

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2011/0052

BETWEEN:

ALBERT ST. BERNARD

Applicant

AND

**HER WORSHIP KAREN NOEL
ATTORNEY GENERAL**

Respondent

Appearances:

Mr. Dwight Horsford for the Applicant

Mr. Darshan Ramdhani for the Respondent

2011: February 28, May 12

RULING

[1] **PRICE FINDLAY, J.:** This is an application for leave to apply for Judicial Review for an Order of Certiorari to quash as being ultra vires the decision of the Magistrate, Her Worship Karen Noel sitting in the No. 2 Magistrate's Court, to enter judgment against the Applicant without conducting a trial of a claim which the Applicant disputed.

He seeks the following relief:

1. "An Order of Certiorari to remove into this Honourable Court and quash as being ultra vires, null and void and of no effect in law, the decision made by the Magistrate, Her Worship Karen Noel on the 25th November 2009, to enter Judgment against the Applicant without conducting a trial on a Claim before her which the Applicant disputed contrary to or in breach of fundamental justice in that the Applicant

was thereby denied a fair hearing and an opportunity to put up a defence; the Magistrate in proceeding to enter Judgment on the Claim without a trial on evidence, especially where the claim was disputed, exceed her jurisdiction and/or acted without or in lack of jurisdiction and in breach of the principles of natural justice thereby committing a procedural impropriety resulting in a jurisdictional error of law.

2. A Declaration that the said decision made by the Magistrate, Her Worship Karen Noel sitting in the Southern Magisterial District Magistrates Court No. 2 on the 25th November 2009 to enter Judgment against the Applicant without a trial on a civil claim which the Applicant disputed, was in breach of the principles of natural justice in that the Applicant was denied the right to a fair hearing and an opportunity to defend the Claim and was in excess of an/or acted without jurisdiction to do so; so that the act of the Magistrate in entering judgment on the Claim was ultra vires, null and void and of no effect in law.
3. Damages.
4. Costs.
5. Such further or other relief as to the Court shall appear just and appropriate."

[2] In essence, the Applicant was sued in Magistrate Court by his landlord for arrears of rent at the hearing of the matter he was unrepresented.

[3] At the hearing of the matter on 25th November 2009, the Magistrate inquired of the Applicant whether he admitted the claim. The Applicant indicated that he owed some money to the Claimant but he disputed the amount claimed, the sum of \$9000.00

- [4] After some discussion, according to the Applicant, the Magistrate entered judgment for the Claimant in the full amount claimed and allowed the Applicant to stay on in the premises until 31st December 2009.
- [5] He further deponed that the Magistrate told him that he should have discussions with the Claimant's solicitors regarding the payment of the arrears.
- [6] He awaited word from the Claimant Solicitors, but nothing was forthcoming. He then left the jurisdiction on 19th May 2010 and did not return until 27th June 2010.
- [7] It was after he returned to Grenada that he received a letter from the Claimant's lawyers with a Judgment Debtor Order. This was received on July 2010. He still did not retain Counsel, because he says he was out of pocket and his Solicitor was ill and abroad seeking medical attention. He did not wish to retain other Counsel as he trusted and had confidence in Counsel who was ill.
- [8] As soon as he got the Committal papers, he went to his lawyer who by then in October 2010 had returned to the jurisdiction.
- [9] The present application was filed on 1st February 2011 for the reliefs stated earlier.
- [10] Counsel for the Applicant agreed that at this stage of the proceedings the Applicant had to establish that he had an arguable case, that he has a realistic prospect of success.
- [11] He further states that the Court is to determine on a perusal of the papers whether the matter discloses what might turn out to be an arguable case in favour of granting the application sought.
- [12] He also submitted that even if and where an alternative form of redress might be available the existence of such a remedy is not a bar to an application, the circumstances of the application must be duly examined.

[13] The Court having read the papers requested that the parties make submissions on the issue of delay as the application was made some fourteen (14) months after the decision was made by the Magistrate.

