



[2013] JMSC Civ 133

## **(NO. 2)**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2013 HCV 04292**

<b>BETWEEN</b>	<b>VIRALEE BAILEY-LATIBEAUDIÈRE</b>	<b>APPLICANT</b>
<b>AND</b>	<b>THE MINISTER OF FINANCE AND PLANNING</b>	<b>FIRST RESPONDENT</b>
<b>AND</b>	<b>THE FINANCIAL SECRETARY</b>	<b>SECOND RESPONDENT</b>
<b>AND</b>	<b>THE PUBLIC SERVICE COMMISSION</b>	<b>THIRD RESPONDENT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>FOURTH RESPONDENT</b>

**IN CHAMBERS**

**Hugh Wildman for the applicant**

**Carlene Larmond and Basil Williams for the respondents**

September 19, 2013

**JUDICIAL REVIEW – LONG VACATION – PART 56 – CLAIM TO BE FILED WITHIN  
FOURTEEN DAYS OF GRANT OF LEAVE - WHETHER FOURTEEN DAY RULE  
APPLIES DURING LONG VACATION**

**Sykes J**

[1] Is it true to say where leave to apply for judicial review as been granted during the long vacation (August 1 to September 15) and the fixed date claim form is not filed within the fourteen-day period stated then there is no recognisable claim before the court because the leave granted lapses? This is the procedural issue that has arisen.

[2] In the previous decision in this matter ([2002] JMSC Civ 127) leave to apply for judicial review was granted on August 22, 2013. The first hearing was set for September 19, 2013. The fixed date claim form was filed on September 18, 2013 and served on September 19, 2013. At the first hearing, Miss Carlene Larmond took the point that the claim form was not filed within fourteen days of the grant of leave and therefore leave had lapsed with the consequence being that there is not any recognisable claim before court.

[3] Mr Wildman said that rule 3.5 of the Civil Procedure Rules ('CPR') applies. It is necessary to set out the contending views.

**Miss Larmond's submissions**

[4] Briefly, Miss Larmond relied on the Court of Appeal's decision of **Orrett Bruce Golding and The Attorney General of Jamaica v Portia Simpson Miller** SCCA No 3/08 (unreported) (delivered April 11, 2008). In its barest form the decision of that case is that once leave to apply for judicial review is granted the applicant must file the claim form within fourteen days of the date of the grant of leave and unless that time limit is met the leave lapses. It was also held that the court had no power to extend time within which to file the claim form. The major

legal premise for these conclusions was that Part 56 of the CPR which governs judicial review application was self-contained and unless there was something within Part 56 itself that referred to some other rule, then no other rule could be relied on. The practical result of this was that Mrs Simpson Miller's application for extension of time within which to file the claim form after leave was granted could not be granted.

[5] According to Miss Larmond it is the same thing that has happened to Mrs Bailey-Latibeaudiere. She was granted permission to apply for leave on August 22, 2013 and should therefore have filed her claim form not later than September 4, 2013. Consequently, according to learned counsel there is no claim before the court and so there is nothing for the court to manage. The learned President stated that:

*Where it is intended that these special rules are to be affected by other rules, it is so stated.*

[6] Inferentially, where it is not so stated then the other rules do not apply. It is not quite clear where 'so stated' means explicitly stated or implicitly stated.

[7] Smith JA took the view that the provisions for extension of time found in rule 26 could not be relied on because '[a]n application for an administrative order only get to the case management as contemplated by rule 56.13 after leave has been granted and the claim for review has been made within the time prescribed by rule 56.4 (12)' and therefore rule 26 is not applicable at the leave stage (pp 17 – 18). Harris JA also concluded that the power to extend time can only arise after a claim has been filed pursuant to the grant of leave.

