

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA**

SUPREME COURT CRIMINAL APPEAL NO COA2021CV00046

**BETWEEN THE FIREARM LICENSING AUTHORITY APPELLANT
AND ANDREW BOBB RESPONDENT**

Miss Courtney Foster instructed by Courtney N Foster and Associates for the appellant

Lemar Neale instructed by Nea | Lex for the respondent

8 November 2022 and 10 May 2024

Civil procedure – Judicial review – Application for extension of time to apply for judicial review – Whether there was a good reason for the delay in applying – Civil Procedure Rules, 2002, r 56.6

Judicial review – Leave to apply for – Application for leave – Revocation of firearms user’s licence – Claimed breach of natural justice – Whether alternative remedy to judicial review existed – Whether a grant of leave to apply for judicial review operates as a stay of proceedings – Firearms Act, 1967, ss 36, 37A – Firearms (Appeals to the Minister) Regulations, 1967, Regulations 5, 6 – Civil Procedure Rules 2002, rr 56.3(3)(d), 56.4(9)

BROOKS P

[1] The Firearm Licensing Authority ('FLA') has appealed the decision of Smith J (Ag), as he then was, ('the learned judge') made on 14 May 2021, granting Mr Andrew Bobb an extension of time to apply for leave to apply for judicial review and leave to apply for judicial review.

Background

[2] Mr Andrew Bobb was a police officer who applied through the Portland Police Division of the Jamaica Constabulary Force for a firearm user's licence ('firearm licence'). On 5 March 2002, the Portland Police Division granted him a firearm licence and regularly renewed his firearm licence until about 1 March 2006. Under amendments to the Firearms Act, 1967 ('the Act'), the Firearm Licensing Authority ('FLA') was given the responsibility of renewing firearm licences. The amended legislation required Mr Bobb to apply to the FLA for renewal of his firearm licence and to pay the renewal fee each year for the firearm licence.

[3] During the period 2012 to 2014, Mr Bobb did not pay the renewal fee. On or about 27 July 2014, Mr Bobb was arrested and charged with various offences ('the offences'). He was later acquitted of these offences. On 25 August 2015, before his acquittal, he applied to the FLA for renewal of his firearm licence and paid the renewal fee that had been in arrears. The FLA renewed his licence. During the period 2016 to 2017, Mr Bobb, once more, failed to pay the renewal fee. On 19 July 2017, he approached the FLA to renew his firearm licence and paid the outstanding renewal fee.

[4] The FLA informed Mr Bobb that it was investigating the reason for his tardy payments. It permitted Mr Bobb to keep his firearm pending the investigation. Mr Bobb wrote to the FLA informing it that family commitments and financial hardship were the reasons behind his late payments. The FLA's investigations revealed that Mr Bobb had been arrested for the offences and that he had been suspended from the Jamaica Constabulary Force for three years pending the resolution of the case involving the offences.

[5] On or about 30 April 2018, Mr Bobb applied to renew his firearm licence, but the FLA refused his application and seized his firearm. On 9 April 2019, the FLA served him with a revocation order, dated 29 March 2019. It unhelpfully stated that the basis for revoking the licence was that Mr Bobb was "no longer considered fit and proper to be entrusted with a firearm licence".

[6] On or about 25 April 2019, Mr Bobb applied to the Review Board to review the decision of the FLA. The Review Board did not respond to his application and accordingly, in December 2020 he applied to the Minister of National Security ('the Minister') but again, received no response.

[7] Without a response from the Minister, Mr Bobb, on 19 January 2021, applied for an extension of time to seek leave to apply for judicial review and leave to apply for judicial review before the learned judge. The learned judge granted his applications and also granted the FLA leave to appeal.

The learned judge's findings

[8] The learned judge found that Mr Bobb had a good reason for the delay of 21½ months in bringing his application. He accepted that Mr Bobb was pursuing his appeal to the Review Board and that contributed to the delay in applying to the court. The learned judge relied on **Constable Pedro Burton v The Commissioner of Police** [2014] JMSC Civ 187 and determined that Mr Bobb was attempting to exhaust his available remedies before applying for leave to apply for judicial review. He accepted that according to rule 56.4(7) of the CPR, Mr Bobb could also have applied for leave and then adjourned the application for leave until the appeal to the Review Board was determined or the time for appealing had expired. He concluded that the public interest as well as the interest of good administration required that Mr Bobb's application for extension of time be granted.

