In The Supreme Court of Bermuda

CIVIL JURISDICTION

2016 No: 284

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND IN THE MATTER OF A CLAIM FOR DAMAGES FOR UNLAWFUL ARREST AND TRESPASS

BETWEEN:

MAHESH SANNAPAREDDY

Applicant

-v-

THE COMMISSIONER OF THE BERMUDA POLICE SERVICE

Respondent

REASONS FOR RULING ON APPLICATION TO SET ASIDE LEAVE/STRIKE-OUT APPLICATION

(in Chambers)

Judicial review-alternative remedies-abuse of process- whether risk of prejudice to pending criminal investigation is a bar to seeking judicial review of investigative actions of the Police application to strike-out or stay proceedings and/or to set aside leave-lawfulness of arrest-Police and Criminal Evidence Act 2006 section 23(6)-whether exercise of unqualified summary arrest power is arguably subject to implied restraints

Date of Ruling: January 24, 2017
Date of Reasons: February 6, 2017

Lord Peter Goldsmith QC of counsel and Mr Delroy Duncan, Trott & Duncan Limited, for the Applicant
Ms Anesta Weekes QC of counsel and Mr Dantae Williams, Marshall Diel & Myers Limited, for the Respondent

Background

1. The Applicant applied for judicial review of the Respondent's decision to arrest him without a warrant on May 19, 2016, by Notice of Application dated July 26, 2016. The main grounds of the application and the basis on which I decided to grant leave to seek judicial review on the papers on August 4, 2016 are best described by reproducing a few paragraphs from my Ruling of that date:

> "***Statutory basis for the impugned decision***
>
> *4. In broad-brush terms, the Applicant complains that there was no sufficient basis for his arrest and that the subsequent search and seizure was accordingly also unlawful. His attorneys sent a letter before action dated June 16, 2016 to the Attorney-General's Chambers, who responded (by letter dated June 30, 2016) that the arrest was (a) on suspicion of "corrupt practices, conspiracy to defraud and money laundering", and (b) was lawful based on section 23(6) of the Police and Criminal Evidence Act 2006 ("PACE"). That subsection provides:*
>
> > *'(6) Where a police officer has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to have committed the offence."*
>
> *5. The Applicant concedes that on its face this provision appears to justify the arrest. However, in his Skeleton argument, Mr Duncan submits:*
>
> > *'4. Leave to apply for judicial review should be granted if, on the material available, the Court thinks that there is an*

arguable case for the granting the relief sought by the Applicant without going into the matter in depth; or that the case is fit for further investigation at an inter partes hearing….The threshold for leave is not a high one, and it is submitted that the Applicant's case satisfies both conditions…

10. It is the Applicant's contention that section 23(6) of PACE must be interpreted so as to fetter the discretion of police officers to proceed to summary arrest; the decision not to seek an arrest warrant from a magistrate's court under section 3 of the Criminal Jurisdiction Act and Procedure Act 2015 ("CJPA") must be reasonable in accordance with the scheme of PACE, the Constitution of Bermuda, the ECHR, and the common law.'

Merits of case for leave

6. Section 23(6) of PACE is derived from section 24(6) of the UK Police and Criminal Evidence Act 1984 (UK PACE) as originally enacted. On a cursory review of the Bermudian statutory scheme, however, it is far from clear that the limits placed on the power of arrest under PACE are completely aligned with those under the corresponding English provisions now in force which spell out the grounds on which the summary arrest power may be exercised (section 24(5), UK PACE) . However the Applicant's case, based on construing provisions which have not seemingly been judicially considered before as a matter of Bermudian law, does in my judgment clearly raise issues which are fit for further investigation at an inter partes hearing: Middleton-v-Director of Public Prosecutions [2006] Bda L.R. 79 (at paragraph 3(b)). As Ground CJ further stated in the same case:

'5. The requirement for leave is a filter and the threshold for granting leave is not a high one: leave should be granted if on the material then available the court considers, without going into the matter in depth, that there is an arguable.""

