

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**BREON DAVIS**

**Applicant**

**AND**

**COMMISSIONER OF POLICE**

**1<sup>st</sup> Respondent**

**AND**

**THE ATTORNEY GENERAL**

**2<sup>nd</sup> Respondent**

**Before:** The Honourable Madam Justice Camille Darville Gomez

**Appearances:** Mr. K. Melvin Munroe for the Applicant

Mr. Randolph Dames and Mr Rodger Thompson for the  
Respondent

**Hearing Date:** 4<sup>th</sup> March, 2022

**RULING**

**Interlocutory relief to prevent the Commissioner of Police from proceeding with a Disciplinary Tribunal against the Applicant who is an Inspector - whether there is a serious issue to be tried - adequacy of damages not addressed sufficiently - application dismissed**

## **Darville Gomez, J**

1. I gave my oral decision in relation to this application on March 14, 2022 and promised to give my reasons in writing later. I do so now.
2. The Applicant applied by Ex Parte Summons filed on February 23, 2022 for an injunction restraining the Commissioner of Police, the First Respondent whether by himself, his agents, his servants or otherwise howsoever from continuing with any prosecution before the Disciplinary Tribunal in so far as it relates to the Applicant pursuant to such inquiry or at all until further order of the Court. It was supported by an Affidavit of the Applicant also filed on February 23, 2022.
3. Simultaneously, the Applicant filed an application for Judicial Review on the basis that the Commissioner of Police did not follow the procedures set out in law as it relates to matters of discipline concerning officers of the rank of Inspector and above and therefore lacks jurisdiction and has acted ultra vires to the Constitution, the Police Force Act and the Police Service Regulations. The Applicant set out the grounds for judicial review and the relief sought. This application remains extant and therefore, I do not intend to address it at all because only the application for an injunction is being pursued at this time.
4. The Applicant gave notice of the application to the Respondents who filed an Affidavit in response on March 1, 2022.
5. The undisputed facts gleaned from the Affidavits of the Applicant and the Respondents are that the Applicant, a Police Inspector was charged on Tuesday, February 1, 2022 with the following offences before the Police Disciplinary Tribunal (the "Tribunal"):
  - (i) Two (2) counts of Acts of a major nature;
  - (ii) One(1) count of conduct of a major nature which is contrary to Discipline, Good Order and Guidance of the Force;
  - (iii) One (1) count of Acting in a manner reasonably to bring discredit on the reputation of the Police Force and
  - (iv) One (1) count of knowingly making false statement.
6. The Applicant in his Affidavit in Support of his application for an injunction set out the chronology of events starting with the fact that before his interdiction he was posted at the Rapid Response Unit where his duties were patrolling supervisor and his commanding officer at the time was Superintendent Sean Thompson.
7. I set out below the remainder of his Affidavit:

*" 4. That on Sunday, 12<sup>th</sup> December, 2021, I along with other officers had reason to arrest several suspects for possession of unlicensed firearm ammunition and other offences.*



5. That on Tuesday 25<sup>th</sup> January, 2022 I was summons to the Police Complaints Unit where I saw and spoke to Superintendent Bradley Pratt who informed me of a matter that the Police Complaints Unit were investigating. He then served on me a Royal Bahamas Police Force Discipline Notice (CD4 form).

6. That on Wednesday 26<sup>th</sup> January, 2022 Superintendent Bradley Pratt conducted a record of interview with me in relation to the matter reported to the Royal Bahamas Police Force, Complaints Unit. During the interview I produced my report which outlined the sequence of events as they occurred on the date in question.

7. That on Tuesday 1<sup>st</sup> February, 2022 I appeared before the Police Disciplinary Tribunal and arraigned by Chief Superintendent Mareno Hinds on two (2) counts of Acts of a major nature, one (1) count of conduct of a major nature which is contrary to Discipline, Good Order and Guidance of the Force, one (1) count of Acting in a manner reasonably to bring discredit on the reputation of the Police Force and one (1) count of Knowingly making false statement. I was arraigned with six (6) other police officers. I plead not guilty to each count. I was told to return to the Tribunal on Monday, February 7, 2022. Copies of the charge sheets are hereto attached as exhibits "DB1 – "BD5".

8. That on my return to the Tribunal I was informed by Chief Superintendent Mareno Hinds that he recommended that I along with the Applicant and the other officers be interdicted from the Royal Bahamas Police Force.

9. That I was later served with a letter dated February 7, 2022 signed by the Commissioner of Police Paul Rolle stating that I had been interdicted by him pursuant to section 63(1) &(2) of the Police Act, 2009. A copy of the letter is hereto attached as exhibit "BD6".

10. That I consulted with my attorney K. Melvin Munroe of Themis Law Chambers as a result of what had transpired. I was then advised that the procedure set out in regulations 33-40 of the Police Service Commission Regulations are to govern matters of discipline concerning officers of my rank and above and that the actions of the Commissioner were in breach of my constitutional rights in particular Article 121.

11. That I now know after being advised that the Commissioner of Police, Paul Rolle did not follow the procedures set out in law as it relates matters to discipline concerning officers of my rank and therefore lack jurisdiction and has acted ultra vires to the Constitution, Police Force Act and Police Service Regulations.

12. That prosecution of the Disciplinary Tribunal hearing was set to commence on the 7<sup>th</sup> March, 2022. That my attorneys, Themis Law Chambers filed an Originating Notice of Motion and Affidavit in Support in Supreme Court Action on the grounds that the Commissioner of Police has acted Ultra Vires under the

*Police Force Act, 2009 relative to the Article 121 of the Constitution of The Bahamas (The Bahamas Independence Order 1973) paragraph 3(B) to Interdict an Inspector of the Royal Bahamas Police Force, and did not follow the law according to the procedures set out in regulations 33-40.*

*13. That notwithstanding my application in the Supreme Court and my complaint the Commissioner of Police will continue to prosecute me in the absence of any order from the Court and I am now humbly requesting the assistance from the Supreme Court to have the Commissioner of Police restrained from continuing to prosecute me until such time that the Supreme Court matter is heard and determined.*

*14. That the continued prosecution will be prejudicial in that it can result in me being punished unlawfully and reduction in rank or dismissal from the Royal Bahamas Police Force.”*

8. There is little difference from these facts in the Respondents' Affidavit, save that the Respondents have included the events which led to the disciplinary proceedings against the Applicant and the other officers.
9. While the Court has noted the seriousness of the charges and the allegations against the Applicant, they are not an issue that this Court must resolve.
10. The Court is being asked to grant an injunction to restrain the First Respondent, the Commissioner of Police whether by himself, his agents, his servants or otherwise from continuing with the prosecution of the Applicant before the Disciplinary Tribunal which was scheduled to commence on March 7, 2022.
11. **HELD: Dismissing the Applicant's Summons seeking injunctive relief even though there is a serious issue to be tried, the Applicant failed to demonstrate that damages would not be an adequate remedy. The Court makes no order as to costs at this time because the Applicant has filed an application for judicial review of the disciplinary procedure invoked by the Commissioner of Police in the interdiction of the Applicant.**
12. It is undisputed that this Court has the discretion to grant an injunction pursuant to the Supreme Court Act and Order 29 of the Rules of the Supreme Court which reads as follows:  
**Supreme Court Act, Section 21**  
*“21. (1) The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.*  
*(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit.”*



## Rules of the Supreme Court, 1987 – Order 29

*“1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party’s writ, originating summons, counterclaim or third party notice, as the case may be.*

*(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.”*

13. The grant of an interlocutory injunction is discretionary and the case of **American Cyanamid Co. Ltd. v Ethicon [1975] 1 All ER 504** remains the authority on the factors that the Court must consider in the exercise of its discretion.
14. The four-part test is as follows:
  - (i) whether this is a serious issue to be tried?
  - (ii) whether damages would be an adequate remedy for any loss sustained by either party pending the outcome of the trial.
  - (iii) whether the balance of convenience favours the plaintiff or defendant if there is any doubt as to the adequacy of the respective remedies available in damages.
  - (iv) whether there are any special factors that might affect the court’s consideration of the matter.
15. I now consider each in turn.

### **ISSUE 1 – Whether there is a serious issue to be tried?**

16. Lord Diplock in the **American Cyanamid** case defined a serious issue as being satisfied that the claim is not frivolous or vexatious, that is, that there is a triable claim.
17. The Applicant submitted the following as the issues for the court’s determination:
  - I. Whether the Commissioner of Police followed the law when he interdicted the Applicant.
  - II. Whether the Commissioner of Police followed the law when he allowed the Applicant to be charged before the Disciplinary Tribunal.
18. The Respondents’ response to this question is in the negative and I refer to their submissions:

*“14. The Respondents contend that there is no serious question/ issue to be tried between the Applicant and the Respondents because the procedures prescribed within the Bahamas Constitution, Statute and Regulations were followed **at this point** of the preliminary investigation/enquiry.*

- *There was an allegation made against the Applicant. (see Paragraph 6-9 ASP Moss Affidavit)*
- *A complaint was made to the Police and Corruption Branch and due process was followed by the Branch (ASP Moss Affidavit 10-12)*

- *The Bahamas Constitution Article 121(3)(b) provides in relation to a police inspector, the Commissioner of Police is vested with power to exercise disciplinary control other than removal or reduction in rank. (The Applicant is a police inspector therefore the Police Commissioner can exercise disciplinary control but cannot remove him).*
- *The Commissioner of Police appointed a Court of Enquiry presided by Chief Superintendent Moreno Hinds an officer of three substantive ranks senior to the Applicant (ASP Moss Affidavit paragraph 15)*
- *At the initial hearing, the Applicant was charged with major offences and supplied with a copy of the charges and informed of the date on which the Court of Enquiry will be convened as well as the date, time and place. A plea was also solicited and the Applicant pleads not guilty to each count. This is pursuant to Regulation 4(2) Police Disciplinary Regulations. (See ASP Moss affidavit)*
- *Since the Applicant pleads not guilty to the charges it shall be duty of Enquiry Court to investigate the charges and record the witnesses on oath. Further the Court of Enquiry shall give the Defendant the opportunity to cross examine witnesses and bring his witnesses for his defence. (Regulation 4(3) Police Disciplinary Regulations)*

15. *It is submitted that on Monday 7<sup>th</sup> March, 2022, the Court of Enquiry will investigate the charges of the applicant.*

16. *Regulation 40 Police Service Commission Regulations, Subsidiary Laws of the Bahamas (Tab 4) provides:*

*“ When the Commissioner considers it necessary to institute disciplinary proceedings against an officer to whom the regulation applies on the ground of misconduct which, if proved, would justify his dismissal from the Police Force, he shall after the preliminary investigation as he considers necessary report the facts to the Governor General...”*

17. *It is submitted that the preliminary investigation will be the procedure outlined in Regulation 4(1), (2), (3) of the Police Disciplinary Regulations.*

18. *It is further submitted that the affidavit of the Applicant dated 23 February, 2022 does not contain any cogent grounds or reasons justifying the grant of the injunction.”*

19. I disagree with the Respondents.
20. **Regulation 33** of the **Police Service Commission Regulations, 1970** prescribes that the procedure under **Regulations 40 – 43** applies to officers of the rank Inspector and above. I am of the view that, whether or not the Commissioner of Police complied with the procedures relative to the interdiction of the Applicant, is a triable issue and is neither frivolous nor vexatious.
21. Similarly, there may also be a triable issue whether the Commissioner of Police followed the law when he allowed the Applicant to be charged before the Disciplinary Tribunal.



22. However, I am mindful of the fact that this is an application for an interim injunction only and that the substantive application for judicial review has not yet been heard. Therefore, it would be inappropriate at this stage to address these issues further or, in any detail.
23. Accordingly, I am of the view that the Applicant has passed the first test and has demonstrated that there is a serious issue to be tried relative to the interdiction of the Applicant by the Commissioner of the Police.

**ISSUE 2: Whether damages would be an adequate remedy for any loss sustained by either party pending the outcome of the trial?**

24. The Applicant did not address the issue of whether or not damages would be an adequate remedy for any loss sustained by him if the Disciplinary Tribunal hearing would proceed.
25. It may be assumed that damages would not be an adequate remedy based on the Applicant's statement in his Affidavit that the continued prosecution will be prejudicial in that it can result in him being punished unlawfully and cause him to suffer a reduction in rank or dismissal from the Royal Bahamas Police Force. However, it is for the Applicant to make his case regarding this test which he has failed to do.
26. The Respondents submitted that it would be for the Plaintiff to show that damages would not be an adequate remedy.
27. I agree with the Respondents.
28. The Applicant has not satisfied the second test. Therefore, I need not consider the remaining tests set out in **American Cyanamid Co. Ltd. v Ethicon** supra.
29. Accordingly, I dismiss the Applicants' Summons seeking an injunction to prevent the Commissioner of Police from proceeding with the Disciplinary Tribunal against the Applicant.
30. I make no order as to costs in view of the pending judicial review application where the issue of costs can be addressed after the determination of that application.

**Dated this 31<sup>st</sup> day of March, A. D., 2022**



**Camille Darville Gomez**  
**Justice**