[2023] JMCA App 4

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA

APPLICATION NO COA 2022APP00071

MOTION NO COA2022MT00013

BETWEEN	**MICKEY HONEYGHAN**	**APPLICANT**
AND	**FIREARM LICENSING AUTHORITY**	**1ST RESPONDENT**
AND	**THE REVIEW BOARD**	**2ND RESPONDENT**

Hugh Wildman instructed by Hugh Wildman & Co for the applicant

Miss Courtney Foster instructed by Courtney N Foster & Assoc for the 1st respondent

Miss Lisa Whyte instructed by the Director of State Proceedings for the 2nd respondent

24 February 2023

ORAL JUDGMENT

BROOKS P

[1] This is a motion by Mr Mickey Honeyghan for leave to appeal to His Majesty in Council ('the Privy Council' or 'the Board') from a costs order that this court made on 4 July 2022 against him, in favour of the 1st respondent, the Firearm Licensing Authority ('the FLA'). The order of this court did not affect the 2nd respondent, the Review Board. Mr Honeyghan argues that he should be granted leave to appeal because the genesis of the litigation is an application for judicial review, and the general rule is that costs should

not be awarded against an applicant for an administrative order. He contends that it is of great general or public interest that the issue should be decided by the Privy Council.

[2] Mr Honeyghan had applied to the Supreme Court for judicial review of the FLA's revocation of his firearm licence. Carr J, on 25 March 2021, refused Mr Honeyghan's application. Her reason was that he had not exhausted the alternative remedy afforded to him by the Firearms Act (as it then was). At that time, his appeal to the relevant Minister of Government, seeking to overturn the FLA's decision, was still pending. Mr Honeyghan applied to this court for leave to appeal Carr J's decision. He maintained the application despite the decisions from this court that coincided with Carr J's decision (see **Robert Ivey v Firearm Licensing Authority** [2021] JMCA App 26).

[3] When the application for leave to appeal came on before this court, it was revealed that the relevant Minister had ruled in Mr Honeyghan's favour, thus rendering further litigation otiose. Mr Honeyghan, at that time, wisely withdrew his application. It is in that context that this court made the costs order against him.

[4] Mr Honeyghan has no right to appeal to the Privy Council by way of section 110(1) of the Constitution of Jamaica. He needs to have leave to appeal pursuant to section 110(2) of the Constitution.

[5] It is plain that the order for costs made by this court in this matter has no great general or public importance, as section 110(2) requires. The matter is restricted to Mr Honeyghan and the circumstances of this case.

[6] Reference may be made to **Hon Gordon Stewart OJ v Senator Noel Sloley SR and others** [2013] JMCA App 4 in which this court analysed the requirements of section 110(2) of the Constitution as it relates to satisfying the section 110(2) requirement of great general or public importance. In that case, after assessing the various authorities, the court found that a reference to the Privy Council is not for determining whether this court got it wrong, nor necessarily that it was a serious matter of law, but it must be a

question that not only affects the rights of the particular applicants. It must be a decision which would guide and bind others in their commercial and domestic relations.

[7] This court and the other authorities from other jurisdictions have made the issue of awarding costs very plain. There is nothing new arising from this case to be determined in respect of costs.

[8] Counsel for Mr Honeyghan cited the cases of **Société des Chasseurs de L'Ile Maurice and others v The State of Mauritius and another** [2016] UKPC 13 and **Aston Reddie v The Firearm Licensing Authority** (unreported), Supreme Court, Jamaica, Claim No HCV 1681 of 2010, judgment delivered 24 November 2011, but neither assists him on the issue of whether the order for costs is a matter of great general or public importance. They deal with the issue of the revocation of firearm licences.

[9] There is another basis for saying that the matter is not of great general or public importance and should not be referred to the Privy Council.

[10] The general rule is that the Privy Council will not hear an appeal that is filed solely on the issue of costs. In **Credit Foncier of Mauritius Limited v Paturau & Co** [1876] UKPC 58; (1876) 35 LT 869 ('**Credit Foncier'**), their Lordships ruled at page 2 that "appeals are not allowed to Her Majesty in Council merely for the sake of costs". The Board ruled that the appellants did not have standing as appellants and dismissed the appeal.

