

**COMMONWEALTH OF THE BAHAMS**  
**IN THE SUPREME COURT**  
**Public Law Division**

2022/PUB/jrv

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

**BREON DAVIS**

**Applicant**

**AND**

**COMMISSIONER OF POLICE**

**First Respondent**

**AND**

**THE ATTORNEY GENERAL**

**Second Respondent**

Before: The Honourable Madam Justice Camille Darville Gomez  
Appearances: Mr. Kelsey Munroe for the Applicant  
Mr. Randolph Dames for the Respondent  
Hearing Date: 30<sup>th</sup> May, 2022

**DECISION**

**Darville Gomez, J**

**INTRODUCTION**

1. I have already given my decision in this matter orally therefore, I have sought to provide a short written decision for the parties.
2. The Applicant, an Inspector of the Royal Bahamas Police Force sought leave to apply for Judicial Review and an injunction.
3. 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.
4. The Applicant in his Affidavit in Support of his application for leave to apply for judicial review set out the chronology of events. He averred 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.
5. 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 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 lacks jurisdiction and has acted ultra vires to the Constitution, Police Force Act and the Police Service Regulations.*

*6. 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).*

*7. 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.*

*8. That on Tuesday 1<sup>st</sup> February, 2022 I appeared before the Police Disciplinary Tribunal and was arraigned by Chief Superintendent Milano 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 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 7<sup>th</sup> February, 2022. Copies of the charge sheets are hereto attached as exhibits “BDI – “BD5”.*

*9. That on my returned to the tribunal I was informed by Chief Superintendent Milano Hinds that he recommended that I along with the other officers be interdicted from the Royal Bahamas Police Force.*

10. That I was later served with a letter 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".

11. 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.

12. That prosecution of the Disciplinary Tribunal hearing was set to commence on the 7<sup>th</sup> of March, 2022 and this is not in compliance of the procedures set out in regulations 33-40 of the Police Service Commission Regulations.

13. That at no time did I receive any communication from the Secretary of the Cabinet informing me of any allegation against me as mandated by section 33 of the Police Service Commission Regulations.

14. That none of the procedures as mandated by section 33 of the Police Service Commission Regulations for the Commissioner to follow was adhered to therefore the actions of the Commissioner is unlawful.

15. 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."

6. The Applicant has relied on the following grounds and for the following relief:

### **RELIEF SOUGHT**

- (i) Declarations as follows in relation to the unlawful interdiction:
  - (a) A declaration that the purported interdiction is fundamentally flawed and does not constitute proper or meaningful interdiction;
  - (b) A declaration be made that the said Commissioner of Police unlawfully interdicted the Applicant on the 7<sup>th</sup> February, 2022;
  - (c) A declaration be made that the Applicant fundamental rights under the Constitution of the Commonwealth of the Bahamas have been violated by the First Respondent when the First Respondent erred in fact and in law interdicted the Applicant on the 7<sup>th</sup> February, 2022 to present date in respect to Section 63(1) and (2) of the Police Force Act, 2009 and the First Respondent did not take into consideration Article 121 of the Constitution of The Bahamas (The Bahamas Independence Order 1973) paragraph 3(B);

- (d) A declaration be made that the present interdiction is an abuse of power and/or process of the First Respondent and he lacks jurisdiction and has acted Ultra Vires under the Police Force Act, 2009 relative to Article 122 of the Constitution of The Bahamas (The Bahamas Independence) Order 1973) paragraph 3(B) to interdict an Inspector of the Royal Bahamas Police Force;
  - (e) A declaration be made that Article 121 paragraph 3(b) of the Constitution of The Commonwealth of The Bahamas affords the Applicant the right not to be interdicted by the First Respondent;
  - (f) A declaration and/or Order be made that the Honourable Court deem that Section 63(1) and (2) of the Police Force Act, 2009 provision is unconstitutional in the circumstances.
- (ii) As a consequence of the declaratory relief sought above, the following orders:
- (a) That an order of Certiorari quashing the decision of the Respondents and/or each or any of them to interdict the Applicant.
  - (b) That an order of prohibition preventing the Respondents from continuing with the purported interdiction and/or from making any decisions based on the purported interdiction.
  - (c) That an order to discontinue the Court of Inquiry which is presently before the Police Tribunal.
- (iii) In addition, the following specific order against the Respondents
- (a) An Order that the First Respondent be mandated to observe the provisions and supremacy of the Constitution of The Bahamas and the Police Service Commission.
  - (b) An Order be made that effective immediately the Applicant be assigned to police duties and receive full salary.
  - (c) An Order be made to compensate the Applicant immediately for one-half of loss of earnings from the period of 7<sup>th</sup> February, 2022 to present date.
  - (d) An Order be made that this Honourable Court make a declaration that the action of a Commissioner of Police interdicting an Inspector of the Royal Bahamas Police Force is unlawful and void Ab initio.
  - (e) Accordingly, further and/or alternatively an order of prohibition preventing the Respondents from interdicting an Inspector of the Royal Bahamas Police Force.

