IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV00221

BETWEEN	**KENYA ROBINSON**	**APPLICANT**
AND	**HER HONOUR MS SASHA ASHLEY**	**RESPONDENT**

IN CHAMBERS

Mr Lemar Neale instructed by Jacobs Law for the Applicant

Mr Stuart Stimpson instructed by the Director of State Proceedings for the Respondent

Heard: October 24, 2023 & July 17, 2024

Judicial Review – Application for leave - Whether a member of the Jamaica Constabulary Force can record his/her own statement as both its maker and recorder – Parish Judge committed accused to stand trial in Circuit Court – Whether statutory requirements for committal on paper complied with – Whether insufficiency of evidence or error in reception of evidence – Statutory interpretation

Committal Proceedings Act, Committal Proceedings Rules, 2016, Part 56 Civil Procedure Rules

WINT-BLAIR, J

The Application

[1] This is an application by Kenya Robinson[1] seeking leave to apply for judicial review of the decision of Her Honour Ms. Sasha Ashley ("the learned judge") arguing that there is a prima facie case against him in the matter of Regina v Kenya Robinson for the offence of murder as charged on information number SJ2022CR00837.

[2] The complaint is grounded in the submission that the decision of the learned judge was based on statements contained in a committal bundle in the matter of Regina v Kenya Robinson which do not comply with section 6 of the Committal Proceedings Act.

[3] The applicant seeks an order of certiorari to quash the above decisions and declarations that there is no prima facie case against him in the matter of Regina v Kenya Robinson; that the witness statements of Detective Sergeant Michael Chisolm dated April 20, 2022, Zaria Wright dated March 11, 2022, and Sergeant Stacey Hawkins dated April 22, 2022, contained in a committal bundle served on defence counsel in the matter of Regina v Kenya Robinson are not compliant with section 6 of the Committal Proceedings Act, and therefore cannot be admitted as evidence to the like effect as the oral evidence of these witnesses. The applicant also seeks an order as to costs and such further or other relief as this Honourable Court may deem necessary or appropriate.

The Legislation

[4] Section 6 of the Committal Proceedings Act ("the Act") has been amended by section 45 (Sixth Schedule) of the Major Organized Crime and Anti-Corruption Agency Act, 2018 and it now provides:

> *In subsection (2), delete paragraph (a) and (b) and substitute therefor the following as paragraphs (a) and (b)-*
>
> *(a) The statement has been recorded (whether in writing or by electronic means) by a member of the Jamaica Constabulary Force or a senior officer of the Major Organized Crime and Anti-Corruption Agency, (hereinafter referred to as "the*

[1] Filed on January 26, 2023

recorder") in the presence of the Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and read over to the person who made it (hereinafter referred to as "the maker"):

However, in the case of a person who is suffering from a physical disability, physical disorder or a mental disorder within the meaning of the Mental Health Act, which renders it impracticable for him to be communicated with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner;

(b) The statement purports to be signed by the maker and the recorder and in the presence of –

(i) The Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or as the case may be;

(ii) a senior officer of the Major Organized Crime and Anti-Corruption Agency

(iii) the senior members of the Jamaica Constabulary Force;

[5] Section 6(3) (a) of the Committal Proceedings Act provides:

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section-

(a) the statement shall state whether it is made by a person who has attained the age of eighteen years, and if it is made by a person under the age of eighteen years, it shall state the age of that person;

The Evidence

[6] On April 27, 2022, the applicant was granted bail by the respondent. Subsequently, the matter was set for a committal hearing and the committal bundle was served on defence counsel. The committal hearing took place on November 1, 2022, with the learned judge as examining justice.

[7] The committal bundle contained among numerous other statements, the witness statements of Detective Sergeant Michael Chisolm dated April 20, 2022, Zaria Wright dated March 11, 2022, and Sergeant Stacey Hawkins dated April 22, 2022.

[8] At the committal hearing, the applicant's attorney-at-law objected to these statements being admitted as evidence as if they were the oral evidence of the makers arguing that that they were not in compliance with section 6 of the Committal Proceedings Act.

[9] Counsel submitted then that the witness statement of Zaria Wright, contained the signature of the maker but not the signature of the recorder of the statement; and that the witness statements of Detective Sergeant Stacey Hawkins and Detective Sergeant Michael Chisolm, were each signed by the recorder as maker of the statements. It was also argued that these statements each failed to comply with the statute as they did not reflect the age of the makers.

