

Henderson
15/7/10

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
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5 CAUSE NO. G236 of 2010
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8 IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
9 PURSUANT TO GCR ORDER 53
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11
12 AND IN THE MATTER OF:
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14
15 RICHARD ROBERT HURLSTON
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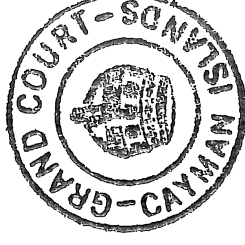
17 Applicant
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20 CAYMAN ISLANDS SUMMARY COURT
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22 Respondent
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25 Before: Hon. Justice Henderson
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28 Heard: July 15, 2010
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30 RULING
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- 33 1. The Applicant, Richard Robert Hurlston, seeks leave to apply
34 for judicial review of a decision of the Summary Court to
35 commit him to stand trial in the Grand Court on charges of
36 abduction, keeping a person in confinement, and blackmail.
37 The decision to commit was made following a long form

1 preliminary enquiry at which several witnesses were called and
2 cross-examined.

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4 2. After considering the papers, I endorsed the file with a note
5 saying that the application for leave (which was made *ex parte*)
6 is refused but the Applicant is at liberty to renew the application
7 in open court on an *inter partes* basis. The Applicant having
8 requested that I provide written reasons for this informal ruling,
9 I now do so.

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11 3. As in the United Kingdom, judicial review proceedings (in
12 either criminal or civil matters) may be pursued only with leave
13 of the Court. Most of the *Grand Court Rules* do not apply to
14 criminal proceedings, but an exception is made for Order 53
15 (Applications for Judicial Review): see *Grand Court Rules*,
16 Order 1 Rule 2 (1) and (2).

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18 4. Order 53 Rule 3 reads in part:

- 19 (1) No application for judicial review shall be made
20 unless the leave of the Court has been obtained in
21 accordance with this rule.
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23 (2) An application for leave must be made *ex parte* to a
24 judge ...
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- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court...
- (4) Where the application for leave is refused by the judge, or is granted on terms, the applicant may renew it by applying to a single judge sitting in open court...
- 11 5. These provisions are identical to the comparable portions of
12 Order 53 in the United Kingdom, with the sole exception that a
13 renewed application for leave in that jurisdiction may go to a
14 Divisional Court. Thus, it can safely be said that the practice in
15 the Cayman Islands mirrors that in the United Kingdom.
- 16
- 17 6. The initial application for leave must be made *ex parte*. A
18 decision will normally be made on the papers, although the
19 presiding judge may call upon the applicant to make oral
20 argument.
- 21
- 22 7. The test to be applied upon a leave application is whether the
23 judge is “satisfied that there is a case fit for further investigation
24 at a full *inter partes* hearing of a substantial application for
25 judicial review”: *Supreme Court Practice*, 1999, volume 1,
26 paragraph 53/14/55. The editors of the *White Book* go on to

1 observe that “if, on considering the papers, the judge cannot tell
2 whether there is, or is not, an arguable case, he should invite the
3 putative respondent to attend the hearing of the leave
4 application and make representations on the question whether
5 leave should be granted”; in support, the decision of the Court
6 of Appeal in *R. v. Secretary of State for the Home Department*
7 [1990] C.O.D. 107 is cited. An alternative order which leads to
8 the same result is to refuse the initial application and direct (as
9 the Court has power to do) that the renewed application must be
10 made *inter partes*: see *Supreme Court Practice*, op. cit.,
11 paragraphs 53/14/2 and 53/14/3.
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13 8. The Crown alleges that Mr. Hurlston was engaged in an
14 unlawful common enterprise and, as a consequence, the acts and
15 declarations of the other persons (whether indicted or not) who
16 participated in that enterprise are admissible against him. It
17 says that the evidence is admissible although the indictment
18 against Mr. Hurlston charges only substantive offences and does
19 not allege a conspiracy.

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21 9. The Crown relies particularly upon the evidence of two
22 witnesses – Msrs. Wright and Mullings – to show that Mr.

1 Hurlston was a part of the unlawful common purpose. If he
2 was, then an exception to the rule against hearsay permits
3 evidence of the acts and declarations of the other participants in
4 furtherance of the unlawful common purpose to be adduced
5 against Mr. Hurlston as proof of his guilt.
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7 10. The argument advanced by Mr. Hurlston is that there was no, or
8 alternatively insufficient, evidence before the Learned
9 Magistrate from which she could infer that he had participated
10 willingly in the abduction plan. That being so, Mr. Hurlston
11 says the evidence of Msrs. Wright and Mullings was not
12 admissible and, as a consequence, there was insufficient
13 evidence to justify a committal for trial in the Grand Court. As
14 is customary at a preliminary enquiry, the Learned Magistrate
15 gave no reasons for her decision.
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17 11. In support of his position, Mr. Hurlston has filed a twenty page
18 written argument (entitled "Grounds On Which Relief Is
19 Sought" which contains a detailed review of the evidence at the
20 preliminary enquiry. No transcript is available; Mr. Hurlston's
21 review is based upon Counsel's notes taken at the hearing.
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1 12. In these circumstances, the Court will naturally wish to hear
2 from Crown counsel before coming to a considered decision on
3 the merits of the application. Granting leave to proceed with a
4 judicial review of a Magistrate's decision regarding committal
5 for trial where the argument rests heavily upon Counsel's notes
6 of the evidence, without hearing from opposing counsel, is not
7 conducive to the orderly administration of justice.

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9 13. For these reasons, the *ex parte* application for leave is dismissed
10 but the Applicant is at liberty to renew the application in open
11 court on an *inter partes* basis.

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13 Dated this 15th day of July, 2010

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Henderson, J.

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16 Henderson, J.
17 Judge of the Grand Court

