



Neutral Citation Number: [2025] CIGC (Civ) 21

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

Cause No: G 2023-0046

BETWEEN:

GREGG VANGARD ANDERSON

Plaintiff

-and-

UTILITY, REGULATION AND COMPETITION OFFICE

Defendant

Before: The Honourable Justice Marlene Carter

Appearances: Ms. Clare Price of KSG Attorneys for the Plaintiff
Mr. Nigel Gayle, Senior Crown Counsel, and
Ms. Alexandria Fatta, Crown Counsel for the Defendant

Heard: 3 June 2025

Draft Circulated: 11 June 2025

Reasons for Decision: 17 June 2025

Judicial Review – Order 53 Rule 5(2)- Issue Remitted – Delay in preparing and submitting Order Granting Leave for Judicial Review - expedition and speedy certainty in judicial review proceedings – whether ongoing negotiations between parties, good reason for delay

REASONS FOR DECISION

1. On 13 March 2025 in the matter of *Anderson v Utility Regulation and Competition Office (OfReg) & Attorney General v Berry & Ors. [2025] CICA (Civ.) 6* - (“the joint appeal”) the Cayman Islands Court of Appeal (“CICA”) found as follows:
 - (1) *There is jurisdiction to extend the seven-day time limit required by Order 53 Rule 5(2) for service of the specified documents where, bearing in mind the requirement in judicial review cases of the need for expedition and speedy certainty, a party has shown good reason for the extension.*
 - (2) *The time for service of the documents required by Order 53, Rule 5(2) runs from the receipt of the order as signed and sealed by the court.*
 - (3) *Mr Anderson’s appeal against the striking out of his action should be allowed and his case remitted to the Grand Court ...”*
2. The CICA remitted the matter to the Grand Court to consider afresh the following issue:
 - (1) *“Whether there was a delay by the Plaintiff in preparing and submitting the order to the Platform for filing, which meant that he did not comply with the principle requiring expedition and speedy certainty in judicial review proceedings and, if so, what, if any, consequences there should be of that delay.”*
3. I declined to broaden the scope of this issue to include the Defendant’s further submission that there was a related issue as follows:

“17(d) Whether there is an extant judicial review claim before the Grand Court, on which to exercise discretion or otherwise, since the requisite documents initiating the judicial review claim under GCR Order 53, rule 5(2), especially the Notice of Originating Motion, have to date, not been filed or served after Carter J’s authorisation to so do, pursuant to the 5 May 2023 court-sealed Perfected Court Order granting leave to apply for judicial review.”
4. The Defendant contended that this further issue arose from the following facts:

“15. The Court of Appeal at paragraph 80(2) of the Judgment found, inter alia, that the time for service of the documents required by GCR O.53, rule 5(2) runs from the receipt of the order as signed and sealed by the court, in other words, runs from the date of the signed and sealed perfected Court order. On the facts, that would be from 5 May 2023.

16. *At no material time since the perfected Court order of 5 May 2023, up to today, has the Plaintiff issued (filed or served) the documents required under GCR O.53 r. 5(2) to initiate his judicial review claim”*

5. I find that if this was a related issue, as the Defendant argues, it should have been argued before the CICA when the joint appeal arose for that Court’s consideration. I am satisfied that this Court cannot entertain matters which were not before the CICA, and which fall outside the ambit of the remitted issue.
6. Regarding the remitted issue, the CICA confirmed the jurisdiction of the Court to extend time for compliance where there was a default in meeting a time limit and there is good reason for exercising the court’s discretion to grant an extension.
7. I am mindful of the principles regarding delay referred to by the CICA in its judgment on the joint appeal, further explored in the various authorities which have been referred to by counsel in their very helpful oral and written submissions at the hearing.
8. The CICA reiterated in its judgment on the joint appeal:

“41. Common law jurisdictions have long recognised the need for promptness and expedition in the exercise of the judicial review jurisdiction. This is because, as Lord Diplock stated in **O’Reilly v Mackman** [1983] 2 AC 237, 280-281 *“the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in the purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.”* Lord Diplock also referred (at 284) to the need for *“speedy certainty”* as to the validity of public law decisions which may affect many people and entities.”
9. In the exercise of its discretion to extend leave, if so merited, the approach of Mangatal J. in **Bush v Baines**¹ is useful:
 - (i) *Identify and assess the seriousness of the default* – identify the delay and consider the length of the delay in light of the nature of the matter/claim under consideration
 - (ii) *Identify the cause of the delay* – has a good reason been advanced or can one be discerned from the facts of the case?

