IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G63 OF 2014

BETWEEN:

BIRDY EVADNEY BLAKE MORRISON

SHERRI BODDEN-COWAN

Applicants

AND

THE WORK PERMIT BOARD

THE CHIEF IMMIGRATION OFFICER

Respondents

Appearances:	**Ms. Sherri Bodden-Cowan of Bodden & Bodden for the Applicants**
Before:	**Hon. Justice Richard Williams**
Hearing:	**12th June 2014**
Ex Tempore Ruling:	**12th June 2014**
Transcript Distributed:	**13th June 2014**

TRANSCRIPT OF EX TEMPORE JUDGMENT

1. I am giving this ex tempore judgment so that the applicants and the Proposed Respondents have the reasons for my decision today. I will direct that a transcript of this judgment be made available to the parties. As this is an Ex Tempore Ruling, it is not intended to read as a formal written ruling.

The Law and Procedure

2. At this stage my function is not to determine issues that are properly raised by the affidavit that is before me. The purpose of the requirement for leave, on the other hand, is to eliminate at an early stage any applications which are frivolous or hopeless and to ensure that the matter only proceeds to a substantive hearing if there is a case fit for consideration. I bear in mind that leave should be granted if on the material available the Court thinks, without going into the matter in depth, that there is an arguable case for granting relief.

3. Judicial review is available to supervise actions of a public/statutory body in the exercise of a public function. Public law applies if a public interest arises. A public interest appears to arise in the matter before me.

4. The Applicants are Birdy Evadney Blake Morrison and Sherri Bodden-Cowan. Ms. Bodden-Cowan is Mrs. Morrison's employer. The application arises, as described by the first affidavit of Ms. Bodden-Cowan sworn on 29th April 2014, in support of the application for leave. The Applicants seek this hearing rather than my considering whether to grant leave on the papers.

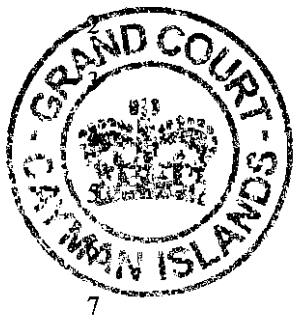
5. Prior to the hearing the Court notified the Applicants that it wished notice of the hearing to be given to the proposed Respondents. I have before me an email from the Listing Officer stating that the Applicants' Counsel indicated that the application was brought ex

parte as per the Grand Court Rules and that the other side would ordinarily only be served after leave has been granted. That said, the attorneys agreed to put them on notice.

6. Whilst I acknowledge the normal approach to such applications, it was clear to me that, at paragraph 3 of their Application for Leave, the Applicants were seeking interim relief and therefore the proposed Respondents should be put on notice of the application. Although paragraph 3 is phrased as being an application for *Mandamus* what is in fact sought is a mandatory injunction directing the Chief Immigration Officer to permit Mrs. Morrison to continue to work for her employer pending the conclusion of these judicial review proceedings.

7. A judge may grant interim relief on the papers but, except in cases of real urgency, the usual practice is for any application for interim relief to be put over to an oral hearing, with notice being given to the other parties who are able to file evidence in advance if appropriate and attend and make representations at the hearing. This is reflected in the dicta of Parker L.J. in ***R v Kensington and Chelsea Royal Borough Council Ex P. Hammell*** [1989] Q.B. 538-539 when he stated:

> *"There remains a matter of procedure that was canvassed by Mr. Straker, namely the question whether, assuming that an application can – as I hold it can – be made for interim relief of this sort, it can be made ex parte or must be made on notice to the other side. The position under Order 53 is that every application for leave to move must be made ex parte in the first instance (rule 3(2)), and it is on the grant of leave, which may be made on such ex parte application, that the alternative powers under rule 3(10) arise. The judge, when considering whether or not to grant an application*



for interim relief, having decided that he will grant leave and having therefore given himself jurisdiction to grant relief of either of the types mentioned in the sub-rule, will no doubt consider whether the case is sufficiently urgent to warrant his dealing with it at that time or whether he should put it over to be heard inter partes. In so doing, he will be reflecting the procedure under Order 29 that would apply in the case of an action, for there it is provided that, except in urgent cases, the application for interim relief must be made by motion or summons (rule 1(2)). It is, therefore, impossible to rule that all such applications must be on notice. I would, however, for my part observe that, where an application for interim relief is intended to be made, the applicant would be well advised to give notice to the other party that such an application is being made in order that the other party may, if he so wishes, attend and assist the court by filling in any gaps in the information that may be available and thereby enable the matter to be dealt with properly at a first hearing and dispense with the necessity of having a second hearing. I can, therefore, say no more than that notice that an ex parte application for interim relief is going to be made would be an advisable step in all cases."

