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RE: GEOFFREY MILES GRANGER JOHNSON

[HIGH COURT, 1995 (Scott J), 31 July]

Revisional Jurisdiction

B *Crime-procedure-how far there is scope for Judicial Review of interlocutory rulings in criminal proceedings in the Magistrates Courts.*

The Applicant sought leave to move for judicial review of an interlocutory ruling made in the Magistrates Court in the course of criminal proceedings against him. HELD: (1) Save in the most exceptional circumstances judicial review is not available in respect of criminal proceedings in the Magistrates C Courts (2) interlocutory rulings are only very rarely reviewable.

Cases cited:

Anisminic Limited v. Foreign Compensation Commission [1969] 2 AC 147
Chief Constable of North Wales Police v. Evans [1982] 3 All ER 141
D *Din v Wandsworth Borough Council* [1983] 1 AC 657
Mohammed Sadiq Khan v. Reginam (1961) 7 FLR 138
Neil v North Antrim Magistrates' Court [1994] 6 Admin LR
R v. Association of Futures Brokers and Dealers Limited and Another ex-parte Mordens Limited (1991) Admin LR 254
R v Greater Manchester J.J. *ex-parte* Aldi (Times 28-12-94)
E *R v. Greater Manchester Coroner ex-parte* Tal [1985] 2 QB 67
Salaman v. Warner [1891] 1 QB 734
Suresh Charan and Others v. Shah and Others (HBJ 14/94)
White v. Brunton [1984] 1 QB 570

Application for leave to move for judicial review.

F *R. Smith* for the Applicant
I.V. Tuberi for the Respondent
I.W. Blakeley for the Interested Party

Scott J:

G This is an Application for leave to seek Judicial Review. The facts, which are not in issue are set out in the Applicant's affidavit in support filed on 17 May 1995. Briefly, the Applicant was charged with three Counts of failing to deliver Income Tax Returns and other information contrary to sections 50 (1) and 96 (1) of the Income Tax Act -Cap.201 - the Act.

When the matter came before the Resident Magistrate (S. Temo Esq. - the

Respondent) for hearing Counsel for the Applicant (Dr. J. Cameron) raised a preliminary legal objection. Dr Cameron submitted that the charges disclosed no offence known to law. This submission was disputed by Counsel for the Commissioner of Inland Revenue (the Interested Party) who, relying on Mohammed Sadiq Khan v. Reginam (1961) 7 FLR 138, argued that the relevant section of the Act did indeed create the offence with which the Applicant was charged. The Resident Magistrate, albeit with some reluctance, agreed with Mr. Blakeley and overruled the Applicant's preliminary objection. The Applicant now seeks Judicial Review of the Resident Magistrate's decision and the proceedings in the Magistrate's Court have been adjourned to allow this Application to be made.

In support of the Application Mr. Smith, referring to paragraph 111 of Volume 1 (1) of the 4th Edition of *Halsbury's Laws of England* pointed out that the High Court had the power judicially to review decisions of Magistrates' Courts and, citing various authorities referred to in the paragraph submitted that an order for certiorari was particularly appropriate where the jurisdiction of a Magistrate was being impugned. In the present case, Mr. Smith suggested, the basis of Dr. Cameron's challenge had been that the charges did not disclose an offence known to law and therefore the Resident Magistrate had no jurisdiction to try them. Anticipating objections first raised by Mr. Blakeley and Mr. Tuberi in their Notices of Opposition to the Application filed on 22 and 25 May, Mr. Smith, referring to observations made by the House of Lords in Chief Constable of North Wales Police v. Evans [1982] 3 All ER 141, argued that Judicial Review was not an appeal from a decision but a review of the manner in which the decision was taken. Since in the present case it was to be argued that the Resident Magistrate had no jurisdiction to proceed to hear the charges against the Applicant an appeal would be inappropriate; the only suitable remedy was Judicial Review.

