[2016] JMCA App 19

JAMAICA

IN THE COURT OF APPEAL

APPLICATION NO 62/2016

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE P WILLIAMS JA (AG)

BETWEEN	**ROYAL CARIBBEAN CRUISES LTD**	**1ST APPLICANT**
AND	**FALMOUTH JAMAICA LAND COMPANY LTD**	**2ND APPLICANT**
AND	**ACCESS TO INFORMATION APPEAL TRIBUNAL**	**RESPONDENT**
AND	**PORT AUTHORITY OF JAMAICA**	**1ST INTERESTED PARTY**
AND	**JAMAICA ENVIRONMENT TRUST**	**2ND INTERESTED PARTY**

Hadrian Christie instructed by Patterson Mair Hamilton for the applicants

Mrs Sandra Minott-Phillips QC and Mrs Alexis Robinson instructed by Myers Fletcher & Gordon for the respondent

Dr Lloyd Barnett instructed by Miss Suzanne Lawrence for the 1st interested party

Miss Natassia Robinson for the 2nd interested party

20 April and 24 June 2016

BROOKS JA

[1] I have had the privilege of reading, in draft, the judgment of P Williams JA (Ag) and concur with the conclusion at which she has arrived, that the application for leave to appeal should be refused. I wish, however, to add a few words of my own. It will be sufficient for these purposes to rely on, and adopt as my own, the outline of the circumstances and the submissions that have been set out in the judgment of my learned sister.

[2] Having considered the material and the submissions made by learned counsel for the parties, I agree with my learned sister that on an application of the provisions of the Interpretation Act to rule 56.4(12) of the Civil Procedure Rules (CPR), the applicants would have filed their claim out of time. I am, however, not convinced that it is necessary to venture outside of the CPR to resolve the issue in this case. I am, particularly, not prepared to accept at this time, that part 3 of the CPR, which deals with, among other things, the computation of time, has been excluded from application to part 56 of the CPR, which deals with judicial review.

[3] My diffidence in this regard does not prevent me from agreeing with the conclusion reached by P Williams JA (Ag). I agree with the submissions of Mrs Minott-Phillips QC, that even with the application of the provisions of rules 3.2(2) and 3.2(3) of the CPR, the applicants would have filed their claim for judicial review out of time.

[4] The relevant parts of the rules are, for completeness, both set out below. Firstly, rule 3.2, which deals with computation of time, states, in part:

> "(1) This rule shows how to calculate any period of time for doing any act which is fixed –
>
> (a) by these Rules;
>
> (b) by any practice direction; or
>
> (c) by any judgment or order of the court.
>
> (2) All periods of time expressed as a number of days are to be computed as **clear days**.
>
> (3) In this rule "**clear days**" means that in computing the number of days –
>
> (a) the day on which the period begins; and
>
> (b) **if the end of the period is defined by reference to an event**, the day on which that event occurs or should occur, are not included." (Emphasis supplied)

[5] It is important to note that "the day on which that event occurs", is not an unqualified statement, it depends on the words which precede it. In ascertaining what constitutes "clear days" in any particular situation, a point to be ascertained is whether "the end of the period is defined by reference to an event". Strictly by way of parenthesis, it may be said that rule 11.11(1)(b) is an example in the CPR where the end of a period is defined by reference to an event. Rule 11.11(1) states:

> "(1) The general rule is that a notice of an application must be served-

(a) as soon as practicable after the day on which it is issued; and

(b) **at least 7 days before the court is to deal with the application**. (Emphasis supplied)

In that rule, the end of the period is defined by an event, namely the hearing date. Both paragraphs (a) and (b) of rule 3.2(3) apply in that case.

[6] Rule 3.2(3) goes on to give two examples of the way time is to be computed. Regrettably, the examples given do not assist in the examination of rule 56.4(12), which is set out below. Neither speaks to the doing of an action "within" a particular period. An example given in the English Civil Procedure Rules, in this regard, is more helpful. Rule 2.8(1), rule 2.8(2) and rule 2.8(3) of those rules are in almost identical terms to the portion of rule 3.2 quoted above. The relevant example in the English Civil Procedure Rules is set out at rule 2.8(3)(iii) of those rules. It states as follows:

> "Particulars of claim must be served **within 14 days of** service of the claim form.
> The claim form is served on 2 October.
> The last day for service of the particulars of claim is 16 October." (Emphasis supplied)

It will be noted in that example, although using the standard of "clear days", that the first day, 2 October, is not counted, and the 14th day is the day by which compliance is required.