2. The Applicant filed his Notice of Originating Application on August 5, 2016 and it was issued returnable for August 18, 2016. On the morning of August 18, 2016, the Respondent filed a Summons seeking to strike out or stay the Applicant's Notice ("the Strike-out Summons"). The original Summons on the Court file and the Summons included in the Hearing Bundle are both unissued, but counsel agreed at the January

24, 2017 hearing that the Strike-out Summons had been formally issued. In any event, I gave directions for the hearing of the Strike-out Summons on August 18, 2016 over the objections of the Applicant's counsel, who contended it was wholly unmeritorious.

3. It is true that it rarely occurs that a judicial review application is struck out before the substantive hearing or stayed. To my mind, however, judicially reviewing ongoing criminal investigations was unusual. It was easy to envisage that subsequent criminal proceedings might potentially be prejudiced in ways best known to the Respondent. Accordingly, I declined to strike out the Strike-out Summons summarily.

4. On September 20, 2016 the Respondent filed a Summons which was issued on October 4, 2016 seeking to set aside the grant of leave ("the Set Aside Summons).

5. The Strike -out Summons and the Set Aside Summons were both heard on January 24, 2017 when I dismissed both Summonses with costs. I now give reasons for that decision.

The Respondent's case

<u>The evidential case</u>

6. The Strike-out Summons was supported by the First Affidavit of Paul Wright sworn on August 18, 2016. The key averment was that the Applicant's arrest formed part of a large scale fraud and corruption inquiry commenced in 2012 and that defending the judicial review application would involve disclosing sensitive material which could prejudice the investigation. The investigation was described as "*nearing completion and …consequently in a critical phase*". It was further deposed that it was believed that the real purpose of the judicial review application was to obtain sensitive information about the inquiry. As such it was an abuse of process and should be struck-out.

7. The Set Aside Summons was supported by the Second Affidavit of Paul Wright. This explained that the failure to interview the Applicant following his arrest was out of respect for his right to have his lawyer present. It also expressed the concern, based on public pronouncements made by Dr Ewart Brown in support of the Applicant's case that a judicial review hearing would prejudice the ongoing investigation. The case for setting aside the grant of leave was finally supported by the following averments:

> "*10. It is believed that the Applicant's claim for judicial review is premature due to the fact that there is an ongoing investigation into the Applicant and the Applicant remains on police bail.*

11. Further, it is believed that the Applicant's claim for judicial review, whilst in the midst of an ongoing investigation into the Applicant, is fundamentally misconceived."

8. The Strike-out Summons was accordingly based on the premise that the judicial review application was brought for an ulterior motive and the Set Aside Summons was based on the closely connected premise that it was, in effect, impermissible to judicially review actions taken by the Police in a pending criminal investigation. In effect, the Respondent contended:

    (a) there was no genuine basis for challenging the legality of the search; and

    (b) pending Police investigations were immune from judicial review.

9. These Affidavits were sworn in response to the Applicant's First Affidavit in which he described prior conduct which he regarded as harassment by the Respondent prompting him to make a formal complaint to the local Police Complaints Authority in 2014. More to the point, the Applicant complained that the search was not necessary as he would have cooperated with the Police in any event and that it has caused him considerable personal and professional embarrassment.

10. The Wright Affidavits did not seek to justify the legality of the search as such, being sworn by a Deputy Commissioner who had no direct involvement in the fraud and corruption inquiry. They implicitly presupposed the existence of some overarching legal principle protecting active criminal investigations from judicial scrutiny. However, this evidential gap was belatedly filled by the First Affidavit of Ian Tomkins, which firstly asserted that reasonable grounds for arresting the Applicant without a warrant existed based on, *inter alia* interviews with former Bermuda Healthcare staff, and secondly explained why the Applicant was not interviewed after his arrest (because his lawyer was not available).