[14] With respect to application for judicial review, the CPR 2000 at 56(5)(1) and (2) states:

1. "In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
2. When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –
 - (a) be detrimental to good administration; or
 - (b) cause substantial hardship to or substantially prejudice the rights of any person"

[15] There are three issues which the Claimant has to consider in determining whether or not to grant leave for judicial review. These are as follows:

1. Firstly, does the Applicant have a sufficient interest in the matter to which the Applicant applies to justify the grant of leave.
2. Does the Applicant have an arguable case for the grant of relief.
3. Has there been unreasonable delay by the Applicant in bringing the application.

[16] The evidence quite clearly reveals that the Applicant here has a significant interest in the matter to which the application relates. It was he who was the defendant in the proceedings in the Magistrate's Court.

- [17] I am also of the view that the Applicant does have an arguable case for the grant of the relief that he seeks. If the facts as alleged by the Applicant are accurate it would seem on the face of it that he was denied a hearing on the issue of the quantum of the claim filed against him.
- [18] This leaves the Court to consider whether the third issue, that of delay.
- [19] The Magisterial decision from which the Applicant seeks judicial review was made on the 25th November 2009, some 15 months prior to the date of making the application. This is considerable delay, which could only be considered reasonable if there were some good reason for it.
- [20] The Applicant in his affidavit says that the Magistrate advised him that he should have discussions with the Claimant with respect to the payment of the arrears. The Applicant did nothing; in fact he deposes that he waited to hear from the Claimant's solicitors. He made no attempt to contact them, he was not proactive.
- [21] He did nothing between the 25th November 2009 and his departure from the jurisdiction in May 2010. He neither contacted the Claimant's solicitor nor did he retain counsel.
- [22] He returned to the jurisdiction in June 2010. He received in July 2010 a letter from the Claimant's lawyers along with a Judgment Debtor Order. Still the Applicant did not retain counsel, because he says he lacked funds, and the only lawyer whom he trusted was ill and was receiving medical attention abroad. One would have thought that at least at this stage the Applicant would have made an effort to retain counsel.
- [23] It was only in October 2010 when the Applicant received the Committal papers did he retain a lawyer. The present application was not filed until the 1st day of February 2011. He states that the delay in filing the application was due to requests made to the Magistrate for documents which request was not dealt within a timely manner, but the documents from the Court annexed to the publication would have been the documents the Applicant had in his possession.

- [24] The Court is being asked to ignore or forgive these delays by the Applicant at the various stages of this procedure. Counsel urged the Court that these delays were not unreasonable due to the Applicant's lack of funds as well as Counsel's absence from the jurisdiction.
- [25] The last delay between the approach to counsel and the actual filing of the application (a period of 5 months) was required in order to obtain documents from the lower court to prepare and pursue these proceedings.
- [26] I quote from Michel J (Ag.) as he then was in **Grenada Building & Loan Association v The Planning And Development Authority** – Grenada Civil Claim No. 2009/0142, at paragraph 20:-
- “By now, the sheer accumulation of causes of delay, combined with the extent of the delay, have become overwhelming, and it would be in the circumstances be unreasonable for the court not to determine that the Applicant's delay in seeking leave to quash the permission granted by the Respondent in June 2007 was unreasonable.”
- [27] Counsel has argued that the delay in this matter is not inordinate and ought not to act as a bar to the grant of leave. The Court is aware that it can still exercise its discretion to grant leave despite the delay in filing the application.
- [28] However, this Court finds that to grant this application would be detrimental to the good administration of justice if the Magistrate's decision is allowed to be challenged after a delay of 14 months, especially after the Claimant in that matter has acted on the decision and taken all the necessary steps to enforce the judgment which he obtained.
- [29] Accordingly, the Court declines to grant leave to the Applicant to apply for judicial review against the decision of the Magistrate dated 25th November 2009.

[30] Each party to bear its own costs.



Margaret Price Findlay
High Court Judge