

M. Warner
Justice of Appeal

I. Archie
Justice of Appeal

P. Weekes
Justice of Appeal

JUDGMENT

This is a joint judgment of the Court.

There are three appeals which all touch and concern the same series of events, applications and orders and which emanate from decisions of the single judge who presided over all relevant proceedings. For ease of comprehension and convenience the three appeals were heard together and we issue one judgment in respect of them all.

The matters that give rise to these actions and appeals arise in a particular context and are but the latest chapter in an unfolding narrative. In early 2005, the Director of Public Prosecutions and the Attorney General alleged that the Chief Justice attempted to interfere in an ongoing preliminary enquiry. The issue was referred to the Prime Minister who in turn advised the President under Section 137 (3) of the Constitution to appoint a tribunal to investigate the allegations of

misbehaviour. Judicial review proceedings were initiated by the Chief Justice and remain undetermined to date. This state of affairs has generated intense public debate with allegations that the Prime Minister's decision was politically motivated.

With these sentiments hanging in the air, a second allegation was made against the Chief Justice on or about 31st March 2006, this time with Chief Magistrate, who at the relevant time was presiding over the summary trial of the Leader of the Opposition, Mr Basdeo Panday, on charges under the Integrity in Public Life Act. The Chief Magistrate alleged that the Chief Justice had attempted to influence him to give his decision in a particular way. This latter allegation is the springboard for the events, actions and orders that have brought us to this juncture.

The first appellant appeals the decision of the judge, dated 17th of July 2006, to dismiss her application to set aside leave granted to the respondent to apply for judicial review of the first appellant's decision. The respondent alleges that the first appellant had decided to institute and/or advised the police to institute criminal proceedings against him in the past and to do so in the future.

-1 T-20.915 -1.76 Tc0.0002T of the first appellant's decision follows: ³
i. TD(3)T8/TT4 0 T

- a. The decision of the Judicial Committee of the Privy Council in **Jeewan Mohit v DPP Privy Council Appeal No 31 of 2005** does no more accept that the exercise of a prosecutorial discretion, in the context of a written constitution, can be subject to review; accepts that the categories identified are not exhaustive and in orises that it would be difficult to conceive of the circumstances where unreasonableness, in Wednesbury sense of the term, or want of natural justice would be unsuccessful.¹
- b. The question whether the Appellant decided to institute or

6. The Learned Judge wrongly applied the following test: that in the public law matter where the Defendant party is a public authority, the Courts must take into account the interests of the public in

filed to adduce sufficient evidence to support the continuation of the injunctions granted on 14th

Rule 26.8 of the CPR to rectify the Claimant's failure to state the reason or reasons why notice was not given for interim relief pursuant to Rules 17.3 (3) of the CPR;

11. The Learned Judge's order in law;
12. The Learned Judge's order was against the weight of evidence.

C.

5:55 pm

7:00 pm Approximately ACP Reyes was summoned to the telephone to speak with the judge who explained to him her orders and the intent and effect thereof. ACP Reyes told the Judge that he understood what she had said. He, together with the police party, left the premises of the respondent/claimant

10:05 pm

27th July 2006

This court ordered that the appeals be heard with expedition.

The First Appellant's Appeal

The first appellant's grounds of appeal may be summarized as follows:

(i)

evidence raised by the Claimant the Claimant has presented an arguable case to the Court". Since we do not have the benefit of any analysis by the judge, we must undertake a fresh examination of the evidence to see whether there is any material upon which she could reasonably have come to the conclusion that she did.

The evidence upon which the respondent relied at the time of the application for leave .22contained in his affidavit filed on July 10th, 2006 and exhibits thereto. As proof of the intention of the Prime Minister and/or Attorney General he relies on the following:

- (i) A reported conversation on 5th April 2006 in which the Prime Minister told a retired judge that ***"the Chief Justice must go... He has been attempting to influence the Chief Magistrate in his adjudication in the Panday case"***¹⁰;
- (ii) A conversation on 8th May 2006 between the respondent and the Attorney General during which the Attorney General told him that he w16 in receipt of statement22containing evidence that he had interfered in the administration of justice and

prosecution would not depend on the D.P.P. but that he had been advised that any policeman could initiate criminal proceedings. He offered the respondent the option to resign rather than face criminal prosecution and “implored” the respondent to spare himself and the country the disgrace and embarrassment of a criminal trial¹²

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(Chief Justice) 7. 8 12. 8 3 566 m 0 .005 60 Tw () 1 0 0 1 2 17 8 4 6 6 m 0 g 003 20 T 1

would have to be some evidence from which it could be inferred that there was pressure exerted *“from the top down”*¹⁷.

“For the removal of doubt, you are to make your own independent

The Other Grounds of Relief Advanced by the Claimant/Respondent

(1) Abuse of Process

This is really the obverse of the political interference coin. There are, in general, two types of situations where the doctrine of abuse of process may be employed to stay a prosecution. The first, where the prospect of a fair trial is prejudiced by state conduct, simply does not

Failure to establish an arguable case

Before dealing with this ground we will address the second appellant's peculiar position. While the judge did not continue the injunction against him, he falls within the class of persons restrained by the second part of the order of July 24th 2006. Mr. Fitzpatrick has contended that he has

The third appellant's position is even more unusual. He was added as a party on the night of July 14th 2006 at a time when there were no allegations of political interference against him. He was not present at the Chief Justice's residence that evening. The judge had already explained to the officers there present that the effect of her orders made up to 5:55 p.m. that day was to prevent any police officer from arresting the respondent. The officers had accepted that and voluntarily left the premises without any further attempts to effect an arrest. He appears to have been joined as a party at that stage solely for the purpose of obtaining injunctive relief to prevent the respondent's arrest.

Up to the time of this appeal we have seen no affidavit alleging any specific mis-He aive2n his part in respect of his decision to prosecute the respondent. The only evidence of his involvement comes from his statement dated July 14th 2006 that was issued the following day²². In it he states that he formed a view regarding the approprih (nesns ofcriminali)-5.1o the respondent.Hte thne suightatheadvlice o two Svenort

amended). Indeed the overriding objective of the Rules is to deal with cases justly. One of the imperatives of dealing with a case justly, however

The judge's acknowledgment at the end of her ruling of 24th July 2006, that the terms of the injunctions were too wide, implies that the order or certain parts thereof were unworkable. We are of the view that, for other reasons, the injunctions should be discharged in any event. We do not therefore propose to decide whether in such circumstances the order ought inevitably to be discharged or whether it can be modified once the underlying intention of the judge is ascertainable. However, judges should avoid making or continuing orders that are imprecise.

Grounds (iii) and (iv) will be taken together

However, we do not think that concern should assume overriding proportions as the real issue is whether there was an evidential basis to ground any stays or injunctions in the first place.