[10] The learned judge in her capacity as examining justice, ruled that the statements were admissible as if they were the oral evidence of the makers and that the prosecution had established a prima facie case against the applicant. The applicant was committed to stand trial for the offence of murder in the Circuit Court for the parish of Saint James.

[11] The applicant filed this Application for Leave to Apply for Judicial Review on January 26, 2023.

Submissions

Applicant

[12] Mr Neale submitted that while the learned judge had the jurisdiction in a narrow sense, pursuant to section 3 of the Act to admit the statements, the exercise of that jurisdiction was conditional upon the statements complying with the conditions set out in section 6. The learned judge acted outside the scope of

section 6 of the Act in admitting the impugned statements rendering the decision to commit the applicant to stand trial ultra vires.

[13] It is the applicant's contention that though acting in a judicial capacity, the learned judge decided the matter in a manner that was procedurally irregular or Wednesbury unreasonable.

[14] Counsel contended that extrinsic aids such as the Jamaica Hansard of Parliamentary Proceedings of the Honourable House of Representatives[2] should be used to establish the interpretation and aim of the statute in that the opening words of Section 6, specifically the use of the word "*shall"*, meaning that the intention of Parliament was that the provision should be strictly obeyed.

[15] Counsel highlighted that the applicant was directly affected by the order. The consequence, if found guilty, was that the applicant would be deprived of his liberty. The application had been made promptly within the three months prescribed by the Civil Procedure Rules.

[16] Additionally, any challenge to a conviction in the Circuit Court is on appeal in respect of the conviction from that court. Therefore, the applicant does not have any alternative form of redress and in any event, judicial review is a more adequate, effective, expedient and suitable alternative.

[17] Accordingly, leave for judicial review should be granted as the respondent's decision could be considered unlawful given that she has exercised her power outside of the statutory limits which is a basis for the order made against the applicant to be quashed. In support of these submissions counsel relied on the cases of: **Latoya Harriot v University of Technology**[3]**, Council of Civil Service Unions and others v Minister for the Civil Service**[4]**, Attorney General of Trinidad and Tobago v Ayers- Caesar**[5]**R v Hull University Visitor**[6] and **R v Lord President of the Privy Council,**[7] **Powys v Powys**[8]**, Pepper v**

[2] Jamaica Hansard Parliamentary Proceedings of the Honourable House of Representatives
[3] [2022] JMCA Civ 2
[4] [1985] AC 374
[5] [2022] JMCA Civ 2
[6] ex p Page [1993] AC 682, 701E
[7] [1993] AC 682
[8] [1971] 3 All ER 116

Hart[9] **Brown v Brown**[10],**R v Warwickshire County Council, Ex parte Johnson**[11]**.**

Respondent

[18] Counsel for the respondent, Mr. Stimpson, submitted that Part 56 of the CPR is applicable to the instant case and that the threshold test in applications for leave to apply for judicial review is that the court must be satisfied that no discretionary bar exists and there is an arguable case with a realistic prospect of success, the test as set out in **Sharma v Brown-Antoine and others**[12]

[19] Counsel further contended that the learned judge could have properly concluded, as she did, that the statements all satisfied the requirements under section 6 and could have been admitted as evidence to the like effect as oral evidence by the maker.

[20] In any event, the applicant had the opportunity to address any irregularities during the committal proceedings pursuant to subsections (6) and (7) of Rule 25 of the Committal Proceedings Rules, 2016, but chose not to do so, making the grant of leave for judicial review unnecessary.

[21] Counsel relied on the case of **Andrew Leighton Coke and Michael Christopher Coke v Her Honour Judge Lori Ann Cole Montaque**[13] to highlight that the court should look at the evidence to determine whether there was a failure to comply with section 6 in the circumstances of the instant case. In the present case, the statements of Detective Sergeant Michael Chisholm, Zaria Wright, and Detective Sergeant Stacey Hawkins complied with section 6 in that they purport to be signed by the maker, in the presence of a recorder and senior member of the Jamaica Constabulary Force not below the rank of Sergeant and that it was read over. There is no requirement in the Act for the maker and recorder to be two separate persons.

