JAMAICA

IN THE COURT OF APPEAL

APPLICATION NOS COA2020APP00044 & COA2020APP00043

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE SIMMONS JA (AG)

BETWEEN	**FRITZ PINNOCK**	**1ST APPLICANT**
AND	**RUEL REID**	**2ND APPLICANT**
AND	**FINANCIAL INVESTIGATIONS DIVISION**	**RESPONDENT**

Hugh Wildman, Miss Indira Patmore and Miss Faith Gordon instructed by Hugh Wildman & Company for the applicants

Richard Small, Mrs Shawn Wilkinson and Miss Cheryl-Lee Bolton

19 March and 3 April 2020

MORRISON P

[1] I have had the advantage of reading in draft the judgment prepared by Phillips JA in this matter. I too would refuse the applications for (i) permission to appeal against the decision of the Full Court given on 2 March 2020; and (ii) for a stay of the criminal proceedings which are already on foot in the Corporate Area Parish Court – Criminal Division, held at Half-Way-Tree in the parish of Saint Andrew (the Parish Court).

[2] In their joint judgment in **Sharma v Brown-Antoine and Others** [2006] UKPC 57; (2006) 69 WIR 379, Lords Bingham and Walker stated (at paragraph 13), that "[t]he ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success **and not subject to a discretionary bar such as delay or an alternative remedy**" (emphasis mine). This test has been consistently applied by the Board and by this court (see, for instance, **Attorney General of Trinidad and Tobago v Ayers-Caesar** [2019] UKPC 44, paragraph 2, where it is described as "the usual test"; and **National Commercial Bank Jamaica Ltd v Industrial Disputes Tribunal and Peter Jennings** [2016] JMCA App 27, paragraph [9], where it is described as "the now well-known test for the grant of leave").

[3] The applicants' application for permission to apply for judicial review has now been refused by Sykes CJ and, on their renewed application for permission, the Full Court of the Supreme Court. Despite differences in their reasoning, all four judges in the court below are unanimous in the view that the application should be refused by reason of the fact that the applicants have an alternative remedy with regard to the wrongs of which they complain.

[4] In seeking permission to appeal against the decision of the Full Court, the applicants must satisfy this court, as Phillips JA points out, that they have an appeal with a real chance of success.

[5] In my view, for the reasons so admirably stated by Phillips JA at paragraphs [40]-[47] below, the applicants have failed to show that they have an appeal with a prospect of success against the decision of the Full Court as they clearly have an alternative remedy in this case. This is, as it seems to me, amply demonstrated by the fact that the applicants have also made an application in the Parish Court proceedings seeking similar relief to that which they seek in the judicial review proceedings. It is for this reason in particular that I also agree with Phillips JA that the applicants should pay the respondent's costs of this application.

PHILLIPS JA

[6] The court heard two applications from Fritz Pinnock and Ruel Reid (the applicants) against the respondent, the Financial Investigations Division (FID). The first was an application for permission to appeal the decision of the Full Court of the Supreme Court, comprising Batts, Stamp and Jackson-Haisley JJ, contained in a judgment delivered on 2 March 2020, refusing the applicants' application for leave to apply for judicial review in relation to criminal proceedings being conducted in the Corporate Area Parish Court – Criminal Division, held at Half-Way-Tree in the parish of Saint Andrew (the Parish Court). The second was an application for stay of the said criminal proceedings, in the said court, pending the determination of the applicants' application for leave to appeal the decision of the Full Court.

Background

[7] The applicants were arrested in the early morning of 9 October 2019, in separate raids of their homes, conducted by members of the Jamaica Constabulary Force (JCF).

The arrests were, as would subsequently appear, the result of an extensive investigation by FID, an agency established under the Financial Investigations Division Act (FIDA).