8. Note 53/14/49 in the 1999 White Book states:

"An interlocutory injunction can be obtained in judicial review proceedings pending the determination of the substantive judicial review application, or, if the urgency of the case justifies it, pending the hearing of the leave application. The approach to applications for interlocutory injunctions in judicial review proceedings is similar to that adopted in the case of applications under O.29 or an interlocutory injunction in an ordinary action."

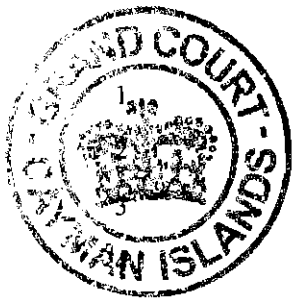
The note then goes on to refer to the ***Hammell*** case

9. Although there is no express provision in the Grand Court Rules, it has long been established in England and Wales that the Court has the power to adjourn an ex parte application for the proposed Respondent to be present. As stated by Lord Diplock at 642F ***IRC v National Federation of Self-Employed and Small Businesses*** [1981] A.C. 617:

> *"The application for leave to apply for judicial review is made initially ex-parte but may be adjourned for the persons or bodies against whom relief is sought to be represented."*

10. In ***R v Secretary of State for the Home Department Ex Parte Rukhshanda Begum Ex Parte Angur Begum and Others*** [1990] Imm A.R. 1 Lord Donaldson of Lymington M.R stated:

> *"For my part, as it seems to me, a judge who is confronted with an application for leave to apply for judicial review should grant it if he is clear that there is a point fit for further investigation on a full inter-parties basis with all such evidence as is necessary on the facts and all such argument as is necessary on the law. If he is satisfied that there is no arguable case he should dismiss it. But there is an inter-mediate category of cases in which the judge, on looking at the papers which support the application, can very reasonably come to a conclusion that it really does not know whether there really is or is not an arguable case, either because the facts are not clear or because he has not received sufficient assistance with the law to enable him to be satisfied as to precisely what the relevant law is. That is not necessarily a criticism of counsel supporting the application: it may well be inherent in the problem.*
>
> *In those circumstances, where he is in doubt, the right course, in my view, is always to invite the putative respondent to attend and to make representations as to whether leave should or should not be granted. This*



is not to say that the subsequent inter-partes hearing should become anything remotely like the hearing which would ensue if leave were granted. It is analogous to the approach which was considered by Lord Diplock in Antaios Compania Naviera SA v Salen Rederierni AV (1985) A.C. 191 at p.207 in a quite different context, that of arbitration: if, taking account of a brief argument of either side, the judge is satisfied that there is a case fit for further consideration, then he should give leave. Adjournment for an inter-partes hearing will at least enable the judge to have a bird's eye view of the contentions on both sides and any doubts or difficulties are likely to be resolved one way or the other; that is to say either in favour of granting leave or in favour of refusing leave, or resolved in the sense that it is obviously very difficult and needs further thought, which of course amounts to a requirement for leave to be granted. I say no more about that."

11. As stated by Sedley J. in ***Reg v Camden London Borough Council ex parte Marten*** [1997] 1 W.L.R. 359 at 364 D:

> *"Courts of judicial review, responding to much the same imperatives, have found it a practical necessity to escape the trammels of Ord.53, **r** 3(2). The Court of Appeal in Begum (Angur) v Secretary of State for the Home Department [1990] Imm A.R. 1 expressly sanctioned inter-partes procedure where the application for leave itself raises doubts which the putative respondent can help to resolve - to the extent, at least, of allowing the court to invite the latter to make representations."*

12. I hope the above will assist parties who bring applications for leave to recognise the Court does have a discretion to invite the Proposed Respondents to attend a hearing. Therefore, primarily due to the interim relief sought and having regard to the Court's responsibility to case manage and minimise delay, I was of the view that notice of this is

requested hearing should be given to the Proposed Respondents. This would have afforded them the opportunity to attend and, if they wished to have made representations on the leave application and the application for an interlocutory injunction.

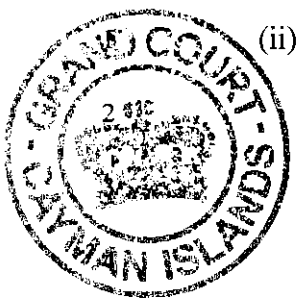
13. I have been informed that the Immigration Department as well as the Attorney General's Chambers have been notified of today's hearing and that they have been provided with a copy of the application and affidavit in support. I am informed that they were told that the Judge requested that this be done and that they could attend at the hearing if they wished. I am informed that, since the service of the pleadings, the Proposed Respondents or their usual legal representatives have not contacted the Applicants. Despite being put on notice, neither the Proposed Respondents nor any legal representative on their behalf have attended today's hearing.