[9] The learned judge found, at para. [67] of his judgment, that the Act did not impose an obligation on the FLA to have a hearing or to provide reasons when revoking the firearm licence. However, he noted that implicit in the Act was the requirement of natural justice and procedural fairness. He highlighted in para. [68] that the modern method requires the FLA's decision-making process to be fair. To do so, the learned judge advanced that despite the absence of a statutory obligation to provide reasons, the FLA, at the time of revoking a licence, should "provide a gist of the reasons for the revocation" (para. [68] of his judgment). He found that the reason that the FLA gave to Mr Bobb, that he was "no longer considered fit and proper to be entrusted with a firearm licence",

placed Mr Bobb at a disadvantage because it did not enable him to know “precisely the basis for the revocation” (para. [70]).

[10] He noted that the revocation order informed Mr Bobb that he could apply for a review of the FLA’s decision and state the grounds for doing so but found that Mr Bobb would be hindered in his attempt to do so since he was not given a proper reason for the revocation. In those circumstances, the learned judge found that the process was not fair (see para. [72] of the learned judge’s judgment).

[11] The learned judge found that:

- a. the time limit stipulated in the Act for the Review Board to review the FLA’s decision had passed, and it would no longer be able to review the decision (para. [73]);
- b. fairness required that the Minister should respond in a reasonable time (para. [74]);
- c. since Mr Bobb had applied to the Minister in December 2020, but had received no response, the next step was for him to approach the court, as there was no alternative recourse (para. [74]); and
- d. Mr Bobb had an arguable case for judicial review with a realistic prospect of success (para. [75]).

He, therefore, granted Mr Bobb an extension of time within which to seek leave to apply for judicial review and granted leave for him to apply for judicial review.

Grounds of appeal

[12] The has FLA filed numerous grounds of appeal:

- “a) The learned judge erred in finding that leave should be granted in circumstances where [Mr Bobb] had simultaneously embarked on an appeal before the Minister of National Security;

- b) The learned judge erred in finding that [Mr Bobb] was not required to apply for a stay of his application for leave for judicial review pending the outcome of the appeal process;
- c) The learned judge did not sufficiently consider that the Court of Appeal decision of Raymond Clough v Superintendent Grayson and AG 1989 26 JLR 292 was binding on the court in arriving at its decision on whether or not to grant leave to apply for judicial review to [Mr Bobb];
- d) The learned judge failed to consider that under section 37A of [the Act], the Review Board is empowered to hear, receive and examine the evidence which led to the revocation of [Mr Bobb's] firearm user's licence and [Mr Bobb] did not make a request for said disclosure in his application for leave for judicial review;
- e) The learned judge failed to consider that the Minister of National Security is empowered under [the Act] to provide information to [Mr Bobb] to present his case to the Minister of National Security;
- f) The learned judge did not find that since there is no requirement of the [FLA] to disclose documents or reasons on [Mr Bobb] at the revocation stage, there was no breach of natural justice by the [FLA];
- g) The learned judge failed to consider that [Mr Bobb's] election not to join the members of the Review Board and the Minister of National Security in his application for leave for judicial review had denied the learned judge significant details which the learned judge would need to consider in determining whether or not time should be extended for the filing of said application;
- h) The learned judge, in granting leave for judicial review, did not direct (pursuant to Rule 56.4(9) of the Civil Procedure Rules) on whether or not the grant of leave operates as a stay of proceedings given that the application for leave for judicial review included a request for an order of certiorari;

- i) The learned judge erred in finding that [Mr Bobb] was not sufficiently aware of the basis for the revocation of his firearm user's licence;
- j) The learned judge erred in finding that the [FLA] breached the principles of natural justice in arriving at its decision to revoke [Mr Bobb's] firearm user's licence despite the [FLA's] investigator disclosing to [Mr Bobb] the nature of the investigations;
- k) The learned judge erred in finding that the [FLA] breached the principles of natural justice in arriving at its decision to revoke [Mr Bobb's] firearm user's licence despite the [FLA] requesting a statement from [Mr Bobb] and [Mr Bobb's] refusal to provide same to the [FLA] during the course of the investigations;
- l) The learned judge erred in finding that [Mr Bobb] had been denied the opportunity to make representations before the Review Board or the Minister of National Security after [Mr Bobb] made no such claim in his affidavits and further, [Mr Bobb] had already successfully embarked on the appeal process at the time that the application for leave for judicial review was being heard;
- m) The learned judge erred in failing to consider that the thrust of [Mr Bobb's] application for leave for judicial review was the purported delay of the Review Board and the Minister of National Security in hearing the appeal and therefore [Mr Bobb] should have sought the intervention of the Minister of National Security upon the expiration of the [ninety-day] period within which the Review Board was mandated to treat with [Mr Bobb's] appeal against the revocation of his licence;
- n) The learned judge erred in not finding that [Mr Bobb's] claim that he was not aware that he could submit an application to the Minister of National Security until he retained the services of counsel was not a sufficient basis on which time to apply for leave for judicial review could be extended;
- o) The learned judge failed to consider that [Mr Bobb] did not take the necessary steps to renew his licence at the