[8] After a full day of questioning at the offices of the Major Organised Crime and Anti-Corruption Agency (MOCA) of the JCF, the applicants were each charged with a number of offences. It is common ground in these proceedings that the charges against the applicants were laid by a serving member of the JCF, who was also designated by the Commissioner of Police as an "authorized officer" pursuant to section 2 of FIDA. The applicants were thereafter taken to the Half-Way-Tree Parish Court where they were in due course offered bail.

[9] The applicants sought leave to apply for judicial review of the decision to arrest, charge and prosecute them. The application was made on grounds that: (i) FID was purely an investigative body of financial crimes, and was not empowered under FIDA to arrest, charge and prosecute offences under FIDA; and (ii) that JCF members designated by the Commissioner of Police to be authorized officers of FID, were not empowered under FIDA to arrest, charge and prosecute the applicants. The applicants sought declarations to that effect, and also that the charges laid and proceedings initiated against them by FID were null and void. They also sought orders prohibiting FID from taking steps to obtain a fiat from the Director of Public Prosecutions in respect of the said charges against the applicants; an order of certiorari quashing those charges; and stay of proceedings in the Parish Court, pending the determination of the application for judicial review.

[10] In opposing the application for leave, FID submitted that, notwithstanding their designation as authorized officers of FID, JCF members retained their full common law and statutory authority to arrest, charge and prosecute. In other words, JCF members took with them all their powers and authority as police officers and, as such, were therefore competent to arrest, lay charges and initiate prosecutions arising out of an investigation by FID.

[11] The application for leave was heard in the first instance by Sykes CJ. The learned Chief Justice refused to grant leave and made no order as to costs of the application. The applicants renewed the application for leave before the Full Court, which also refused leave, but ordered costs in FID's favour.

[12] Despite the disparate interpretation of the statute by the Chief Justice and the judges of the Full Court, they all found that there was an alternative remedy to judicial review which could be pursued in the Parish Court. The Chief Justice commented on the increasing frequency with which resort was being had to the supervisory jurisdiction of the Supreme Court, and indicated that such an action should be discouraged save in exceptional circumstances. He also stated that there were adequate means of redress open to the applicants during the trial in the Parish Court and, in the event of an adverse outcome, by appeal. Batts J said, with the concurrence of the other members of the Full Court, that the Parish Court Judge is in the best position to determine the issues intended to be raised in the proceedings for judicial review.

The application for permission to appeal and to stay criminal proceedings

[13] The applicants now seek permission to appeal the decision of the Full Court and a stay of the criminal proceedings in the Parish Court pending a determination of their application for leave to seek judicial review on grounds that: (i) the Full Court erred in finding that there was an alternative remedy to judicial review that ought to be pursued in the Parish Court; (ii) the Full Court failed to address the issue as to whether it was an abuse of process for authorized officers under FID to arrest, charge and prosecute the applicants; and (iii) the Full Court misconstrued various provisions of FIDA. They also contend that the court misconstrued the ratio decidendi in **R v South Yorkshire Police and Another** [2007] EWHC 1261 (Admin) and **R v Horseferry Road Magistrates' Court, ex parte Bennett** [1994] 1 AC 42.

Submissions

[14] Detailed and helpful submissions were presented by Mr Hugh Wildman for the applicants and Mr Richard Small for FID. I intend no disrespect to either of them by the following summary of their respective positions.

[15] Relying heavily on the learned Chief Justice's analysis of the provisions of FIDA, Mr Wildman submitted that FIDA embraces a special regime created by Parliament for the investigation of financial crimes. Properly construed, the relevant provisions of FIDA demonstrate that the functions assigned to FID are purely investigative. Once the Commissioner of Police had designated members of the JCF to be authorized officers for the purposes of FIDA, they were no longer carrying out duties under the Constabulary Force Act, but under FIDA. FIDA does not confer on any officer of FID the power to issue warrants, arrest, charge or prosecute. The wall of separation which FIDA creates

between FID and the JCF means that JCF members cannot continue to operate as such once they have been designated authorized officers under FIDA.

