[2013] JMCA App 11

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 126/2011

MOTION NO 16/2012

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA

BETWEEN	**MICHAEL LEVY**	**APPLICANT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**1st RESPONDENT**
AND	**JAMAICAN REDEVELOPMENT FOUNDATION INC**	**2nd RESPONDENT**

Raphael Codlin, Miss Karen Scott and Miss Melissa Cunningham instructed by Raphael Codlin & Co for the applicant

Miss Carlene Larmond instructed by the Director of State Proceedings for the 1st respondent

Mrs Sandra Minott-Phillips QC and Gavin Goffe instructed by Myers, Fletcher & Gordon for the 2nd respondent

16, 26 April, 9, 27 May and 14 June 2013

MORRISON JA

Introduction

[1] By notice of motion dated 30 October 2012, the applicant sought leave to appeal to Her Majesty in Council ('the Privy Council') from a decision of this court given on 12

October 2012. The notice of motion was amended on 1 May 2013 to expand the basis of the application. On 27 May 2013, the court announced that the application for leave to appeal would be refused, with costs to the respondents, to be taxed if not agreed. These are the promised reasons for this decision.

[2] The amended application was made pursuant to the provisions of section 110(1)(a), or, in the alternative, section 110(2)(a) of the Constitution of Jamaica ('the Constitution'). Section 110(1)(a) provides that an appeal shall lie from decisions of the Court of Appeal to the Privy Council, as of right, "where the matter in dispute on the appeal to Her Majesty in Council is of the value of one thousand dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings". Section 110(2)(a) provides that an appeal shall lie to the Privy Council, with the leave of the Court of Appeal, "where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings".

[3] The issues that arise on this application, which was vigorously opposed on both grounds by both respondents, are therefore whether, in the first place, the case comes within section 110(1)(a), in which event the applicant is entitled to a grant of leave as of right; and secondly, if it does not, whether the matter is in the court's opinion one which ought to be submitted to the Privy Council, on the bases identified by the applicant, by reason of its great general or public importance.

Background

[4] By way of background, we cannot improve on, and therefore gratefully adopt, the introductory paragraphs of Brooks JA's judgment (with which Panton P and Phillips JA agreed) in the matter from which leave to appeal is now sought (***Michael Levy v The Attorney General of Jamaica & Jamaican Redevelopment Foundation Inc*** [2012] JMCA Civ 47, paras [3] – [8]):

> "[3] In the 1990s, there was a devastating meltdown of a large portion of the island's financial sector. A number of the institutions, therein, failed. On 30 January 2002, Jamaican Redevelopment Foundation Inc (JRF) acquired the bad-debt portfolios, or at least portions thereof, of some of the financial institutions that had experienced financial difficulties.
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> [4] The Minister of Finance gave his blessings to the acquisition. On 25 June 2002, in demonstration of his approval, the minister granted JRF exemption from the provisions of the Moneylending Act (the Act). That exemption particularly allowed JRF, not only to charge interest rates above that which the Act sought to constrain, but also to charge compound interest. JRF was, thereby, in that regard, placed on equal footing with the institutions that it replaced. The Minister of Finance granted further exemptions annually, thereafter, to JRF, from 2003 through 2008.
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> [5] Mr Michael Levy was one of the 23,000 debtors affected by JRF's acquisitions. In November 2008, he filed a claim in the Supreme Court asking for judicial review of the exemption orders. He sought to have them quashed on the basis that they were unlawful. His main contention was that the exemption orders were not in the interest of the public and were, therefore, *ultra vires* the minister's remit under the Act.
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> [6] Mr Levy named the Attorney General of Jamaica as the respondent to the claim, however, the JRF was allowed to intervene as a party directly affected by the claim. Both resisted Mr Levy's claim.

> [7] P.A. Williams J heard the application for judicial review and, on 6 October 2011, refused it. The learned judge ruled that the exemption order that affected Mr Levy was that granted on 25 June 2002. Accordingly, she ruled that his application had been made several years late. She found that he was not entitled to any relief by way of judicial review, as that would cause substantial hardship to JRF, which had relied on the validity of the order over the course of six years and had acted thereon.
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> [8] Mr Levy is aggrieved by that ruling and has appealed. The resolution of the appeal turns on the question of whether the annual exemption orders were by way of renewals of previous orders, or were in respect of transactions that were to have been conducted by JRF during the year for which each order was granted."