prescribed times and such failure was a sufficient basis on which [Mr Bobb's] firearm user's licence could be revoked;

- p) The learned judge failed to consider that [Mr Bobb] did not challenge that he failed to disclose to the [FLA] that he had been arrested and charged for [the offences] and said offences would be reasonably considered by a firearm licensing authority in granting or revoking a firearm user's licence;
- q) The learned judge failed to consider that [Mr Bobb's] non-disclosure of his charges undermined him having an arguable case with a realistic prospect of success against the [FLA's] decision to revoke his firearm user's licence; and
- r) The learned judge failed to consider that [Mr Bobb's] late renewal of his firearm user's licence; [Mr Bobb] being charged with offences which could reasonably have affected him being fit and proper to be entrusted with a firearm licence; and [Mr Bobb] being placed on suspension by the Jamaica Constabulary Force to which he was employed were all considerations which would undermine [Mr Bobb's] request to quash the [FLA's] decision to revoke his firearm user's licence." (Underlining as in original)

[13] The issues arising from these grounds are:

- a. the propriety of the learned judge in extending the time for Mr Bobb to apply for leave to apply for judicial review (grounds g and n);
- b. whether Mr Bobb had an arguable ground for judicial review with a realistic prospect of success. (This aspect falls for consideration under three subheadings which are: natural justice (grounds c, d, e, f, i, j, k, l and m), whether there was a good reason for the revocation (grounds o, p, q and r), and whether an alternative remedy existed (ground a)); and

- c. whether the granting of leave to apply for judicial review operates as a stay of Mr Bobb's application to the Review Board (grounds b and h).

[14] These issues will not be argued in sequence, for two reasons. First, F Williams JA in **Garbage Disposal and Sanitations Systems Ltd v Noel Green et al** [2017] JMCA App 2 gave guidance on treating applications for extension of time to apply for permission to appeal when they are made together with the substantive application for permission to appeal. He said that it would be futile to consider and grant an extension of time if there was no merit in the substantive application. He, therefore, advised that the possible merits of the substantive application should be considered before the application for the extension of time. He said at para. [17]:

"In relation to addressing the question of what approach the court should adopt when hearing both these types of applications together, I am not without guidance. As recognised by Smith JA in the case of **Evanscourt Estate Company Limited v National Commercial Bank** SCCA No 109/2007, judgment delivered on 26 September 2008, if permission to appeal ought not to be given, it would be futile to enlarge the time within which to apply for permission. This, then, will be the primary rule that will guide the resolution of the application for the orders. The application for permission to appeal will be addressed first." (Bold as in original)

[15] That reasoning may be applied to the present case. As a result, the question of whether Mr Bobb had a meritorious application for judicial review will be considered before his application for an extension of time.

[16] The second reason for departing from a sequential analysis of the issues is that the issue of Mr Bobb having an alternate remedy is integral to the issue of whether his application for judicial review has a real prospect of success. **Robert Ivey v Firearm Licensing Authority** [2021] JMCA App 26 ('**Ivey v FLA**') was decided after the learned

judge handed down his decision in this case, but the reasoning in the case answers most of the questions with which the learned judge wrestled.

This court's function

[17] This court is mindful of its function as an appellate court when reviewing the learned judge's exercise of discretion. Lord Diplock in **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 distilled the principles governing this court's function. He made the following pronouncement on page 1046:

"... [the appellate court] must defer to the judge's exercise of his discretion and must not interfere with it merely on the ground that the members of the appellate court would have exercised the discretion differently. **The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based on a misunderstanding of the law or of the evidence before him or on an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn on the evidence that was before the judge, can be demonstrated to be wrong by further evidence that has become available by the time of the appeal, or on the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it.**" (Emphasis supplied)

[18] Accordingly, this court can only disturb the learned judge's decision if his decision is palpably wrong.

