



**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA**
Civil Division

Submitted Date:24/03/2023 15:55

Filed Date:24/03/2023 15:56

Fees Paid:27.00

Claim No. DOMHCV2023/0035

BETWEEN:

DAVIDSON BAPTISTE

Applicant

and

**[1] THE COMPTROLLER OF CUSTOMS
[2] THE ATTORNEY GENERAL OF THE COMMONWEALTH
OF DOMINICA**

Respondents

ORDER

Before the Honourable Madame Justice Jacqueline Josiah-Graham

Dated the 21st day of March 2023

Entered the 24th day of *April* 2023

Appearances: Mrs. Noelize Knight-Didier with Mrs. Heather Felix-Evans, Ms. Mary Roberts, Mrs. Hazel Johnson, Mrs. Dawn Yearwood-Stewart, Ms. Lisa de Freitas, Ms. Joelle Harris, and Mr. Jeffrey Douglas-Murdock Counsel for the Applicant; Mrs. Tameka Hyacinth-Burton with Mrs. Vanica Sobers-Joseph, Counsel for the Respondents

Parties: Applicant excused
1st Respondent present
2nd Respondent absent

UPON this matter coming on for inter partes hearing;

UPON READING the Applicant's application for leave to apply for judicial review filed on February 24, 2023, Affidavit in support of application for leave to apply for judicial review sworn to by Davidson Kelvin Baptiste on 11th February 2023 and filed on 24th February 2023 together with the exhibits thereto annexed, Second Affidavit in Support of Application for Leave to Apply for Judicial Review sworn to by Davidson Kelvin Baptiste on 27th February 2023 and filed on 28th February 2023;

AND UPON ALSO READING the Affidavit of Service sworn to by Avis Bruno and filed on 7th March 2023, Affidavit in Response sworn to by Roderick Deschamps on 16th March 2023

and filed on 17th March 2023, Application for Extension of Time to File and Serve Affidavit In Opposition and For Relief From Sanctions filed on 17th March 2023, and Affidavit in Support of Application sworn to by Josea Daniel on 16th March 2023 and filed on 17th March 2023;

AND UPON FURTHER READING Skeleton Submissions of the Applicant for Leave to Apply for Judicial Review and for Interim Relief filed on 20th March 2023, List of Authorities filed on 20th March 2023, Supplemental Affidavit in Support of Application for Leave to Apply for Judicial Review sworn to by Kendra Corbette and filed on 20th March 2023 together with the exhibits thereto annexed, Speaking Notes on Behalf of the Respondent in Opposition to Leave filed on 20th March 2023, Respondent's List of Authorities filed on 20th March 2023;

AND UPON HEARING Counsel for the Applicant and Counsel for the Respondent;

AND UPON the Court being satisfied that:

- [1] the Applicant's evidence surpasses the threshold for the grant of leave to apply for judicial review set out in **Sharma v Browne Antoine [2006] UKPC 57**;
- [2] applying the principles for the grant of interim relief in public law matters as set out in **Belize Alliance for Conservation Non-Governmental Organisation v Department of the Environment of Belize [2003] 1 WLR [35]** the balance of justice lies in granting the interim relief sought;
- [3] the application for an extension of time made by the Respondents ought to be granted.

AND UPON an undertaking by the Applicant to refund the costs/charges incurred for clearing two containers which the Court is hereafter of the view should be paid by the Respondents by reason of the grant of interim relief until the determination of the substantive claim, should he be unsuccessful in the substantive claim;

IT IS HEREBY ORDERED that:

- [1] Leave is granted to the Applicant to apply for judicial review of the decisions and/or determinations of the First Respondent made on or shortly after November 24, 2022, and supported by the Second Respondent, that:

1. the Applicant, a recently retired Judge of the Court of Appeal of the Eastern Caribbean Supreme Court, is a Returning Resident and as such liable for the payment of 28 % Excise Tax, 4 % Customs Service Charge and Environmental Charge in respect of the importation of two containers of his household and personal effects as well as his vehicle from Saint Lucia;
2. the Applicant is personally liable for said tax and charges and not the State;
3. as a consequence of the above determinations that the Applicant is a Returning Resident and personally liable for said tax and charges, the Applicant must attend to his offices personally for an interview and/or to attend to the clearance of the containers containing the Applicant's items.