[7] Rule 56.4(12) is the second rule that is relevant to this case. It stipulates the time for filing the claim once leave to apply for judicial review is granted. The paragraph in the rule states:

> "Leave is conditional on the applicant making a claim for judicial review **within 14 days of receipt of the order granting leave**." (Emphasis supplied)

[8] Using the terminology of rule 3.2(3), it is my view that the end of the period set by rule 56.4(12) of the CPR is not defined by reference to an event. The period is, instead, defined by the day on which the period begins. It is rule 3.2(3)(a) alone which is applicable to rule 56.4(12). Rule 3.2(3)(b) is excluded.

[9] It is, therefore, apparent that, as the period in this case began with the grant of leave by an order made on 7 July 2015, and rule 56.4(12) required the approved claim to have been filed within 14 days of that date, it is the date of the grant that defines the period, not the date of the filing of the claim. The 14 days, when counted, would therefore exclude 7 July, as required by rule 3.2(3)(a). Starting the count on 8July, therefore, the 14 days would end on 21 July. It is plain, therefore, that 22 July would have been the 15th day and therefore outside of, and not "within", the time allowed by rule 56.4(12). Reliance on the use of the term "clear days" used in rules 3.2(2) and 3.2(3) cannot provide any refuge or relief for the applicants.

[10] As stated above, I would also refuse the application with costs to the respondent.

SINCLAIR-HAYNES JA (DISSENTING)

[11] I have had the privilege of reading the decisions of both Brooks JA and P Williams JA (Ag). I, however, cannot agree with their method of calculation. It is unnecessary for me to outline the facts and counsel's submissions as they have been adequately stated by P Williams JA (Ag).

[12] I agree with Mr Christie's submission that the Interpretation Act is not applicable. The issues which confronted Panton P in **Orett Bruce Golding and the Attorney General v Portia Simpson Miller** SCCA No 3/2008, judgment delivered 11 April 2008, were different. His pronouncement in respect of the Interpretation Act is, in my view, therefore irrelevant to the instant matter. In the **Golding and the Attorney General v Simpson Miller** case, the issue was whether the court had the power to extend the time within which an applicant to whom conditional leave had been granted to make a claim for judicial review, had failed to make his claim within the prescribed time.

[13] In that case, the applicant's application was filed in excess of a month outside of the stipulated 14 days. The method for the computation of the time in respect of rule 56.4(12) of the Civil Procedure Rules (CPR) was not an issue for the learned President's determination. By referring to the Interpretation Act, he endeavoured to demonstrate that the applicant's application in that case would have been made outside of the 14 days allotted by whatever method of calculation was applied.

[14] In my view, the Interpretation Act is inapplicable to the computation of time in respect of judicial review matters. There is, as posited by Dr Barnett, no basis for resorting to the Interpretation Act, when the CPR specifically provides for the computation for these matters. Section 8(1) of the Interpretation Act reads:

> "**In computing time for the purpose of any Act, unless the contrary intention appears –**
>
> (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;
>
> (b) if the last day of the period is Sunday or a public holiday (which days are in his section referred to as excluded days) the period shall include the next following day, not being an excluded day;
>
> (c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day;
>
> (d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time." (Emphasis supplied)

[15] In the instant case, a contrary intention has been clearly demonstrated by Part 56 which has expressed in clear language that applications for judicial review are dealt with by the CPR. Dr Barnett also relied on section 12(1) of the Interpretation Act which states that:

> "Where expressions are defined in or for the purposes of any Act, such expressions shall have the meanings assigned to them, **unless there is anything in the subject or context repugnant to, or inconsistent with, such meaning**." (Emphasis supplied)

[16] The language of the framers of the CPR makes it palpable that in computing time, judicial review matters are not exempt from the method of computation set out in rule 3.2 of the CPR.