¹ [2016] 1 CILR 274

- (iii) *Evaluate all the circumstances of the case* - the court must consider the effect of denying the Plaintiff an extension as well as the resulting impact from the court finding good reason to extend time, impacts to the Defendant, any third parties and/or the good administration.
10. The Plaintiff's position is that the Defendant was aware of the grant of leave to file for judicial review from the 10 March 2023 when the court's minute of order was served on the Defendant and, because there is no difference in content between the minute of order and the filed and sealed order of the 5 May 2023, for all practical purposes, there was no delay. While an interesting argument, it does not find favour with this Court. The CICA has found that the date of the sealed and perfected Order is 5 May 2023. The Plaintiff must show good reason for not having acted with expedition and speed certainty between the 10 March 2023 and the 5 May 2023.
11. The length of the delay in filing in this case is some 40 days. This is a significant delay. It is significant given the seven-day time limit required by Order 53, Rule 5(2) for service of the specified documents with the order granting leave. A Plaintiff must act with alacrity ensuring that the perfected Order is served with the originating process. This is the context within which this significant delay must be considered. This is the context within which this Court must examine the delay in preparing and submitting the Order to the Platform for filing.
12. The Defendant has cited various authorities where time limits have not been complied with and the Courts' consideration of the impact of such default. These have ranged from 6 days to 2 months and 18 days.² In each instance, the Court emphasized that the circumstances of each individual case must be considered on its applicable facts. There is no formula for stating that a particular length of delay is fatal. A court, having identified a delay, must go on to consider any reasons advanced for same.
13. The reason advanced by the Plaintiff for the delay is stated as follows:

"37. Paragraph 3.1 of the current Pre-Action Protocol for Judicial Review No 4 of 2013 (2024) provides for

"...the parties to consider whether some form of alternative dispute resolution procedure would be more suitable than litigation, and if so, endeavour to agree which form to adopt...The Court takes the view that litigation should be a last resort, and that proceedings should not be

² **VC Computer Holdings Ltd v Mertal Overseas SA v Zukiapa Management Ltd** [2015] CICA J0421-1; **Gabato v Immigration Appeals Tribunal** [2011] 1 CILR Note 6; **Magdalyn Burlington v Butterfield Bank (Cayman) Ltd**, Cause no G2017-0139 (10 July 2024). **Anderson v OfReg & Attorney General v Berry & Ors.** [2025] CICA (Civ.) 6

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issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court may have regard to such conduct when determining costs. However, parties should also note that an application for Judicial Review “shall be made promptly and in any event within 3 months from the date when grounds for the application first arose”.”

38. *This is just a case where the Applicant was following protocol, and took active steps to try to reach a resolution during the period before serving the documents:*

38.4 *A pre-action letter was sent on 23 December 2022*

38.5 *On 17 March 2023, the Applicant served the Respondent with the minute of order and Mr Anderson’s affidavit. The Respondent has accordingly been fully aware of the grounds of the Applicant’s Judicial Review application throughout.*

38.6 *Cognisant of the encouragement in the Protocol that parties should be encouraged to settle whenever possible, two ADR meetings took place in March and April 2023, during the period which is now characterised as procedural delay.*

38.7 *On 28 April 2023, the settlement discussions concluded, and the Applicant filed his documents at Court the same day.*

38.8 *Service thereafter was in time.”*

14. There was some disagreement between the parties as to the extent of the discussions and/or negotiations between the parties. It is however accepted that up to the 27 April 2023 the parties were in contact regarding the matter and it was conceded by counsel for the Defendant that up to that point there were exchanges of offers to settle. I am satisfied that even without affidavit evidence specifically noting these points, this Court can infer that those negotiations continued to the 27 April. Once these were concluded without a positive outcome the Plaintiff filed the Notice of Originating Motion on the 28 April 2023.

15. At issue is whether the reason advanced, that the parties were engaged in negotiations, is sufficient to constitute good reason for the delay that has been identified above. The Defendant contends that that it is not.