The first objections raised to the Application were by Mr. Blakeley who, citing R v. Association of Futures Brokers and Dealers Limited and Another *ex-parte* Mordens Limited (1991) Admin L.R. 254, 263 - 4 argued (a) that the Application was inappropriate and premature and (b) that it revealed no arguable grounds. Mr Tuberi supported these objections. He also cited a decision of this Court namely Suresh Charan and Others v. Shah and Others (Byrne J - HBJO014/94) in support of the proposition that the High Court will not entertain an Application for Judicial Review until an Applicant has exhausted any other remedies available to him, particularly a right of appeal. Mr. Tuberi submitted that the Applicant not having appealed his Application should be rejected.

The first matter that has to be examined is the nature of Dr Cameron's challenge. Dr. Cameron argued that section 96 (1) of the Act did not create an offence and therefore there was nothing for the Applicant to plead to and nothing for the Resident Magistrate to try. Mr. Blakeley, citing reported authority argued

that it did. The Resident Magistrate agreed with Mr. Blakeley. Did Dr. Cameron's challenge amount to a challenge to the Resident Magistrate jurisdiction? In my view it probably did, however I do not think that the use of the concept of jurisdiction advances the Applicant's case. This is because almost all errors of law go to jurisdiction since there is a presumption that if a Resident Magistrate makes an error of law within his jurisdiction then his action exceeds his jurisdiction and is liable to be quashed. (See Anisminic Limited v. Foreign Compensation Commission [1969] 2 AC 147; R v. Greater Manchester Coroner *ex-parte* Tal [1985] 2 QB 67 and also Din v. Wandsworth Borough Council [1983] 1 AC 657). This does not however mean that whenever a Resident Magistrate makes an error of law Judicial Review is the only appropriate remedy.

In Fiji the procedure for correcting errors made in Magistrates' Courts is governed by the Criminal Procedure Code, Cap 21, and not by English statutes or authorities. Section 3 of the Code makes it quite clear that although the High Court has a saving power "all offences ..... shall be inquired into, tried and otherwise dealt with" according to the provisions of the Code. The term "offences" obviously includes alleged or charged offences since otherwise the Court would not be able to enquire into or try alleged offences in respect of which an acquittal was subsequently entered.

The Criminal Procedure Code is a comprehensive code which lays down the procedures for dealing with the trial of criminal offences in Magistrates' Courts and any subsequent appeal (Part X), Revision (sections 323 et.seq) or Case Stated (sections 329 et.seq). Although (and notwithstanding R.H.C. 0.1 r.8 (2)) section 3 (3) of the Code may be read to preserve the power of the High Court to issue Prerogative Writs in respect of proceedings in a Magistrates' Court there is no specific mention in the Code of such Writs and indeed the suggestion that errors of law going to jurisdiction are especially appropriate for Judicial Review in Fiji is, if anything, directly contradicted by section 329 (1) of the Code which provides that:

> "After the hearing and determination by any Magistrates' Court of any summons, charge or complaint either party to the proceedings before the said Magistrates' Court may, if dissatisfied with the said determination *as being erroneous in point of law, or as being in excess of jurisdiction*, apply in writing ....."(emphasis mine).

Two further points clearly emerge from careful reading of this section. First, the procedure laid down is identical for errors of law and challenges to jurisdiction. Second, the procedure is to be initiated *after* the hearing and determination of the summons, charge or complaint and not *before* the hearing and determination had ever taken place as is the case here.

In my view to describe the Resident Magistrate's ruling on Dr. Cameron's Application as "jurisdictional" is merely to confuse the matter with abstruse legal theory. In Magistrates' Courts in Fiji there is really no practical difference between one type of ruling in law and another. If it is alleged that a Resident Magistrate made an error of law prior to finding guilt then an appeal may be lodged, a request for a case to be stated may be made or in certain special circumstances the High Court may be asked to review under section 323. In my opinion, save in the most exceptional circumstances, such circumstances being saved by section 3 (3), there is no scope or purpose whatever for Judicial Review of a decision of a Magistrate's Court to be brought in the High Court under the provisions of Order 53 of the High Court Rules. I would go further. In my view, the attempt to graft Judicial Review under the provisions of Order 53 onto the Criminal Procedure Code so as to provide a fourth channel or procedure for reversing decisions of the Magistrate's Court is wholly unwarranted and unnecessary. It can only lead to confusion error and delay.