Whether Mr Bobb had an arguable ground for judicial review with a realistic prospect of success (grounds a, c, d, e, f, i, j, k, l, m, o, p, q and r),

[19] In **Ivey v FLA**, the FLA revoked Mr Ivey's four firearm licences, giving him the same stock reason that is reflective of section 36 of the Act, namely, that "he was no longer considered fit and proper to retain a firearm licence". Unlike Mr Bobb, Mr Ivey did not appeal to the Review Board, he applied to the Supreme Court for leave to apply for judicial review of the FLA's decision.

[20] In upholding the Supreme Court's refusal to grant Mr Ivey leave to apply for judicial review, this court considered the provisions of the Act and several authorities, some of which were decisions of this court, touching and concerning the revocation of firearm licences. The court held:

- a. the FLA was not obliged to have a hearing before revoking a firearm licence, nor was it obliged to give the licence holder a reason for the revocation;
- b. the licence holder had a statutory recourse to a remedy and, unless special circumstances existed, was obliged to pursue that remedy;
- c. the remedy was to appeal to the Review Board, which was obliged to grant the licence-holder a hearing;
- d. if the Review Board failed to act within the time prescribed by the statute, the aggrieved licence-holder could have recourse to the Minister; and
- e. an application for leave to apply for judicial review was permissible if the Minister either failed to act within a reasonable time or made a decision which the licence-holder disagreed.

[21] Those principles may be discovered in paras. [41], [46] and [64] of **Ivey v FLA**. Para. [41] of the lead judgment states:

"[41] In applying the reasoning in **Raymond Clough v Superintendent Greyson and Another** [(1989) 26 JLR 292] to the present statutory framework, the similarity to that which applied in the previous dispensation of the Act, dictates a finding that although the [FLA] is obliged to act fairly and in accordance with an ostensibly legitimate basis, it is not obliged to grant a hearing to a licence holder before revoking a licence. The [FLA] is also not obliged to give reasons for its decision to the licence holder. If, however, the licence holder requires a review, the Review Board must:

- a. secure the [FLA's] reasons for its decision;

- b. grant the licence holder a hearing, which need not be orally conducted; and
- c. provide its recommendations to the Minister.”

[22] The court held that since Mr Ivey had not pursued the statutory alternative remedy he was not entitled to leave to apply for judicial review. Para. [46] reads:

“My Ivey, on the reasoning set out above, had no basis to apply for judicial review of the [FLA’s] decision.”

[23] Finally, in para. [64] the court set out a summary of its position in Mr Ivey’s case:

“Mr Ivey has not demonstrated that exceptional circumstances exist in this case, in order to grant leave to apply for judicial review at this time. This is so for the following reasons:

- a. the statutory review process is the more appropriate method of determining the real issue to be decided, which is whether he has been proved to be unfit to hold a firearm licence. The process of judicial review cannot decide that issue. It can only decide whether he was treated fairly at the [FLA] stage. The court does not have the information or the expertise which the Review Board would possess in considering an application for review.
- b. the public interest requires that holders of firearm licences be fit to do so. The entities that are established by the Act are equipped to determine fitness. It is noted that in **Danhai Williams v The Attorney General and Others** [(1990) 27 JLR 512], although this court quashed the decision of the Minister on the basis of an unfair procedure, it remitted the matter to the Minister to conduct a proper hearing.
- c. the statutory review process is more likely to be swifter than the process for judicial review. The statutory process establishes a 90-day period for a decision to be made. It is true that there have been examples of a departure from that standard (**Raymond Clough v Superintendent Greyson and Another** being an example), but not only is that not sufficient to create exceptional circumstances, but the Act also provides a direct

route to the Minister if the Review Board fails to execute its duties within the prescribed time. The reference, by [counsel for Mr Ivey], to evidence of previous breaches is not of assistance as each case must turn on its own facts. In any event, the matter of the real question to be decided has to be considered.” (Bold as in original)

[24] Based on that outline of the law, the learned judge was wrong to have granted Mr Bobb leave to apply for judicial review. He erred in finding that:

- a. the FLA was obliged to give “a gist of the reasons for the revocation”;
- b. the Review Board, was unable to carry out its function after the expiry of the statutory 90-day period (inferentially thereby denying Mr Bobb of the statutory alternate remedy to judicial review); and
- c. Mr Bobb could apply for judicial review of the FLA’s decision without joining the Review Board and the Minister as respondents to the application.