[5] Brooks JA resolved the matter in favour of the respondents, holding, in agreement with P.A. Williams J in the court below, that the exemption order that affected the applicant was that dated 25 June 2002. As a result, the application to claim judicial review, which was filed on 25 November 2008, was several years in excess of the three months allowed for the bringing of such claims by rule 56.6(1) of the Civil Procedure Rules 2002 ('the CPR'). Brooks JA concluded (at paras [54] – [55]) that the circumstances of the case justified the learned judge's approach:

> "[54] The situation is that for at least six years, up to the date of the filing of the claim, JRF had operated on the basis that the exemption orders were valid. There are some 23,000 debtors involved. Some of the debts must have been repaid. The properties of some debtors, such as Mr Levy, have been sold in an attempt to liquidate the debts. No further exemptions have been granted since 2008.
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> [55] It is patent, that even relatively minor relief, if relief were deserved, by way of a declaration that these exemption orders were invalid, would result in mammoth upheaval. It would most likely generate a tsunami of litigation that would engulf

> this country's already overburdened court system. Individuals who have been adversely affected over the past ten years, would sue seeking to recover money had and received or damages for the wrongful sale of their respective properties. The likely defendants would be JRF and the Minister of Finance. The resultant hardship and prejudice to those parties would be horrendous. The situation would cause substantial detriment to good administration. Those results would preclude the grant of any form of relief. In light of such calamitous consequences, why then would the court embark on a futile exercise of considering the merits of the claim? For these reasons, I find that Williams J was entitled to consider the effect of the delay to the exclusion of the merits of the substantial application."

The basis of the application

[6] The applicant's primary contention is that he is entitled to appeal to the Privy Council as of right, pursuant to section 110(1)(a) of the Constitution. In the affidavit originally filed in support of the notice of motion for leave to appeal to the Privy Council on 30 October 2012, the applicant offered no more than a brief rehearsal of the progress through the courts of his application for judicial review, before concluding (at para. 6) with the statement that, "having consulted my legal representatives I have been advised and do verily believe that I have a right of appeal to Her Majesty in Council as regards the judgment handed down by the Court of Appeal".

[7] However, in a further affidavit filed on 6 May 2013 at the suggestion of the court, the applicant provided additional detail in support of his primary contention that he had an appeal as of right. In it, he made reference to the loan which he had originally taken from Workers Savings and Loan Bank ('the bank'), its "alleged assignment" to the 2nd respondent, and to the fact that he was being charged interest on the loan by the

2nd respondent at a rate of "50% per annum compounded at monthly rest" [sic] (para. 2). He also referred to the fact that the 2nd respondent had been allowed on the basis of the exemption from the provisions of the Moneylending Act granted to it by the minister to charge compound interest above the prescribed rates (para. 3), which resulted in "the monumental increase in the balance payable on the loan...[which]...eventually reached over one billion dollars" (para. 4). The applicant exhibited a copy of a loan statement to demonstrate this point. Further, a property owned by him, which had been used as security for the original loan, had also been "purportedly assigned" to the 2nd respondent and sold by it at what he believed to be a gross undervalue (para. 5). Thus, the applicant concluded on the question of value, he had suffered "grave financial loss as a result of the exemptions and the resulting high interest rate...including the loss of my property" (para. 6), he had claimed damages on his claim for judicial review, as he had been advised that he was entitled to do (para. 7) and, since those damages "far exceeds [sic] one thousand dollars", he is entitled to appeal to the Privy Council as of right (para. 8). The applicant exhibited to his affidavit a copy of the original fixed date claim form dated 25 November 2008, in which he had sought "an order of certiorari quashing the Orders of the Minister, a declaration that the orders are ultra vires and null and void, damages, cost, such further and other relief as the Court sees fit".

