

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**Cause No.: G2025-0222**

**BETWEEN**

**STERLING SECURITY SOLUTIONS LTD**

**Applicant**

**AND**

**THE SUMMARY COURT OF THE CAYMAN ISLANDS  
THE DIRECTOR OF LABOUR**

**Respondents**

**ON THE PAPERS**

**Before: The Hon. Justice Marlene Carter**

**Applicant: Broadhurst LLC**

**Date of Decision: 20 October 2025**

**HEADNOTE**

***GCR Order 53 - Judicial Review – Application for Leave to Apply for Judicial Review – Section 25 of the Labour Act (2021 Revision) – Jurisdiction of the Summary Court***

**The application**

1. The Applicant was charged with thirty offences contrary to the Labour Act (2021 Revision) (the “Act”), for failure to pay overtime wages contrary to section 25 of the Act. The charges relate to 23 different employees and over different periods of time.
2. The Applicant challenged the jurisdiction of the Summary Court to try the charges, arguing that they had been laid outside the six-month time bar.

3. The Summary Court determined that the majority of the charges had been brought outside the six-month time bar and were therefore statute barred. However, the Summary Court also determined that charges relating to ten employees were brought within the relevant six-month period and could proceed.
4. In reaching this conclusion, the Summary Court was required to determine whether the fact that it had found that the Department of Labour & Pensions (“DLP”) had “general knowledge” of the Applicant’s failure to register the overtime waivers of its employees in late November or early December 2022 constituted “constructive knowledge” of evidence sufficient to justify proceedings pursuant to section 78 of the Code in respect of those ten employees.
5. The decision which the Applicant seeks to challenge is that of the learned Magistrate of 12 August 2025 (“the Decision”). In that ruling the Learned Magistrate stated:

*“I do not accept that these remaining ten (10) employees are in that category for which, as at either 3 November 2022 (receipt of the information from Sterling) or 5 December 2022 (the meeting between Mr. Cansell and Ms. Madourie), the DLP had either actual or constructive knowledge of evidence sufficient to justify proceedings. All it had was at best, this “general knowledge” of the Overtime Waiver breach.*

*The question left therefore, is what was the effective date that sufficient evidence came to the actual or constructive knowledge of the DLP in respect of these employees?*

*It seems to me that the effective date can only be on the dates that these (former) employees first approached the DLP with a formal complaint of alleged unpaid overtime wages, subject to the DLP forming the view that the information it received, coupled with its “general knowledge” of the lack of registered and approved Overtime Waivers, satisfied the S.78 sufficiency test.”*

6. The grounds of the challenge to the decision were stated as follows<sup>1</sup>:

*“The Summary Court erred as a matter of law when determining that the fact that the DLP had knowledge of the Applicant’s general failure to register the overtime waivers of its employees in breach of the Act did not constitute sufficient to justify proceedings pursuant to section 78 of the Criminal Procedure Code (2021 Revision) in respect of those individuals the subject of the Remaining Charges.*

*More specifically, the Learned Magistrate erred in determining that the DLP’s general knowledge of same did not constitute “constructive knowledge” of*

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<sup>1</sup>Paragraphs 13-16 of the grounds of application for leave

*evidence sufficient to justify proceedings, and accordingly, erred in determining that the Remaining Charges were not statute barred as a result being brought out of time.*

*In the circumstances where the DLP had constructive knowledge of evidence sufficient to justify proceedings on 5 December 2022, the Learned Magistrate erred in determining that the Remaining Charges had been brought in time, as none of the Remaining Charges had been brought on or prior to 5 June 2023.*

*In summary, where the DLP knew that there had been a general failure by the Applicant to register its employees' overtime waivers in early December 2022, the Applicant contends that the DLP was charged with responsibility from that date to investigate the Applicant and bring any necessary charges within six months, which it failed to do. It was not open to the DLP to wait until it received an individual complaint from each respective employee of the Applicant and then calculate the relevant time period from that date, as has (in effect) been found by the Summary Court. By determining that the knowledge of the DLP did not rise to the bar of "constructive knowledge", the Learned Magistrate erred as a matter of law."*

#### **Court's decision on the application**

7. An application for leave to apply for judicial review may be granted if a court concludes that "*there is some arguable case or claim which is not obviously untenable, vexatious or frivolous*".<sup>2</sup> An arguable ground with a realistic prospect of success is not the same thing as an arguable ground with a good prospect of success.<sup>3</sup>

8. In *Ramdass v Minister of Finance and Another* the Court stated as follows:

*"The threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow."*

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<sup>2</sup> *Smith v Commissioner of Police [1980-83 CILR 126]*

<sup>3</sup> *Shirley Tyndall O.J. et al v Hon. Justice Boyd Carey (ret'd) et. al.*<sup>3</sup> per Mangatal J.

9. A court is not required to go into the matter in great depth at the leave stage or to seek to determine the issues raised by the applicant. However, upon consideration of the application, the court must find sufficient grounds and evidence to support the applicant's claim of a realistic prospect of success.
10. Having considered the application, the affidavits filed in support thereof and the grounds of challenge, I find that there is sufficient evidence for this court to conclude that the Applicant has grounds for judicial review with a realistic prospect of success if leave was granted.
11. The Applicant's second affidavit records that the DLP concluded that the Applicant had failed to ensure that its employment agreements, under which its employees had waived their right to be paid overtime, were approved and registered with the Labour Tribunal pursuant to Section 26 of the Labour Act (2021 Revision). Hence, those aspects of the agreements regarding overtime were invalid. The applicant contends that the DLP was also made aware that the Applicant had never sought such approval and/or registration of *any* overtime waivers signed by its employees in general, to include its current or former employees even beyond those covered by the Audit which gave rise to the Department's actions against the Applicant.
12. In effect the Applicant submits that when the Department became aware of the failure to register the paid overtime, the effect of which was to render those portions of the employees agreements invalid, and knowing as well that such failure extended to all employees, including those who were the subjects of the Remaining Charges, at that point the DLP must be taken to have been first placed in a position to examine any preliminary documentation and to assess whether the matter warranted criminal investigation and/or prosecution. This was the point at which the DLP became seized of the matter, vis a vis, the Remaining Charges in an official capacity
13. Based on the above I find that there is an arguable case that such information was sufficient to justify proceedings at the time that it was received by the DLP and the Learned Magistrate erred in concluding otherwise and therefore also erred in determining that the remaining charges had been brought in time.
14. The Order on the application is as follows:
  - (i) Leave to apply for judicial review is granted.

- (ii) Pursuant to GCR O.53 r5(2), the applicant is to serve copies of the Originating Motion, the Affidavits in support, the order for Leave and Form 53 upon the Respondents within 7 days of the date of this Order.
- (iii) The Respondents shall have leave to apply.



**Hon. Justice Marlene Carter**  
**Judge of the Grand Court**