

NM/S

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT

SUIT NO. M 129 OF 1996

BEFORE: THE HONOURABLE MR. JUSTICE PANTON
THE HONOURABLE MR. JUSTICE SMITH
THE HONOURABLE MR. JUSTICE JAMES (G)

IN THE MATTER OF AN APPLICATION BY
ACTING CORPORAL BRIAN ELLETON BAKER
FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF THE JAMAICA
CONSTABULARY FORCE ORDERS DATED
DECEMBER 12, 1996, IN RESPECT OF THE
PURPORTED DISMISSAL OF THE APPLICANT
FROM THE JAMAICA CONSTABULARY FORCE.

Arthur Kitchin, instructed by H.G. Bartholomew and Company, for the applicant.

Patrick Wells, instructed by the Director of State Proceedings, for the respondent.

Heard: July 14 and 17, 1997.

PANTON, J.

The applicant is an acting Corporal of Police. He has been a member of the Jamaica Constabulary Force since 1976, and has been stationed at the May Pen Police Station since 1986. On or about March 4, 1991, he was interdicted as a result of his being charged with a criminal offence. He remained off duty for five (5) years as his trial was not completed until March 27, 1996.

Having been found not guilty by a jury, he reported to the Superintendent of Police in charge of the May Pen police Station and indicated his availability and readiness to resume full duty. Prior to this, he had applied for re-enlistment. The Superintendent advised him to go home and stated that he would eventually be contacted. The applicant has deponed that he continued to visit the police station at the end of every month thereafter to collect his salary. On such visits, he would make enquiry as to his status but received no useful information.

The Jamaica Constabulary Force Orders, serial no. 2584, dated 12th December, 1996, contained an item indicating that the applicant had been discharged as he had not been permitted to re-enlist with effect from the 1st November, 1996. Prior to this publication in the Force Orders, the Commissioner of Police had conducted a review of the applicant's career in the Force, and had come to a decision not to approve his re-enlistment. By a letter dated July 25, 1996, the Assistant Commissioner of Police in charge of Administration communicated the Commissioner's decision to the applicant "c/o Superintendent of Police Clarendon". The letter advised the applicant that if he wished he would be given the opportunity to appear, either alone or with his attorney-at-law, before the Commissioner to show cause why his application should not be so refused. He was instructed to advise his Commanding Officer (that is, the Superintendent) in writing within seven days of the receipt of the letter. Incidentally, the letter had been routed through the Assistant Commissioner in charge of Area 3 with instructions that the original letter was to be delivered to the applicant and the duplicate, against a receipt returned duly endorsed, as to date and time the original was delivered.

The Superintendent of Police sent the letter to the applicant by registered mail on October 3, 1996. On November 15, 1996, the Superintendent of Police advised the Assistant Commissioner in charge of Area 3 that the letter had been returned unclaimed. The letter had been sent to an address that the applicant had given to the Superintendent of Police in charge of Clarendon in March 1991 when he was interdicted.

There has been no contradiction of the applicant's statement that he continued to collect his salary at the May Pen Police Station at the end of each month. Hence, it is unclear why the Superintendent of Police in charge of Clarendon was unable to arrange for the personal delivery of the letter to the applicant.

The applicant may well be subject to disciplinary proceedings for changing his address without informing the appropriate authority. That, however, ought not to be a consideration for us at this time. The fact is that the applicant did not receive the letter intended for him. He wishes to show cause why his application to re-enlist should not be refused. It is fair and reasonable that he should be allowed to so do.

In Supreme Court Civil Appeal no. 84/94, Corporal Glenroy Clarke v. Commissioner of Police and The Attorney General for Jamaica (March 11, 1996), Carey, J.A. said :

"Where the Commissioner has taken a decision not to approve re-enlistment, then, upon any application of the member for re-enlistment the Commissioner is obliged, in fairness, to supply the

reasons for his decision and allow the officer affected, an opportunity to be heard in relation to that material if the officer requests it."

In the instant case, the applicant was not informed of the decision and so did not get an opportunity to appear before the Commissioner. The application to quash the Order discharging the applicant is therefore granted. Further, the Commissioner is to hear the applicant in his quest to show cause. The applicant is to have the costs of these proceedings.

Considering that the applicant has not performed any duties for over six years, we suggest that arrangements be made as quickly as possible for the hearing before the Commissioner.

SMITH, J.

I agree.

JAMES, GRANVILLE, J.

I agree.