[8] As regards the alternative limb of the application, the applicant stated that "[t]he exceptional public interest in the issues raised in this matter was acknowledged by this court in its judgment", referring to the powers of the minister to grant exemptions from

the provisions of the Moneylending Act, as well as the matters set out in the notice of motion, as follows:

> "1. Whether the Moneylending (Exemption) (Jamaica Redevelopment Foundation Inc) Order 2002 properly interpreted exempted loans, contracts and securities for loans etc from the Moneylending Act for a period of one year or whether it exempted loans, contracts and securities for loans etc made or acquired within that year ad infinitum notwithstanding the fact that the order clearly states that the exemption was to last for one year and the Honourable Minister in his evidence before the tribunal categorically stated that each exemption order was to last for only one year.
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> 2. Whether the Court in interpreting the Moneylending (Exemption) (Jamaican Redevelopment Foundation Inc) Orders from 2002 to 2008 ought properly to have had regard to the pronouncements made by the Minister under oath at a Commission of Enquiry in which he stated that he granted yearly exemptions to Jamaican Redevelopment Foundation Inc from the provisions of the Moneylending Act.
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> 3. What weight, if any, should be attached to the importance of the issues involved in a claim in determining whether an applicant for judicial review who is out of time ought to be allowed an extension of time to bring his application. As a matter of law ought the Court to have applied the law as laid down rather than seeking to protect the Minister as the Court of Appeal seemed to have done by attaching greater weight to the prejudice they perceived would have been occasioned to the Minister rather than the merits of the claim. [sic]
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> 4. Is the fear of subsequent litigation against a defendant a valid circumstance to be taken into account by the Court in determining whether or not it should make a judicial pronouncement on an issue placed before it for determination. [sic]
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> 5. In judicial review proceedings involving actions of Ministers or State Officials should the Court as a matter of policy make a judicial pronouncement on the legality or otherwise of the said actions complained of instead of making theoretical predictions

which were never placed before the Court as any issue to be determined. [sic]

6. The Court of Appeal having stated that "It is patent that even relatively minor relief, if relief were deserved, by way of a declaration that these exemptions orders were invalid, would result in mammoth upheaval. It would most likely generate a tsunami of litigation that would engulf this country's already overburdened court system. Individuals who have been adversely affected over the past ten years, would sue seeking to recover money had and received or damages for the wrongful sale of their respective properties." [sic] Is the court entitled to deny relief which a litigant justly deserves because of its own conceived notion that it would result in a tsunami of litigation when if such a situation should occur the state, not the court of appeal, could take the view that the matter ought to be settled and grieving litigants compensated or alternatively, have the court determine each case on its own merits." [sic]

The submissions

[9] In submitting that the applicant had made out his case for an appeal as of right pursuant to section 110(1)(a), Mr Codlin was content to say that the further affidavit summarised at paras [7] and [8] above sufficiently addressed the question of the value of the claim. And, as regards the requirement of section 110(2)(a), he submitted that the judgment under appeal made it clear that this is a matter of great general or public importance, referring us in particular to paragraph [55] of Brooks JA's judgment (see para. [5] above).

[10] Miss Larmond for the 1st respondent submitted, firstly, that the applicant had failed to provide sufficient evidence of value to enable the court to determine that the proposed appeal fell within section 110(1)(a). The matter in dispute in this case was

whether the Minister ought to have granted the exemptions from the Moneylending Act and the claim by the applicant to have suffered loss as a result of the exemptions did not, without more, provide a basis for concluding that the matter was of a value of $1,000.00 or upwards, as there is no general right to damages for public law wrongs. What is required is that a distinct cause of action, fully particularised, be pleaded, and rule 56.10(2)(a) of the CPR, which empowers the court to award damages on a claim for judicial review, does not entitle the court to award damages on the basis of the inclusion in the fixed date claim form of a bare claim to damages unsupported by a cause of action. Secondly, Miss Larmond submitted, none of the questions posed by the applicant in the notice of motion was of any general or public importance, as they raised matters peculiar to the applicant's claim for judicial review, which cannot be elevated to the level of general or public importance.