[16] Mr Wildman also stated that it is clear from the judgment of the learned Chief Justice that, had he appreciated that the JCF members in question had in fact been formally designated authorized officers under FIDA, he would have found that, in charging the applicants, they acted in breach of FIDA, and that the charges laid were void and of no effect. Accordingly, the actions of FID/JCF members amounted to a clear abuse of process. In these circumstances, on the authority of **R v Horseferry Road Magistrates Court, ex parte Bennett**, a judicial review in the Supreme Court, as opposed to a hearing before the Parish Court, is the appropriate remedy.

[17] For all these reasons, Mr Wildman submitted, the Full Court erred in refusing the applicants' application for leave to apply for judicial review. This court should therefore grant permission to appeal and order a stay of the Parish Court proceedings, pending the hearing and determination of the appeal.

[18] Mr Small pointed out at the outset that, subsequent to the order of Sykes CJ on 24 December 2019, but before the Full Court hearing commenced on 10 February 2020, the applicants filed an application in the Parish Court raising all the issues which are now before us. That application is now set for hearing on 8 April 2020. This clearly demonstrated the availability of an alternative remedy. The Parish Court Judge, he said, was eminently qualified by training and experience to adjudicate on the matter. In this regard, **R v Horseferry Road Magistrates Court, ex parte Bennett**, was readily

distinguishable, given the differences between the jurisdiction of the Magistrate in the English judicial system and the Parish Court Judge.

[19] He also argued that the admittedly stark differences in interpretation of FIDA between the learned Chief Justice and the judges of the Full Court were irrelevant to the true ratio decidendi of both decisions, which was that leave to apply for judicial review should be refused because of the existence of an alternative remedy. So anything said about the nature of FID's statutory remit was purely obiter. The Full Court applied the correct test for the grant of leave and, as the applicants themselves appreciated, the alternative remedy was still available, thus making judicial review an inappropriate use of judicial resources. In any event, there was no evidence that FID laid any of the charges or initiated the criminal prosecution. This was done by police officers, who retained their powers under the Constabulary Force Act, notwithstanding their designation as authorized officers under FIDA.

[20] On this basis, Mr Small submitted that the application for permission to appeal and for a stay of proceedings should be refused, with costs to the respondent.

Discussion and analysis

[21] Applications for permission to appeal are made pursuant to rule 1.8 of the Court of Appeal Rules 2002 (CAR), which states that once permission of the court is required, the party wishing to appeal must apply for permission within 14 days of the order against which permission to appeal is being sought. Permission to appeal will only be given if the court considers that the appeal will have a real chance of success, which

has been interpreted to mean that the chance of success on appeal should realistic and not fanciful (see **Swain v Hillman and Another** [2001] 1 All ER 91 and **Marilyn Hamilton v Advantage General Insurance Company Limited** [2019] JMCA App 30). A stay of proceedings was also applied for and will be considered under the inherent jurisdiction of the court.

[22] The main consideration relative to this application must be whether the test in respect of an application for permission to apply for judicial review has been established. That test is now quite settled in respect of a grant or refusal of the application. In the leading case of **Sharma v Brown-Antoine and Others** [2006] UKPC 57; (2006) 69 WIR 379, from the Judicial Committee of the Privy Council on appeal from the Court of Appeal of Trinidad and Tobago, although the court refused the application for judicial review, the minority of the court, comprising Lord Bingham of Cornhill and Lord Walker of Gestingthorpe, as against the majority of the court comprising Lady Barroness Hale of Richmond, Lord Carswell and Lord Mance, arrived at their decision through slightly different routes and on different bases.

