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IN THE GRAND COURT OF THE CAYMAN ISLANDS
SUMMARY COURT NO. 04024 OF 2010

CAUSE NO. 218 OF 2010

BETWEEN	LEON BUCKERIDGE	APPLICANT
AND	SERGEANT ORLANDO MASON	1ST RESPONDENT
AND	ATTORNEY GENERAL OF THE CAYMAN ISLANDS	2ND RESPONDENT

IN OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CJ
THE 28TH DAY OF JULY 2010

ATTENDANCE: Mrs. Jacqueline Samuels-Brown QC instructed by Mr. Peter Polack for the applicant

Ms. Vicki Ellis, Assistant Solicitor General and Mrs. Suzanne Bothwell Senior Crown Counsel for the respondents

RULING

1. This is an application for leave to apply for judicial review of a decision to institute criminal charges against the applicant, Mr. Buckeridge.

2. Leave was already sought ex parte and refused by Henderson J. on 18 June 2010, sitting administratively without a hearing pursuant to GCR O.53 Rule.3(3). The applicant renewed his application pursuant to Rule 3(4) by applying for a hearing by a single judge in open Court and thus the matter came on before me. Notice was given to the Attorney General who appeared by counsel as noted above.

3. I was able to dispose of the matter *in limine* by bringing to the attention of leading counsel for the applicant, the Privy Council judgment in ***Sharma v Brown-Antoine and others*** ***[2006] UKPC 57*** – the case authority that bolstered the submissions earlier provided in writing on behalf of the Attorney General.

4. The applicants' challenge by way of judicial review of the decision to prosecute him is essentially a challenge to the reasonable premises of the charge itself. It is explained in these terms as taken from paragraph 10 of the written submissions made by counsel on his behalf:

> *"Before a charge can be properly laid there must be two distinct but related preconditions:*
>
> *There must be reasonable and probable cause to do so; and*
>
> *the officer charging the person must be one having the belief that there is indeed reasonable and probable cause. There could have been no reasonable or probable cause here as there is no evidence or material on which it could be reasonably said that the applicant was in possession of the two items [(a 10 mm handgun and matching ammunition clip with rounds in it)] which are the subject of the charge."*

5. The criticism of the prosecutorial decision comes against the background of the applicant having been found to be the front seat passenger of a car in which, beneath the driver's seat, the handgun and ammunition clip were found by the police who stopped the car having received a tip off from an anonymous

the weapon after analysis matches the applicant but none matches any of the other three occupants who were in the car with him.

6. There is however, no further evidence to explain how the weapon came to be in the car or whether the circumstances under which the applicant's DNA came in contact with the weapon were such as to attribute possession – as that concept is regarded by the law – to him.

7. It is for this reason that the applicant asserts that the prosecutorial decision lacks reasonableness and probable cause and is "illegal, irrational and disproportional" and further, is therefore amenable to being set aside by way of judicial review.

8. But, as I pointed out immediately at the start of this hearing, the complete answer to this complaint is to be found in the following dicta from the ***Sharma*** case in which the Privy Council affirmed, among others, the following principles (at pp 787-788):

> *"It is well established that a decision to prosecute is ordinarily susceptible to judicial review, and surrender of what should be an independent prosecutorial discretion to political instruction (or, the Board would add, persuasion or pressure) is a recognised ground of review [(and which happened to be the ground invoked by the applicant in that case)]:* ***Matalulu v DPP*** *[2003] 4 LRC 712, 733 at 735-736;* ***Mohit v DPP of Mauritius*** *[2006] 1WLR 3343, paras. 17, 21.* It is also well established that judicial review of a prosecutorial decision, although available in principle, is a highly exceptional remedy. The language of the cases shows a uniform approach: *"rare in the extreme" (**R v Inland Revenue***

Commissioners, Ex.p. Mead *[1993] 1 All E.R. 772, 782); "sparingly exercised" (**R v Director of Public Prosecution Ex.p. C** [1995] 1 Cr. App. R. 136, 140); "very hesitant" (**Kostuch v Attorney General of Alberta** (1995) 128 DLR (4th) 440, 449); very rare indeed" **R (Pepushi) v Crown Prosecution Service** [2004] Innu. A R 549, para 49; "very rarely": **R (Bermingham) v Director of Serious Fraud Office** [2007] 2 WLR 635, para. 63.*

In ***R v Director of Public Prosecutions, Ex.p. Kebilene*** *[2002] 2 AC 326, 371*, Lord Steyn said:

> *"My Lords, I would rule that absent dishonesty or mala fides or an exceptional circumstance, the decision of the Director to consent to the prosecution of the applicant is not amenable to judicial review."*
>
> *With that ruling, other members of the House expressly or generally agreed at pp 362, 372, 376. The Board is not aware of any English case in which leave to challenge a decision to prosecute has been granted."*

9. And further (at p.888 E – p.889 B):

> *"In **Wayte v United States** (1985) 470 US589, 607, Powell J. described the decision to prosecute as "particularly ill-suited to judicial review." The Courts have given a number of reasons for their extreme reluctance to disturb decisions to prosecute by way of judicial review. They include:*

(i) *the great width of the DPP's discretion and the polycentric character of official decision-making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits" (**Matalulu [2003] 4 LRC 716, 735 cited in Mohit [2006] 1 WLR 3343, para. 17**);*

(ii) *"the wide range of factors relating to available evidence, the public interest and perhaps other matters which [the prosecutor] may properly take into account" (counsel's argument in **Mohit**, at para 18, accepting that the threshold of a successful challenge is "a high one");*

(iii) *the delay inevitably caused to the criminal trial if it proceeds (**Kebilene [2000] 2 A.C. 326, 371; Pretty [2002] 1 AC 800, para. 77**);*

(iv) *the desirability of all challenges taking place in the criminal trial or on appeal": **Kebilene**, at p. 371; and see **Pepushi [2004] Imm. AR 549, para. 49**. In addition to the safeguards afforded to the defendant in a criminal trial, the court has a well-established power to restrain proceedings which are an abuse of its process, even where such abuse does not compromise the fairness of the trial itself:*

R v Horseferry Road Magistrate's Court, Ex.p. Bennett *[1994] 1 AC 42. But, as Lord Lane CJ pointed out with reference to abuse applications in* ***the Attorney General's Reference (No. 1 of 1990)*** *[1992] QB 630, 642:*

> *"We would like to add to that statement of principle by stressing a point which is sometimes overlooked, namely, that the trial process itself is equipped to deal with the bulk of complaints which have in the recent Divisional Court cases founded applications for a stay."*

(v) The blurring of the executive function of the prosecutor and the judicial functions of the Court, and of the distinct role of the criminal and the civil courts: ***R v Humphreys*** *[1977] AC 1, 24, 26, 46, 53 ..."*

10. All of those established reasons for the Court's interference in criminal charges only in exceptional circumstances are applicable to the present complaint.

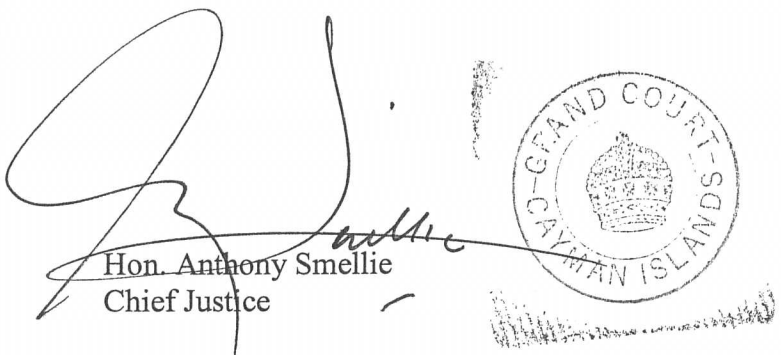
11. As I remarked at the outset to counsel, this is a complaint with which the ordinary criminal trial process is well equipped to deal. Indeed, it is difficult to imagine a more commonplace objection in the criminal trial process than that the prosecution's case is so devoid of reasonable evidential basis as to be susceptible to being summarily dismissed. Such complaints are, moreover, the standard refrain in applications for dismissal of charges for being abuses of the process of

the criminal courts and, in this very case an application for stay of these charges on such grounds is already before the Summary Court awaiting disposition.

12. This application, based as it is upon assertions as to the evidential weakness of the prosecution's case and so the unreasonableness of the prosecutorial decision, comes no where near satisfying the stringent requirement of "exceptional circumstance" justifying intervention by way of judicial review.

13. There being no allegations of dishonesty or *mala fides* tainting the prosecutorial decision, it was immediately clear at the outset that leave could not be given. It was so ordered without demurrer from the applicant's counsel after a brief discussion between bench and bar on the principles as affirmed from the ***Sharma*** case and as set out above.

14. There was no order made as to costs.



Hon. Anthony Smellie
Chief Justice

August 4 2010