[11] Mr Goffe for the 2nd respondent joined in Miss Larmond's objection to the application, also submitting as regards the question of value that there can be no claim for damages without a cause of action being pleaded. In any event, it was submitted, even if the applicant had been awarded damages to be assessed, he would still not be entitled to appeal as of right, as the court in such a circumstance had a discretion to grant or refuse leave. That discretion ought not to be exercised in favour of the applicant, as it cannot be said that he would be entitled to any damages at all, based on an analysis of the unchallenged loan statement provided to the court by the applicant. Mr Goffe also submitted that the applicant's assertion that it was the minister's exemptions which had caused the monumental increase in the amount

payable by him was wrong in fact, as those rates were originally agreed between the applicant and the bank. On the issue of great general or public importance, Mr Goffe pointed out that only the first question posed by the applicant had been before the court on the hearing of the appeal and submitted that that was not "remotely a matter of great general or public importance". Neither, it was submitted, was any of the other questions posed by the applicant, the circumstances that had resulted in his being refused relief on his application for judicial review having been peculiar to the circumstances of his case.

[12] We are grateful to counsel for their very helpful submissions, as well as the authorities cited, to some of which we will come in due course.

An appeal as of right?

[13] Although an appeal as of right pursuant to section 110(1)(a) does not in terms require an application for leave to appeal to the Privy Council, it is now well established that an application for leave must nevertheless be made to the Court of Appeal, pursuant to section 3 of The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962. This order remains in effect, notwithstanding Mr Codlin's muted suggestion in argument that it has either been repealed or overtaken by the Judicial Committee (Appellate Jurisdiction) Rules 2009, which are rules made by the Privy Council to regulate the procedure for civil and criminal appeals to the Board in its general appellate jurisdiction. However, these rules have no bearing on either the provisions of the Constitution or the procedure established under the 1962 Order in

Council and, indeed, rule 10 makes it clear that "[i]n cases where permission to appeal is required, no appeal will be heard by the Judicial Committee unless permission to appeal has been granted either by the court below or by the Judicial Committee".

[14] The decision of the Board in ***Electrotec Services Ltd v Issa Nicholas (Grenada) Ltd (No. 1)*** [1998] 1 WLR 201, a case concerned with the very similar provisions of the Constitution of Grenada, makes it clear that the question of leave to appeal in cases falling within the equivalent of section 110(1)(a) is not a matter of discretion for the Court of Appeal. The court is nevertheless required to satisfy itself that the case is one which comes within the terms of section 110(1)(a), that is, that a right of appeal exists (see especially per Lord Hoffmann at page 204 and see also ***Brent Griffith v Guyana Revenue Authority and Attorney General of Guyana*** [2006] CCJ 1 (AJ), para. [19], in which the Caribbean Court of Justice described the similar approach required by the Caribbean Court of Justice Rules in relation to appeals to that court as "...little more than a gate-keeping exercise since the appeal is as of right").

[15] So the court has no discretion in the matter of leave so long as the case comes within the requirements of section 110(1)(a) of the Constitution. By the same token, if the case falls outside the section, the court has no discretion to grant leave (see the very helpful discussion by Thomas JA (Ag) in ***Daryl Sands Controller of Bank Crozier Limited v Garvey Louison Liquidator of Bank Crozier Limited (In liquidation) and Peter Foster Liquidator of Bank Crozier International Limited***

(HCVAP 20007/001, judgment delivered 16 September 2008, a decision of the Eastern Caribbean Court of Appeal (Grenada), paras [20] – [30])).

[16] As has already been seen, the issue before the court on the hearing of the appeal in the matter from which the applicant seeks leave to appeal was a fairly narrow one, *viz*., "whether the annual exemption orders were by way of renewals of previous orders, or were in respect of transactions that were to have been conducted by JRF during the year for which each order was granted" (per Brooks JA at para. [8] of the judgment – see para. [4] above). The court found, in agreement with the trial judge, that the plain meaning of the order was that transactions carried out during the year covered by each order were permanently exempt and that the order that was applicable to the applicant was that made on 25 June 2002. The applicant's application for judicial review of the minister's order was accordingly made several years late and the grant of an order for judicial review in those circumstances would cause substantial hardship to the 2nd respondent.

[17] On the face of it, in our view, it is difficult to see how an appeal challenging a ruling that the applicant's right to apply for judicial review has been lost through lapse of time could possibly be characterised as a matter in dispute, or as a matter involving directly or indirectly a claim to or question respecting property or a right, of the value of $1,000.00 or upwards. The applicant's challenge to the minister's order was made on the ground that it was *ultra vires*. The substantive question at issue in the judicial review proceedings was therefore whether, as a matter of public law, the minister's exercise of his statutory powers should be allowed to stand. As Ackner LJ, as he then

was, observed in ***R v Stratford-on-Avon District Council and Another, Ex parte Jackson*** [1985] 3 All ER 769, 773, in judicial review proceedings, "there is no true lis inter partes or suit by one person against another".