[22] It was also submitted that although the statements did not indicate the age of the members of the Jamaica Constabulary Force, the learned judge at her discretion could have taken judicial notice of the fact that members of the Jamaica

[9] [1993] 1 All ER 42
[10] [2010] JMCA Civ 12
[11] [1993] AC 583
[12] [2006] UKPC 57, [2007] 1 WLR 780
[13] Unreported Claim No. SU2019CV03066 delivered 21 May 2020 (Draft judgement)

Constabulary Force are required to attain the age of 18 years and that an officer at the rank of Detective Sergeant would have attained the age of 18 years.

[23] In reliance on the cases of **Brown v Others v RM, Spanish Town**,[14] and **Fritz Pinnock & Ruel Reid v FID**,[15] counsel submitted in response to ground eleven of the application that it cannot be said in this case that the Parish Judge acted in excess of her jurisdiction or without jurisdiction.

[24] Counsel submitted that the court should not exercise its discretion to allow leave for the applicant to bring a claim for judicial review because judicial review remedies are discretionary remedies that should not be frivolously entertained and should only be allowed in exceptional circumstances. Therefore, having regard to all the circumstances, such an order would not be appropriate. If this application for leave is allowed, the criminal process would be fragmented despite the absence of any exceptional circumstance to warrant such.

[25] Further, as the Parish Judge did not act in excess of her jurisdiction or without jurisdiction, the remedy of certiorari would not be available to the applicant. It is for these reasons that the court should dismiss this Application for Leave to Apply for Judicial Review with costs to the Respondent.

Discussion

Obtaining Leave

[26] Rule 56.2(1) of the CPR permits an application for judicial review by any person, group or body, with sufficient interest in the subject matter. Rule 56.3 directs that an applicant for judicial review should first seek leave to apply for judicial review.

[27] The applicant is the party adversely affected. There is no assertion of a lack of promptness so this application will proceed on the basis that the applicant has filed the claim in a timely manner.

[28] The primary role of the court at this stage, is to ensure that actions which are frivolous and vexatious are sifted out and eliminated, so that leave is not granted where an action is without any arguable ground, having a realistic prospect of success.

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[14] (1996) 48 WIR 233
[15] (Unreported) [2019] JMSC Civ 257 delivered 24 December 2019

Justiciability

[29] Pursuant to the case of **N. O. (A child represented by the Children's Advocate) v The Attorney General of Jamaica**[16]**,** as an inferior tribunal, the decisions and the decision-making process by judges of the Parish Court are amenable to judicial review.

[30] The learned editors of Halsbury's Laws of England, 5th Edition, 2018, Volume 61A, state that the decision may be found to be outside of the jurisdiction of the public entity if it is an abuse of the entity's power or is unreasonable in a Wednesbury sense (see **Associated Provincial Picture Houses Ltd v Wednesbury Corpn.**[17]). The learned editors so state at paragraph 11: "…*A body will lack jurisdiction in the narrow sense if it has no power to adjudicate upon the dispute…it will lack jurisdiction in the wide sense if, having power to adjudicate upon the dispute, it abuses its power, acts in a manner which is procedurally irregular, or, in a Wednesbury sense, unreasonable, or commits any other error of law."*

Threshold Test

[31] **Sharma v Brown-Antoine** is widely accepted as comprehensively setting out the tests that an applicant should satisfy in order to be granted leave to apply for judicial review. In paragraph [14] of the joint judgment of Lord Bingham of Cornwall and Lord Walker of Gestingthorpe, they set out the guiding principles for considering applications for judicial review. At subparagraph (4), their Lordships set out principles of general application. They said, in part:

> *"(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: R v Legal Aid Board, Ex p Hughes (1992) 5 Admin LR 623, 628; -Fordham, Judicial Review Handbook, 4th ed (2004), p 426. -But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. -It is a test which is flexible in its application…. It is not enough that a case is*

[16] [2022] JMFC Full07
[17] [1948] 1 KB 223, [1947] 2 All ER 680

potentially arguable: -an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen': Matalulu v Director of Public Prosecutions [2003] 4 LRC 712, 733." (Emphasis supplied)

[32] The duty of the court in this matter is to ascertain whether the applicant ought to be provided an opportunity to apply for judicial review. The burden of proof rests with the applicant to satisfy the court on a balance of probabilities that leave should be granted. The court will examine the material in order to determine whether the applicant has made out his case for leave to be granted.