The application

14. The application, filed on 30th April 2014, concerns two decisions. The first decision is that of the Chief Immigration Officer dated 17th February 2014 granting Mrs. Morrison a final work permit for three months from 22nd November 2013 to 22nd February 2014. The second decision is that of the Work Permit Board dated 17th April 2014 refusing the appeal against the refusal to grant a 12-month final work permit on the basis that no grounds for appeal had been established.

15. The relief sought by the Applicants is:

(i) An order of *Certiorari* quashing the decisions of the Chief Immigration Officer and the Work Permit Board;



(ii) An order of *Mandamus* directing the Chief Immigration Officer and/or the Work Permit Board to rehear the application in accordance with section 52(9) of the Immigration Law (2013 Revision) as read with the amendment to section 114(1) of the Immigration Law (2013) as amended by the Immigration Amendment (No.2 Law); and

(iii) An order of *Mandamus* directing the Chief Immigration Officer to permit Mrs. Morrison to continue to work with Ms. Bodden-Cowan until the hearing of the application for judicial review of the two aforementioned decisions.

16. The relief is sought because it is argued that the decisions were wrong in law and that they deprived the Appellants of a right to a final 12-month work permit which, it is contended, is a substantive right which existed immediately prior to the Immigration (Amendment) (No 2) Law 2013 ("the new Law") coming into effect and therefore offends against the very nature of section 114 (1) of the Immigration Law (2013) and all other savings provisions in previous Immigration Laws.

17. It is submitted that the decisions were unreasonable and in breach of the rules of natural justice as Mrs. Morrison's appeal against the refusal of her right to permanently reside in the Cayman Islands was heard by the Immigration Appeals Tribunal on 17th October 2013, prior to the new Law coming into effect, and having been refused on that date, it was unreasonable for the Proposed Respondents to issue the final work permit under the provisions of the new Law and not the law in effect on the date of refusal, namely the Immigration Law (2013 Revision). It is contended that this is especially so as Mrs. Morrison has been a resident in the Cayman Islands for almost 20 continuous years.

18. It is also submitted that the Proposed Respondents acted in a discriminatory and arbitrary manner and in a manner in which no reasonable tribunal would behave by failing to provide the Applicants with any rational or fair basis or reasons for issuing the work permit under the new Law and not the Immigration Law (2013 Revision).

19. Finally, it is submitted that the Applicants had a legitimate expectation that upon the appeal being refused under the Immigration Law 2013 as read with the amendment to section 114(1) of the Immigration Law (2013 Revision) as amended by the new Law, a final work permit would be issued for the period of 12-months as provided by section 52(9) of the Immigration Law (2013 Revision).

The Facts

20. The affidavit filed in support of the application indicates that Mrs. Morrison applied to the Caymanian Status and Permanent Residency Board for permanent residence on 25th July 2006. That application was refused on 8th January 2009. The decision was unsuccessfully appealed to the Immigration Appeals with the appeal being heard on 17th October 2013. The refusal was communicated by letter dated 21st November 2013. This was received by the Applicants on 22nd November 2013.

21. As the new Law was gazetted as coming into effect on 25th October 2013, the Applicants sought clarification about the date upon which the decision was taken. On 15th January 2014 they were informed that the decision was made on 17th October 2013. A request for the minutes from the Immigration Appeals Tribunal was requested on 20th January 2014. On 21st January 2014 the Applicants were informed that minutes relating to such

decisions are not included in the file copy and therefore were being withheld. Attempts were then made through a freedom of information request to obtain a copy of the minutes. To date these have been fruitless.

22. Later a request was made for a copy of the minutes for the application for the grant of the 12-month work permit.

23. On 24th January 2014 Mr. Hunter from the Department of Immigration refused to accept the application for the grant of the 12-month final work permit on the basis that all that could be granted was 90 days. The Applicants then wrote to the Chief Immigration Officer who indicated that the *"ability to take a final non-renewable has been removed from the law nor could a fee be collected because it was not in the regulations."*

24. Mrs. Morrison's permit expired on 26th January 2014 and she was informed that she was now an over-stayer and that she should attend the Immigration Department each month to be processed as a visitor.

25. On 29th January 2014 a further application was made pursuant to section 52(9) of the Immigration Law (2013 Revision) on the immigration form entitled "Permission to Continue Working Application" in order to legalise Mrs. Morrison's immigration status in the Cayman Islands in a form that the Department of Immigration would accept. As a result of this application Mrs. Morrison was issued with a final non-renewable work permit from 90 days on 17th February 2014. On 19th February 2014 this decision taken by

the Chief Immigration Officer was appealed. On 17th April 2014 the Work Permit Board refused the appeal on the basis that there were no grounds for appeal established.