[18] Perhaps because of this difficulty, the applicant bases his application under section 110(1)(a) on his assertion that (i) the effect of the ministerial order exempting the 2nd respondent from the operation of the Moneylending Act was to expose him to higher interest rates, which led to "the monumental increase in the balance payable on the loan"; and (ii) he had been advised that in consequence of this he was entitled to damages, for which he had made a claim, in a sum far in excess of $1,000.00.

[19] The addition of the claim for damages in the instant case is authorised by rule 56.10(2) of the CPR, which specifically empowers the court, on a claim for judicial review, to award damages, restitution or make an order for return of property if –

> "(i) the claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or
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> (ii) the facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief; and
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> (iii) the court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy."

[20] Rule 56.10(2) bears an obvious family resemblance to Order 53 rule 7(1) of the English Rules of the Supreme Court ('RSC'), which was later incorporated into the now repealed Judicature (Civil Procedure Code) Act ('the CPC'), by the Judicature (Civil

Procedure Code) (Amendment) (Judicial Review) Rules 1998. Section 564G of the amended CPC thereafter also gave to the Supreme Court the power to award damages on an application for judicial review, provided that (a) the applicant included in the statement in support of his application for leave to apply for judicial review a claim for damages "arising from any matter to which the application relates" and (b) "if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages".

[21] In this connection, Miss Larmond referred us to Supperstone and Goudie's 'Judicial Review' (by Michael Supperstone QC and James Goudie QC, 1997), in which the learned authors state (at page 14.35) that RSC Order 53 –

> "...creates no new cause of action. It enables a claim for damages for breach of a private law duty resulting from unlawful conduct by a public authority to be joined with a public law application to establish the unlawfulness rather than being claimable only in an action begun by writ. This is of value because it avoids the instigation of duplicate proceedings."

[22] Supperstone and Goudie go on to quote (at page 14.36) from a judgment of Simon Brown J (as he then was) in ***R v Chief Constable of the Thames Valley Police, ex p Cotton*** [1989] COD 318, 320, in which the learned judge observed that the "mere fact of succeeding in judicial review proceedings does not supply [an applicant with a cause of action]...[s]uccessful natural justice challenges do not carry in their wake damages claims". (The point does not appear to have arisen in the unsuccessful appeal from Simon Brown J's decision: see [1990] IRLR 344). Read in this

way, it appears that rule 56.10(2) falls to be regarded as facilitative only, in the sense of permitting an applicant for judicial review to join an action for damages in the same proceedings, provided that at the time of the filing of the judicial review application the claimant could have filed a claim for such a remedy. In any event, even if the rules confer a power on the court to award damages on an application for judicial review, it cannot do so unless it is furnished with the necessary detail to enable it to make a sensible assessment of damages.

[23] In the instant case, the claim for damages was neither quantified nor particularised. On the basis of the material placed before the court on this application, we are completely unable to conclude from the mere fact of such a claim having been included in the remedies prayed for in the fixed date claim form, coupled with the applicant's bald statements in his affidavit as to the effect of the exemption orders on his financial position, that the applicant has demonstrated that he has a cause of action to support the claim for damages. Or, even assuming that that is not a necessary requirement, he has not shown that he will be entitled, if his appeal succeeds, to damages in excess of the minimum amount prescribed in section 110(1)(a) of the Constitution.

[24] While we have not found it necessary for present purposes to refer to Mr Goffe's detailed analysis of the applicant's loan statement, which makes it clear, Mr Goffe submitted, that the applicant suffered no loss as a result of the exemption orders, what it does demonstrate, in our view, is that the question of damages remains very much in the air. Which brings us then to the decision of the Board in ***Zuliani and Others v***

Veira [1994] 1 WLR 1149, a case concerned with the similar provision to section 110(1)(a) in the Constitution of St Kitts and Nevis, in which, dealing with the question of unliquidated damages, Lord Nolan said the following (at page 1155):

> "In providing that the automatic right of appeal should arise only where the matter in dispute was of the value of (or in excess of) a precise figure the legislature has chosen not to include an award of unliquidated damages. In the view of their Lordships this provision should be strictly construed. No doubt there will be many cases, of which the present is one, where it can be said as a matter of the utmost probability, or even of virtual certainty, that the damages ultimately awarded will be in excess of E.C. $5,000, and in such cases the Court of Appeal may very well think it right, as [sic] general rule, to grant leave in the exercise of its discretion. Equally, however, there may be cases – and again the present case may serve as an example – where the likely amount of damages is at or above the statutory threshold, but which are so lacking in merit that the Court of Appeal in its discretion would refuse leave."