Rule 3.2 reads:

> "**This rule shows how to calculate any period of time for doing <u>any act</u> which is fixed -**
>
> (a) by these Rules;
>
> (b) by any practice direction; or
>
> (c) by any judgment or order of the court." (Emphasis supplied)

[17] Applications for judicial review matters are dealt with by Part 56 of the CPR which delineates its scope. Rule 56.1(1) of the CPR states:

> "This Part deals with applications -
>
> (a) for judicial review;

..."

Rule 2.2(1) and (2) also put it beyond doubt that judicial review matters fall within the ambit of the CPR. Rule 2.2(1) and (2) read:

> "(1) Subject to paragraph (3), these Rules apply to all civil proceedings in the court.
>
> (2) '**Civil proceedings**' include Judicial Review and applications to the court under the Constitution under Part 56." (Emphasis as in original)

Rule 3.2(2) states in plain language that:

> "(2) **All periods of time expressed as a number of days are to be computed as clear days.**" (Emphasis supplied)

Rule 3.2(3) defines clear days in the context of the CPR thus:

> "(3) In this rule '**clear days**' means that in computing the number of days -
>
> (a) the day on which the period begins; and
>
> (b) if the end of the period is defined by reference to an event, the day on which that event occurs or should occur, are not included." (Emphasis as in original)

[18] Examples are provided by the rule for the avoidance of doubt as how clear days are to be computed:

> "(a) Document served by post deemed to be served 14 days after posting: document posted on 1st September, deemed served on 16th September.
>
> (b) Document must be filed at least 3 days before the hearing: application is to be heard on Friday 20 October, the last date

> for filing the document is Monday 16 October."

The rule is unambiguous. In respect of matters which are dealt with by the CPR, such as judicial review matters, calculations in respect of time as it concerns days, must be "computed as clear days". The inescapable conclusion, to my mind, is that calculations in respect of judicial review matters are to be done pursuant to rule 3.2 of the CPR.

[19] Rule 3.2(3)(b) does not, in my view, exclude judicial review matters for the reason posited by learned Queen's Counsel that there is no reference to an event in judicial review matters as provided in the examples provided by rule 3.2(3). Rule 56.4(12), in my view, makes it plain that an event must necessarily occur within 14 days of obtaining leave. The rule provides that:

> "Leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave."

The rule has not only set the parameters, it makes it pellucid that an event is to occur, which is, a claim is to be made. The period began at the granting of leave. The making of the claim is incontrovertibly an event. It is immaterial that the name of the document initiating the claim is not specifically stated at rule 56.4(12) because it was specifically stated at rule 56.9(1) how the application is to be made.

Rule 56.9(1) reads:

> "An application for an administrative order must be made by a fixed date claim in form 2 identifying whether the application is for -
>
> (a) judicial review;
>
> ..."

[20] In light of the foregoing, I must regrettably differ from the view expressed by my learned brother that resort must be made to the example provided by the English Civil Procedure Rules set out at rule 2.8(3)(iii), as in my view, there is no deficiency in the CPR.

By virtue of rule 3.2(3), and the examples provided by the framers of the CPR, it is abundantly clear that in the instant case, the date the fixed date claim ought to have been filed (which was the event) was excluded. The claim was therefore not filed out of time.

[21] Rule 3.2(1)(a) states unequivocally that "this rule shows how to calculate any period of time for doing any act which is fixed by these rules". "Any act" is defined by the Oxford English Dictionary as "no matter which". Merriman-Webster online dictionary defines "any" as unmeasured or unlimited in amount; one or some indiscriminately of whatever kind". It therefore follows that "any act", in the context of Part 3 of the CPR, includes all acts to be done, be it filing or service of documents or whatever other acts which might be necessary.

[22] In any event, the English rules predated ours. If the framers of our CPR were of the view that the examples provided were inadequate, they would have incorporated that example. In the circumstances, I must regrettably and respectfully, differ from my learned brother's view that the examples provided by the CPR do not assist in the examination of rule 56.4(12). In my opinion, it is lucent that based on rule 3.2(3) and the examples provided that in judicial review matters, the period of 14 days within which to file the "fixed date claim" is to be calculated as clear days in accordance with that rule.

[23] In light of the foregoing, I am the view that the applicants have a real chance of succeeding on their application.