[23] That case concerned a challenge by the Chief Justice of Trinidad and Tobago to the decision of the Deputy Director of Public Prosecutions to proceed with a charge against him of attempting to pervert the course of justice. The Chief Justice had obtained leave at first instance from Jones J, and an order staying all consequential action on that decision. She restrained other persons, namely the Assistant Commissioner of Police and the Commissioner of Police from proceeding with any similar prosecution and from taking any step to prosecute the Chief Justice. The Court

of Appeal allowed the appeals of the Deputy Director, the Assistant Commissioner and the Commissioner of Police and set aside the grant of leave to seek judicial review of the Deputy Director's decision, vacated all other orders and discharged the injunctions. Leave was granted to the Chief Justice to appeal to the Board. I will deal with the minority decision of the Board first.

[24] Lord Bingham and Lord Walker identified the issues before the Board as: (i) whether the Court of Appeal should have disturbed the orders made by Jones J; (ii) should the decision to prosecute the Chief Justice be examined by way of an application for judicial review; and (iii) whether the criminal proceedings should be allowed to take their course. The Law Lords recognised that the matter was one of "extreme sensitivity", bearing in mind that very serious allegations had been made against the Chief Justice, a person who held high office of Constitutional importance, whose integrity should not be lightly questioned, but who had claimed that the action proposed to be taken against him was:

> "improper, politically-motivated, interference in the prosecution process by the Prime Minister and Attorney-General; of politically-inspired dishonesty by the Chief Magistrate... and ... improper politically inspired decision making and conduct by the Deputy Director, the Assistant Commissioner and the Commissioner, respectively..."

These were all important persons who discharged significant functions in the judicial system.

[25] Lord Bingham and Lord Walker gave a brief outline of the facts, indicating that they would be careful not to express any premature opinion on the matter as to where

the truth may lie. For the purposes of the application before us, I would simply say that this case concerned an allegation made by the Deputy Director and the Attorney-General to the Prime Minister against the Chief Justice that he had attempted to persuade them to withdraw a charge of murder against a named suspect. The facts relating to this matter and the chronology of events are fairly complicated and do not need to be repeated here for the purposes of this application.

[26] Several governing principles were set out by Lord Bingham and Lord Walker in paragraph 14 of their minority judgment, namely: (i) the rule of law should apply to all persons alike (save for any particular immunities or exemptions provided by law); (ii) police officers should be permitted to engage in investigations and prosecutions exercising an independent, objective and professional judgment on the facts of each case; and (iii) the discretion for the grant of judicial review should not be improperly exercised or take account of irrelevant considerations, and the court should not, save in exceptional circumstances, grant leave for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal the decision (this latter principle was taken from section 5(1) and (9) of the Trinidad and Tobago Judicial Review Act 2000).

[27] Of great significance, the minority stated at 14(4) that:

> "The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy; R *v Legal Aid Board, ex parte Hughes* (1992) 5 Admin LR 623 at 628, and

> Fordham, *Judicial Review Handbook* (4th Edn, 2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application...."

[28] The minority referred to the English Court of Appeal statement and the civil standard of proof in relation to arguability and stated in **R (on the application of AN) v Mental Health Review Tribunal (Northern Region) and Others** [2005] EWCA Civ 1605, at paragraph 62, that:

> "... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

[29] The minority considered that:

> "It is not enough that a case is potentially arguable; an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen'; *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712 at 733."

[30] Other guidelines were referred to dealing specifically with the decision to prosecute and the reluctance of the court to disturb decisions made to prosecute by way of judicial review, which are not specifically relevant to the application before us.

The minority set out the ratio decidendi of the decision of Jones J, specifically, her finding that the Chief Justice had shown an arguable case that the exercise of the prosecutorial discretion could be reviewed. She indicated that at that stage of her deliberations, she could assume that the facts as raised by the Chief Justice were true, and she found that he had presented an arguable case, and so had discharged the burden placed on him at that stage.