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There are two further important considerations. The first is that as already pointed out the Code itself suggests that the case stated procedure may be used where excess of jurisdiction is being alleged. That does not of course mean that where the only ground of appeal is an alleged error of law then section 308 cannot be used. Section 308 (3) makes it quite clear that "an appeal to the (High Court) may be on a matter of fact as well as on a matter of law". (emphasis added). I can see no reason for thinking that an allegation that a Resident Magistrate had exceeded his jurisdiction could not be considered "a matter of law".

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Assuming therefore that a jurisdictional error is being alleged, the Code provides two methods for applying for correction of the error and that being the case, as was pointed out by Byrne J in Suresh Charan and Others v. Shah and Others [supra] an Application for Judicial Review of the alleged error cannot be entertained since the Applicant has not exhausted the other remedies available to him.

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The second important consideration arises from the fact that the Ruling which the Applicant seeks to have reviewed was undoubtedly interlocutory. Mr. Smith suggested that since the Application, relating as it did to jurisdiction, went to "the heart of the prosecution" the Ruling had the character of finality. I disagree. While the Resident Magistrate's Ruling had it gone in favour of the Applicant would have disposed of the proceedings it clearly did not once he ruled the way he did. Therefore, applying the now accepted "application approach" the ruling was interlocutory (see White v. Brunton [1984] 1 QB 570 and Salaman v. Warner [1891] 1 QB 734).

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On 30 September 1993 the Chief Justice issued Practice Note No.1 of 1993 entitled "Judicial Review of Interlocutory Orders". A copy was sent to the

Secretary of the Fiji Law Society and therefore all legal practitioners should be aware of it. The penultimate paragraph of the note reads:

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> "The Legal Profession is therefore requested to note that only in the most exceptional cases will the High Court grant leave judicially to review interlocutory decisions".

The reasons for the Practice Note and the general rule are obvious and have been recognised not only in Fiji but also in other closely related jurisdictions.
B (See generally: Neil v North Antrim Magistrates' Court [1994] 6 Admin L.R. and R v Greater Manchester J.J. *ex-parte* Aldi. (The Times 28 December 1994). In England's Queens Bench Division Mr Justice McCullough in R v. Association of Futures Brokers etc (supra) said:

> " ... The Court should emphasise that it is only in most
> C exceptional circumstances that the Court will grant Judicial Review of a decision taken during the course of a hearing by a body amenable to the Courts supervisory jurisdiction before the hearing has been concluded. The practice which this Court almost invariably follows is to decline to hear a challenge to an interlocutory decision until the proceedings in which it
> D was taken have been concluded .... to entertain challenges at the interlocutory stage would play havoc with the conduct of proceedings in Courts and Tribunals below. Even to make an application to this Court will in most cases occasion at least some interruption to the course of those proceedings ..... not only is time wasted, relationships are upset. Once the
> E proceedings in this Court are over the hearing must resume with the Tribunal once more above and between the Parties rather than alongside one and against the other as here. Further, to come to this Court too soon is in many cases to come unnecessarily. The Party aggrieved by an interlocutory decision may nevertheless be satisfied by the outcome of the
> F proceedings. A decision which, when it was made, was thought to be wrong or likely to have a significant effect on the outcome of the proceedings may, in the end, turn out to have been right or immaterial to the result".

Mr. Smith did not advance any argument in support of the proposition that
G this was an exceptional case. In my view it was not. In my Judgment this Application for Judicial Review is entirely misconceived. It must be dismissed.

There is one final point. Resident Magistrates and Practitioners may possibly be concerned that where the only defence is a challenge to the jurisdiction or possibly some other point of law, sections 206 (3) and 209 of the Code nevertheless require the Court to embark on a perhaps lengthy hearing of undisputed evidence. Clearly such a waste of time should be avoided if possible.

The best answer, given the restraints imposed by the present Code, may lie in a greater use of the procedure set out in section 192.

(Application dismissed.)