P WILLIAMS JA (AG)

[24] On 18 March 2016 Royal Caribbean Cruises Limited and Falmouth Jamaica Land Company Limited (the applicants) filed an urgent notice of application for leave to appeal seeking the following orders:

> "1. Permission to appeal the Orders of the Hon. Mrs Justice Bertram Limited [sic] (the 'learned judge') on 14 March 2016 in Supreme Court Claim No 2015 HCV 0247 ('the Supreme Court Claim')
>
> 2. Execution of the Order of the learned judge be stayed pending appeal.
>
> 3. The Respondents decision dated 13 April 2015 in Access to Information Appeal No. AT/PAJ/2013/1 be stayed pending appeal.
>
> 4. Costs of this application to be costs in the appeal."

The grounds on which the orders are sought are that:

> "1. The Applicants have a real chance of success on appeal.
>
> 2. The learned judge erred in granting the Respondent's application in the Court below.
>
> 3. A stay of proceedings is just and necessary in the circumstances.
>
> 4. This application is made pursuant to Rule 1.8 of the Court of Appeal Rules 2002 and s.11 of the Judicature (Appellate Jurisdiction) Act and is supported by the overriding objective of Part 1 of the Civil Procedure Rules, 2002."

[25] When the matter came on for hearing before this court, the parties consented to the application being treated as the hearing of the appeal.

Background

[26] The applicants entered into contracts with the Port Authority of Jamaica ('PAJ'). The Jamaica Environment Trust (JET) requested disclosure of the said contracts but this request was denied by PAJ. JET appealed to the Access to Information Appeal Tribunal (the respondent) and after hearing arguments the appeal was granted with the respondent giving a written decision dated 13 April 2015.

[27] On 27 May 2015, the applicants filed an ex parte notice of application for leave to apply for judicial review of this decision so that an order of certiorari quashing the decision of the respondent could be obtained. The application was heard by Batts J on 7 July 2015 and leave was granted to apply for judicial review.

[28] The applicants filed their fixed date claim form on 22 July 2015 and served the respondent on 11 November 2015. PAJ and JET were served, as interested parties, on 12 November 2015.

[29] On 16 November 2015, the respondent filed a notice of application for court orders (jurisdictional point) seeking the following orders:

> "1. The court has no jurisdiction to try this claim;
>
> 2. The Fixed Date Claim Form filed herein is struck out as a nullity and judgment issues for the Defendant as against the Claimants for costs incurred by the Defendant to date, said costs to be taxed if not agreed."

[30] The grounds on which the orders were sought were as follows:

> "1. The claimants have failed to comply with the Civil Procedure Rules applicable to applications for judicial review in that:
>
> (a) Their Fixed Date Form was filed outside of the 14 day period set out in rule 56.4 (12)
>
> (b) The affidavit in support of the claim does not conform with the general rule requiring it be made by an appropriate officer of the Claimants and the reason given for that is insufficient [rules 56.9(4) (5)]; and
>
> (c) The affidavit was not filed with the Fixed Date Claim Form as is required by rule 56.9(2).
>
> 2. The condition upon which this court granted the Claimants leave to commence judicial review, having not been met, the Court has no jurisdiction to try the claim, as it can only adjudicate upon judicial review proceedings of this kind if properly commenced following the grant of leave."

[31] On 14 March 2016, Bertram-Linton J (Ag) having heard submissions, granted the orders prayed in the application of the respondent. In her reasons for granting the orders, the learned judge considered the following questions:

1. Is there a valid claim? and

2. Does Rule 3.2 apply?

[32] In arriving at the answer for both questions the learned judge found that the case of **Orett Bruce Golding and the Attorney General of Jamaica v Portia Simpson Miller** SCCA No 3/2008, judgment delivered 11 April 2008, which had been relied on by learned Queen's Counsel, provided the requisite guidance. Thus the learned judge stated at paragraph [6] that:

> "The period for filing the claim was calculated and set out in **Golding and Anor v Portia Simpson Miller SCCA No 3/2008** which was delivered on April 11, 2008. In that case the Court of Appeal added 14 days to the date the leave was granted and sanctioned that as the means of calculating the time limit for the period of filing, by ordinary calculation."

