IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 97 of 2016

BETWEEN: **CARLTON POWELL**

Applicant

AND

CIVIL SERVICE APPEALS TRIBUNAL

Putative 1st Respondent

AND **THE CHIEF OFFICER (Ministry of Sports)**

Putative 2nd Respondent

Appearances: The Applicant in person

Before: Hon. Justice Richard Williams

Heard: 5 August 2016

Transcript provided: 5 August 2016

HEADNOTE

Application for leave to apply for judicial review – Ex parte hearing – Adjourning to inter partes leave application and inviting Putative Respondents to attend to enable both parties to make submissions.

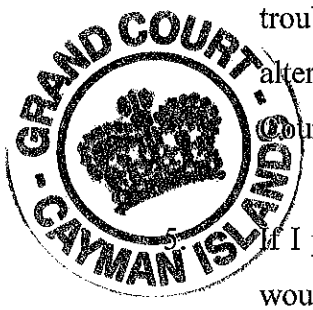
TRANSCRIPT OF EX TEMPORE RULING

1. At this stage my function is not to determine issues that are properly raised by the affidavit sworn on 2 June 2016 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.

2. This is a case where there may issues as to alternative remedy and in particular as to delay.

3. Most regrettably the Applicant's attorney has failed to attend Court today to represent him. The Applicant told me that his attorney had contacted him to inform him that he was not going to attend this fixed hearing before the Grand Court as he had a more important case to attend in another court.

4. The failure of an attorney on record to attend the Grand Court, or any court, for a fixed hearing is a breach of his duty to his client and to the Court and is totally unacceptable and amounts to unprofessional conduct. The attorney's conduct is made even more troubling in a leave for judicial review application involving issues of delay and of alternative remedy, especially if the reason for his non-attendance is that relayed to the Court by the Applicant this morning.



5. If I proceed to hear the application this morning there exists a real possibility that leave would not be granted. I have regard to my duty under the Overriding Objective to deal with the application in an expeditious, economical and just way. I do not believe that it would be fair and just for the Applicant if I proceeded to hear this ex parte application today when he has today been 'left in the lurch' by his attorney.

6. In addition, I have considered whether I should adjourn this ex-parte application for the Putative Respondents to be present. It has long been established that I have this power 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."*

7. In ***R v Secretary of State for the Home Department Ex Parte Rukhshanda Begum Ex Parte Angur Begum and Others*** [1990] 3 W.L.R. 797 Lord Donaldson 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 partes*

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 intermediate category of cases in which the judge, on looking at the papers which support the application, can very reasonably come to the conclusion that he really does not know whether there 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 representation 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 Rederierna AB [1985] AC 191 at p 207 in a quite different context, that of arbitration: if, taking account of a brief argument on 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."

8. As stated by Sedley J. in ***Reg v Camden London Borough Council ex parte Martin*** [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). In 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."

9. In this matter, on the material before me, I am uncertain whether or not to grant leave, and I feel that it is proper and reasonable for me to adjourn this application to enable me to hear from the Putative Respondents.

10. Accordingly, I adjourn this ex parte application for leave to an inter-partes hearing when the Court will consider the application to apply for judicial review. The parties are to consult with the Listing Office to obtain a date and to provide Listing with the suitable time estimate. The inter-partes hearing may come before any Judge of the Grand Court.

11. A transcript of this Ex Tempore Ruling will be provided to the Applicant, which he should provide to the Putative Respondents at the same time as he serves the pleadings on them.

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