[2015] JMSC Civ. 71

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2014 HCV 04144

BETWEEN	GORSTEW LIMITED	APPLICANT
AND	HER HON. LORNA SHELLY-WILLIAMS	1ST RESPONDENT
AND	PATRICK LYNCH	2ND RESPONDENT
AND	JEFFREY PYNE	3RD RESPONDENT
AND	CATHERINE BARBER	4TH RESPONDENT

D. Leys QC, H. Wildman, B. Hines, K. Tennant instructed by H. Wildman and Co. for the Applicant

C. Larmond instructed by the Director of State Proceedings for the1st Respondent

K. Knight QC and J. Junor instructed by Knight Junor and Samuels for the 2nd Respondent

B. Samuels, S. Knight instructed by Knight Junor and Samuels for the 3rd Respondent

D. Martin, S. Usim instructed by Usim, Williams and Co for the 4th Respondent

Heard: December 9, 10, 2014 and April 21, 2015

Lawrence-Beswick J

[1] On December 10, 2014 I refused the application for leave to apply for judicial review in this matter. I promised to provide reasons for that decision. This is a fulfilment of that promise.

[2] On June 3, 2014, Her Honour Ms. Lorna Shelley-Williams (the 1st respondent) upheld the submission made on behalf of Mr. Patrick Lynch, Mr. Jeffrey Pyne and Ms. Catherine Barber (the 2nd, 3rd and 4th respondents respectively) that they should not be required to answer the case presented by the prosecution against them. The result of that decision was that the 1st respondent adjudged each of them to be not guilty of all the offences for which each was charged.

[3] Gorstew Limited (the applicant) was the complainant in that matter and it has sought leave to apply for judicial review of that decision. The orders sought are for, *inter alia*:

i. a declaration that the 1st respondent made a jurisdictional error in stating that she needed more time to go through the evidence and that it was a work in progress, thus rendering the verdict null and void

ii a declaration that the 1st respondent's verdict was so unreasonable that no tribunal properly directed could have arrived at that verdict

iii an order of certiorari quashing the verdict of the 1st respondent.

Background

[4] The applicant was the founder of the Appliance Traders Group Pension Fund. Mr. Lynch was the chairman of the Fund, Dr. Pyne was a previous managing director of the applicant and Ms. Barber was general manager of the Fund.

[5] Those three respondents were charged on an indictment containing 16 counts. The allegations were that on the 15th or 16th December 2010, the 3rd respondent had forged four letters, that the 4th respondent uttered them and that they, along with the 2nd respondent used the letters to conspire to defraud the applicant and to falsify its accounts.

[6] The allegation at the trial was that the letters stated that Gorstew Limited had consented to certain distributions by the Fund when the 2nd, 3rd and 4th respondents knew that that was not true.

[7] Several witnesses testified on behalf of the prosecution over a period of many trial dates. At the end of the prosecution's case, the 1st respondent upheld the submission that there was no case for the accused persons (2nd, 3rd and 4th respondents) to answer and entered not guilty verdicts against them.

[8] Queen's Counsel Mr. K. D. Knight, submitted on behalf of the 2nd respondent, that this application for leave to apply for judicial review of that decision should not be heard. Counsel for the other respondents adopted his submission. His argument was that the application is based on a falsehood concerning words allegedly used by the 1st respondent. The words and their importance are exemplified in the written submissions of counsel for the applicant.

Submissions for the applicant

[9] In his written submissions, counsel for the applicant complained that the 1st respondent's decision was faulty. He submitted that she had said that there was insufficient time for her to consider the case. That situation, he argued, had therefore contributed to the learned Judge's error. He placed reliance on the pronouncements which he alleged the 1st respondent made whilst giving her reasons for her decision.

[10] Counsel submitted that the trial had lasted for several days and the volume of evidence was substantial. There were detailed written submissions and oral submissions lasted 5 days. Thereafter the 1st respondent indicated that she would need time and adjourned the matter.

[11] Counsel said that he expected the 1st respondent to then deliver a written judgment as that would have been the appropriate and procedurally regular thing for her to do. He did, however, accept that there was no legal requirement for her to do so. Instead the legal requirement was for the decision to be made after a reasonable and

accurate examination of the prosecution's case and a consideration of all the relevant evidence and issues that arose.

Preliminary Points

False substratum

[12] Mr. Knight submitted that all grounds being urged as being bases for judicial review had their foundation in the assertion that the 1st respondent had said that she needed more time to go through the evidence. Queen's Counsel's submission was that the substratum of the application was the words which the 1st respondent is alleged to have said but they were misquoted. The application for judicial review was therefore based on what he described as a falsehood and was thus faulty.

[13] Queen's Counsel referred to paragraphs 8 and 10 of the Notice of Application which alleged that the 1st respondent had stated that she really needed more time to go through the evidence and that it was a work in progress. He then referred to paragraph 12 which he said contended that the statement allegedly said by the 1st respondent that she needed more time amounts to a jurisdictional error which vitiates her ruling on the no case submission, rendering the verdict null and void.

[14] Mr. Knight referred to the exhibited transcript where it is recorded that the 1st respondent said:

> "Let me just say first of all that I think I have given myself too little time in relation to this matter. I had hope [sic] to give persons copies of the decision, it's not going to be possible."

[15] Mr. Knight pointed out that nowhere in that quotation did the 1st respondent speak to needing more time to go through evidence. Queen's Counsel then referred to particular quotations which were said to display that the 1st respondent had stated her concerns about the time she had spent considering the evidence:

a. "Now please forgive me if I left out areas. I only went to certain areas I dealt with in my decisions." [pg 19 of transcript]

b. "I am very sorry this is taking longer than I thought and I am going to start summarizing." [page 23 of transcript]

[16] Her words as quoted, he said, referred to her intention to have provided persons with copies of her judgment and that it was no longer going to be possible to do so at that time. These quotations, he argued, did not demonstrate that the 1st respondent said she needed more time to go through the evidence, but rather they showed how diligently she had approached the decision. The words on which the applicant relied, he points out, are exhibited and the applicant must stand or fall by them.

[17] Counsel submitted that when the 1st respondent referred to a matter taking longer than she thought she (1st respondent) was referring to the actual articulation of the decision, not to the time for reaching the decision.

No official document to be quashed

[18] In submitting further that the application should not be heard, Mr. Knight argued that the applicant had not exhibited the official order which it wished to have reviewed judicially and which it sought to have quashed. Instead, the applicant relied on a transcript of the proceedings produced by a stenographer. Mr. Knight stated that all parties had agreed for that record to be made but they had not agreed for it to become the official record of the proceedings.

[19] Queen's Counsel described it as false to state that the transcript was analogous to an official transcript which is described in ss. 291 and 292 of the Judicature (Resident Magistrates) Act. He stated that the 1st respondent had made it clear that that transcript was not an official transcript and that her notes are the official notes.

[20] Indeed, Queen's Counsel referred to par. 9 of the affidavits of the 3rd and 4th respondents in which they said that the understanding was that it was the 1st respondent's notes of evidence, not the stenographers' notes, which formed the official record of the proceedings.

Autrefois acquit

[21] In furthering his submission that the application should not be heard, counsel for the 2nd respondent argued that there is no right to appeal by the prosecution in this jurisdiction and this application would amount to an appeal by the prosecution. A Full Court could not accede to the relief being sought by the applicant because of **s. 16 (9)** of the **Constitution**. There it is provided that no person who shows he has been tried and acquitted shall be tried again save on the order of a superior court made in the course of appeal proceedings. He relied on **Millicent Forbes** v **Attorney General of Jamaic**a [2009] 75 WIR 406 at par. 6 and 8 to support that argument. There the Judicial Committee of the Privy Council said that judicial review does not lie against the Crown as such.

Statutory Breaches

[22] Mr. Knight argued that there is a great difference between statutory breaches committed by the tribunal and where it is alleged that there is a jurisdictional error based on the interpretation of a statement, allegedly made by an inferior tribunal. In the former scenario judicial review is permissible. In the latter it is not. His submission was that there is no statutory breach here.

No Order made by 2nd, 3rd and 4th respondents

[23] Mr. Knight argued that the 2nd, 3rd and 4th respondents had made no decision and it was wrong to have named them as a party to this application. Nor could they be named as interested parties because they could be jeopardised as their constitutional rights and liberty could be affected.

Submissions for the applicant

[24] Queen's Counsel Mr. Leys, on behalf of the applicant, acknowledged that there was no official record of an order but stated that the applicant had done all that it could have done to obtain one. The applicant was therefore relying on the affidavits as well as p.46 of the transcript to state the order of the 1st respondent.

[25] Mr. Leys submitted that the argument of the respondents concerning the absent record was too narrow. He outlined that originally it was necessary to have a formal

order on record before an order for *certiorari* could be made in a judicial review. The modern approach, he submitted, recognises that the record is comprised of what he described as a barrage of documents, including submissions and affidavits.

[26] A transcript was made by reporters who had been privately retained. He referred to par. 22 of the 1st respondent's skeleton submissions which he stated shows that the 1st respondent recognised the transcript as a part of the record. According to Queen's Counsel Leys, the 1st respondent had said there that "whatever is going to be said will be recorded, so you can in fact, get it from the court report." He submitted that the similar issue as that being raised by the respondents had been raised in **Sampson v. Air Jamaica** JM 1992CA53 and **R v Knightsbridge** [1982] 1QB 304 where it was shown that what he had exhibited was sufficient at this stage.

[27] Further, he argued, these documents including the transcript had been served on the 1st respondent from August 28, 2014 and in the absence of an affidavit by her contesting the assertion that it is the record it must be taken to be the record.

[28] Queen's Counsel argued that the transcript, as exhibited in the affidavit of Mr. Singh, showed the charges, the order for indictment, the grounds, the summation, the notes of evidence and the no case submission. They, however, were not certified. He argued that in any event it was not necessary to produce certified copies at this stage of the proceedings. At this stage, the court need only ascertain if there are arguable points of law. [**R. v. Knightsbridge** p.315, 316] [rule 56.3 **Civil Procedure Rules** 2002 [CPR].

[29] As to the falsehoods to which counsel for the respondents referred, Mr. Leys submitted that there has been no dispute/challenge to the veracity of the utterances and the court does not have to look at all details.

[30] He argued that egregious errors going to jurisdiction could be inferred and the errors went to *mens rea* and to conspiracy to defraud. The extent of the errors could only be explained by inferring that the 1st respondent did not have sufficient time to consider the case.

[31] He submitted that Parliament could not have intended that the 1st respondent, as a Resident Magistrate, schooled in the law, could have gotten it so wrong, making such grave errors. Her decision therefore could not be regarded as valid because she acted outside her jurisdiction to adjudicate in accordance with the Judicature (Resident Magistrates) Act.

[32] As it concerns the right of the applicant to make this application, counsel for the applicant submitted that although the Crown did not make this application, the applicant has a sufficient interest in the proceedings to pursue this application. The applicant maintains that it carried out the prosecution of the 2nd, 3rd and 4th respondents with the fiat of the Director of Public Prosecutions (DPP). It therefore could properly make this application.

[33] As it concerns the argument that the 2nd, 3rd and 4th respondents had made no decision and it was wrong to have named them as a party to this application, Mr. Leys initially responded that they are likely to be affected by the order of the court, and they were therefore properly named.

[34] He argued that if they had not been joined, the court could have made an order which would cause them to be re-arrested. Eventually Queen's Counsel Leys acknowledged that there could be no effective order against the 2nd, 3rd and 4th respondents and submitted that they would be interested parties. Mr. Leys argued that much reliance should not be placed on **Millicent Forbes** (supra) because the particular references were *obiter dicta*.

Submissions for the 1st respondent

[35] As it concerns the absence of an order to be reviewed, counsel Ms. Larmond submitted that based on **rule 56.16(1) CPR**, the order would be required at the trial stage, not this stage where leave is being sought. However, she said, the spirit of the CPR is that the court should be privy at this stage to the document containing the order. In this application not even the indictment to which amendments had been made, was before this court.

[36] She argued that **Knightsbridge** (supra) was distinguishable from this matter because in that case the question was whether the court would be limited to the Order or should refer to the transcript which had the judgment of the court. [p. 313]

[37] Ms. Larmond submitted further that **Samson** (supra) was also distinguishable from the instant matter in that the question there was whether the brief and other material could be part of the record. It was not a situation as here where the judge's reasons are in question because of the absence of the official transcript.

