

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

IN MISCELLANEOUS

CLAIM NO. 2006HCV5719

IN THE MATTER of an Application by
ANDREW WILLIS for Judicial Review

AND

IN THE MATTER OF THE INCOME TAX ACT

AND

IN THE MATTER of Estimated Assessments for
the Years of Assessment 1997-2003

**R v THE COMMISSIONER OF THE TAXPAYERS AUDIT AND ASSESSMENT
DEPARTMENT/COMMISSIONER OF INLAND RESPONDENT, EX PARTE
ANDREW WILLIS**

Mr. Lawrence Philpotts-Brown instructed by Gentles & Willis for the Applicant.

Mrs. Trudy-Anne Dixon-Frith, Ms. Suzette Rogers, Ms. Cecelia Chapman and Ms. Sophia Preston, instructed by the Director of State Proceedings for the Respondent.

Application for Order of Certiorari – Filing of Fixed-date Claim Form outside period limited by Order and Rules - Interpretation and Application of Rules 56.4 (12) and 42.2 of the Civil Procedure Rules, 2002, as amended.

IN CHAMBERS

Heard: January 14 & 29, 2009

F. Williams, J (Ag.)

Nature of Application

This matter came before me as the first hearing of a fixed-date claim form, pursuant to Rule 56.13 of the Civil Procedure Rules, 2002 (as amended in 2006).

The substantive relief sought is an order of certiorari, to quash Notices of Assessment for income tax, which were raised against the applicant for the years of assessment 1997-2003.

In accordance with Rule 56.3, the applicant obtained leave to apply for judicial review from Sinclair-Haynes, J on November 4, 2008. By paragraph 1 of that order granting leave, the applicant was required to file his fixed-date claim form seeking his remedy within fourteen (14) days of the date of that order. This part of the order mirrors Rule 56.4 (12) of the Civil Procedure Rules, which provides as follows: - "Leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave". (Emphasis supplied). I shall return to a consideration of this particular provision in a short while.

Applicant's Timeline of Action

The following is a summary of the applicant's action relative to this suit and the corresponding dates: -

1. November 4, 2008 - leave to apply for order of certiorari obtained.
2. November 18, 2008 – formal order re 1 above, filed.
3. December 2, 2008 – fixed-date claim form (dated 25.11.08) filed.

Preliminary Objection

When the matter came for hearing before me, Mrs. Dixon-Frith, on behalf of the respondent, took a preliminary objection based on the above timeline.

Her submissions may be summarized thus: -

- a). Leave to apply for judicial review is conditional on the applicant making the claim (by filing the fixed-date claim form) within 14 days of the date of the order. In the instant case, the claim form was filed on December 2, 2008 – or some twenty-eight (28) clear days of the leave having been granted. The leave

has lapsed and is now invalid. There is no proper claim before the court today. The claimant is barred from pursuing this matter any further.

b). The claimant cannot renew his application for leave to apply for judicial review as this is prohibited by Rule 56.5 (3).

In support of her submissions, counsel for the respondent relied on the case of **Orrett Bruce Golding and the Attorney General of Jamaica v. Portia Simpson-Miller** – S.C.C.A. # 3/08, delivered by the Jamaican Court of Appeal on April 11, 2008. In that case, leave to apply for judicial review was granted on December 13, 2007. Pursuant to the requirements of Rule 56.4 (12), therefore, the claim ought to have been filed by December 27, 2007 (that is, within 14 days of the order). That was not done. On January 10, 2008, when what should have been the first hearing of the fixed-date claim form came on for hearing, an order was made extending time for the filing of the claim by fourteen (14) days. It was the making of this latter order that was the subject of the appeal. The Court of Appeal held that the order had been made without jurisdiction. It set the order aside and awarded costs of the appeal to the appellants.

For the applicant, Mr. Philpotts-Brown submitted as follows: -

i). The **Golding** case is distinguishable on the basis that in that case no documents at all were filed, whereas in the instant case the relevant documents were filed, albeit late.

ii). The "order" referred to in Rule 56.4 (12) means the formal order extracted from the Supreme Court Registry. That this is so can be seen in Rule 56.11 (4), which requires that where leave has been granted, copies of the application for leave; the affidavit in support and "the order giving leave" must all be served. The formal order in this case was received some time close to December 2, 2008, hence the late filing of the fixed-date claim form.

iii). The court could intervene and extend the time limited by the Rules for the filing of the fixed-date claim form – either pursuant to the Rules of this Court, or

on the basis of the inherent jurisdiction of this court (a court of superior jurisdiction).