11. However, perhaps because the subtleties of what in my experience is a novel basis on which the legality of an arrest was being challenged were missed, First Tomkins contains no (or no coherent) explanation of why it was considered necessary to carry out the arrest at all. The assertion that "*BPS took great care and attention when considering the decision to arrest the Applicant and search his home*" (paragraph 7) offers no insight into why, assuming that lawful grounds to make an arrest and carry out a search without a warrant *prima facie* existed, it was considered necessary to deploy those powers at all.

12. For example, there was no suggestion that the arresting officers did find or expected to find evidence which might have been destroyed if the officers had requested him to voluntarily assist them with their enquiries rather than carrying out the arrest. There was no suggestion that the summary arrest was essential because of a fear that the

Applicant would tip-off co-conspirators. On the contrary, the Applicant complained that confidential patient files had been seized and Detective Inspector Tomkins deposed that the Police did not expect to find such documents at the Applicant's home. When the legal nature of the Applicant's central complaint is properly understood, it ought to have been possible to explain why it was considered necessary to summarily arrest the Applicant in general terms without having to "*disclose details of the factual foundation for the conclusion that it was appropriate to arrest him*" (First Wright, paragraph 8). This assumes, of course, that this question was asked at all. If the arrest decision was not made with the Applicant's novel in Bermudian terms construction of section 23(6) in mind, the analytical exercise it is said to require would never have been thought about, let alone carried out.

13. In summary, by the time of the hearing the Respondent's two Summonses on January 24, 2017 there was virtually no evidence before the Court which was responsive to the main thrust of the Applicant's case: that his summary arrest and subsequent search was unlawful because no sufficient reasons for exercising those intrusive powers existed, even if in general terms sufficient grounds for an arrest could be made out. Nor was there any or any cogent evidential support for the proposition that the present proceedings were an abuse of process because they were designed to illicit confidential information about a pending investigation which would prejudice the ongoing enquiries.

14. Whilst it was self-evident that the case for a stay might arise if criminal charges were laid against the Applicant before the present proceedings were finally adjudicated, it seemed doubtful that the present proceedings would entail scrutiny of sensitive facts relating to the investigation.

15. In these circumstances, the Summonses could only possibly succeed in delivering a first round knockout blow to the Applicant's case on the basis of a compelling legal case which clearly demonstrated that the application was (1) legally misconceived on its merits or that (2) the legality of arrests made by the Police were immune from judicial review while Police investigations were pending, either (a) as a matter of principle, or (b) because the Applicant had failed to pursue an alternative more suitable remedy.

The legality of the arrest issue: did the Applicant raise arguable grounds?

The Applicant's complaint defined

16. The Applicant's grounds in support of his Notice of Application for Leave span more than 30 pages. It being comparatively easy to meet the minimum threshold requirements of section 23 (6) of the Police and Criminal Evidence Act 2006 ("PACE") for arresting a suspect without a warrant thus triggering the right to search the premises they are in without a warrant, the Applicant contended that the law

imposes further layers of protection for the liberty of the citizen. The essence of the legal argument upon which the Applicant relies can best be taken from the following grounds (which are replicated in his Notice of Originating Motion):

> "*55. It follows from the fundamental right to individual liberty that an individual can in principle only be deprived of her/his liberty by judicial order, and that exceptions to that principle are only allowed on compelling grounds. The rules setting out the circumstances in which the police can arrest an individual represent the direct application of the constitutional principles protecting individual liberty and they therefore must be interpreted consistent with them.*
>
> *56. Applied to the issue at hand, it is submitted that the Constitution of Bermuda, supported by the common law principle of legality, requires that an arrest by warrant under section 3 of the CJPA*[1]*be the standard procedure the police must follow unless they have compelling grounds for proceeding summarily pursuant to section 23(6) of PACE. It necessarily follows that not only must the police subjectively believe there are compelling grounds for proceeding with a summary arrest, but that belief must also be based on objectively justifiable reasons.*
>
> *57. Further, if the police were able to use section 23(6) of PACE without having to justify it, court supervision of deprivation of liberty would be otiose except for offences where the maximum sentence is less than twelve months. That would lead to an absurd and unjust result of a kind contemplated in Nothman.*
>
> *58. The conclusion that the statutory scheme requires that recourse to summary arrest be justified as an exception is even clearer when considering the fact that pursuant to section 31 of PACE, summary arrest opens the door to infringements (albeit potentially justified) of the right to privacy, enshrined in section 7 of the Constitution of Bermuda and Article 8 of the ECHR….*
>
> *67. In applying ….section 24 of UK PACE* [in its original form upon which the Bermudian section 23 is based. The current UK version now contains express fetters on the summary arrest power], *the courts nevertheless confirmed that the section contained implicit limits on the power of summary arrest based on principles of public law 'reasonableness'…* "