[31] The minority noted also that the Court of Appeal had found that although Jones J had said that an arguable case existed, she had not set out any analysis of the evidence. The Court of Appeal had therefore undertaken a fresh examination of the evidence and concluded that there was no evidence to suggest any improper influence or conspiracy among the Chief Magistrate, the Prime Minister, or the Attorney-General, or that there had been any attempt to influence anyone who had the conduct of the investigation before the Resident Magistrate. The Court of Appeal therefore resolved that the Deputy Director had been the effective decision maker and that the issue could have been resolved by judicial review if that process had been otherwise appropriate. The Court of Appeal did not think, however, in the circumstances, that judicial review was appropriate.

[32] The minority then analysed the facts to ascertain whether on the facts leave ought to have been granted by Jones J in the first place. They commented on the fact that the judge had approached the matter without full consideration of the very ambitious case that the Chief Justice sought to establish, or the complaint that the matter could have been resolved in the criminal process. Also, the judge ought not to

have proceeded on the basis that the facts alleged by the Chief Justice were true. She also failed to show the particular evidence which she found persuasive. The Board therefore examined the matter raised on both sides by review of the allegations placed before it and found that there was potentially credible evidence that the Deputy Director had acted independently, without influence. Additionally, a decision not to prosecute would have been vulnerable to challenge. Further, the Chief Justice's complaint could be fairly resolved within the criminal process. The conclusions they arrived at, they said, were not in any way aspersions on the integrity of the Chief Justice or his innocence, but they found that a full hearing of the application for judicial review, if unsuccessful, might greatly compromise the fairness of any criminal trial that ensued which, they indicated, ought to take place.

[33] The majority of the Board did not hesitate in confirming that a review of the decision to prosecute was an exceptional remedy of last resort, and they ruled forthwith that the issues in the case could be properly raised in criminal proceedings, either on a ground for a stay of the proceedings, or on the ground of an abuse of process in any substantive trial. So, they agreed with the minority that they were not persuaded that the Chief Justice's complaint could not be resolved within the criminal process. They concluded that in their view "it will in a single set of criminal proceedings be easier to indentify and address in the appropriate way the different issues likely to arise". Referring to the issue of attempting to pervert the course of justice, on the one hand, and political interference and influence in the laying of the prosecution on the other, the majority of the Board stated:

> "A criminal judge would we think be better placed to manage the different potential issues, such as whether the decision to charge was politically influenced, whether there is evidence fit to be left to the jury (both matters for him at separate stages of any trial) and, if the case gets that far, how the evidence should be left to the jury."

[34] The majority found that there were some features of the case which were "troubling both individually and collectively", but without analysing any of the facts of the case, decided that the place for consideration of the same was in the criminal proceedings. The application for leave to pursue judicial review was therefore dismissed by the Board with costs.

[35] **Danville Walker v The Contractor-General** [2013] JMFC Full 1 was also a case dealing with an application for leave to apply for judicial review after criminal proceedings had already started. This case related to the request for information relating to the scrap metal industry by the Contractor-General of the applicant under the powers of the Contractor-General Act, which the applicant refused and/or failed to provide. The Contractor-General submitted that information to the Director of Public Prosecutions and charges were duly laid against Mr Walker.

[36] The application by Mr Walker for judicial review first went before Fraser J, who refused it on the basis that the application concerned a decision to prosecute and the courts were loathe to interfere with a direct challenge to the exercise of that discretion by a prosecuting authority. Indeed, he found that there was a greater need for caution when the challenge was indirect as existed in that case. He also found that there was

adequate alternate means of redress. The Resident Magistrate's Court (as then described) was well placed to determine the question as to whether, *inter alia*, the Contractor-General had acted unlawfully.

[37] The application was therefore renewed, as in the instant case, before the Full Court, comprising Campbell, Sykes and Straw JJ. The court reviewed the test set out in **Sharma v Browne-Antoine** and examined the facts, and Campbell J also concluded, in paragraph [57] of the Full Court's written reasons for judgment, that the applicant had an alternative form of redress. He said that the applicant had failed to demonstrate that judicial review was more appropriate than a trial in the Resident Magistrate's Court, nor had the applicant showed that the circumstances of the application were exceptional and as a result he would dismiss the application.