Arguability

[33] The standard of proof in relation to arguability was set out by the English Court of Appeal in **R (on the application of N v Mental Health Review Tribunal (Northern Region) and Others**[18] which stated that *"… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*

[34] In **Matalulu v Director of Public Prosecutions**[19]**,** the court stated that *"we do not understand the full significance of the term 'potentially arguable'. It cannot be used to justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen".*

[35] I bear in mind that a ground with a realistic prospect of success is not the same thing as a ground with a real likelihood of success, the prospect of success has to be realistically and sufficiently demonstrated.

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[18] [2005] EWCA Civ 1605, [2006] QB 468, para 62

[19] [2003] 4 LRC 712 at 733]

Statutory Interpretation

[36] In order to ascertain the true construction of the Act, Mr. Neale relied on the approach recommended by Brandon J in **Powys v Powys.**[20]

[37] Mr. Neale contended that the opening words of Section 6, particularly the use of the word *'shall'*, suggests that it is the intention of Parliament that the provision should be strictly obeyed.

[38] The section makes the admissibility of the statements conditional upon the fulfilment of the conditions set out in sections 6(2) and (3) and that the conditions are mandatory. The provision should be construed strictly, given the fact that the accused can be committed on written statements alone.

[39] The applicant states that the aim of the provision was that the respondent was mandated, by the use of the word "*shall*", to have satisfied herself that the impugned statements were in strict compliance with the statutory conditions and that the "*maker"* and "*recorder"* must be two separate individuals. This was not reflected in the witness statements before the lower court.

[40] In response, Mr Stimpson submitted that the provision contains no mandate that the recorder and maker of the witness statement be two distinct individuals and submitted that the primary concern to be satisfied was whether the statement was properly taken and the makers clearly identified.

[41] As with any legal instrument, the construction of an enactment of Parliament must be informed by the relevant context of the statute, including all the matters that might give meaning to the text.

[42] I bear in mind the approach to interpreting a statute as directed by Brooks, JA in the decision of the Court of Appeal in **Jamaica Public Service Company Limited v Meadows and others:**[21]

> *The learned editors of Cross' Statutory Interpretation 3rd edition proffered a summary of the rules of statutory interpretation. They stressed the use of the natural or ordinary meaning of words and cautioned against 'judicial*

[20] [1971] 3 All ER 116
[21] [2015] JMCA 1

legislation' by reading words into statutes. At page 49 of their work, they set out their summary thus:

> *'1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.*
>
> *2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.*
>
> *3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute ….' (Emphasis supplied)*

This summary is an accurate reflection of the major principles governing statutory interpretation."

The impugned statements

[43] The affidavit evidence of Courtney Rowe in support of the application for leave (which I will not reproduce), attaches the statements. An examination of copies of these statements shows that the maker of the statement and recorder of the statements of Detective Sergeant Michael Chisholm and Detective Sergeant Stacey Hawkins are one and the same. The statement of Detective Sergeant Chisholm said that he had recorded and signed it in the presence of Detective Sergeant O. Anglin.

[44] The statement of Detective Sergeant Stacey Hawkins said that the statement had been recorded and signed in the presence of Ms Claudia Dixon, a member of the JCF of the rank of Sergeant.

[45] The statement of the purported eyewitness states that it was given to Detective Sergeant Michael Chisholm in the presence of Inspector V. Fletcher, it was read

over and signed by the maker in the presence of both the recorder and Inspector Fletcher. There is only one signature on this statement which is that of the maker.

Issues:

1. Whether a member of the JCF can record his/her own statement as both its maker and recorder
2. Whether there is an insufficiency of evidence or an error in the admission of evidence

Issue 1: Whether a member of the JCF can record his/her own statement as both its maker and recorder

[46] Counsel for the applicant has submitted without any authority for this proposition, that the maker and recorder cannot be the same person. In the written submissions of counsel for the applicant, he acknowledges the fact that it is the norm for police officers to write their own statements.[22] In order to depart from this norm, counsel would have to do more than simply state the proposition that the maker and recorder must be two distinct individuals in all instances.

[47] This submission can therefore only be applied to the situation when the maker of a statement is also a member of the Jamaica Constabulary Force ("JCF".) I begin with the statements of both police witnesses.

[48] Section 6(2)(a) requires that the statement be recorded; there is no issue here as each police officers' statement has been recorded. There can be no dispute that both police witnesses are over the age of eighteen and are members of the JCF, even though the statements do not say so, thus the age requirement in Section 6(3) of the Act is not a substantive issue here.

