PAUL EDDIE v. ATTORNEY-GENERAL

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Civil Case No. 72 of 2006.

Date of Hearing: 31st March 2006.
Date of Judgment: 7th April 2006.

K. Averre for the Applicant.
N.Mosinsky, Q.C. with F.Waleasia for the Respondent.

JUDGMENT.

Kabui, J: This case is about the right of an accused person in a criminal proceeding not to be hand-cuffed whilst sitting in the dock in a Magistrate Court. There is no provision in the Magistrates Courts Act (Cap. 20) nor is there any in the Criminal Procedure Code Act (Cap. 7), "the CPC" which says anything about it. These statutory provisions are silent about it. Whereas in criminal proceedings in the High Court, the position is governed by section 250 of the CPC which says that the accused person shall be placed at the bar unfettered unless there is a good reason to do otherwise by the court.

However, it is not the issue to be decided in this case. Rather, it was the issue of dispute between the parties which brought about this application for judicial review. In this jurisdiction, judicial review is still called prerogative writs. It is the same thing but with different names.

The Notice of Motion.

The notice of motion seeks both mandamus and certiorari together. Counsel for Paul Eddie did not say whether or not these remedies were in the alternative or they were being sought together. I think they are in the alternative so that if one fails, the other can survive.

How the facts came about in the Magistrate Court.

Mr. Drumgold was the Counsel for Paul Eddie on the 24th February 2006 who had been charged with rape. On that date, Mr. Drumgold had been instructed to apply for bail. When Paul Eddie appeared in the dock, he was hand-cuffed and flanked by two prison guards. Mr. Drumgold, at the commencement of the hearing, applied to the sitting Magistrate that the hand-cuffs fixed to the wrists of Paul Eddie be removed from his client. The Magistrate, after having heard submission from the Crown, said that he was not prepared to make a decision on a matter of policy.

The Magistrate did not seem to take down any notes of the proceeding but he recalled by way of an affidavit that he had said that he did not "**accept applications on policy matters in a busy list and make decisions on the run.**" He also explained in his affidavit the circumstances prevailing at the Magistrate's Court premises at the relevant time.

The non-attention given by the Magistrate to the application for the removal of hand-cuffs and the fact that the Magistrate did not rule on that application, prompted Paul Eddie to act against that omission made by the Magistrate.

Paul Eddie has now been committed to stand his trial in the High Court.

The remedies being sought by Paul Eddie.

In the first place, Paul Eddie seeks an order of mandamus against the Magistrate to command him to fulfill his duty as a Magistrate and rule on his application. In the second place, he seeks an order for certiorari to bring into the High Court and quash the practice or policy in the Magistrates' Courts where accused persons are hand-cuffed in the body of the court unless ordered otherwise by the court.

These remedies are discretionary in nature. The parties do not dispute that position.

Why should the Magistrate be obligated to rule on the application by Paul Eddie?

Obviously, Mr. Drumgold wanted a ruling to be made by the Magistrate on his client's application. The fact was that Paul Eddie was in the dock hand-cuffed. That fact was not disputed. Mr. Drumgold wanted the hand-cuff removed. Not only did he do that, but he cited common law authorities in support of his application. The application clearly raised a legal ground for consideration by the Magistrate. The legal ground cited in the common law authorities by Mr. Drumgold clearly put the correctness of the policy position of the Chief Magistrate in question. The Magistrate clearly had been asked to rule whether the common law prevailed over policy or not in respect of the application. The Magistrate had a duty to do that to put the matter to rest at least in respect of the Magistrates' Courts' proceedings. He failed to do that in this case.

In fact, the letter addressed to the Public Solicitor, jointly signed and dated 23rd February 2006 by two officers of the prison authorities in Rove Prison being Annexure "**A**" to Mr. Drumgold's affidavit filed on 1st March 2006, made it clear that any decision to remove hand-cuffs in court was for the Magistrate to make on application to the Magistrate. The Magistrate seemed to have overlooked that also.

Would an order of mandamus lie in this case?

Counsel for the Resondent, Mr. Mosinsky, Q.C., had argued that even if mandamus was inevitable, it should not be granted because Paul Eddie had already been committed to stand his trial in the High Court and would not appear again in the Magistrate Court. That is, the issue had become an academic one for that reason. In other words, it would be pointless to grant an order of mandamus in a case such as this where Paul Eddie will no longer be affected by any ruling by the Magistrate.