#### **Mr Wildman's submissions**

[8] Equally brief was Mr Wildman. He relied on rule 3.5 (1) and (2) which states:

(1) *During the long vacation, the time prescribed by these Rules for filing and serving any statement of case does not run.*

(2) *However this rule does not override any order of the court which specifies a date for service of a statement of case.*

[9] Mr Wildman's position was that the claim form falls within the definition of statement of case (see rule 2.4 of the CPR). Counsel also submitted that Part 56 is silent on what happens during the long vacation and so the fourteen - day rule to file the claim form has no application to this case. He further submitted that the court did not, during the long vacation or indeed at any time, make any order, under section 3.5 (2), specifying the time within which fixed date claim form should be filed. Therefore, counsel concluded, since the court did not make any order under rule 3.5 (2) and therefore rule 3.5 (1) applies. The result being that time did not run during the long vacation. Time began on September 16, 2013, when the Michaelmas Term began and so the applicant is within time when she filed her claim form on September 18.

[10] Miss Larmond's reply was that fourteen days means just that and if Part 56 is silent on what happens during the legal vacation then the fourteen-day period stated in rule 56.4 (12) applies. Counsel relied on the observation of Panton P at paragraph 10 of his reasons in **Golding** to support the proposition that rule 3.5 (1) cannot alter the effect of rule 56.4 (12) unless Part 56 expressly says so.

### **Resolution**

[11] This court appreciates the force of Miss Larmond's position and the strength of Mr Wildman's opposition. This court starts from the position that a litigant should not be denied access to the court without very good reason. The court has examined the **Golding** case and observed that there was no reference in that case to rule 2.2 (1) and (2). This rule states:

*(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.*

[12] The court accepts that Part 56 is silent on what happens during the long vacation and it would seem that in light of wording of rules 2.2 and 3.5, that time does not run during the long vacation. This court is not convinced by an argument from silence should be used to shut out the applicant where there a clear rule that speaks to the long vacation.

[13] The true position would seem to be that where there are rules of general application in the CPR and a specific part does not address an issue or provides a rule contrary to the general rule then that general rule applies unless there is some compelling logic to hold otherwise.

[14] In **Golding**, part of the time within which to file the claim form extended into the break between the Michaelmas Term and the Hilary Term. In that case, leave was granted on December 13 and according to the learned President, the claim form should have been filed on December 27. There is no rule that stops time during any vacation except the long vacation. Part 56 does not deal with time during vacations, long or otherwise. It is not surprising that the President, in effect, held that time continued into the Christmas break. The fourteen-day rule would undoubtedly apply.

[15] Here, however, there is a specific rule governing the long vacation regarding time for filing and serving documents. Since Part 56 is silent on the long vacation then it appears that rule 3.5 applies because rule 2.2 says that the CPR applies to all civil proceedings (except those exempted). Judicial review falls within the definition of civil proceedings and so is governed by rule 3.5.

[16] Miss Larmond pointed out that even if this approach is correct there are no judicial review proceedings until the claim form is filed. The grant of leave does not operate to commence judicial review proceedings. The application for and grant of leave are mere steps preparatory to the commencement of judicial review proceedings. Though it was not referred it is quite likely that counsel had in mind rule 8.1 (2) which states that '[p]roceedings are started when the claim form is filed.' She may have been drawing support from rule 11.1 which states that this 'part deals with applications for court orders made before, during or after the course of proceedings.' The logic would be that this rule clearly recognises that an applicant can approach the court before a claim form or fixed date claim form has been filed and so provides clear support for the proposition that an application for leave to apply for judicial review is not civil proceedings.

[17] This court does not agree with this last submission. It still does not get over the point of rule 3.5 regarding the filing and service of documents during the long vacation.

[18] **Golding** was not dealing with the situation before the court. There was no question of any long vacation rule applying. It seems to me that **Golding** does not cover these facts at all. Indeed this is not an extension of time application but rather whether the long vacation rule applies to Part 56. In my view it does and so this court accepts Mr Wildman's submissions.

### **Disposition**

[19] The preliminary objection is dismissed. Having regard to the procedural importance of the point, leave to appeal is granted. Also the first hearing is adjourned pending determination of the matter by the Court of Appeal. The hearing dates of October 29 and 30, 2013 are vacated. The injunction granted is extended until the matter is heard and determined by the Court of Appeal. Counsel are asked to prepare an order to reflect the decision of the court.