[38] Counsel also submitted that at this stage of the proceedings nothing should be inferred from the fact that the 1st respondent had not filed an affidavit in response. Counsel said that the 1st respondent would not have been required to file an affidavit at this stage in response to the grounds filed. Indeed the 1st respondent did not intend to be confined to the documents which had been filed up to then.

[39] Ms. Larmond argued that in the United Kingdom (UK) unlike in Jamaica, the prosecution may apply for judicial review of a decision of the Resident Magistrate made on information. She argued that the procedure in the UK was different from that in Jamaica because, *inter alia*, in the U.K., the Resident Magistrate does not proceed on indictment and also the High Court there has supervisory power over the Crown Court.

[40] In addition, counsel argued that the sparsity of verified information in this case would cause the court to be unable to make a proper determination. In any event in this case, she submitted, the application is not by the Crown.

[41] Counsel for the 1st respondent submitted further that the indictment against the 2nd, 3rd, and 4th respondents had not been preferred by the applicant. Her argument was that the charges had been brought by the police acting as agents of the State and that the matter was prosecuted by the clerk of the court. Associating with her, by way of fiat, were counsel retained by the applicant and the applicant, standing by itself, therefore had no *locus standi* to bring this application.

[42] Queen's Counsel Mr. Knight adopted the submissions of Ms. Larmond concerning the authorities.

Further submissions for the applicant

[43] Mr. Wildman, arguing on behalf of the applicant countered that his position was strengthened by Ms. Larmond's submission concerning the statutory framework in the United Kingdom allowing judicial review to be pursued instead of an appeal where it is contended that the Resident Magistrate or Judge commits a jurisdictional error. He submitted that there are several cases where judicial review is the proper procedure instead of an appeal, including **R v. West** [1964 1QB 15]

[44] According to counsel, where it is contended that the verdict is bad, that is not a jurisdictional error and an appeal is appropriate. However, where the error is jurisdictional as is the position here, then judicial review is appropriate. His submission was that once it is an inferior tribunal, judicial review is proper.

[45] Further, according to counsel, the assertion here is that the 1st respondent's verdict was **Wednesbury** unreasonable.

Discussion

[46] The law concerning the application for leave for judicial review is well established. The question to be determined at this stage is whether I am satisfied that there is an arguable ground for judicial review having a realistic prospect of success, not having a discretionary bar such as delay or alternative remedy [**Sharma v Brown Antoine** 2006 UK PC 57 30 Nov. 2006, **The Minister of Finance and Planning and Public Service et ors v. Viralee Bailey-Latibeaudiere** SCCA 76 and 67/2013]. The application for leave ought to serve to prevent the waste of the Court's time in reviewing a matter in which there is no arguable case.

***Locus standi* of applicant**

[47] One of the arguments raised in opposition to the granting of leave for judicial review was that the applicant had no *locus standi* in the matter, that is, no sufficient authority/interest to bring this application.

[48] In my view, it would follow from that argument that this application should be pursued with the approval/consent of the DPP in some manner. There is no such approval/consent.

[49] The response to this argument by Counsel for the applicant shows that the applicant is assuming responsibility and authority for the prosecution of the 2nd, 3rd and 4th respondents.

[50] Although a private citizen is at liberty to lay an information to prosecute another individual for a criminal matter, s.94 (3) (c) of the Constitution empowers the DPP to discontinue any criminal proceedings. The purpose of this application for judicial review must be to allow for further prosecution of the 2nd, 3rd and 4th respondents. In view of the powers of the DPP, it would be a counsel of prudence to solicit the involvement of the DPP before proceeding along this proposed route of judicial review. The DPP was served with the documents in this matter as a consequence of an order of the Court. At the start of these proceedings, Counsel attended for the DPP but has not played any part in the proceedings. The DPP has not been joined as a party. To proceed to judicial review without the approval/consent of the DPP raises the very real probability of a waste of judicial time where DPP is empowered to discontinue proceedings.

Absence of Order

[51] Another argument in opposition to the grant of the permission to review was that there was no proper order placed before the court. The submission that that should result in the application being refused does not find favour with me.

[52] It is not essential for the Order which is the subject of this application to be available at this stage of the proceedings. S. 56.16(1) **CPR** makes that clear where it provides:

> "Where the claimant seeks an order or writ of certiorari to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless-
>
> (a) before the trial the claimant has lodged with the registry a copy of the order, etc., verified by affidavit; or
>
> (b) can account for the failure to do so to the satisfaction of the court."