[2] Leave is granted to the Applicant to apply for judicial review for the following relief:

1. A declaration that the First Respondent erred in law in applying the policy relating to returning residents to the Applicant and acted ultra vires and irrationally in so doing;
2. A declaration that the First Respondent erred in law in his determination that the Applicant is personally liable for the charges and taxes associated with the clearing of the containers containing the Applicant's personal and household items and vehicle, rather than deeming these charges and taxes court expenses or expenses to be met by the State, and in so doing acted irrationally, unreasonably and ultra vires;
3. A declaration that the First Respondent unlawfully and unreasonably fettered his discretion by adopting an inflexible approach and ruling out of his consideration factors which were quite relevant to the circumstances of the Applicant which set him apart from "a returning resident";
4. An order of certiorari to move into the High Court and quash the decisions of the First Respondent;
5. An order of mandamus to compel the First Respondent to treat any duties, taxes and/or charges in respect of the clearance from Customs of the said two

containers as the responsibility of the State pursuant section 15 of the Supreme Court Order and section 10(6) of the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order, Chap.4:01 of the 2017 Revised Laws of Dominica, and to deal with relevant authorities and/or agents of the State accordingly regarding the clearance of the said two containers.

6. Damages

7. Costs

8. Judgment interest

- [3] Permission is granted to the parties to read and rely on their affidavits filed in support of and in opposition to the grant of leave and interim relief at the hearing of the substantive claim;
- [4] This order granting leave is conditional on the Applicant making a claim for judicial review within 14 days of the date of this order in accordance with Part 56 of the Civil Proceedings Rules 2000 as amended; and
- [5] The costs of the application for leave shall be costs in the cause.

AND IT IS FURTHER ORDERED that:

- [1] An interim order is granted directing the First Respondent to forthwith, and in any event, no later than seven (7) days from the date of service of this order, release the containers containing the Applicant's personal and household effects and vehicle from the Woodridge Bay Port;
- [2] the Second Respondent shall pay to Tropical Shipping the sum of \$19,018.30 and the additional sum of US \$70.00 per day from January 23, 2023 to the date of release of the containers on account of the demurrage charges for the said containers; subject to the right of the Respondents or any of them to reclaim any sum paid under this interim order at the end of the determination of the substantive claim; and
- [3] the costs of the application for interim relief shall be costs in the cause.

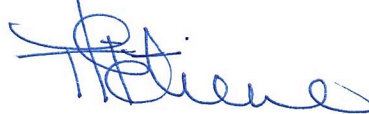
AND IT IS FURTHER ORDERED that:

- [1] Time is extended for the Respondents to file and serve their affidavits in opposition to on or before March 17, 2023 and the affidavit in opposition filed on that day is deemed properly filed; and
- [2] There be no order as to costs on the Respondents application filed on March 17, 2023.

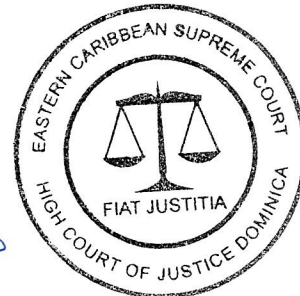
AND IT IS ALSO ORDERED that:

- [1] Both parties are to attend a Case Management Conference which is fixed for hearing on 3rd May, 2023 at 2:30pm;
- [2] A copy of any claim filed pursuant to the leave granted by this order together with a copy of this order shall be served on the Judicial and Legal Services Commission of the Eastern Caribbean Supreme Court which is at liberty to apply to be joined as an interested party to the claim within 14 days of service; and
- [3] The Applicant shall have carriage of this order.

BY THE COURT



REGISTRAR



**In The Eastern Caribbean Supreme Court
In The High Court of Justice
Commonwealth of Dominica
Claim No. DOMHCV 0035 OF 2023**

BETWEEN:

JUSTICE DAVIDSON BAPTISTE

Applicant

AND:

THE COMPTROLLER OF CUSTOMS

1st Respondent

**THE ATTORNEY-GENERAL OF THE
COMMONWEALTH OF DOMINICA**

2nd Respondent

ORDER



HARRIS, HARRIS & DIDIER

CHAMBERS

3 HODGES LANE

ROSEAU