

Proceedings pending - whether any proceedings are to be stayed or not
Order set aside
No proceedings to be stayed

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 81/93

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COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

BETWEEN THE COMMISSIONER OF POLICE PLAINTIFF/APPELLANT
AND LESLIE HARPER APPLICANT/RESPONDENT

Douglas Leys & Miss Nicole Foga for Appellant

Ian Ramsay & Enos Grant for Respondent

10th, 11th & 24th January, 1994

CAREY, J.A.

This is an appeal against an order of Harris J (Ag) whereby she refused an application on behalf of the appellant, the Commissioner of the Jamaica Constabulary Force, to delete an order for a stay which she had made on the ex parte application of the respondent, a Deputy Commissioner in the Jamaica Constabulary Force, for leave to apply for certiorari to quash certain directives of the Commissioner of Police, which will appear hereafter. That order, the subject of the appeal, was in the following terms:

"It is further ordered that all proceedings consequent on the letter dated the 11th day of October, 1993 be stayed pending the determination of the application."

The point which arises on this appeal is, in my view, a narrow and technical point: it is also, I fear, quite simple. It may be stated in this way - was the learned judge entitled to grant a stay in the terms she did in the absence of any material whatever before her that there were any "proceedings pending in relation to the respondent?" I pose the question in this way because, as it

seems to me, if there was evidence that "proceedings" were contemplated, then the question raised in the ground of appeal as to proceedings being quasi judicial or administrative would have to be considered, and as well, whether the judge could have granted a stay which would be in the nature of injunctive relief.

It seems to me as plain as plain can be, that there was no material in the affidavit of Mr. Harper which he filed in support of his application from which any inference could be drawn that there were any extant proceedings consequent on the directions contained in the letter of the Commissioner. I set out, so far as material, paragraphs in the affidavit of the respondent:

"That I have been a member of the Jamaica Constabulary Force since the 7th July, 1962 when I joined as a Constable. I came up through the ranks and was appointed Deputy Commissioner on the 1st April, 1991.

That I am also the chairman of the police officers association.

That I have over the past thirty (30) years dedicated myself to the Jamaica Constabulary Force and I have always carried out my duties faithfully, honestly, professionally and in my best judgement.

That I have not been advised of any disciplinary charges against me and I know of nothing which may cause disciplinary charges to be laid against me."

There follow paragraphs 7 8 9 10 and 12 which do not speak to facts but are tendentious in nature expressing the personal opinion of the deponent as to the legality of the Commissioner's action. Paragraph 11, I can also omit because it speaks to a fact which has no bearing on this point. Paragraph 13 which is the final paragraph, contains a prayer for relief. The paragraphs quoted do not refer in any shape or form to extant or pending proceedings against the respondent.

In her reasons for her order refusing to set aside the stay, the learned judge said this:

"On the date of hearing of the ex parte application for leave to issue order of certiorari it was reasonable to infer from the tenor of the Commissioner's letter of the 11th October, 1993 that quasi judicial proceedings with respect to the Applicant, were either pending or in progress.

It follows therefore, that having granted leave to the Applicant to proceed to the Full Court it would be just and fair that any proceedings which had commenced be held in abeyance pending the adjudication of the matter by the Full Court.

The effect of the stay would be that the status quo remain and that there should be no further proceedings in the matter until the application is heard by the Full Court."

Before examining the reasons, I go next to the Commissioner's letter which recited as follows:

"Whereas it appears to me as Commissioner of Police that it is in the interest of the Force that you do not perform any duties with the Jamaica Constabulary Force for the time being;

This therefore is to direct that you remain on leave from your duties with effect from Tuesday 12th October, 1993 and until further orders.

You will hand over all Government properties etc. to an Officer to be named by me at an appropriate time.

You should not leave the island without prior approval from me and I shall be notified of any change in your address."

With all respect to the learned judge, I am quite unable to discover from any reading of that directive any facts from which any inference could be drawn that "quasi-judicial proceedings with respect to the applicant, were either pending or in progress." The letter I suggest, did no more than give directives or what are, in fact, orders to a subordinate officer. These directives gave no indication whatever as to what action was contemplated. It would be the merest speculation as to what the Commissioner's future actions would be.

There was no evidence either inferential or direct in the affidavit or in the directive that proceedings of any kind were either pending or in progress. One would have expected if such proceedings there were, that such evidence would be adduced before the judge. In the absence of any such evidence the challenged order could not be made and it is in that respect that the judge fell into error. That is, in my view, enough to dispose of the appeal.

I must add that we were treated to an interesting argument which demonstrated thorough and careful research on the part of Mr. Leys but for my part, I do not think it is at all necessary to consider any issue of whether the "proceedings" were quasi-judicial or administrative. Mr. Ramsay, in support of the judge's order, was altogether unable to show to which "proceedings" the learned judge's order attached.

The result of this appeal is that the directive of the Commissioner remains certified to the Full Court for its decision. The respondent remains on leave until further order as a senior police officer in the constabulary. We think that every effort should be made to convene the Full Court so that the hearing can begin. In the meantime, nothing should be done by the police authorities to exacerbate the situation.

It was for these reasons, which we promised at the conclusion of the hearing, that I concluded in agreement with my Lords, that the appeal should be allowed and the order below set aside.

WRIGHT, J.A.

I agree.

GORDON, J.A.

I agree.