[49] By virtue of being members of the JCF, both police witnesses are recorders within the meaning of section 6(2)(a), this cannot be in dispute. The recorder has to record the statement whether in writing or by electronic means, either in the presence of a Justice of the Peace or a senior member of the JCF not below the rank of Sergeant.

[22] Applicant's Written Submission: Para 16

[50] Each recorder recorded their statement in the presence of a senior member of the JCF. The maker of each statement is the recorder of each statement and is identifiable. Also identifiable is the senior officer who was present for the recording of each statement. Each recorder signed their statement in the presence of the senior officers who were present as provided by section 6(2)(b). The signature of the recorder is the signature of the maker as they are the same person.

[51] It has been submitted that the maker and the recorder cannot be the same person, I fail to see why not. The natural and ordinary meaning of the words used in the section cannot be given a meaning that linguistically they cannot bear unless the context lends itself to that interpretation.

[52] Nothing in section 6 requires giving the words "*person*"[23] or "*maker*" an exclusionary meaning. Furthermore, there is nothing in the context or subtext of the section which leads to a reading into the section of words to exclude members of the JCF from the meaning of the ordinary word "*maker"* and the ordinary word "*person."*

[53] When the maker is not a member of the JCF that witness cannot be a recorder, it is then, that the need to have a recorder to take the statement of the maker arises. The section has to be read in context as it is disjunctive.

[54] In my judgment, when the maker is a member of the JCF, the maker being also a recorder, may record his/her own statement as has been done since time immemorial. I can find no way to agree with Mr Neale on this point and respectfully decline to accept it as valid.

[55] In respect of the eye witness statement, it complies with section 6(2)(a) in that the statement of the maker has been recorded by a recorder. The statement is signed by the maker; however, the recorder has not signed it which is a breach of section 6(2)(b). The declaration also does not state that the witness has attained the age of fourteen years, however, the redacted age of the witness is stated on the first page of the statement. But for the failure of the recorder to sign, the statement is otherwise compliant.

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[23] 6(1) In committal proceedings a written statement by any **person** shall, if the conditions mentioned in subsection (2) and (3) are satisfied be admissible as evidence to the like effect as oral evidence by that **person**.

[56] The issue raised by the breach of section 6(2)(b) is whether it can be classified as a defect in the statement or one of form capable of being rectified under the Committal Proceedings Rules, 2016. There was no application to the learned judge by either side in order for her to make a determination one way or another on this point.

[57] At the committal hearing, counsel for the applicant objected to the admissibility of the statements as the oral evidence of the makers and that a result there was insufficient evidence upon which to establish a prima facie case for the offence of murder. This court has no other evidence before it as regards what took place at the committal hearing, the submissions of the prosecution, and the ruling itself are not before this court.

Issue 2: Insufficiency of evidence or error in reception of evidence

[58] The application before the court has conflated these two separate positions. The decision to admit the eyewitness statement may well be a procedural irregularity and if so it calls for the intervention of the court by way of certiorari. On the other hand, any insufficiency of evidence is a separate issue. The material before the court is inadequate to ground such a submission.

[59] In my view, given that the affidavit in support of the application speaks to numerous witness statements disclosed by the prosecution, it is unknown to this court what the other numerous statements have to do with. All of this is material which would have been before the learned judge but is not before this court. That material and the submissions of counsel for the crown on that material in advancing a prima facie case have not been placed before this court. This means that the material which the learned judge took into account and which grounded her decision cannot be said to have been solely influenced by evidence which was inadmissible based on what the applicant has placed before the court.

[60] Judicial review lies in respect to committal proceedings where there has been a procedural flaw. In a case where there has been a material irregularity in the conduct of the committal resulting in real prejudice to the applicant, the proceedings would be susceptible to judicial review. The issue of liberty of the applicant is not at issue here as it is his evidence that he is on bail.

Alternate Remedy

[61] Rule 56.3(d) of the CPR requires the applicant for leave to state whether an alternate remedy exists, and if so, why judicial review is more appropriate or why the alternative has not been pursued. In his written submissions, Mr. Neale argued that the Act and Rules do not provide redress as upon a committal order being made, the examining justice, ceases to have jurisdiction except with respect to bail. He cited the case of **Andrew Leighton Coke** in which an issue arose as to whether statements complied with section 6 of the Committal Proceedings Act.