[1] Criminal Jurisdiction and Procedure Act 2015.

The Respondent's submissions on the merits of the legal theory underpinning the unlawful arrest argument

17. The Respondent's submissions did not engage with the central legal argument advanced by the Applicant at all. They studiously ignored them. Ms Weekes QC correctly submitted that the power of summary arrest under section 23(6) existed because the offences the Applicant was suspected of committing were arrestable offences as defined by section 23(1). That was common ground. She was unable to advance any coherent riposte to the argument that the reasonableness of the exercise of that discretionary summary arrest power was amenable to judicial review. This was unsurprising as the Applicant's central legal thesis was supported by highly persuasive English authority.

18. While the merits of the interpretation the Applicant placed upon section 23(6) and its application were not conceded, no (or no meaningful) attempt was made to suggest that the point was not arguable.

The Applicant's submissions on the merits of the legal theory underpinning the unlawful arrest argument

19. It was effectively conceded that the Applicant's legal theory as to the terms and effect of section 23(6) of PACE was arguable so no need to consider the Applicant's arguments at this stage arises.

The Respondent's submissions on the factual merits of the unlawful arrest argument

20. The Respondent's submissions, like his evidence, did not address the facts which are highly relevant if the Applicant is right in contending that the summary arrest power can only be exercised on objectively reasonable grounds. Ms Weekes did succeed in seriously discrediting the following submission contained in the Applicant's Skeleton Argument in support of the grant of leave:

> "*13. There is therefore compelling evidence that no police officer could reasonably have concluded that applying for a warrant to arrest the Applicant and/or to search his home was impracticable, thus necessitating the Applicant's summary arrest. This evidence leads to the conclusion that the Applicant's arrest was arbitrary and unlawful.*"

21. Without deciding the point, that submission appears to me to be putting the bar the Respondent must meet to justify the exercise of the summary arrest power too high. Impracticability is the English section 24 of PACE express statutory requirement. Reasonableness (in the *Wednesbury* sense) by the Applicant's own account is the only

standard which must be met to justify using a summary arrest power which is otherwise available because the express statutory requirements have been met. However this point is, for present purposes, by the by.

22. Looked at practically, it is open to a person summarily arrested in any case to make the bare assertion that the decision to exercise the power was unreasonably reached. In some circumstances that bare assertion will be so preposterous that it would be laughed out of Court. A person suspected of being in transitory possession of illicit drugs or a firearm used in a recent robbery could hardly complain that he was not invited by the Police to come down to the Station for a chat. In the circumstances of the present case, however, it was clearly arguably unreasonable for the Respondent to summarily arrest a professional man who would on the face of it have been willing to voluntarily assist the Police to avoid the embarrassment of an arrest.

23. The Respondent has shed no evidential light whatsoever on why it should be considered to have been reasonable in all the circumstances of the present case to have deployed the summary arrest power as opposed to seeking voluntary assistance or obtaining a warrant of arrest and/or search. This is presumably because the true position is that the officers concerned, relying upon a literal reading of section 23(6), did not consider that they were legally required to apply their minds to the question of whether the summary arrest power should be exercised, once the substantive grounds for exercising the power were made out. If this is indeed the true position, it is to the Respondent's credit that no effort has been made to retrospectively 'manufacture' justifying assessments which were not at the time actually carried out.