Applying for Leave Promptly

26. I have considered the time limits for leave. The application for leave must be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made (Order 53, rule 4(1)). The fact that an application has been made within three months does not necessarily mean that it has been made promptly.

27. The **decisions** sought to be reviewed were made on 17th February 2014 and 17th April 2014. The Application for Leave was filed on 30th April 2014. The application has been made within three months of both decisions.

28. The reason for the delay in relation to the first decisions is due to the fact that the Applicants were still trying to use the alternative remedy which resulted in the second decision which the Applicants seek to review. When this approach proved to be unsuccessful due to the decision made on 17th April 2014, the Applicants promptly filed the application for leave within two weeks.

29. Accordingly, I am satisfied that in the circumstances of this case the application has been made promptly.

Sufficient Interest of Applicants

30. I am satisfied that both of the Applicants, one being the employer and the other the employee, have a sufficient interest in the matter to which this application relates (Order 53, rule 3.7).

Availability of Alternative Remedy

31. There appears to be no alternative remedy available to the Applicants, as none appears to be provided under the Law to appeal the decisions.

Merits

32. As to the merits, I am only concerned today with whether the Applicants have an arguable case. In my judgment they do. It is arguable, on the information placed before me by the Applicants, that the Proposed Respondents' actions may be viewed as unreasonable. There is an arguable issue as to the appropriate applicability and interpretation of the legislation in what was a transitional stage.

Decision

33. It follows that leave to apply for judicial review is granted.

Further Orders

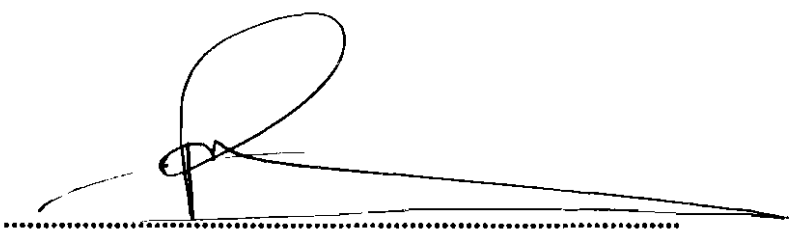
34. The remaining question is whether, in the interim, the Chief Immigration Officer should be directed to permit Mrs. Morrison to continue to work for Ms. Bodden-Cowan until the hearing of the application for judicial review of the afore-mentioned decisions.

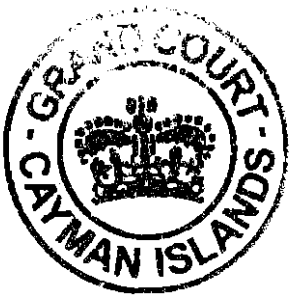
35. As notice of the application has been given to the proposed respondents, I am satisfied that it is appropriate for me to consider this today. The Court may make an injunction in any case where it considers it "just and convenient" to do so. I accept that such orders against officers of the Crown should not be liberally made. The principles governing such relief are set out in ***American Cyanamid Co v Ethicon Ltd*** [1975] A.C. 396. The Applicants need to establish that a serious issue arises, or that the claim is not frivolous or vexatious or that the application discloses a reasonable prospect of success. Thereafter, usually, the governing consideration is the balance of convenience which involves assessing whether the applicants could be adequately compensated by damages if refused an injunction, or whether the proposed respondents could be adequately compensated in damages if an injunction were granted. However, in public law disputes, the adequacy of damages as a remedy is not as important as in a normal civil action and will not in itself determine whether it is appropriate to grant or refuse an injunction.[1] (***R v Secretary of State for Transport Ex p. Factortame Ltd (No. 2)*** [1991] 1 A.C. 603 at 672G-673B).

36. I am satisfied that there is a serious issue to be determined and that the application is not frivolous or vexatious. In this case I find that it is both just and convenient that Mrs. Morrison be permitted to work until the judicial review hearing is disposed of one way or another. It is only fair as she has lived here under a work permit for almost 20 years and she and her son are dependent on the income derived from it. The balance of convenience means that she should be permitted to do so.

[1] Judicial Remedies in Public Law – Fourth Edition – Clyde Lewis Q.C. at paragraph 8-025.

37. Accordingly, I make an injunction that the Chief Immigration Officer, or any person acting on her authority, to permit Mrs. Morrison to continue to work for Ms. Bodden-Cowan and to refrain from taking any action which would prohibit Mrs. Morrison from continuing in such employment, until the disposal of this application for judicial review. Although the Proposed Respondents have chosen not to attend this ex parte hearing which has been on notice, I will give them liberty to apply to vary or discharge the injunction on 72 hours' notice to the Applicants' attorneys.





The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT