

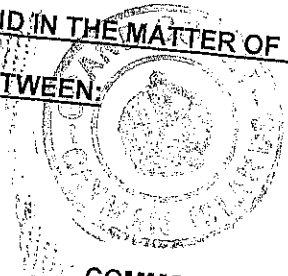
IN THE GRAND COURT OF THE CAYMAN ISLANDS

131
Cause No of 2009

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER
GCR Order 53

AND IN THE MATTER OF THE POLICE LAW (2006 REVISION)

BETWEEN:

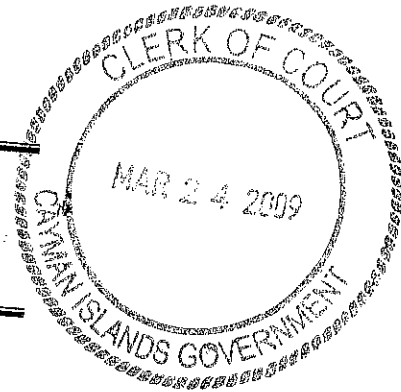


ANSEL GRAHAM RECORD

v

COMMISSIONER OF THE ROYAL CAYMAN ISLANDS POLICE SERVICE

NOTICE OF AN APPLICATION FOR
LEAVE TO MOVE FOR JUDICIAL
REVIEW



This form must be read together with Notes for Guidance obtainable from the Crown Office.
To the Clerk of Courts, Judicial Administration Building, Court House, George Town, Grand
Cayman Strand, Cayman Islands B.W.I.

Applicant:

Ansel Graham Record

Respondent:

Commissioner of the Royal Cayman Islands Police
Service

Judgment, order,
decision or other
proceeding in respect
of which relief is
sought:

Decision dated 14th January 2009 requiring the Applicant to return to active duty
with the Royal Cayman Islands Police in the Cayman Islands pursuant to the
Respondent's powers under the Police Law (2006 Revision).

Relief Sought:

Certiorari of the decision of 14th Jan

Mandamus that the Respondent
Applicant and his family with full
consistent with his current st

Prohibition preventing the Respondent from requiring the Applicant to return to active duty with the Royal Cayman Islands Police without a Threat Assessment conducted by a neutral Third Party;

Discovery of all notes, minutes, memoranda, e-mails and documents however stored relating to the Respondent's decision to require the Applicant to return to active service with the Royal Cayman Islands Police;

Further or alternatively, damages, for breach of contract and negligence to be assessed the Applicant's Licence and to Appoint Controllers;

An Order that this file be closed marked not to be disclosed to any non party without the leave of the Grand Court or the Court of Appeal.

Name and address of
Applicant's Attorneys,
or, if no Attorneys
acting, the address
for service of the
Applicant:



Signed: Stuart Walker Hersant

Dated: 13th March 2009

**GROUNDS UPON WHICH RELIEF IS
 SOUGHT**

INTRODUCTION

1. The Applicant is a citizen of the Cayman Islands. He is employed as a Detective Constable of the Royal Cayman Islands Police Service. He presently resides out of the jurisdiction. The circumstances giving rise to the Applicant's evacuation from the jurisdiction are fully particularized in the Applicant's Affidavit sworn in support of this application for leave to move for Judicial Review.
2. On 14th January 2009, the Respondent required the Applicant to return to the Cayman Islands to re-commence active duty. In the circumstances set out in the Affidavit, the Applicant contends that the Respondent's decision is unreasonable, in breach of his substantive legitimate expectation.

JURISDICTION

3. The Applicant relies on the clear and settled principle set out by Lord Templeman in *R v Secretary of State for the Home Department ex p Bugdaycay* [1987] AC 514 where he stated the following:

"My noble and learned friend, Lord Bridge of Harwich has dealt in more detail with the contentions adopted by the appellants. The actions of a statutory decision-making body may be controlled by the court in judicial review proceedings if there has been a defect in the decision-making process. In the case of Mr. Musisi but not in the case of any of the other appellants, the evidence discloses that there may have been such a defect. The action of an authority entrusted by Parliament with decision-making can be investigated by the court:

"with a view to seeing whether it has taken into account matters which it ought not to take into account or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account;" per Lord Greene M.R. in Associated Provincial Picture Houses Ltd, v. Wednesbury Corporation [1947] 2 All E.R. 680, 685.

In my opinion where the result of a flawed decision may imperil life or liberty a special responsibility lies on the court in the examination of the decision-making process."

4. The Applicant contends that the Respondent's decision is flawed. By reason of the matters set out in his Affidavit evidence and the consequential clear and obvious risk to the Applicant and his family's lives, it is further respectfully contended that the Grand Court's "special responsibility" to examine the Respondent's decision is engaged. This special responsibility is not a derogation from the traditional judicial reluctance to interfere with or substitute its decision for that of the decision maker. The Applicant relies on the following dictum of Lord Bridge in *Bugdaycay*:

"It is not the function of the Court to substitute its own view of the merits. The threshold of unreasonableness is not lowered. The test remains whether the decision falls within the range of responses open to a reasonable decision-maker. However where fundamental human rights are affected the Court may require more by way of justification before it is satisfied that the decision is reasonable in that sense."

5. The proximate cause of the Applicant and his family being evacuated from the Cayman Islands was the Respondent's reasonable apprehension of the risk to the Applicant's life occasioned by the disclosure of his identity in foreign extradition proceedings. That risk has not abated and the Respondent has on a number of occasions represented that he would undertake a threat assessment in order to discharge his duty to the Applicant. These representations having been made, the Respondent has failed to effect these representations so that, at the time of this application for leave to move for Judicial Review, the risk to the Applicant remains unchanged. The Respondent's direction that the Applicant return to the Cayman Islands and thereby to service is a breach of the Applicant's legitimate expectation. Furthermore, the Respondent in the circumstances of the uncontroverted evidence which lead to the Applicant's evacuation from this jurisdiction, the Respondent is estopped from denying the existence of the threat to the Applicant. It is the Applicant's case that there remains a clear and present danger to his life which fact is evidenced by the correspondence from a foreign police force with intimate knowledge of the relevant material and personnel, and the fact that in December 2008, the Applicant's mother's house was subject to random, automatic gun fire. The Applicant relies on *R v Jockey Club. Ex p RAM Racecourses* [1993] 2 All ER 225 and *R v North and East Devon Health Authority, x p Coughlan* [2001] QB 213.

COSTS - PROSPECTIVE COSTS ORDER

6. Having regard to the matters set out hereinbefore, the strength of the Applicant's case the likelihood of the outcome, the justice of his case and the extraordinary circumstances of the case, it is respectfully submitted that the Applicant should be granted the costs of this application and the substantive application in any event. The jurisdiction of a High Court to grant a prospective costs order was considered by Mr. Justice Dyson in *R v Lord Chancellor, ex p Child Poverty Action Group* [1999] 1 WLR as compared with the private law position set out in *Alsop Wilkinson v Neary* [1996] 1 WLR 1220, 1226F-G.
7. For all these reasons, the Applicant respectfully invites this Honourable Court to grant the application fore leave to move for Judicial Review.


Stuarts Walker Hersant

13th March 2009