

IN THE SUPREME COURT
OF TURKS AND CAICOS ISLANDS
Civil jurisdiction

Case number: CL 37/10

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

Ex parte

BY

WILKIE W ARTHUR

AND

STEPHENSON MORRIS

Applicants

Applicants in person

Hearing: 30 April 2010

Ruling: 4 May 2010

Ruling

1. Both applicants have been charged jointly and with another with conspiracy to forge and related offences. They were arrested in June 2008 and charged on 4 July 2008.

2. The applicants' affidavits state that the second applicant advised the Magistrate at the first appearance before the court that he wanted an 'oral' preliminary inquiry. They depose that the magistrate expressed doubt whether the applicant had such a right and said he would seek the advice of the prosecution but, following hearing from prosecuting counsel in court, he refused the application and committed the three defendants by 'paper' preliminary inquiry on 2 September 2008.

3. By motion filed in the Magistrate's Court on 9 January, 2009, and in the Supreme Court on the same day, the applicants seek leave to apply for judicial review of the magistrate's order. The remedies sought are an order (presumably mandamus) that the magistrate conduct an oral PI (and, presumably, certiorari to remove the previous order and quash it), an order (presumably a declaration) that he has no power to compel any defendant charged with an indictable offence to have a paper PI and a similar order that the Attorney General's chamber has no right to compel a defendant to be committed by paper PI if the defendants have requested an oral PI.

4. I do not set out the grounds. The first issue, which is determinative of the application, is whether this application has been brought in time under the Rules and, if it has not, whether the Court should exercise its discretion to allow it to proceed.

5. Order 53 rule 4(1) states:

“(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.”

6. Clearly, by the time the application was lodged with the Magistrate's Court and the Supreme Court on 9 January, 2009, it was already out of time by more than month. However, it appears on the court papers that, although the application papers were accepted by the registry, no fee was paid. In those

circumstances the papers should not have been accepted. No document can be filed until the appropriate fee has been paid.

7. On 23 November 2009, nothing having been done to pursue the application, the Registrar wrote to the first applicant:

"Re: Leave for Judicial Review

I refer to your application for leave for Judicial Review and advise that before this matter can be listed for hearing the relevant fee, which is \$300.00 must be paid.

I have consulted also the Chief Justice in relation to legal aid who advised that no legal aid is granted for civil cases. As soon as we are in receipt of your filing fee the matter will be listed."

8. There is no evidence whether the applicants had been advised of that necessity previously but it was perfectly clear from the letter that they needed to act quickly. Unfortunately, the fee was not paid until 23 March, 2010, a delay of a further four months after the Registrar's warning.

9. Order 53 rule 3(3) allows the Court to consider an application for leave without a hearing. However, I listed this to allow the unrepresented applicants an opportunity to demonstrate if there is a reasonable excuse for the delay and any good reason for extending the time permitted.

10. The first applicant explained that the applicants had unsuccessfully sought to have the fees waived and then to be granted legal aid.

11. The Court must also look to the possibility of prejudice to the other party from the delay. The charges upon which the defendants were committed include the need to call civilian witnesses and any undue delay is likely to affect their evidence adversely because memories fade and witnesses become more reluctant to give evidence. I have not sought the views of the prosecution whether this has or is likely to occur in this particular case but I am satisfied that, whether it has or not, the delay in this case is inordinate and the applicants have not demonstrated any sufficient reason..

12. I accept this delay was caused partly by the defendants' lack of knowledge of the procedural requirements of Order 53 and their attempts to seek legal aid and waiver of the fees but it is clearly far more attributable to a simple failure to pursue the application with any diligence. It demonstrates a singular want of prosecution and is an abuse of process.

13. I also note that any issues that the applicants might have raised before the magistrate challenging the sufficiency of the prosecution evidence at the committal may still be raised before the trial judge so the risk of prejudice to the applicants is far less than that caused to the prosecution.

14. The application for leave is refused.



Gordon Ward
Chief Justice