[11] **Credit Foncier** was cited with approval in more recent cases by their Lordships. In **Nana Atta Karikari and Another v Nana Oware Agyekum II** [1955] A.C. 640, the Board said, in part, on page 647:

> "In 1835 Lord Brougham, in *Inglis v. Mansfield*, said: 'The rule with respect to costs in this House, as well as in the Privy Council and the Court of Chancery, is, that you cannot appeal for costs alone;'. In *Credit Foncier of Mauritius v. Paturau and Others* Sir Barnes Peacock said: 'But appeals are not allowed to Her Majesty in Council merely for the sake of costs.' These statements require qualification. In a judgment of the Board

> delivered by Turner L.J. in an appeal from the Court of Arches *(Attenborough v. Kemp* [(1861) 14 Moo PC 351, 353] it is said that an appeal might lie if the discretion had not been fairly exercised or there had been mistake. In *Donald Campbell & Co. v. Pollak* [[1927] A.C. 732] the House of Lords decided that not-withstanding the general rule of practice of the House of Lords that no appeal lies for costs only, an appeal would be entertained if an error of law was alleged." (Italics as in original)

[12] Still later, in **Elders Pastoral Limited v Bank of New Zealand** [1990] 1 WLR 1090, on page 1095, the Board, in affirming the principle stated in **Credit Foncier**, said, in part:

> "It follows that an appellant is never entitled as of right to appeal to the Judicial Committee if the only effect of a successful appeal will be to reverse an order for costs. Where there is no appeal as of right, an appellant may seek special leave, notwithstanding that the only effect will be on costs but the appellant will only obtain such special leave in very exceptional circumstances: see *Karikari v. Agyekum II* [1955] A.C. 640. Where leave is unnecessary or has been obtained and subsequently the dispute between the parties is reduced to a dispute over costs the appeal remains competent but the Judicial Committee retains a discretion to decline to entertain the appeal if the only effect of success will be to reverse an order for costs; and as a general rule the Judicial Committee [will] be minded not to entertain the appeal: see *Credit Foncier of Mauritius v. Paturau,* 35 L.T. (N.S.) 869." (Italics as in original)

[13] Costs are always at the discretion of the court before which any matter is heard. An appellate court is unlikely to disturb an order for costs which lies in the discretion of the court below. As it is plain that Mr Honeyghan caused the Firearm Licensing Authority to incur costs in respect of the application for leave to appeal, this court was entitled in the circumstances outlined above, to award costs to it. Mr Honeyghan's attempt to rely on rule 56.15(5) of the Civil Procedure Rules, 2002 ('the CPR') (that generally, costs are not awarded against an applicant in applications for judicial review) is misplaced. That provision does not apply at the appellate level. Part 56 of the CPR is not incorporated into the Court of Appeal Rules. The principle was pointed out in **Robert Ivey v Firearm**

Licensing Authority (see paragraph [76]). There is nothing, therefore, to suggest that this court's order as to costs "had not been fairly exercised or there had been [a] mistake", as outlined in **Nana Atta Karikari and Another v Nana Oware Agyekum II**.

[14] The present motion is, therefore, completely misguided. It has also been attended by improper conduct on Mr Honeyghan's part. He did not file the required bundles to enable the court to prepare for the hearing of the motion on the scheduled date, and his counsel failed to file any written submissions in good time for consideration. Despite reminders to counsel during the past week, the submissions were only provided to us during the course of the weekend. The explanation for the default, that counsel was otherwise engaged, is completely untenable.

[15] The disrespect to the court and inconvenience to the opposing counsel warrant a costs sanction as allowed by Practice Note No 1 of 2021. Costs should be awarded on an indemnity basis.

[16] Accordingly, the motion for leave to appeal to His Majesty in Council must be refused. The court, therefore, orders as follows:

1. The motion for leave to appeal to His Majesty in Council is refused.

2. Costs of the application to the 1st respondent are to be paid on an indemnity basis and are to be agreed upon or taxed.

3. No order as to costs in respect of the 2nd respondent.