[62] Although, the respondent has filed no affidavits in answer at this stage, Mr. Stimpson contends that the learned judge complied with the statute and that counsel for the applicant had the opportunity to invite the court to grant an adjournment to rectify the purported irregularities or to ask the witnesses to give oral evidence pursuant to subsections 6 and 7 of Rule 25 of the Committal Proceedings Rules, neither of which were requested. It is implicit in this submission that there were irregularities in the documents that could have been rectified.

[63] Mr. Stimpson contented that an alternate remedy is available to the applicant in the form of Subsections (6) and (7) of Rule 26 of the Committal Proceedings Rules, 2016 which state as follows**:**

> *"(6) If a statement is not admissible by reason of its failure to satisfy the formalities of the Act, the examining justice will decline to admit the evidence in its current form.*
>
> *(7) The prosecution or defence may -*
>
> > *(a) apply to adjourn for the formalities to be rectified (which application the examining Justice may allow or adjourn in his*
> >
> > *(b) ask the examining Justice to allow the witness to give oral evidence (which he may permit, if no injustice will follow); or*
> >
> > *(c) choose to continue without the evidence of that witness"*

[64] At paragraph 37 of the draft judgment of **Andrew Leighton Coke**, Dunbar-Green, J (as she then was) pointed to the fact that Rule 25(6) and (7) of the Committal Proceedings Rules provided for rectification of formalistic errors. At paragraphs 38 and 39 of the draft judgment, she stated:

> *"[38] This was a remedy that was available at the Committal and it could have been invoked by either the prosecution or the defence. Judicial review should not be used to correct errors in formality for which provision is made in the statute. It is a discretionary remedy (Pids Company Ltd v Pendle Borough Council [2012] EWHC 904, para 17). The two witnesses who were called and cross examined would have been quite capable of dealing with the perceived time discrepancy. Moreover, I see no reason why a cross-examination of those witnesses could not be conducted at the trial if deemed necessary by the applicants.*
>
> *[39] The whole point of the provision in the rules relative to defects in formalities is to ensure that any detriment to the administration of justice or any prejudice is identified and dealt with at the outset of the trial process. It is submitted that this court like the judge in Coke should look at the evidence to determine whether there was a failure to comply with the section in the circumstances of the instant case."*

[65] The Committal Proceedings Rules, 2016 ("the Rules")[24] set out the rectification of certain procedural matters in the committal proceedings. However, the legislation states that where statements are not compliant with section 6 of the Act, those statements cannot be admitted in their current form (see section 6 and rule 25(6)). The rules provide for these procedural options:

(i) An adjournment for the formalities to be rectified (rule 25(7)(a)).
(ii) Allowing the witness to give oral evidence (rule 25(7)(b)).
(iii) Choosing to continue without the evidence of the witness (rule 25(7)(c)).

[66] The issue of whether documentary evidence is not admissible at all unless oral evidence to the like effect could properly be admitted arises for determination but not at this stage.

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[24] Committal Proceedings Rules, 2016 ("CPA Rules") (in force as at 1st January 2016, reissued in Gazette 17th November 2016)

[67] The process under the rules was designed to reduce and regulate the use of mention hearings. Consequently, there is an expectation that parties will more frequently resolve issues concerned with disclosure and the preparation of the case out of court.

[68] In all the circumstances, the applicant has established that there is an arguable case with a reasonable prospect of success and has passed the threshold test for the grant of leave.

Costs

[69] The general rule is that costs are not awarded in applications for judicial review, albeit that this protection is mainly for the applicant (see rule 56.15(5) of the CPR). It is also unusual for costs to be awarded in an application for leave to apply for judicial review, in that it is in the actual application that the merits of the case would be determined. Rule 56.15(5) stipulates that an award of costs at the stage of an application for leave should normally only be made where a party has behaved egregiously. There will be no order made as to costs.

[70] Orders:

1. The application for leave to apply for judicial review is granted limited to the statutory requirements of section 6 of the Committal Proceedings Act related to the statement of the purported eye witness.
2. Leave is conditional on the applicant filing a claim for Judicial Review within (14) days of the receipt of this Order granting leave.
3. No order as to costs.
4. The applicant's attorneys-at-Law shall prepare, file and serve the Orders made herein.

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Wint-Blair, J