IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. 2005 HCV 3022

IN THE MATTER OF THE NATURAL RESOURCES CONSERVATION AUTHORITY ACT

AND

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT

AND

IN THE MATTER OF PART 56 OF THE CIVIL PROCEDURE RULES, 2002

No. 3

BETWEEN	THE NORTHERN JAMAICA CONSERVATION AUTHORITY	FIRST APPLICANT
AND	THE JAMAICA ENVIRONMENT TRUST	SECOND APPLICANT
AND	CECILE CARRINGTON	THIRD APPLICANT
AND	ELEANOR GRENNAN	FOURTH APPLICANT
AND	ANNABELLA PROUDLOCK	FIFTH APPLICANT
AND	JOHN DECARTERET	SIXTH APPLICANT
AND	THE NATURAL RESOURCES CONSERVATION AUTHORITY	FIRST RESPONDENT
AND	THE NATIONAL ENVIRONMENT AND PLANNING AGENCY	SECOND RESPONDENT

IN CHAMBERS

Humphrey McPherson instructed by Humphrey McPherson and Company for Donald Clarke

Sandra Minott-Phillips and Ky-Ann Lee instructed by Myers, Fletcher and Gordon for HOJAPI Limited

Jerome Spencer instructed by the Director of State Proceedings for first and second respondent

Jermaine Spence for Northern Jamaica Conservation Authority

JULY 31, 2007 and October 10, 2007

APPLICATION TO VARY ORDER

SYKES J.

1. This application was heard on July 31, 2007, at the end of which it was dismissed and I also dismissed the application for leave to appeal. These are my reasons. This application is connected to two previous decisions I made on May 16 and June 23, 2006. I shall refer to the May 16 decision as NJCA No. 1 (Claim No. 3022 of 2005) and the other on June 23 as NJCA No. 2 (Claim No. 3022 of 2005). In NJCA No. 1 I had granted an order of certiorari quashing the decision to grant a permit under section 9 of the National Resources Conservation Authority Act. This order was in addition to other remedies granted on the judicial review. In NJCA No. 2 I varied the order made on May 16 by reversing my decision to grant the order of certiorari. I also expanded on the declarations I had granted.

2. The variation of the NJCA No. 1 orders and declarations arose because Hojapi Limited applied for a variation of the orders. It based its application on rule 42.12 of the Civil Procedure Rules ("CPR").

3. This current application made by Mr. Donald Clarke is one in which I am being asked to make the following orders:

a) the order of Mr. Justice Sykes granted on the 23rd of June 2006 setting aside or varying his order to cease and desist granted on the 16th day of May 2006, be varied or set aside.

b) there be a criminal investigation into the proceedings.

4. The grounds on which Mr. Clarke says I can make this order are as follows:

a) the learned judge exceeded his authority in varying or setting aside his own order;

b) the order varying or setting aside the cease and desist order is not substantiated by the facts nor the evidence on the record;

c) there is no legal or equitable basis to substantiate the learned judge setting aside or varying his cease and desist order;

d) the order to cease and desist was arrived at after a hearing on the merits;

e) the matter involved land fraud, obstruction and perversion of the course of public justice, institutional criminality, wrongdoing and illegality and conspiracy aided and abetted by the state.

5. Mr. Humphrey submitted that rule 56.15 (1) and (3) of the CPR made this application possible. I don't agree. Let me set out the rules so that my position can be clearly understood.

6. Rule 56.15 (1) and (3) reads:

(1) At the hearing of the application the court may allow any person who or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.

(2) ....

(3) The court may grant any relief that appears to be justified by the facts proved before the court whether or not such relief should have been sought by an application for an administrative order.

7. He also referred to rule 56.14 which reads:

Wherever practicable any procedural application during a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.

8. A plain reading of these rules puts it beyond any doubt that an application of the type being made by Mr. McPherson can be made under either of these provisions. Rule 56.14 contemplates that procedural matters are dealt with prior to the hearing of the administrative order. It is a rule designed to have consistency and orderly management of the case.

9. The common sense behind rule 56.14 is obvious. I shall demonstrate this by referring to rule 56.13. Rule 56.13 (1) specifically states that parts 25 to 27 of the CPR apply to first hearings. Parts 25 to 27 comprise the case management powers of the judge. Those powers are to be used to further the overriding objective. In rule 25.1 the judge is told in quite explicit language that he must "further the overriding objective by actively managing cases". Parts 25 and 26 authorises the judge to make various orders and give directions to ensure the expeditious and fair hearing of the application for administrative orders.

10. At the first hearing of an application for administrative orders the judge deals with matters such as the amendment of any claim. The judge makes orders for affidavits, witness statements, disclosure of document, skeleton arguments (see rule 56.13). The judge may allow any person having a sufficient interest to be heard at the substantive hearing.

11. It is clear, therefore, that rule 56.14 does not permit an application of the type made in this case. This is not a procedural application. It is an application going to the basis of the decision of the court.

12. Rule 56.15 is dealing with the hearing of the application for the administrative order. It authorises the judge to permit parties with a sufficient interest to make submissions even if they were not served with the claim form. This provision is in keeping with the relaxation of the locus standi requirement. This current application is not at the hearing of the application for the administrative order and so this rule does not apply.

13. Unfortunately for Mr. Donald Clarke, the applicant on this hearing, none of the rules cited by counsel permits this application. The application therefore fails on procedural grounds.

14. Let me consider now the grounds on which the application is based. When I varied my order I acted under rule 42.12 and rule 56.11. Mr. McPherson did not demonstrate that I had no power under those two rules to vary my order. What he was saying was that I should not have varied the order because of a dispute over the land between a group of citizens known as the Pear Tree Bottom Land Owners Association and the hotel developers. Mr. Clarke, in his affidavit, speaks of this land dispute. Regrettably, the issue before me in NJCA No. 1 was whether the process leading up to the grant of the permit to the hotel developers was procedurally flawed. I held that it was and granted what I considered to be the appropriate remedies. In NJCA No. 2, the issue was whether the remedies I granted should be varied. There was no question raised about my primary finding which was that there were procedural flaws leading to the grant of the permit. In other words, I was not deciding a case on land ownership. Mr. McPherson is raising a matter that is purely one of private law.

15. The application is therefore dismissed with costs to Hojapi Ltd., the Northern Jamaica Conservation Authority and Jamaica Environmental Trust to be agreed or taxed. Mr. McPherson applied for leave to appeal. Leave to appeal was refused on the basis that the applicant did not demonstrate that the appeal had a real chance of success.