Issues for Decision

There are, therefore, two (2) main issues for the court's consideration and decision: -

1. Whether the "receipt of the order" mentioned in Rule 56.4 (12) refers to the order pronounced in court on the one hand; or, on the other, the formal order or written document containing the terms of that oral order; and
2. Whether the Rules permit of leave to apply for judicial review being extended where the applicant has failed to make an application for judicial review within the 14 days stipulated by Rule 56.4 (12).

To deal with the second-stated issue first, the **Golding** case addresses the matter directly and definitively, so that the matter can be dealt with with short shrift. The court in the **Golding** case was unanimous in holding that there can be no extension of time in such a case, or renewal of an application for leave where the liberty of the subject is not at stake or the matter is not a criminal one. As was succinctly stated in that case by the learned President: "The effort... to have time extended for the purpose of filing the claim was [a] wasted effort. The Rules forbid an extension of time in the instant circumstances". That, shortly stated, is the position on this issue.

In dealing with the first-stated issue, counsel for the respondent urged the court to consider, in rejecting the view advanced by counsel for the applicant, Rules 42.2 and 42.8. Rule 42.2 states: -:

" A party who is present whether in person or by an

attorney-at-law when the judgment is given or order was made is bound by the terms of a judgment or order whether or not the judgment or order is served”.

Rule 42.8 states: -

“A judgment or order takes effect from the day it is given or made unless the court specifies that it is to take effect on a different date”.

It is my considered view that these Rules clearly decide the issue – that is, that reference to “receipt of the order” must refer to the oral order made in court. That this is so can be seen from a consideration of a practical scenario: what would be the case where an applicant (whether through his/her own dilatoriness or inadvertence/heavy workload on the part of the Registrar in signing a formal order) does not receive the signed formal order for weeks or months after it is filed? Would this not have the practical effect (if the argument of counsel for the applicant were correct) of providing the applicant with that extra time (however long it might be) in addition to the fourteen days stipulated in the Rules? Surely this effect could never have been the intention of the Rules Committee, running counter, as it would, to that element of the overriding objective requiring matters to be dealt with expeditiously and fairly. Were it otherwise, it would be an invitation for dilatoriness and abuse, and be clearly inimical to good administration.

But, in this case, this point advanced by counsel for the applicant would perhaps have carried more weight had the formal order been filed on the 4th November, 2008 or shortly thereafter. In this case the formal order was not filed until the 18th November, 2008 – that is on the very last of the fourteen days stipulated by Rule 56.4 (12) for filing the claim.

In my opinion, the late receipt of a formal order should not be trotted out as an excuse for non-compliance or late compliance with the Rules. In the experience

of the court, proactive counsel, who bring home to the judge or Registrar, the urgency of having formal orders signed, are always expeditiously assisted in that regard.

It seems to me from a careful consideration of Part 56 in its entirety; of the above-cited sections of that Part in particular; and of the **Golding** case, that the requirements of Rule 56.4 (12), in particular compliance with the stipulated time period, must be scrupulously complied with. The total absence from the Rules of any provision permitting an extension of the fourteen-day period in a matter of this nature reinforces this view.

It is worth mentioning that it appears that in none of the other Caribbean countries with civil procedure rules that are similar to ours, is there any provision permitting an extension of time after leave has been granted. The Eastern Caribbean Civil Procedure Rules, for example (Rule 56.4 (11) simply states {in the exact words of the Jamaican provision pre-2006}}:-

“Leave must be conditional on the applicant making
a claim for judicial review within 14 days of receipt of
the order granting leave”.

Nothing else is stated to address the possibilities that may arise from non-compliance with this rule.

Blackstone’s Civil Practice, 2008, is also completely silent on the point of whether it is permissible to extend the time for making a claim outside of the period permitted by the rules.

In light of this, the view to which I hold is that the absence of any provision dealing with an extension of time in these circumstances (where there are such

provisions in other parts of the rules), is ample evidence that such an application was not contemplated by the framers of the rules.

Ruling

The court rules that the leave granted on the 4th November, 2008, expired without the condition on which it was granted being satisfied (that is, filing the claim within 14 days), and so became invalid. Additionally, it cannot be renewed.

In these circumstances, it is perhaps apposite to quote the words of the learned President in the **Golding** case (at para. 15): -

"...I have to remind litigants and their attorneys-at-law that they ignore the Civil Procedure Rules at their peril. The days of paying scant regard to the Rules are over...Ignoring the Rules over the years has been a major factor in the length of time that matters have taken to be disposed of in this country. There can be no return to such times as it is not in the interests of justice for the Courts to permit such laxity".

The preliminary objection is upheld. Costs are awarded to the Respondent to be taxed (if not agreed).

Contract law - good news - we have here - ^{could prove} - filing of FDCP
outside of Orders/Rules