The Applicant's submissions on the factual merits of the unlawful arrest argument

24. No need to consider the Applicant's submissions on the factual merits of the unlawful arrest argument arises. He has adduced evidence complaining that the arrest was unnecessary because he would have voluntarily assisted the Police (First Sannapareddy, paragraph 49). The answer to the question of why an arrest was necessary, which was in effect "we arrested him because we could", was not responsive to this core complaint.

25. The Respondent's position, again, amounted to a tacit concession that the complaint is factually arguable assuming (which of course is not conceded) that the Applicant is correct in his legal argument that the exercise of the discretion to deploy the summary arrest power is amenable to judicial review on *Wednesbury* reasonableness grounds.

Interlocutory findings: merits of unlawful arrest argument

26. The Applicant's central complaint was plainly arguable and the Respondent did not ultimately have the temerity to seriously contend otherwise.

Has the Applicant failed to pursue alternative available and more suitable remedies?

The Respondent's submissions on alternative remedies

27. The broad submission on this point was formulated in the Respondent's Skeleton Argument as follows:

> "*2.1 The jurisprudence on this principle has provided a number of strong statements for guidance of the Courts considering JR. They can be summarised as follows: it is a 'cardinal principle…save in the most exceptional circumstances', that JR would not be exercised where other remedies were available and had not been used (R-v-Epping and Harlow General Commissioners, ex parte Goldstraw [1983] 3 All ER 257)…That JR should not be made available if an alternative remedy exists, has been described by Lord Scarman as, 'a proposition of great importance' (in Re Preston [1985] AC 835)…*"

28. This submission was clearly sound as a matter of general principle. But this principle has generally been understood to be designed to exclude either the pursuit of judicial review proceedings or the granting of public law relief when, in a real and immediate sense, there is an available alternative remedy specifically designed to adjudicate a complaint which has been improperly and/or prematurely referred to judicial review. Defending pending proceedings on their merits (assuming a fair trial is possible) and exhausting statutory appeal rights are classical cases in point, as was clear from the authorities cited by the Respondent's counsel. The proposition that the Applicant should wait and see if criminal charges were laid, and (a) if he was charged raise the issue in the criminal proceedings, and (b) if no charges were laid pursue a civil action, distorted the established alternative remedies doctrine almost beyond recognition.

29. Bearing in mind that alternative remedies arguments can always be advanced at the substantive hearing of a judicial review application, leave to seek judicial review proceedings is only ever refused at the outset in deference to alternative remedies in the clearest of cases. The suggestion that a writ action for unlawful arrest was a more appropriate alternative remedy would have greater force had it been clear that the Applicant was seeking an adjudication of contested facts and exploring the *bona fides* of the reasons for suspecting him to be guilty of an offence. The mere fact that he has made somewhat speculative assertions about the motivations behind his arrest does not mean that those matters must necessarily be explored in the present proceedings. As at the date of the hearing of the Respondent's Summonses, the motivations behind the arrest appeared to be largely irrelevant as, in the absence of any reasons being advanced for the decision to use the summary power, there was no obvious need to discredit the genuineness or *bona fides* of the Respondent's motives in effecting the

Applicant's arrest. After all, the Respondent's main legal argument appears to be that as a matter of construction of section 23(6), no need arises to justify the decision to exercise the summary arrest power when the grounds for exercise of the power are made. In these circumstances, the Applicant's primary case appeared to be that the arrest was unlawful because the Respondent gave no consideration at all to the question of whether it was appropriate to exercise the summary arrest power.

30. The Respondent also complained that that if the Applicant wanted to raise constitutional arguments he should seek relief under section 15 of the Constitution. This was on its face a wholly circular argument as section 15 (2) itself provides:

> "*Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.*

31. The argument was unconvincing for two further reasons. Firstly it was based on a serious mischaracterisation of the Applicant's complaint. The primary argument was that in construing section 23(6) of PACE, regard must be had to the fact that any arrest and search without a warrant necessarily engaged fundamental rights and freedoms protected by the Bermuda Constitution. Secondly, it ran counter to this Court's well settled modern approach of entertaining constitutional arguments under the umbrella of judicial review applications. That approach is grounded in the view that this Court should make it easier rather more difficult for citizens to vindicate their constitutional rights assuming they are advancing potentially valid claims.