[25] As we have already indicated, we cannot regard this as a case in which it can be said as either a matter of utmost probability, or even of virtual certainty that the damages ultimately awarded to the applicant, should the proposed appeal to the Privy Council be successful, will exceed $1,000.00.

[26] But, even if we are wrong in this view, and the likely amount of damages in this case is at or above the statutory threshold, we do not think that this is a matter in which this court should grant leave as a matter of discretion. Both P.A. Williams J and this court concluded that, on the basis of the plain language of the exemption order, it covered only those transactions carried out during the year covered by each order and

that the order that was applicable to the applicant was that made on 25 June 2002. Rule 56.6(1) of the CPR provides that an application for judicial review "must be made promptly and in any event within three months from the date when grounds for the application first arose". As Brooks JA observed (at para. [39]), the applicant's application, which was made in 2008, "was, therefore, very late" and this delay was "plainly inexcusable" (para. [58]). Rule 56.6(5) mandates the judge hearing the claim for judicial review, in cases of delay, to consider whether the granting of relief "would be likely to (a) cause substantial hardship to or substantially prejudice the rights of any person; or (b) be detrimental to good administration". P.A. Williams J and this court also considered, on the evidence before them, that the 2nd respondent would suffer severe prejudice and hardship if any relief were granted. This was, in our view, a matter entirely within the discretion of the learned judge who heard the matter at first instance and absolutely no reason has been advanced to suggest that the court exercised its discretion on an incorrect basis. We would therefore consider, in addition to the reasons already given, that this is a case in which the proposed appeal is "so lacking in merit that the Court of Appeal in its discretion [should] refuse leave".

An appeal of great general or public importance?

[27] Some of the relevant authorities on the import of the phrase 'general or public importance' are very helpfully collected in the admirable judgment of Thomas JA (Ag) in ***Sands v Louison & Foster*** (at paras [34] – [45]). It suffices for present purposes to mention but a few of them.

[28] In ***Martinus Francois v The Attorney General*** (St Lucia Civil Appeal No 37 of 2003, judgment delivered 7 June 2004), on an application for leave to appeal to the Privy Council pursuant to section 108(2)(a) of the Constitution of St Lucia, which is in all material respects similar to section 110(2)(a) of the Constitution, Saunders JA (as he then was) made the following observation (at para. [13]):

> "Leave under this ground is normally granted when there is a difficult question of law involved. In construing the phrase 'general or public importance', the Court usually looks for matters that involve a serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences for the public."

[29] In ***Vehicles and Supplies Ltd and Another v The Minister of Foreign Affairs, Trade and Industry*** (1989) 26 JLR 390, this court took a similar approach in a case involving the provisions of sections 564B(2) and 564B(4) of the CPC (referred to in error in the report as "554 (b) and 554 (b) (4)"). Rowe P said this (at page 392):

> "Serious questions of law were raised in the course of this appeal. It is a matter of the utmost importance for the practice and procedure of the court to be settled as to whether the special procedure laid down in Section 554(b) of the Judicature (Civil Procedure Code), whereby and [sic] application for leave to apply for an Order of Certiorari must be made ex-parte, is subject to the procedure which exists for granting ex-parte injunctions in actions begun by writ and exemplified in *W.S.A. Records Ltd v Visions Channel 4 Ltd and Others…*
>
> We think too, that Section 554(b)(4) which has been judicially interpreted for the first time, is such an important provision in the judicial armory that there should be no

> doubt as to the ambit of its applicability in relation to the Crown or officers of the Crown."

