



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. CL 62/23

BETWEEN:

THE KING

-v-

**(1) HERBERT BEEN
(2) HON. RHONDALEE BRAITHWAITE-KNOWLES
(3) ALGERNON DEAN
(4) DOZZLIE DELANCY
(5) BENSON HARVEY
(6) OSWALD SKIPPING
(in their capacity as THE TURKS AND CAICOS
ISLANDS STATUS COMMISSION)
(7) THE ATTORNEY GENERAL OF THE TURKS
AND CAICOS ISLANDS**

RESPONDENTS

***Ex Parte* ALEX PIERRE**

APPLICANT

REASONS

Before: The Hon. Mr Justice Anthony S. Gruchot

Appearances: Ms Andwena Lockhart of Stanbrook Prudhoe for the Applicant

Hearing Date: 12th July 2023

Venue: Court 5, Graceway Plaza, Providenciales.

Handed down: 9th August 2023



Introduction

1. Some 33 applications for judicial review of the Respondent, with respect to the decisions of the Respondent to refuse to recommend to the Governor, the grant of Turks and Caicos Islander status to those 33 applicants were heard on the 18th, 19th and 25th April 2023, in which matter, the judgment of the Court has been reserved.
2. All of the above applications were based on the same or substantially the same grounds as was this application.
3. On 11th May 2023, the Applicant filed an application for leave to move for judicial review against the decision of the Respondent to refuse to recommend to the Governor, his application for Turks and Caicos Islander status. The letter from the Respondent, advising the Applicant that his application had been rejected was dated 7th November 2022 but was only received by the Applicant on or around 15th January 2023.
4. The Civil Rules 2000, at O.53 r.4(1) provides:

“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.”
5. The primary requirement under the above provision is that the application is made promptly. There is no presumption that, as long as the application for leave is made within three months from the date of the decision, it will be allowed¹; however, the Court has the power to extend time for applying for leave, but only if it considers there is ‘good reason’ for doing so.
6. On the best-case scenario, time started to run for the Applicant as of 15th January 2023. Accordingly, the application for leave needed to be made by 14th April 2023.

¹ See Note 53/14/58 Supreme Court Practice 1999 England and Wales – The White Book; also *R v Independent Television Commission, ex.p. TV NI Ltd* 1991) The Times, December 30 CA.

7. The application for leave also included an application for an extension of time to apply. The application was put as a rolled-up application leave to apply for judicial review out of time, rather than 2 separate applications.

The Application

8. O.53 r.3(3) provides:

“The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court ...”

9. Paragraph I of the application under the heading “*Relief Sought*” requested “*The Applicants (sic) seek consideration of the leave application here on paper pursuant to Order 53 Rule 3 of the Civil Procedure Rules 2000.*”

10. At paragraph II under the same heading the application states:

“The Applicant by grant of leave seek (sic):

a) an order granting an extension of time to apply for judicial review pursuant to Order 53 Rule 4 (1); ...”

11. I considered the application on 5th June 2023 on the papers, and refused leave to move for judicial review on the basis the application was made out of time and that the explanation for the delay in filing the application provided in the affidavit of the Applicant in support, was insufficient.

12. The explanation provided by the Applicant for the delay was:

“The delay in making a timely application, is a direct result of the 6th Respondent’s comments as made first on social media and then reported in the local newspaper on any application for judicial review proceedings of the Commission’s decision, as well as – in effect – the insulting (to him, at least) nature of even starting such proceedings. I understand from my lawyers, the law firm Stanbrook Prudhoe, that such evidence was read into the record by the Applicant’s attorney on Day 1 of the final hearing in similar proceedings (CL211, CL224, and CL229/2022), that being 18 April 2023.

A copy of the comments made by Mr. Skipping comments was published on the front and second page of the Turks and Caicos Weekly News Volume 37, No.4, 28 January - 3 February 2023."

13. No explanation was provided as to why the reported comments prevented the Applicant from filing his application promptly, and no explanation was provided as to why those reasons no longer applied.
14. On 5th June 2023 I provided a written, albeit brief, decision on the *ex parte* application for leave. In that decision, I commented, (as will be seen below, erroneously) *"It is open to the Applicant to renew his application pursuant to 0.53 r.3(4)²".*
15. No Order was perfected in respect of the refusal decision.
16. 0.53 r.3(4)(b) provides"

"Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying –
(b) ... to a single judge sitting in open Court..."

17. 0.53 r.3(5) goes on to provide:

"In order to renew his application for leave the applicant must, within 10 days of being served notice of the Judge's refusal, lodge in the Crown Office notice of his intention in Form No. 86B."

The Renewed Application

18. No application in Form 86B was made but by way of a letter dated 8th June 2023 the Applicant, through his attorneys, stated that:

"Paragraph 3 of the Order³ indicates that it was open to the Applicant to renew the application for leave pursuant to 0.53 r.3(4). We take that to have

² This is a reference to The White Book

³ As noted at para. 15, no Order was perfected.

been a reference to the Civil Rules 2000.”

19. The letter went on to make the observation that O.53 r.3(4)(b) had been excluded in the Civil Rules 2000. Nonetheless, the Applicant’s attorneys went on to say:

“In the circumstances, the Court may consider it appropriate that the matter be listed for hearing on notice 1st being given to the intended respondents. If it is listed in that way- and unless we are directed otherwise - we would intend to at these provide informal notice to the intended respondents of any such hearing.”

20. The matter was listed before me for hearing on 12th July 2023. Ms Lockhart appeared on behalf of the Applicant. On enquiry by the Court, Ms Lockhart confirmed that no notice had been given to the intended Respondents of the [renewed] application and could provide no explanation as to why not, given the above-referenced letter.
21. Whilst Ms Lockhart sought to argue forcefully why an extension of time should be given, she could not assist me with respect to the omission of O.53 r.3(4)(b) (and r.4(5)) from the Civil Rules 2000.
22. In all the circumstances my invitation to the Applicant in the written decision to renew his application in open court was an invitation that had no foundation. Accordingly, the renewed application was not properly before the Court given the specific exclusion of O.53 r.3(4)(b) and r.3(5) from the Civil Rules 2000, the clear intention being that if an application for leave to move for judicial review is refused on the papers, then that is the end of the matter, save for any appeal.
23. May I express my gratitude to the Applicant’s attorneys for bringing the omission of the provisions of O.53 r.4(b) and r.4(5) from the Civil Rules 2000 to my attention.

9th August 2022

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court

