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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**APPLICATION NO COA2023APP00279**

<b>BETWEEN</b>	<b>ANDREW LEWIS</b>	<b>APPLICANT</b>
<b>AND</b>	<b>ROHAN JAMES</b>	<b>RESPONDENT</b>

**TAKE NOTICE** that this matter was heard by the Hon Mr Justice Brooks P, the Hon Mr Justice F Williams JA, and the Hon Mrs Justice Shelly-Williams JA (Ag) on 17 January 2024, with Neco Pagon instructed by Peter Champagnie, KC for the applicant, and Hugh Wildman and Duke Foote instructed by Hugh Wildman & Co for the respondent.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court by the Hon Mr Justice F Williams JA, is as follows:

[1] This matter has come before us as an application to appeal the order of Carr J, (hereafter referred to as 'the learned judge') made on 17 November 2023, which granted Mr Rohan James (hereafter 'the respondent'), leave to apply for judicial review against the decision of Mr Andrew Lewis (hereafter 'the applicant') to institute disciplinary proceedings against him and to place him on interdiction pending the disposal of those proceedings. The applicant is an Assistant Commissioner of Police and the respondent is a Corporal of Police in the Jamaica Constabulary Force ('JCF') and the Chairman of the Jamaica Police Federation ('the Federation').

[2] The incident giving rise to the application occurred on 15 July 2023 at the funeral service for a member of the JCF. At the funeral service, the respondent made statements

in respect of a dispute about overtime pay concerning members of the Federation which were recorded and broadcast on national television. The statements were directed at members of the police high command, which ordered an investigation into the respondent's conduct arising from these statements. At the conclusion of that investigation, on 26 July 2023, the applicant issued a notice to the respondent, advising him that disciplinary charges had been brought against him and of his interdiction with three-quarters of his usual pay, in accordance with the procedure set out in Regulation 35 of the Police Service Regulations 1961 (hereafter 'the PSR'). The respondent then made an application for leave to apply for judicial review and for a stay of the interdiction in the Supreme Court on 28 July 2023.

[3] The learned judge heard the application and, on 17 November 2023, she made several orders, including the order that is being disputed before this court. This is the order that the learned judge made at para. 1 of the formal order:

"1. The Amended Notice of Application for Leave to Apply for Judicial Review filed on August 4, 2023 is granted in terms of paragraphs 9 and 10 only, and the interdiction with reduction in salary is stayed pending the outcome of the hearing of the claim."

[4] Mr Pagon, who appears for the applicant, relied on his written submissions but, in his oral submissions, reiterated and emphasized the points that he deemed more important. He referred the court to rule 56.49 of the Civil Procedure Rules (hereafter 'the CPR') and emphasized that there has been no stay in respect of the charges or in respect of the disciplinary proceedings. He also referred the court to regulation 35 of the PSR and submitted that there is nothing in the regulation that requires any further steps to be taken, the interdiction having already taken effect. Therefore, he contended, the interdiction is not amenable to a stay of proceedings.

[5] In addition, Mr Pagon referred to the cases of the **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd and Northern Industrial and Garage Ltd Co (Jamaica)** [1991] 4 All ER 65, (hereafter 'the **Vehicles and Supplies**

case'), **Symbiote Investments Ltd v Minister of Science and Technology and Anor** [2019] JMCA App 8, and **Royburn Robinson v South East Regional Health Authority and the Attorney General** (unreported), Supreme Court, Jamaica, Suit No M121/2001, judgment delivered 30 September 2002. Counsel cited these cases to submit that an interdiction is not a judicial or quasi-judicial proceeding to which a stay could relate. Instead, it was an executive or administrative decision or action and, in this case, it had already taken effect.

[6] In response, Mr Wildman submitted that the interdiction was not an executive decision but is rather a purely judicial or quasi-judicial decision, thus, the decision was amenable to a stay of proceedings. Counsel cited the case of **The Contractor-General of Jamaica v Cenitech Engineering Solutions Limited** [2015] JMCA App 47 and sought to distinguish it from the **Vehicles and Supplies** case, submitting that the learned judge was correct in ordering that the interdiction and the reduction in the respondent's salary be stayed. Therefore, he submitted, the court should dismiss the application as having no merit and as not warranting the grant of permission to appeal.