16. In written submissions the Defendant stated:

“36. Pragmatically therefore, where the timeline was fast approaching, or even expired, the Plaintiff could have sought consent of the Defendant not to object to, and/or, support the application for an extension of time to so file. In fact, the pre-action negotiations in such circumstances, may have provided good reasons or form the basis for the Court in those circumstances to have extended

the 3-month timeline (within which to apply for leave to apply for JR). The non-objection, had it been sought at any material time, could have facilitated good faith continued negotiations. However, the plaintiff, during such period, having made the ex parte application and subsequently obtained said leave on 10 March 2023, and served the Judge signed Minute of Order granting leave on the Defendant and its Counsel during a pre-action negotiation meeting (17 March 2023), and with no stay being agreed or even discussed in that without prejudice meeting, or ordered by the Court, there is no meritorious, plausible, or good reason for the Plaintiff's unprecedented inordinate delay, in the judicial review proceedings."

17. The Defendant went on to note that the Plaintiff, having obtained leave on 10 March 2023, and no stay having been sought or ordered by the Court, the delay amounts to a fatal non-compliance with the common law principle requiring expedition and speedy certainty in judicial review proceedings.
18. The Court was referred to paragraph 3.1 of Pre-action Protocol for judicial review by the Plaintiff, noted above at paragraph 13, which specifically addresses 'Alternative Dispute Resolution' ["ADR"]. That paragraph highlighted the need for consideration of ADR while emphasizing "an application for judicial review *'shall be made promptly and in any event within 3 months from the date when grounds for the application first arose.'*" In that regard, the Pre-action Protocol noted at the footnote to Paragraph 1: "*Compliance with this Protocol alone is unlikely to be sufficient to persuade the court to allow a late application.'*"
19. This is the principle of strict time limits that is evident in many of the authorities cited by the Defendant and indeed in the case of ***The King (On the application of Berry & Others) v Public Lands Commission Cayman Islands Government & Another (19 July 2024, unreported) (Berry)***, also relied on by the Plaintiff. This emphasis, that negotiations or actions in compliance with the Pre-action Protocol are unlikely to be sufficient to persuade the Court to allow a late application for leave for judicial review, is significant to the remitted issue with which this court is concerned.
20. To this Court's mind the same principle must hold true when the Court is considering whether the fact of ongoing negotiations is sufficient to persuade a court that there is good reason for a significant delay in preparing and submitting the order to the Curia Platform for filing as in this case.
21. Counsel for the Plaintiff commended its chronology of relevant dates to this Court. Within the body of that document, it is noted as follows:

Date	Event
20 January 2023	Date of Expiry of fixed term contract Reply to the letter before action by Attorney General's Chambers
24 February 2023	Applicant files application for Judicial Review Applicant's Affidavit is sworn
3 March 2023	KSG writes to AG's Chambers to arrange the date for agreed ADR and Informing them that application for leave to apply for judicial review had been filed AG's Chambers replies with 2 possible dates for ADR
10 March 2023	Carter J grants leave to apply for Judicial Review on the papers Minute of Order uploaded to the Judicial Portal and signed by Carter J
17 March 2023	Parties engage in ADR Parties did not agree a stay of the JR proceedings Court did not order a Stay Minute of Judge's Order served on OfReg (referred to in para 44 Court of Appeal judgment) and their Counsel
23 March 2023	KSG write to AG's Chambers suggesting further ADR w/c 24 April 2023
24 March 2023	AG's Chambers confirm date of 24 April 2023 for a further meeting (subsequently rescheduled to 26 April)
26 April 2023	2 nd ADR meeting takes place
28 April 2023	Applicant files Notice of Originating Motion and uploads unsealed Order of Carter J granting leave

22. The Plaintiff's decision to seek leave to file for judicial review on the 24 February 2023 was taken even as the Plaintiff sought to engage in negotiations with the Defendant in line with the Pre-action Protocol. This is evident from the chronology. On 03 March 2023 the Plaintiff's attorneys wrote to the AG's Chambers to arrange the date for "agreed ADR". At this point it must be taken that the Plaintiff was keenly aware and mindful of the time limits for filing the application for leave for judicial review. The date upon which the Plaintiff was informed by the interim CEO of the Defendant that his contract would not be renewed was 25 November 2022. The application for leave was filed just on the limit of the 3-month requirement to challenge that decision by judicial review.
23. It is difficult to reconcile a position where, on the one hand, observance and adherence to the Pre-action Protocol is not of itself sufficient to excuse a failure to observe the time limit mandated for the filing of an application for leave to apply for judicial review, but on the other, it would be sufficient reason where a Plaintiff who has obtained the leave of the court to file for judicial review, delays for 40 days between the granting of leave and moving to perfect the order made by the court, as in this case. The fact of engagement in negotiations did not preclude the Plaintiff from moving

to perfect the Order to ensure compliance with GCR Order 53, Rule 5(2), just as it did not when the Plaintiff sought leave. It appears that the Plaintiff did not address his mind to this second much shorter time requirement and the result was significant procedural delay.