The Applicant's submissions on alternative remedies

32. Lord Goldsmith QC in his Skeleton Argument made the following compelling submission in response to the suggestion that a future criminal trial was a more appropriate remedy:

> "*18. The Respondent has pointed to no authority for the proposition that the subject of a police investigation needs to await the conclusion of that investigation before challenging the police's use of public law powers in its pursuit. In none of the numerous authorities dealing with such challenges considered by those acting on behalf of the Applicant does the point even appear to have been raised. The legitimate concern to limit satellite litigation in relation to issues that can be raised within the criminal trial presupposes that there are criminal proceedings in existence in relation to which the application for judicial review can be said to be satellite.*"

33. As to the suggestion that a civil action for wrongful arrest was more appropriate, it was correctly submitted that "*in the cases where the issue is raised it is a question of degree and judgment by the court as to which procedure is more apt to deal with the*

issues raised in the particular case….the present case is not one which calls for any fine balancing exercise for the simple reason that the main issue before this Court is the correct interpretation of section 23(6)".

34. As to the suggestion that no constitutional argument could be raised without an application under section 15 of the Constitution, The Applicant's counsel aptly relied upon my own recent findings that constitutional points can be resolved in judicial review proceedings and that applications under section 15 are intended to be a last, not a first resort: *Centre for Justice-v-The Attorney General and Minister of Legal Affairs* [2016] SC (Bda) 72 Civ (see e.g. paragraphs 25-29).

Interlocutory findings on alternative remedies

35. I could for the above reasons only properly find that there were no sufficient grounds made out at the interlocutory stage for setting aside leave, striking-out or staying the present proceedings because there were other more appropriate available remedies for the Applicant to pursue. This was on the tacit understanding that the application would not involve the determination of contentious facts underpinning the motivations behind the arrest decision. Such factual disputes are generally considered to be unsuitable for resolution in the context of judicial review proceedings: *Scher et al-v-Chief Constable of Greater Manchester Police et al* [2010] EWHC 1859 (at paragraph 105).

Is it inappropriate to seek judicial review of the legality of an arrest while a criminal investigation is pending because the investigation might be prejudiced?

The Respondent's submissions

36. The Respondent was unable to identify a single authority for the proposition that it was so obviously inappropriate to seek judicial review in circumstances where a pending criminal investigation might be prejudiced that the present proceedings should be struck out, or the leave granted set aside, at the interlocutory stage. The only principle which counsel was able to identify was formulated in counsel's Skeleton Argument as follows:

> "*2.25 A legitimate reason for denying JR, may be, that any remedy or order arising from the JR or the process of the JR, would have serious implications or unacceptable adverse effect upon the public duties of the Respondent. the court is entitled to take into account the effect of JR upon third parties who have an interest in the outcome of the JR (R v Monopolies and Mergers Commission, ex p Argyll Group Plc [1986] 2 All ER 257. The Court took account of the adverse effect to shareholders*

in Distillers (during a takeover bid between Guinness and Argyll group of companies), of a decision on JR."

37. The *Argyll Group Plc* case (in which, coincidentally, the Applicant's leading counsel appeared as a junior counsel for Guinness) most directly supports a far narrower proposition. Namely, that whether considering to exercise its discretion to grant relief by way of judicial review at the substantive hearing of the application, regard must be had to the public implications of granting relief. It was accepted by the English Court of Appeal in that case that the applicant had *locus standi* to seek relief in relation to a decision of the Monopolies and Mergers Commission.

38. However, I accept that it is possible to extract from this case support for the wider proposition upon which Ms Weekes QC relied. This was most importantly the submission that "*it is a matter of public importance that a criminal investigation should be allowed to take its course without interruption or risk of possible derailment by a process of JR*". The complaint that it would be wrong for the Respondent to be required to disclose confidential material to justify the arrest appeared to me to be an entirely valid one. However, when the issues identified in paragraph 14 of the Applicant's leave Skeleton Argument were analysed in light of the response to those questions already provided (via the First Tomkins Affidavit) by the date of the January 24, 2017 hearing, the potentially valid complaint lacked any substance.