(f) Interlocutory Relief:

(a) Damages;

(b) An order restraining the First Respondent from continuing with any prosecution before the Police Disciplinary Tribunal in so far as it relates to the Applicant pursuant to such inquiry or at all until further order of the Court

**ISSUES**

7. The Applicant sought a miscellany of relief, however, the sole issue for consideration is whether the First Respondent followed proper procedure in the interdiction of the Applicant, an Inspector of the Royal Bahamas Police Force.
8. In addition, the Applicant sought an order restraining the First Respondent from continuing with any prosecution before the Police Disciplinary Tribunal, in so far as it relates to the Applicant, pursuant to such inquiry, or, at all, until further order of the Court.

**DECISION**

**Application for the grant of an Injunction**

9. The Applicant had previously 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 which was scheduled to commence on March 7, 2022. The Applicant did not apply for leave for judicial review simultaneously with the application for the grant of an interlocutory injunction.
10. The application for an injunction was supported by an Affidavit of the Applicant also filed on the same date.
11. I heard the application for an injunction on March 4, 2022. At the end of the hearing the Respondents gave an undertaking to not proceed with the hearing before the Disciplinary Tribunal scheduled for March 7, 2022 until after the Court gave its decision regarding the injunction.
12. By an oral decision given on March 14, 2022 and a written decision given on March 31, 2022, I refused the application for an injunction. I held in dismissing the Applicant's Summons seeking injunctive relief, that even though there was a serious issue to be tried, the Applicant failed to demonstrate that damages would not be an adequate remedy.
13. The Applicant did not appeal the decision.

14. The Applicant has by his Amended Application for leave to apply for judicial review **and** interlocutory relief filed on March 15, 2022 [*emphasis added mine*] sought an “order restraining the First Respondent from continuing with any prosecution before the Police Disciplinary Tribunal in so far as it relates to the Applicant pursuant to such inquiry, or at all, until further order of the Court.
15. The Applicant has not filed any additional documents in relation to the application for an injunction. Therefore, nothing else has been tendered to suggest that the injunction being sought now, is any different than the injunction sought earlier by the Applicant in his Summons filed on February 23, 2022.
16. The Applicant’s counsel has in his submissions referred to the case of **American Cyanamid Co. Ltd. V Ethicon [1975] 1 All ER 504** which is the foremost case on the principles to be considered when granting an injunction.
17. The Applicant’s counsel has submitted that damages would not be an adequate remedy for any loss sustained by the Applicant pending the outcome of the trial, however, even if I were minded to consider or even accept this argument, the application for an injunction has already been determined.
18. Accordingly, I accept the submission of the Respondents that this application must fail because it is res judicata. The Respondent has relied on the case of **Bethel v Commissioner of Police [2015] 3 BHS J No 29** at paragraph 17:

*“Res judicata principally means that a court or tribunal has already adjudicated on the matter and precludes a party from bringing another set of proceedings. The doctrine also covers abuse by a litigant of the court’s process by bringing a second set of proceedings to pursue new claims or different cause of action, which the claimant ought to have brought in the first set of proceedings.”*

#### **Application for leave to apply for Judicial Review**

#### **What is the Court’s jurisdiction for the grant of judicial review and what are the requirements?**

19. The Court’s discretion to grant judicial review is contained in Order 53 of the Rules of the Supreme Court.
20. The Court must be satisfied that: (1) the Applicant has sufficient interest in the matter to which the application relates; and (2) the application has been made within six months from the date when the grounds for the application first arose.
21. I refer to paragraphs 6 through 14 of the Applicant’s Affidavit set out in paragraph 4 above where he detailed being summoned to the Police Complaints Unit and served with a Royal Bahamas Police Force Discipline Notice. He further set out the five charges made against him and the fact that he was interdicted by the Commissioner of

Police by letter dated February 7, 2022 pursuant to sections 63(1) and (2) of the Police Act, 2009. The Disciplinary Tribunal hearing was set to commence on March 7, 2022.

22. I am satisfied that based on the above facts that the requirements prescribed by Order 53 have been met.
23. The Respondents took no objections with either of these requirements.
24. The Respondents objected to the application on the following basis: (i) the Applicant has not exhausted all his remedies and his right to appeal given by The Bahamas Constitution; and (ii) the Applicant grounds for judicial review challenges constitutionality of the powers vested in the Commissioner of Police pursuant to Article 121 the Bahamas Constitution which resulted (as he claims) a breach of his fundamental constitutional rights.
25. The Respondents' counsel relied on **The Queen v Dwight Armbrister [2021] 1 BHS J. No. 2** as authority for the submission that courts have determined that judicial review applications which are substantially constitutional matters ought to be refused.
26. Counsel for the Respondent referred to paragraph 11 of the Applicant's Affidavit and noted that the only complaint made by the Applicant is primarily based on the issue that the Commissioner of Police breached his constitutional rights.
27. I have considered the submissions for the Respondents and I am of the view that the Applicant has raised an arguable issue and therefore I grant the following:
  - (i) Leave to commence judicial review proceedings;
  - (ii) Stay of the proceedings before the Disciplinary Tribunal until the determination of the judicial review application or; until further order of the court.

**Dated this 19<sup>th</sup> day of August, A. D., 2022**



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