[53] It seems to me that the order should be exhibited at the first opportunity. A properly certified and filed Order will ensure that the Order does in fact state what the applicant seeks to have reviewed. However, the provision in the CPR allows for the lodging of the Order before the trial which, in my view, must include the period between the application for leave for judicial review and the judicial review itself.

[54] In this matter there has been much argument alleging the absence of an Order. A certified Order was not exhibited. However, all parties seem to agree that the Order was that there is no case for the 2nd, 3rd and 4th respondents to answer and that they were adjudged to be not guilty. The arguments of the applicant do not challenge such an Order *per se.* The absence of the properly certified Order is not fatal to the application at this stage of the proceedings. The challenge is to the manner in which the Order was made which the applicant submits is obvious from the judgment delivered.

Insufficient Time

[55] The complaint in large part was that the 1st respondent did not devote sufficient time to considering the matters in the trial. To support that assertion counsel for the applicant relied on precise words.

[56] In my view, the words do not indicate that the 1st respondent acted in that manner. Rather, they show that the 1st respondent had intended to deliver her decision in a written judgment, copies of which would be distributed contemporaneously with the

oral delivery of the decision, but time did not allow for the realisation of that intention. Instead she delivered her decision orally whilst reading from/referring to a document.

[57] In reaching my view, I considered some of the words exhibited which are alleged to display her belief that she had had insufficient time to review the evidence:

> a) "Let me just say first of all that I think I have given myself too little time in relation to this matter, I had hoped to give persons copies of the decision, it's not going to be possible." [transcript p.1]

Here the 1st respondent is indicating the impossibility of providing a written copy of the judgment because she had given herself insufficient time to do so. I do not interpret these words to mean that she had given herself insufficient time to consider the issues.

[58] The next quotation was:

> b) "As I said, this is a work in progress." [transcript p.7]

Here the interpretation that makes sense to me is that the 1st respondent is in the process of finalising the document from which she was obviously reading, for purposes of distribution. It defies logic that a Resident Magistrate would deliver a decision in a matter and at the same time say that she is still working on coming to the decision. It follows that here too I do not interpret these words to mean that she had given herself insufficient time to consider the issues.

[59] Other words attributed to the 1st respondent were:

> (c) "What I did was to reproduce what was put in the summations (sic), so I am going to hardly glance through it now that I am giving my decision." [transcript p.11-12]

The 1st respondent is said to have spoken of "reproducing" and of "glancing" which must clearly be references to written material. Though the words to which reference is made include "summations", that appears to be an erroneous recording of the word she would most probably have used, that is, "submissions." My interpretation is that the 1st respondent is here saying that she is in the process of giving her decision and will not

repeat orally what she had reproduced in the written undistributed judgment/notes containing the actual submissions of counsel. One would reasonably assume that the submissions were already known to all counsel concerned. This has nothing to do with giving herself insufficient time to consider the issues.

[60] The 1st respondent is alleged to have also said:

> d) "Now please forgive me if I may have left out certain parts of both submissions for the prosecution and for the defence because I only went to certain areas that I dealt with in my decisions." [transcript p.19]

These words I interpret to mean that the 1st respondent's decision concerned only certain parts of the submissions and so it was not necessary to mention the other portions. She was apologising for omitting some submissions in those circumstances.

[61] This clearly shows that the 1st respondent had come to her decision and was stating that because of the nature of the decision it was not necessary to repeat every part of the submissions. The words in my view do not show in any way that the 1st respondent was saying that she did not have sufficient time to consider the matter.

[62] Additionally, the 1st respondent is said to have stated:

> (e) "I am very sorry this is taking longer than I thought and I am going to start summarizing." [transcript p.23]

These words, perhaps even moreso than the others, make it clear that the references are to the 1st respondent's delivery of the oral judgment. The 1st respondent here, to my mind, is apologising for the time being taken to state the reasons for her decision. She would therefore summarize the written words to which she was referring in order to abbreviate the time taken to deliver the decision. This has no reference to time taken to reach the decision.

[63] I agree with the submission of counsel for the respondents that at the substratum of this application is the assertion that the 1st respondent stated did she did not have sufficient time to consider the case.