24. The Plaintiff did not need to await the conclusion of negotiations before moving to perfect the Order granting leave. The Plaintiff sought leave on 24 February 2023, to ensure compliance with the initial time limit mandated by GCR Order 53, r. 4 (1). The Plaintiff could have moved to perfect the Order within the time limited for so doing after leave had been granted and thereafter sought agreement with the Defendant for a stay of the proceedings from that point while the parties continued to explore settlement or the narrowing of the issues between them. If there was agreement for a stay, and there is nothing to suggest that consent to such agreement would have been unreasonably withheld, the parties could then have made a joint application to the court for appropriate directions. There is no onus on the Defendant to suggest such a course. The onus is on the Plaintiff to ensure compliance with GCR Order 53, r. 5 (2).
25. I find that good reason has not been advanced for the delay in this case.
26. However, apart from considerations of whether there was delay in fact and any reason advanced for same, the Court in determining what consequences may fall as a result, must also give consideration to the effect of denying the Plaintiff an extension and of the resulting impact of the Court finding good reason to extend time, impacts on the Defendant, any relevant third parties and/or to good administration. I am not persuaded that in this case there is prejudice to the Defendant or to any third party. There is no evidence before me on this issue. Counsel for the Defendant sought to refer to a further affidavit, filed on the date of exchange of submissions, at the hearing. However, this was not material that was previously before this Court or the Court of Appeal and more importantly there was not sufficient time for the Plaintiff to be able to respond to same.
27. With regard to good administration in *Derrick Oliver Smith v Immigration Appeals Tribunal*³, the Learned Chief Justice held that: "... it is not in the interest of good administration to extend time for a challenge to the decision of a public body beyond the 28 days set out in the Rules...".

³ Unreported, 02 January 2024 Cause No. G 0058/2020

28. The Court in that case found: “*Given the length of delay and the absence of any good reason for it, the only proper exercise of the Court’s discretion pursuant to O.3, r.5 was to refuse to extend time for appeal.*”

29. The Learned Chief Justice emphasised the importance of compliance with procedural rules:

“The procedural requirements that parties must follow when engaged in litigation before the Grand Court are set out in the rules of court. Although GCR O.2 provides that any failure to comply with the rules is an irregularity that does not nullify the proceedings, and expressly gives power to the Court to remedy any non-compliance, the Court nonetheless expects parties to comply with procedural rules and guidance issued.”

30. I am mindful that if this Court does not grant the extension sought, the Plaintiff will be unable to pursue this action. Beatson JA, delivering the judgment of the CICA in **Berry et al.** noted the following, at paragraph 52, when considering the importance of certainty and expedition in judicial review proceedings:

“52 ... the requirement in Order 53 Rule 4(1) that there be “good reason for extending the period” is a more stringent test than the power granted by the Court by Order 3 Rule 5 to extend or abridge time “on such terms as it thinks fit”.

31. The issues remitted to this court were as follows:

(a) *whether there was a delay by the Plaintiff in preparing and submitting the order to the platform for filing which meant that he did not comply with the principle regarding expedition and speedy certainty in judicial review proceedings?*

I find that there was a significant delay by the Plaintiff in preparing and submitting the order to the platform for filing. Accordingly, I find that the Plaintiff did not comply with the principle regarding expedition and speedy certainty in judicial review proceedings, there being no good reason advanced for the significant delay.

(b) *what if any consequences should there be because of that delay?*

I find that while there is no prejudice to the Defendant, the delay is significant, without justification, and is also such as to offend the need for good administration. As a result, this Court in the exercise of its discretion finds that, the Notice of Motion filed over 40 days after the grant of Leave for Judicial Review is out of time.

32. No extension is granted. The Plaintiff's claim is dismissed.
33. The parties have indicated that they would wish to be heard on costs. Submissions on costs should be filed within fourteen (14) days of the date of this judgment. The issue of costs will be dealt with on the papers.



Hon. Justice Marlene Carter
Judge of the Grand Court