39. All that properly remains to be analysed by the Court is the statutory construction of section 23(6) of PACE, the Respondent's position crucially turning on whether or not they are right in contending that the arresting officers only had to consider whether grounds for arresting existed, and did not have to go further and consider whether a summary arrest was reasonably required. To the extent that the grounds for the arrest may need to be scrutinised, they have already been disclosed in fairly general terms which reveal no confidences.

40. In the course of oral argument Ms Weekes QC complained about the risk of materials filed in the present proceedings being deployed in the public domain in a manner which might, as I viewed it, not simply prejudice the investigation but possibly any future criminal trial (whether involving the Applicant or third parties) as well. It would clearly be an abuse of process to use judicial review proceedings for such collateral purposes. In the modern social media era, it is entirely realistic to fear that litigants with nothing to lose might commence civil proceedings containing scandalous allegations and widely disseminate court filings via the Internet to gain some collateral advantage in another domain. This did not appear on the face of it to be such a case, however. The Applicant in any event stands warned in this respect. Moreover, the risk of a future abuse of process cannot amount to grounds for denying a litigant access to the Court when there is no compelling evidential basis to support a finding that an abuse of process has actually occurred.

The Applicant's submissions on the appropriateness of his application during the pendency of an investigation

41. The Applicant's submissions on this issue require no detailed consideration in light of the comments set out above explaining why I was unable to accept the Respondent's submissions on this issue. Authorities were placed before the Court by the Applicant which demonstrated that the English courts do not regard it as controversial to grant judicial review at the criminal investigative phase: *Harry Redknapp and another-v-Commissioner of the City of London Police et al* [2008] EWHC 117(Admin); *R (Rawlinson & Hunter Trustees et al)-v- Central Criminal Court (et al)* [2013] 1WLR 1634. It was not suggested by the Respondent that these authorities did not have persuasive value in the local context and so should be completely ignored.

Interlocutory findings on appropriateness of seeking judicial review of investigative action during the pendency of an investigation

42. I was bound to find that there was no broad legal policy objection to judicially reviewing the legality of an arrest while a criminal investigation was still pending. Nor was there any evidential basis for concluding that the present proceedings are abusive because they have been brought for a collateral purpose. That does not mean that this Court will allow judicial review proceedings to be used as a device to undermine the efficacy of pending criminal investigations. The main purpose of judicial review is to uphold the integrity of the administrative processes which are under challenge.

43. In *R v Monopolies and Mergers Commission, ex p Argyll Group Plc* [1986] 2 All ER 257 at 266, a case upon which the Respondent's counsel aptly relied, Sir John Donaldson MR (as he then was) articulated an umbrella principle which this Court must always keep in mind:

> "*We are sitting as a public law court concerned to review an administrative decision, albeit one which has to be reached by the application of judicial or quasi-judicial principles. We have to approach our duties with a proper awareness of the needs of public administration….*
>
> *Good public administration requires a proper consideration of the legitimate interests of individual citizens, however rich and powerful they may be and whether they are natural or juridical persons. But in judging the relevance of an interest, however legitimate, regard has to be had to the purpose of the administrative process concerned….*"

44. The true meaning and effect of section 23(6) of PACE is important to the parallel interests of public administration which the Act is designed to protect: the interests the citizen in relation to whom the summary powers of arrest are exercised and the wider public who benefit from the effective investigation and prosecution of crimes. Permitting judicial review of the legality of the Applicant's summary arrest does not obviate the need for the Court to keep these two competing public policy interests in mind.

Conclusion

45. For the above reasons on January 24, 2017 I dismissed the Respondent's Summonses, which sought to strike-out or stay the present proceedings and/or to set aside the leave to seek judicial review which was granted on the papers on August 4, 2016.

Dated this 6th day of February, 2017 _____
IAN RC KAWALEY CJ