

[2014] JMCA Civ 56

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 20/2014

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MISS JUSTICE MANGATAL JA (Ag)**

**BETWEEN COMMISSIONER OF POLICE
AND PUBLIC SERVICE COMMISSION APPELLANTS
AND DWIGHT PETERS RESPONDENT**

Miss Marlene Chisholm instructed by the Director of State Proceedings for the appellants

Garth Lyttle instructed by Garth E Lyttle & Co for the respondent

29 July 2014

ORAL JUDGMENT

PANTON P

[1] This is an appeal against the judgment of Vivienne Harris J in which she, on 16 December 2013, ordered that the fixed date claim form and supporting affidavit filed out of time on 18 October 2013 were to stand and that, in effect the respondent, a constable in the Jamaica Constabulary Force, was allowed to file an application for judicial review in respect of leave that had been granted to him by C McDonald J on 4 April 2013.

[2] The appellants have challenged this order by Harris J on the ground that the respondent had 14 days after the grant of leave to file the claim but had far exceeded that time and the Supreme Court judge has no jurisdiction to extend time in that situation. Consequently, the appellants are seeking an order from this court that the appeal be allowed and the order of Harris J set aside with costs awarded to them.

[3] The parties to this appeal duly filed documents as required by the rules along with submissions and the authorities on which they relied. We, having read the submissions, took the decision at the commencement of the hearing to call upon Mr Lyttle to show why this appeal should not be allowed and Mr Lyttle chose to rise to the occasion. He submitted that rule 56.6(5) of the Civil Procedure Rules, 2002 (CPR) with particular reference to (5)(b) permitted the learned judge to have made the order that she made. That rule reads thus:

- “(5) 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) cause substantial hardship to or substantially prejudice the rights of any person; or
 - (b) be detrimental to good administration.”

[4] Mr Lyttle relied particularly on paragraph (b) of that rule. He submitted that an order had been made by Miss Justice Paulette Williams on 17 October 2012 for certain documents to be disclosed but that the appellants had not properly complied with that order. Consequently, he said, the learned judge had the discretion to act as she did. The point being made by Mr Lyttle was that the Commissioner of Police withheld

information in respect of the court of inquiry conducted by the police on which the respondent was acquitted. That information, he said, was vital for communication by the service commission to the Governor-General who is charged with the responsibility of making disciplinary orders in respect of members of the police force. Certain allegations were made against the respondent in respect of corrupt activities involving the receipt of money from a civilian in circumstances where such receipt led to him being charged with breaches of the Corruption Prevention Act. He was charged along with other members of the Constabulary Force. He was tried in the Santa Cruz Resident Magistrate's Court almost five years ago, to the day, and was acquitted. The learned Resident Magistrate ruled on 27 July 2009 that no prima facie case had been made out and a no-case submission was upheld and the respondent and another constable with whom he was charged were discharged.

[5] A court of inquiry was held and according to Mr Lyttle, the respondent was acquitted there also and that information ought to have been communicated to the Governor-General. Mr Lyttle argued that Harris J was right in extending the time for the filing of the fixed date claim form. Two areas in the administration of justice, he said, were affected. Firstly, he said that it is the duty of a Supreme Court judge to protect the jurisdiction and functioning of a court of law such as the Resident Magistrate's Court where a decision had been given in the respondent's favour. Secondly, he said the Supreme Court has a duty and the power and obligation to protect the jurisdiction and/or judgment of the court of enquiry of the respondent by incorporating the observations in his fixed date claim form reflecting or stating that the

omission by the Commissioner of Police to communicate the information to the Governor-General was fatal. These submissions by Mr Lyttle strongly contend that there was jurisdiction for Harris J to make the order which she made.

[6] Reference was made to the oft-cited judgment of this court in **Orrett Bruce Golding and The Attorney General of Jamaica v Portia Simpson Miller** SCCA No 3/2008 delivered on 11 April 2008. In that case three judges of the court gave written reasons. In the judgment of Harris JA at page 31, she dealt with the question of rule 56.6 on which Mr Lyttle placed great reliance. Unfortunately, Mr Lyttle has not distinguished this judgment and we quote now from Harris JA:

“Rule 56.6 makes provision for extension of time for making an application for leave for judicial review where there is a delay in doing so. Under rule 56.6(1) an application for judicial review must be made promptly or within 3 months from the date on which the grounds for the application first arose. The court, however, will entertain an application for leave made outside the 3 months period if good reasons for delay are proffered. I must hasten to add that this is not a situation where the applicant had been tardy in making her application. She had been afforded a hearing and therefore could not have been aided by rule 56.6. Miss Anderson had in fact correctly observed that Part 56.6 of the rules is inapplicable to a situation in which there has been a prior hearing.”

[7] Miss Akalia Anderson who appeared for the respondent at the hearing of the appeal in that case had conceded that rule 56.6 was really relevant when an extension of time was being sought to make an application for leave for judicial review. In the instant case, leave for judicial review has already been granted so rule 56.6 cannot aid,

we repeat, cannot aid the respondent in this situation where having been granted leave to apply for judicial review, he sat and waited for six months before making the application. So the leave has in fact lapsed. This point was also mentioned by Smith JA in his judgment in the said case **Golding v Simpson Miller**. The leave having lapsed cannot be resuscitated, it's gone. No good explanation had been offered, neither before Harris J nor before us for the respondent's failure to apply within the required time. Mr Lytle has said that he was waiting to receive the documents in relation to what the commissioner had written but the respondent did not need those documents to make the application. Having succeeded in getting leave to apply for judicial review without those documents, there was nothing to prevent him from filing the fixed date claim form before receiving the documents. In any event, the respondent would have known about the processes that he went through. He did not need the Commissioner of Police's confirmation of the processes that he went through.

[8] In the circumstances, given the line of authorities and given the clear reading of the rule there can be no other result in this appeal other than that it has to be allowed and the order of Harris J set aside with the consequence of costs being awarded to the appellants to be taxed, if not agreed.