[64] In my view, no credible evidence has been presented to support the submission that the 1st respondent said she did not have sufficient time to consider the matter. The foundation of the application therefore fails and with it, the application.

Futility of review

[65] However, if I am wrong in so concluding I find that the application is unsuccessful for other reasons. A court must not act in vain. To my mind a judicial review of the decision of the 1st respondent would be an exercise in futility. The orders sought in this application for judicial review include:

i. a declaration that the statement of the 1st respondent that she really needed more time to go through the evidence and that it was a work in progress amounted to her jurisdictional error rendering her findings and verdict null and void and of no effect

ii. a declaration that the verdict of the 1st respondent is so unreasonable that no tribunal properly directed in the law and having considered all the relevant evidence could have arrived at the said verdict.

iii an order of certiorari quashing the verdict of the 1st respondent that the other respondents were not guilty of the charges.

[66] **Section 16(9) of the Constitution** provides:

> "No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal."

[67] A judicial review of the finding that there is no case to answer and that the 2nd, 3rd and 4th respondents are not guilty of the charges would amount to allowing the prosecution to appeal an acquittal. That is not permissible under our law.

[68] The Judicature (Appellate Jurisdiction) Act provides that:

> "22 ..... [A]n appeal shall lie to the Court
> from any judgment of a Resident Magistrate
> in any case tried by him on indictment....."

Judgment is there defined in s. 2 as including any order of a court made on **conviction** (emphasis supplied). In **Gunter v Tucker** JM 1967CA17, the Court of Appeal considered an appeal by a complainant from a dismissal of an acquittal by a Resident Magistrate in proceedings on an indictment. The Court examined the issue of appealing from an acquittal and thereafter held that is was not seised of jurisdiction to hear such an appeal.

[69] If a review led to the reliefs sought, the effect would be to quash the 1st respondent's orders that there is no case to answer and that the 2nd, 3rd and 4th respondents are not guilty of the charges for which they were tried. What then? Would the 1st respondent be directed to continue the trial and hear the case of the other respondents (as defendants)? If the verdict of Not Guilty is quashed, does the prosecution start afresh? Who would initiate such a fresh start? The DPP is not a party to these proceedings. There has been no complaint filed in these proceedings by the DPP. Is the DPP to be directed to prosecute afresh? No one is empowered to direct the DPP to prosecute, without more. If the DPP does prosecute afresh, does the plea of *autrefois* acquit avail the 2nd, 3rd and 4th respondents?

[70] These concerns exemplify the futility of judicially reviewing the decision. The 2nd 3rd and 4th respondents could not be tried again at the instance of the complainant.
A complainant is not at liberty to seek to cause the prosecution of a person twice for the same offence. A judicial review would be a waste of judicial time.

Conclusion

[71] The 1st respondent, as a Resident Magistrate, presided over the trial of the 2nd, 3rd and 4th respondents, accused of certain crimes. At its conclusion, the 1st respondent made an order upholding the submission that no case had been made out against them by the prosecution and she entered a not guilty verdict against each of them.

[72] There is no evidence of the 2nd, 3rd and 4th respondents making any order to be reviewed. Indeed, as accused persons they could make no order in their own trial. They cannot therefore be properly named as respondents in an application to review an order made in their trial.

[73] As it concerns the 1st respondent, a judicial review of the order which she is said to have made would be an exercise in futility. Our constitution protects persons from the jeopardy of being tried twice for the same offence.

[74] In my view it would be wrong to grant leave for an application for judicial review as it would allow the prosecution to circumvent the law which does not allow appeals by the prosecution in our jurisdiction.

[75] Further, the submission that the 1st respondent did not take sufficient time in considering her decision is not supported by evidence. It is that argument that forms the substratum of the application for judicial review of the 1st respondent's order that the 2nd, 3rd and 4th respondents had no case to answer and were not guilty of the charges for which they were tried.

[76] In addition, the application for judicial review included an application for declarations to be made. There is no evidence to support the granting of the declarations.

[77] I therefore have upheld the preliminary points made by Queen's Counsel Mr. Knight and adopted by other counsel. The application lacks merit on the several bases outlined above. There is no arguable ground with a realistic prospect of success. I therefore refused the application.

[78] The question of costs was reserved. Counsel should file and serve written submissions concerning costs within 14 days of today.