[25] Although the case was decided before **Ivey v FLA**, the learned judge was not without guidance. Had he followed the reasoning in **Raymond Clough v Superintendent Greyson and Another** (1989) 26 JLR 292 and **Aston Reddie v The Firearm Licensing Authority and Others** (unreported), Supreme Court, Jamaica, Claim No HCV 1681 of 2010, judgment delivered 24 November 2011 (both of which he considered), he would not have fallen into error.

[26] On these bases, the learned judge’s decision has been proved to be palpably wrong and must, therefore, be set aside.

The propriety of the learned judge in extending the time for Mr Bobb to apply for leave to apply for judicial review (grounds g and n)

[27] Since it has been found that Mr Bobb did not have a proper basis for applying for leave to apply for judicial review, the learned judge’s decision to extend the time, in which

Mr Bobb could apply for leave to apply for judicial review, must also be set aside as being otiose.

[28] However, it may be of assistance to judges at first instance to note, generally speaking, that since the usual procedure for a person, who is the recipient of an adverse ruling of the FLA, is to first apply to the Review Board, time does not begin to run against him, under rule 56.6(1) of the Civil Procedure Rules, 2002 ('the CPR'), from the date of that adverse ruling. However, other circumstances may determine if an application for leave to apply for judicial review is made promptly. On that reasoning, since Mr Bobb was pursuing the statutory alternate remedy, he would not have been out of time under rule 56.6(1) of the CPR, had he made the action, or inaction of the Minister, the subject of his complaint.

Whether the granting of leave to apply for judicial review operates as a stay of Mr Bobb's application to the Review Board (grounds b and h)

[29] Although there were grounds of appeal filed concerning this issue, there were no arguments advanced before the court on these grounds. The issue has also been rendered irrelevant since Mr Bobb will not be granted leave to apply for judicial review.

[30] It is important to note that at almost the completion of the oral arguments before this court, counsel informed the court that, after the appeal to this court had been filed, the Minister had considered Mr Bobb's appeal and instructed the FLA to restore Mr Bobb's firearm licence. The appeal had, therefore, been rendered an academic exercise, for it is inconceivable, if this court had ruled in his favour, that Mr Bobb would have pursued an application for judicial review. The FLA pursued the appeal although it knew that it had re-issued a licence to him.

Costs

[31] Rule 56.15(5) of the CPR provides that the general rule is that costs should not be ordered against an applicant for an administrative order unless the applicant acted unreasonably in bringing the application or in the conduct of the application. That rule

applies in the Supreme Court. Different rules apply at the appellate level (see para. [76] of **Ivey v FLA**).

[32] Although the FLA has succeeded in its appeal, it is questionable whether it acted reasonably in pursuing this appeal, knowing that it had re-issued a firearm licence to Mr Bobb. This would affect the issue of costs. The parties should be asked to provide written submissions on costs for the court's consideration and ruling.

Conclusion

[33] The learned judge erred in his finding that Mr Bobb should be granted leave to apply for judicial review. The reasoning in **Ivey v FLA** demonstrates the learned judge's errors. Mr Bobb had a statutory alternative remedy and, therefore, he could not properly get judicial review against the FLA. He was pursuing the statutory remedy, but the relevant officials did not act within the spirit of the Act. He should have included them in his application for judicial review.

Postscript

[34] The court is alarmed by the number of aggrieved applicants for revocation of firearm licence who appear before the court, complaining that the Review Board and the Minister have failed to act within the timeline stipulated in section 37A of the Act. It is hoped that the Review Board and the Minister will conduct their statutory obligations following the statutorily stipulated period.

P WILLIAMS JA

[35] I have read the draft judgment of Brooks P. I agree with his reasoning and conclusion and have nothing to add.

FOSTER-PUSEY JA

[36] I too have read the draft judgment of Brooks P and agree.

BROOKS P

ORDER

1. The appeal is allowed.
2. The orders of the learned judge made on 14 May 2021 are set aside.
3. The application for leave to apply for judicial review is refused.
4. The parties are to provide written submissions as to costs on or before 24 May 2024.