[33] She then found that since leave in the instant matter was granted on 7 July 2015, using the sanctioned means of calculating time, the claim having been filed on 22 July "was filed outside of the period stated in the precondition, the leave had lapsed, that lapse is fatal to the proceedings, the claim is therefore a nullity and the court has no jurisdiction to deal with it".

[34] In relation to the second question, the learned judge had identified for consideration the following as stated in paragraph [8]:

> "The Court of Appeal per Panton, P (as he then was) in the **Golding** case (para.11), in sanctioning the formula for the calculation of the days, spoke about the Interpretation Act and its application in the circumstances where periods of days are to be calculated. He said:
>
> > `*The Interpretation Act provides that when an act is directed to be done within any time not exceeding six days, excluded days (that is, Sundays and public holidays) shall not be reckoned in the computation of the time. That means that where, as here, the period is more than six days excluded days are to be counted.*'
>
> To my mind the calculation outlined by the CPR cannot take the lead in the determination of this matter. It is the Law in the form of the Interpretation Act to which we must accord that place."

[35] The learned judge was not minded to grant leave to appeal her decision hence the filing of this application became necessary.

The Submissions

[36] Mr Christie, for the applicant, identified the main issue which had been before the learned judge as being whether or not the applicant's fixed date claim form had been filed within time. He accepted that the decision of the learned judge concerning whether rule 3.2 applied to Part 56 of the Civil Procedure Rules (CPR) is supported by this court's decision in **Golding and the Attorney General v Simpson Miller** but

contended that this did not prevent the applicants from having a real chance of success in their appeal.

[37] It was his submission that the method of computing time that was mentioned in **Golding and the Attorney General v Simpson Miller** was *obiter*, and in that decision this court had erred in applying ordinary calculation of time as defined in the Interpretation Act (the Act) to Part 56 of the CPR since the CPR had its own expressed method of computing time. He identified two issues which he considered to be of significance for resolution in this matter, namely: (1) whether general provisions of Part 3 of the CPR apply to administrative law at Part 56; and (2) whether there has generally been an incorrect method of counting clear days.

[38] Mr Christie pointed to rules 2.2 and 2.3 as the place to commence a consideration of the application of the CPR generally to Part 56.

Rule 2.2(1) and (2) states:

> "(1) Subject to paragraph (3), these Rules apply to all civil proceedings in the court.
>
> (2) 'Civil proceedings' include Judicial Review and applications under the Constitution Part 56."

Rule 2.3 states:

> "The Interpretation Act applies to the interpretation of these Rules."

[39] He submitted that the CPR was designed as one whole collective body of rules to govern civil proceedings (including judicial review proceeding) and should therefore be read and interpreted as one within its entire framework. Further, he contended

that the framers of the rules gave thought to and were express in their intention as to when the CPR as a whole or a particular rule should not apply in certain circumstances. He cited the following examples:

> "(a) the CPR expressly does not apply to, inter alia, insolvency proceedings or proceedings where the Court acts as a Prize Court;
>
> (b) CPR 18.2(4) expressly excludes the operation of certain rules from ancillary claims; and
>
> (c) CPR 76.3(2) expressly excludes the operation of certain rules and parts in the CPR from matrimonial proceedings."

[40] Mr Christie further submitted that when one considers the CPR as a whole, it appears that the framers of the CPR would have expressly stated that the general provisions of the CPR do not apply in any particular circumstance, if that was their intention. Since such an express exclusion was not done in Part 56, the word "days" should be given the interpretation set out in CPR 3.2.

[41] Mr Christie contended that it would be contrary to the design of the CPR to have one method of computing days for some parts of the rules and another for other parts.

[42] It was also his submission that Part 56 could not be a self-contained section as there would be far too many anomalies if this were so. He questioned whether other parts dealing with matters such as filing, service, the requirements for a certificate of

truth, the process for commencing a claim and the need to file an acknowledgment of service would not be relevant to judicial review proceedings.

[43] Mr Christie submitted that rule 3.2 shows clearly how to calculate any period of time for doing any act fixed by the CPR and rule 3.3 explains how to compute clear days. He contended that in compliance with these rules, the applicants had filed their claim within 14 days and therefore it ought not to have been struck out.