[7] This court has considered the submissions of both counsel and, on the hearing of the application, we focused primarily on regulation 35 of the PSR and the **Vehicles and Supplies** case.

[8] Regulation 35(1) to (3) of the PSR states:

"35. -(1) Where –

- (a) any disciplinary proceedings or criminal proceedings have been or are about to be instituted against a member; or
- (b) the authorized officer becomes aware of any misconduct on the part of a member below the rank of Inspector; and
- (c) the Commission or as the case may be the authorized officer is of [the] opinion that it is necessary or desirable in the public interest that that member should

forthwith cease to perform his functions as such member.

the Commission may recommend or as the case may be the authorized officer may direct that that member be interdicted from such performance.

(2) A member so interdicted shall, subject to the provisions of regulation 34, be permitted to receive such portion of the salary of his rank, not being less than three-quarters, as the Commission may recommend to the Governor-General or, as respects a member below the rank of Inspector, as the Commissioner may decide.

(3) If disciplinary proceedings against any such member result in his exculpation, he shall be entitled to the full amount of the salary which he would have received if he had not been interdicted; but if the proceedings result in any punishment other than dismissal the member shall be allowed such salary as the Commission may in the circumstances recommend or, as respects a member below the rank of Inspector, as the Commissioner may decide." (Emphasis added)

[9] Regulation 35 makes it clear that it is the Commission or an authorized officer (such as the applicant) that directs that a member be interdicted. Further, the wording of regulation 35 makes it quite clear that an interdiction has immediate effect. Therefore, the respondent immediately ceased to perform his duties the moment he received the notice advising him of same on 26 July 2023. This means that the decision was executed or took full effect the moment the notice was issued to the respondent.

[10] We also considered the affidavit of Andrew Lewis, in particular, para. 21 where he stated that Mr James was not prejudiced because he was still receiving his salary. It emerged, during the hearing, that by a consent order made before the hearing by the learned judge, the respondent was receiving 99% of his salary, and so he would suffer no real prejudice, if any at all, whilst off the job. Additionally, as regulation 35(3) provides, if he successfully contests the disciplinary hearing against him, he will be paid the remaining 1% for whatever period he is off the job.

[11] In the **Vehicles and Supplies** case, the Privy Council held that Ellis J was correct to have set aside a stay granted by another judge of the Supreme Court because, *inter alia*, the Minister's executive decision did not constitute "proceedings" capable of being stayed. The case also made it clear that a stay of proceedings has the effect of bringing to a halt the proceedings that are in court or before a tribunal to avoid the hearing or trial going any further or taking place. However, a stay cannot apply to a decision that has already been made and takes effect immediately. Therefore, based on the wording of the regulation, this court is of the view that, in contending that the decision regarding the respondent's interdiction was a completed act which is not amenable to judicial review, the applicant had an arguable case.

[12] It seemed to us, as well, that it would also have been somewhat incongruous to have left the stay of interdiction in place when there was no stay of the disciplinary hearing itself, no stay of that hearing having been granted or, it appears, even applied for. Therefore, the court found that the applicant has an arguable case with a real chance of success that the notice of interdiction issued on 26 July 2023, was spent, does not fall within the meaning of "proceedings" and thus it is not amenable to a stay. He thus satisfied the requirement of rule 1.8(7) of the Court of Appeal Rules, governing applications for permission to appeal.

[13] In the result, we make the following orders:

1. Leave to appeal the orders of Carr J made on 17 November 2023 is hereby granted.
2. The stay of the interdiction of the respondent granted on 17 November 2023 is hereby discharged on condition that the applicant shall file and serve his notice and grounds of appeal on or before the 31 January 2024.
3. Costs of the application to be costs in the appeal.