[38] Sykes J (as he then was), when reviewing the test for the grant of judicial review, also referred to **Sharma v Browne-Antoine** and canvassed whether in the circumstances there was a realistic prospect of success, which was not subject to a discretionary bar such as delay or the existence of an alternative remedy. The learned judge drew the distinction between the minority judgment of Lord Bingham and Lord Walker in **Sharma v Browne-Antoine**, "that arguability should not be judged without reference to the nature and gravity of the issue to be argued", but stated that the majority did not appear to agree with that view as they resolved the case without any analysis of the nature and gravity of the matter. He stated that the majority "took the view that there were adequate means of redress in the criminal process to address the complaints of the applicant".

[39] So, Sykes J noted that the minority of the Board held the view that although judicial review proceedings could be brought, the case had not been an appropriate one to do so, as the Chief Justice had not established that the criminal court could not provide an alternative remedy. The majority, he said, had pursued a different approach and had acknowledged that there were adequate means of redress in the criminal process where the minority had examined in detail the evidence adduced by the Chief Justice and stated that the evidence brought by him fell woefully short to mount the challenge. From that analysis, Sykes J concluded that the provision in the statute mentioned earlier, namely section 9 of the Trinidad and Tobago Judicial Review Act 2000, was, he said, "consistent with the well established view that remedies are not granted in judicial review proceedings if adequate means of redress exist which have not been exhausted unless there is good reason not to pursue those remedies". In that case, Sykes J concluded that Mr Walker was already before the criminal court, he had been summoned and was awaiting trial, and so there was no reason why the process should not continue to completion.

[40] In the light of all the above it is very clear to me that Mr Wildman has an insurmountable task. I will explain why, shortly. It is equally clear to me, though, that there are serious conflicts between the Chief Justice's reasons and those of the judges of the Full Court in relation to the interpretation to be placed on several important provisions of FIDA. I do not accept that the views as laid out with clarity by the courts are obiter dicta, as submitted by Mr Small, as they related to one limb of the test as to whether there is any realistic prospect of success in the application for judicial review.

However, I am of the view, that the majority of the Law Lords in **Sharma v Browne-Antoine** had made it pellucid that the real matter of importance is how the court should treat with the discretionary bar relating to the issue of whether there is alternative means of redress.

[41] It is of great significance also that all of the judges of the Supreme Court in both applications were of a similar view that an alternative remedy exists. In this case, there clearly is a discretionary bar affecting this application for judicial review. The matter is before the Parish Court. I agree with Mr Small that the following issues raised in these applications lend themselves for determination in the Parish Court, whether:

1. as Sykes CJ found, FIDA does not authorise ID to arrest and charge anyone, and that FID is an investigative body that has been given certain exceptional powers under FIDA, which has not been given to constables under the Constabulary Force Act, and FID operates through authorized officers designated under FIDA; or
2. as the Full Court found, that police officers were operating as such at the material time, with the power to arrest, charge and initiate prosecutions, and there was nothing in FIDA which suggests that even as an authorized officer, under FIDA, a designated constable loses his status, privilege or protection

under the Constabulary Force Act, or that their powers as officers have been suspended in any way; or

3. as the Full Court queried, if the constable relied on confidential information obtained while acting as an authorized officer, could he be in breach of any duty under FIDA resulting in the charges being dismissed.

[42] In this case, there is clearly an alternative remedy. The alternative process is to pursue the criminal proceedings in the Half-Way-Tree Parish Court. The application dealing with these issues is set before a Parish Court Judge on 8 April 2020. In my view, it is certainly well within the powers of that Parish Court Judge to analyse and determine these issues. The Parish Courts in Jamaica have extensive jurisdiction, and Parish Court Judges are called upon to adjudicate upon very complex and important criminal and other matters. An argument could not be sustained that the Parish Court is an inferior court lacking the requisite competence to deal with issues pertaining to statutory interpretation or any allegation of abuse of the court's process.