Rule 3.2(2) provides:

> "All periods of time expressed as a number of days are to be computed as clear days"

Rule 3.2(3) sates:

> "In this rule '**clear days**' means that in computing the number of days -
>
> (a) the day on which the period begins; and
>
> (b) if the end of the period is defined by reference to an event, the day on which that event occur or should occur, are not included." (Emphasis as in original)

[44] It is Mr Christie's submission that having been given leave, conditional on making the claim within 14 days, the day the leave was granted and the 14th day ought not to be included. He submitted that, since the order was made on 7 July, computation would begin on 8 July to 21 July, which would represent 14 clear days. Therefore, filing on 22 July would not have been out of time.

[45] Dr Barnett, in his submissions on behalf of the 1st interested party, adopted the submissions made by Mr Christie. He also contended that this was essentially a question of arithmetic which turned on the real issue of statutory interpretation.

[46] He noted that the Act is a general Act and its terms are only applicable where there is nothing in the context or subject of the provision being interpreted which is "inconsistent with such construction" or "unless it is therein otherwise expressly provided" (see section 3).

[47] Dr Barnett referred to the text Bennion on Statutory Interpretation 5th edition where it is stated:

> "(1) The purpose of an Interpretation Act is by the use of labelling definitions to shorten the language which needs to be used in legislation.
>
> (2) Whether it is so stated or not, a provision of an Interpretation Act does not apply if the contrary intention appears from the enactment in which the term in question is used."

[48] Dr Barnett pointed out that section 8 of the Interpretation Act provides for a method of computation of time for a myriad of statutes and regulates dealing with a variety of subject matters. Thus it applies unless the "contrary intention appears".

[49] He also noted section 12(1) of the Act, which states:

> "Where expressions are defined in or for the purposes of any Act, such expressions shall have the meanings assigned to them, unless there is anything in the subject or context repugnant to, or inconsistent with, such meaning."

Thus, Dr Barnett submitted, there is no rational or legal basis for applying the computation of this general Act in preference to the computation of the special court rules in respect of court proceedings. Further, it was his submission that the makers of the CPR have not given the slightest indication that any other rules for the computation of time apply to the provisions of the CPR or to Part 56 exclusively or specifically.

[50] In response Mrs Minott-Phillips QC submitted that the appeal could have no chance of success for reasons of law or arithmetic.

[51] She countered the submission that what was expressed in **Golding and the Attorney General v Simpson Miller** on the interpretation of rule 56.4(12) was *obiter* by contending that the question before this court in that appeal was whether it should set aside an order of the court below extending the time for filing a claim for judicial review following the grant of leave to apply for judicial review. She noted that Panton P expressly stated at paragraph 4:

> "...Rule 56.4(12) is of great importance for the purpose of this appeal, and so must be quoted..."

And Smith JA in his judgment stated at page 15 that:

> "This appeal turns on the interpretation of rule 56.4(12)..."

[52] She noted that the method of calculation of the 14 day period was done by this court in that decision by Panton P at paragraph 11 and by Harris JA at page 37. Learned Queen's Counsel further noted that one of the matters that this court decided

in **Golding and the Attorney General v Simpson Miller** was that the CPR forbids an extension of time when an applicant for judicial review fails to file his claim within the leave period.

[53] Mrs Minott-Phillips QC submitted that the computation made by the applicants was wrong because clear days in this instance included the first day but not the last since the claim must be filed **within** that 14 day period. She contended that it was the beginning (not the end) of the 14 day period that is defined by reference to an event (the event being the receipt of the order granting leave) so if one applied rule 3.2 the applicants would still be out of time. She submitted that there is no discrepancy in the application of the Interpretation Act and rule 3.2, but if there is, then the Act must prevail over the rules.

Discussion and Analysis

[54] I will first turn to the question of whether permission to appeal should be granted. The court is guided by rule 1.8(9) of the Court of Appeal Rules 2002, which states:

> "The general rule is that permission to appeal in civil cases will only be given if the court or the court below considers than an appeal will have a real chance of success."

[55] "Real chance of success" has been interpreted in several cases by this court. It is now accepted as meaning that there must be a real and not a fanciful or unrealistic chance of success in the proposed appeal. The court, in considering whether this

threshold of a real chance of success, is reached is not required to conduct an analysis to determine whether the grounds of the proposed appeal will succeed, but whether there is a real prospect of success.