[30] In ***Etoile Commerciale SA v Owens Bank Ltd (No 2)*** (1993) 45 WIR 136, a case from St Vincent and The Grenadines, the Eastern Caribbean Court of Appeal was concerned with an application for leave to appeal to the Privy Council in a case having to do with the circumstances under which the enforcement of a foreign judgment might be resisted on the ground that it was obtained by fraud. After noting that there were conflicting decisions on the point, Sir Vincent Floissac CJ (with whom Byron JA, as he then was, and Liverpool JA agreed) said this (at page 141):

> "In this jurisdiction, where several international companies are domiciled and transact business, it is necessary to clarify the law governing the circumstances under which the enforcement of a foreign judgment may be resisted on the ground that it was obtained by fraud. I am therefore of the opinion that the question involved in the proposed appeal is 'one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council'."

[31] We would refer finally to ***Daily Telegraph Newspaper Company Limited v McLaughlin*** [1904] AC 776, a case dealing with an application to the Privy Council for special leave to appeal, in which the Board held that an application for special leave will not be entertained "save where the case is of gravity involving [a] matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character".

[32] These authorities suggest that the consideration of whether a question is of general or public importance for the purposes of section 110(2)(a) is primarily a legal one. The court is required to have regard to the nature and difficulty of the legal question involved in the matter, its gravity, its general importance to some aspect of the practice, procedure or administration of the law, and the public interest.

[33] In considering whether the questions identified by the applicant meet the criterion of general or public importance, it is of interest to note, as Mr Goffe pointed out, that question one is the only one that was involved in the appeal. As Miss Larmond submitted, questions one and two raise issues relating to the interpretation of the ministerial orders made under the Moneylending Act. Before this court, the applicant advanced a particular interpretation, while the respondents advanced another. The court preferred the respondents' interpretation, basing its conclusion on its interpretation of the relevant exemption order. The applicant's proposed challenge to this conclusion raises no particular question of law, but instead, in question one, merely restates the very issue which the court had to consider. Question three, which asks whether any, and, if so, how much weight should be attached to the importance of the issues involved in a claim in determining whether a late applicant for judicial review should be granted an extension of time, is entirely academic, since the learned judge did in fact grant an extension of time to the applicant. The importance of the question of delay thereafter was as a factor considered by the judge in deciding whether to grant relief at all. Questions four to six raise issues having to do with the factors that informed the learned judge's exercise of her discretion in considering whether the grant

of relief to the applicant would be likely to cause hardship or prejudice to the respondents, or be detrimental to good administration. In considering these issues, the learned judge was doing no more than having regard to the factors set out in rule 56.6(5), which, as the rule states, "the judge must consider" in deciding whether to grant relief in a particular case. Neither the judge at first instance nor this court on appeal broke any new ground in this regard.

[34] More than once during his submissions on this issue, Mr Codlin referred to Brooks JA's observation that a declaration of the invalidity of the exemption orders "would result in mammoth upheaval…[and]…most likely generate a tsunami of litigation that would engulf this country's already overburdened court system", pointing to this as clear evidence of the great general or public importance of the matter. A similar point arose in ***Martinus Francois v The Attorney General***, where, on the hearing of the application for leave to appeal to the Privy Council, the applicant sought to rely on the statement by Saunders JA in his judgment in the Court of Appeal that "…this matter has generated such public comment on matters of law that I believe I should briefly add a few remarks of my own on the substantive issues raised by the suit". In his judgment dismissing the application, Saunders JA said this (at para. [10]):

> "As for my own reference to the level of public comment generated by this case on matters of law, let me hasten to suggest that the phrase that we are construing, namely, 'general or public importance', must perforce connote importance through the eyes of the law. Strong public comment does not in and of itself indicate great legal importance. Equally, a case which gives rise to a matter of

> enormous general or public importance might well attract little or no comment in the Press."

[35] In our view, these comments are equally applicable to the instant case. We do not doubt that the matters which led the applicant to seek judicial review of the minister's decision to make the exemption order which affected him in particular were matters of critical importance and concern to him personally. It could well be that they are also of importance to others. Nevertheless, it seems to us, for the reasons that we have attempted to state, that none of the questions posed by the applicant in his amended notice of motion comes close to satisfying the criterion of general or public importance from a legal standpoint.

Conclusion

[36] It is for these reasons that the court refused the application for leave to appeal to the Privy Council, in the terms set out in para. [1] above.