[43] **Regina v Horseferry Road Magistrates' Court** is a case on which the applicant relied heavily. I must state that I agree with Batts J that this case is entirely distinguishable from the instant case. The application for judicial review in that case arose in committal proceedings. It related to an extraordinary abuse of the extradition process. This view was clearly stated by Lord Griffiths at page 64 where he said:

> "I adhere to the view I expressed in *Reg v Guildford Magistrates' Court, Ex parte Healy* [1983] 1 W.L.R. 108 that this wider responsibility for upholding the rule of law must be that of the High Court and that if a serious question arises as to the deliberate abuse of extradition procedures a magistrate should allow an adjournment so that an application can be made to the Divisional Court which I regard as the proper forum in which such a decision should be taken."

[44] There were therefore specific circumstances which warranted the intervention of the supervisory jurisdiction of the High Court. It was necessary for the High Court to enquire into the circumstances by which a person had been brought into the jurisdiction in clear disregard of the extradition procedures which appeared to be in clear abuse of process. The court did not find though that the Magistrate's Court could not in the exercise of its summary jurisdiction, protect its court's process from abuse and upholding the rule of law. It was just that the specific facts of that case warranted the High Court being designated as the appropriate forum. Those circumstances are clearly to be distinguished from the instant case. As indicated, there is absolutely no reason why the Parish Court could not deal with any claim for abuse of process, in the circumstances of this case, arising out of the alleged unlawful arrest, charge and prosecution of the applicants as a result of specific interpretations of certain provisions of FIDA and other relevant statutes.

[45] It should also be noted that the applicant failed to comply with the requirements of rule 56.3(3)(d) of the Civil Procedure Rules, 2002 (CPR), which provides that the applicant for judicial review, in his application, must state whether an alternative form of redress exists, and if so, why judicial review is more appropriate or why the

alternative has not been pursued. As said before, it is clear that an alternative remedy existed, which is more appropriate and is still available to the applicants. In all these circumstances, the applicants would have failed in their attempt to persuade the court that their appeal would have a real chance of success. I would therefore refuse the application for permission to appeal the Full Court's decision refusing an application for leave to seek judicial review, as the conclusion that there is alternative redress cannot be faulted.

[46] The application for a stay of criminal proceedings in the Parish Court pending the determination of the application for permission to appeal the decision of the Full Court would also be refused, and the applicant should therefore proceed forthwith before the Parish Court, if considered necessary, where these issues can be properly ventilated.

[47] Rule 56.15(5) of the CPR states the general rule that no order for costs may be made against an applicant for an administrative order (such as an application for judicial review), unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application (although this rule not specifically included in rule 1.1(10) of CAR). Nonetheless, guided by the powers of the Court of Appeal in rule 2.15 of CAR, in spite of rule 56.15(5) of the CPR, in my view, the circumstances of this case would warrant an order for costs against the applicants. There has been persistence in seeking leave to obtain judicial review, despite consistent rulings of the courts that an alternative remedy exists in the Parish Court, and also in the face of an application by the applicants to obtain similar relief before that court, where such relief ought initially to have been pursued, and where a date to determine

the issues joined has now been set. Yet, the applicants have nonetheless pursued this application before this court, presumably "hedging their bets", so to speak, which this court ought not to encourage. Therefore, in my view, costs ought to be awarded to FID to be taxed if not agreed.

SIMMONS JA (AG)

[48] I too have read the draft judgment of my sister Phillips JA and agree with her reasoning and conclusion.

MORRISON P

ORDER

1. The application for permission to appeal the decision of the Full Court delivered on 2 March 2020 is refused.
2. The application for a stay of criminal proceedings in the Parish Court pending the determination of the application for permission to appeal the decision of the Full Court delivered on 2 March 2020 is also refused.
3. Costs to FID to be taxed if not agreed.