[56] In determining whether the applicants proposed appeal would have a real chance of success, it is necessary to determine whether the period for making a claim for judicial review under rule 56.4(12) is to be computed as clear days as required by rule 3.2. This will be necessary to resolve what must be the ultimate issue as to whether it is arguable that the learned judge erred in making a finding that the Supreme Court had no jurisdiction to try the judicial review proceedings brought by the applicants and erred further in striking out the fixed date claim form as a nullity having been filed out of time.

[57] As already noted, the CPR make reference to clear days and how they are to be computed. A close consideration of rule 3.2(3) leads to an understanding that the day on which the period for computing the period begins is not to be included in the count. It is noted that this would be consistent with the position stated in the Act where at section 8(1) it provides:

> "In computing time for the purpose of any Act, unless the contrary intention appears -
>
> (a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;"

[58] The rule, however, includes a second day which is to be excluded in certain circumstances when the clear days are being computed. The last day at the end of the period is not to be included if it is defined by reference to an event.

[59] In the examples given in rule 3.2(3), this becomes apparent. The first example is as follows:

> "(a) Document served by post deemed to be served 14 days after posting: document posted on 1st September deemed served on 16th September."

The date of posting would be the day on which the period begins, which is excluded. The 15th of September would be day 14, the end of the period being referenced so that day would also not be included. Thus the deemed date of service becomes the 16th.

[60] The second example given states:

> "(b) Documents must be filed at least 3 days before the hearing: application is to be heard on Friday 20 October, the last date for filing the document is Monday 16 October."

The day of filing the document, the 16th, is excluded. The 19th of October would be day 3, the end of the period being referenced and thus is not included, so the date of hearing is on the 20th.

[61] To my mind, a resolution of this matter requires a closer consideration of rule 56.4(12). This rule calls for an act to be done **within** 14 days. The day on which the period begins would be marked by the grant of leave to apply for judicial review. The end of the period is not defined by reference to an event, but the party granted leave

is required to do something within a period of days. The leave granted is conditional upon something being done within a period of days. It follows from this, to my mind, that the computation of clear days as set out in rule 3.2 has no application in these circumstances. It is therefore necessary to construe rule 56.4(12) in accordance with the general rules of interpretation set out in the Act.

[62] It is a cardinal rule of construction that words must be given their ordinary and natural meaning. Relying on the Oxford dictionary, the word "within" is defined as "inside", "not further off than (a particular distance)" and "occurring inside (a period of time)", "not exceeding or transgressing", "not beyond or out of".

[63] Applying this natural meaning to the rule would lead to the understanding of the rule being that leave is conditional on the applicant making a claim not exceeding or not beyond, or out of a period of 14 days. The calculation of time done in the cases which have considered this provision has been consistent with the method prescribed by the Interpretation Act; that is, by excluding the date from which the 14 day period is to be reckoned, but including the 14th day.

So for instance in **Golding and the Attorney General v Simpson Miller**, Panton P said at paragraph 11 that:

> "...By ordinary calculation, the claim ought to have been made by the 27th December that is within 14 days from 13th December, 2007, the date of the order of Beckford, J."

Harris JA at page 37 of the decision stated:

> "The order of December 13, 2007 mandated the respondent to have filed a Fixed Date Claim Form and affidavit by December 27, 2007. This she failed to do. Her right to pursue the remedy of judicial review ceased and determined as of December 27."

[64] This court demonstrably found that the time for filing the claim form should be up to and including the 14th day of receiving leave. On a calculation of days, therefore, in the instant case the learned judge was correct in finding that filing on 22 July meant filing on the 15th day which was outside of the period. The leave had accordingly lapsed.

Conclusion

[65] There is no realistic prospect of success in the grounds to be relied on by the applicants. Accordingly, the application for leave to appeal the orders made by Bertram-Linton J (Ag) on 14 March 2016 should be refused with costs to the respondent.

BROOKS JA

ORDER

By majority (Sinclair-Haynes JA dissenting)

1. The application for leave to appeal the orders made by Bertram-Linton J (Ag) on 14 March 2016 is refused.

2. Costs to the respondent to be agreed or taxed.