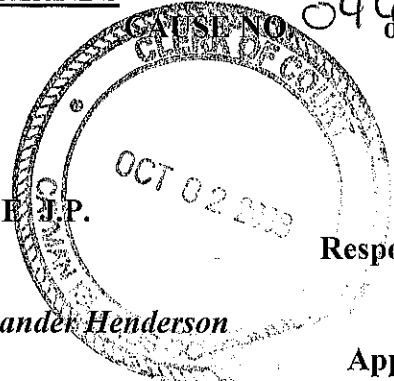
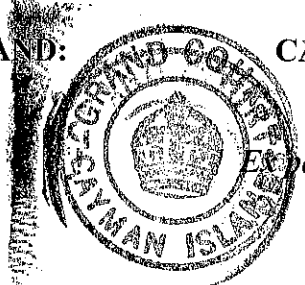


IN THE GRAND COURT OF THE CAYMAN ISLANDS

0464
of 2008

BETWEEN: THE QUEEN

AND: CARSON K. EBANKS, MBE J.P.




Ex parte The Hon. Justice Alexander Henderson

Respondent

Applicant

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant	The Hon. Justice Alexander Henderson c/o Campbells, Attorneys-at-Law 4 th Floor, Scotia Centre Albert Panton Street George Town Grand Cayman Aggrieved person
Judgment, order, decision or other proceedings in respect of which relief is sought	Two search warrants issued by the Respondent at the request of Mr. Martin Bridger, special constable, Royal Cayman Islands Police Force, on 24 th September 2008, copies of which are attached to this application ("the Warrants")
<p style="text-align: center;">Relief Sought:</p> <ol style="list-style-type: none">1. Orders of certiorari in respect of the Warrants2. Declarations that the entry of police officers, whether named in the Warrants or otherwise, into the Applicant's home at No. 7, Grand Palms, South Sound, Grand Cayman ("the Home"), and the Applicant's office and robing room at 4th Floor, Kirk House, Albert Panton Street, George Town, Grand Cayman ("Kirk House")	

<p>and the searches conducted at the Home and Kirk House on 24th September 2008 were unlawful</p> <p>3. Delivery up of all items seized from the Home and Kirk House</p> <p>4. Damages, including aggravated damages, for trespass to land and goods, and/or damages for unlawful interference with goods</p> <p>5. Costs</p> <p>6. Such further or other relief as this Honourable Court thinks fit</p> <p>AND a direction that this application for judicial review be expedited, and that a return date for the substantive hearing be set on or before 17th October 2008 together with all other consequential directions</p> <p>The Applicant requests an urgent <i>ex parte</i> hearing of this application.</p>	
<p>Name and address of the Applicant's attorneys</p>	<p>Campbells 4th Floor, Scotia Centre Albert Panton Street George Town Grand Cayman</p> <p>Ref: STM/KAH/sam/15730</p>
<p>Signed </p>	<p>Dated: 2/10/08</p>

GROUND ON WHICH THE RELIEF IS SOUGHT:

The decision, dated 24 September 2008, of the Justice of the Peace, Carson K. Ebanks MBE ("the Respondent"), to grant an application for search warrants to enter and search the home of Justice Alexander Henderson QC at 7, Grand Palms, 25 Moxam Road, Grand Cayman and his personal office at Kirk House, Albert Panton street, Georgetown, Grand Cayman ("the Warrants"), was unlawful for the following reasons:

1. The Respondent had no, or no sufficient, information (whether on oath or otherwise) before him prior to the issue of the Warrants upon which he could, or could on any reasonable or rational basis, be satisfied that there were reasonable grounds to suspect the commission of the offence of *Misconduct in Public Office*, contrary to common law for the following, among other, reasons:

- (a) The elements of the offence of misconduct in a public office include that the defendant must be acting in the course of his duties and functions as a public officer. The conduct complained of was neither alleged, nor shown in the information on oath before the Respondent, to have taken place in the purported exercise of a power or discretion which Justice Henderson possessed by virtue of his public office as a judge of the Grand Court of the Cayman Islands.
- (b) The information made on oath before the Respondent alleged that Justice Henderson informed John Evans that he was considering whether certain letters amounted to a contempt of court. It was further alleged that Justice Henderson “knew, or had reason to believe” that the content of certain letters was not capable of amounting to contempt of court, and that “even if they did” the alleged contempt was not in the face of the court and would require investigation by police at the request of the Attorney General. However, this allegation is based upon a misconception, which, uncorrected, is likely to have inappropriately influenced the Respondent in his decision. The letters alleged corrupt and improper conduct by senior judges of the Grand Court in their judicial functions, and were arguably calculated to undermine its authority. Therefore, there was ground in law at least for considering whether they might amount to contempt of court and whether, and if so what, action was justified. At common law, a superior court of record has the inherent power, *proprio motu*, to protect the administration of justice from contempts both *in facie* and *ex facie*, which are calculated to undermine it. See **Badry v. DPP** [1983] 2 AC 297
- (c) The information alleged that Justice Henderson had requested John Evans to ascertain certain information about the said letters which he knew or had reason to believe would involve John Evans in committing a breach of trust or breach of contract. However, there was no evidence or material before the Respondent that could conceivably have justified the inference that Justice Henderson had suggested or implied to John Evans that he

should breach the terms of his contract of employment or commit a breach of trust.

- (d) The information alleged that Justice Henderson had “failed to have any/any proper regard to the risk of John Evans being accused of a criminal offence (burglary).” It is assumed that this allegation, if it was to be given any logical meaning, was premised on the assumption that John Evans had indeed committed a criminal offence. However, there was no evidence or material at all before the Respondent that could have justified the inference that Justice Henderson could reasonably have contemplated that John Evans would or might commit an illegal or criminal act. Further, there was no evidence before the Respondent that John Evans had indeed committed any such offence. On the contrary, had the Respondent been informed, as he should have been, of the decision of the Grand Court on related facts “*In the Matter of Operation Tempura*”, he would have been obliged to conclude in fact that no such offence had been committed.
- (e) The information further alleged that Justice Henderson failed to have regard to the risk that journalistic material might be obtained and that the “right to a personal life” of Desmond Seales and others unknown, might be breached. However, there is no general right to privacy in Cayman Islands law. Further, once again, there was no evidence or material before the Respondent that could have warranted the inference that Justice Henderson had requested John Evans to ignore the *legitimate* privacy rights of others in determining the authenticity of the said letters. On the contrary, the letters all purported to have been genuine documents published with the consent and at the behest of their authors.
- (f) The information alleged that Justice Henderson had “sought to conduct an investigation” and thus exposed the judiciary to the allegation of lack of propriety. However, there was no evidence or material before the Respondent to support the contention that Justice Henderson had requested

any more than that the said John Evans should provide him with information, for a purpose in the public interest, that he would receive in the ordinary course of his employment and in which there was no legitimate or legally protectible interest in withholding.

(g) Further or in the alternative, the information before the Respondent failed to assert or to demonstrate a reasonable basis for suspecting that the misconduct alleged, was of such gravity and fell so far below acceptable standards that it amounted to an abuse of the public's trust in the holder of senior judicial office.

2. Further, the Respondent was not informed, as he should have been, of the decision "*In the Matter of Operation Tempura*". That was a material failure to comply with the duty of candour required of those who make application for search warrants.
3. In the circumstances, the Respondent failed to take into account important matters relevant to his decision.
4. The Warrants purport to have been issued by the Court, whereas the Respondent is not a competent Court of the Cayman Islands. Accordingly, the Warrants do not comply with the provisions of Sections 26 and 28 and Schedule 2 of the Criminal Procedure Code (2006 Revision).
5. The Applicant reserves the right to amend and/or amplify these grounds following disclosure.