The Magistrate court records do show that the Magistrate did commit Paul Eddie to stand his trial in the High Court on 10th March 2006. The warrant of remand was also signed by the Magistrate on that same date. Paul Eddie had on that date gone into the domain of the High Court and will enjoy the benefit of section 250 of the CPC when he finally appears before a trial judge on a date to be fixed. The High Court now has jurisdiction over him and will deal with him accordingly.

Paul Eddie filed his application for leave on 1st March 2006 and the High Court granted leave on 16th March 2006, six days after Paul Eddie had been committed to stand his trial in the High Court on a date to be fixed.

Whilst the issue of use of hand-cuffs in the Magistrate Courts is an important one, the use of mandamus to command the Magistrate to make a ruling on the issue at this stage of proceedings against Paul Eddie seems pointless. That is, even if I grant an order for mandamus and the same Magistrate makes a ruling for or against Paul Eddie, it serves no purpose because it matters no more for Paul Eddie.

Paul Eddie will derive no benefit from the issue of mandamus in this case. The possibility of him appearing again in the Magistrate Court in hand-cuffs does not exist any more for him. That is, the need for deciding whether Paul Eddie should continue to appear in the Magistrate Court with hand-cuffs on or not no longer arises after his committal.

The purpose of applying to the Magistrate for hand-cuffs to be removed had been brushed aside by the Magistrate resulting in perhaps subsequent court appearances with hand-cuffs on, the last being on 10th March 2006. Whilst the hand-cuffs issue remains open ended, mandamus is not the appropriate remedy in this case. The public importance of the issue may be litigated in another way another time than mandamus being the remedy in this case.

Suing for trespass is a matter for him if he wishes to do so. He does not have to wait for an order for mandamus to enable

him to do that to vindicate his right to appear in any Magistrate Court without hand-cuffs.

In the result, I refuse to grant an order for mandamus.

Should an order for certiorari lie as well in this case?

The case for Paul Eddie is that Annexure **"A"** attached to Mr. Drumgold's affidavit should be quashed as being unlawful in that it contravenes the principles of the common law about the use of hand-cuffs in any magistrate court. Mr. Averre describes Annexure **"A"** as **"the policy, decision or practice"** of the Magistrate Court communicated to the Public Solicitor's Office in a joint letter dated 23rd February 2006.

Annexure "A".

Annexure **"A"** as a document attached Mr. Drumgold's affidavit referred above, makes it quite clear that the practice of prisoners being hand-cuffed in court was to continue subject to any application to remove hand-cuffs in any case being made to the magistrate by any solicitor on behalf of his or her client. So there was no blanket bar at all against the removal of hand-cuffs. However, that position appears to be the opposite of the alleged common law position put forward by Mr. Drumgold in the Magistrate Court.

Annexure **"A"** is a kind of working understanding guide between the Magistrates' Courts, the Prison Authorities and the Public Solicitor's Office. The Magistrate called it a policy matter. Annexure **"A"** is not meant to be binding in a legal way. It simply represents the practice to be followed by the Magistrates Courts. In this case, it was only a result of an internal consultation between the Chief Magistrate and the Prison Authorities based on administrative convenience without the application of any legal principles.

Is certiorari the correct remedy?

There is no evidence of the Chief Magistrate having acted beyond jurisdiction because both the Magistrates Courts Act

and the CPC are silent on the issue of use of hand-cuffs in the Magistrates' Courts. The Chief Magistrate in consultation with the Prison Authorities in his administrative capacity as the Head of the Magistracy was not a sitting of the Magistrate Court or of some kind of tribunal. Annexure **"A"** is therefore not strictly a record of a tribunal showing an error of law to invoke certiorari as a remedy.

Granting the order of certiorari as asked for by Paul Eddie amounts to me accepting that the position at common law is the correct one regarding the use of hand-cuffs. That is not right because the law has not yet been decided on the point in issue. Certiorari as a public law remedy does not confer private rights but rather it quashes a decision of a tribunal which had committed errors of law on its record or had acted beyond its jurisdiction. It does not determine any point of law that may be in dispute.

This, to my mind, is the difficulty in applying the certiorari mould to the facts. The correct mould appears to be a declaration. This appears to be so because of the nature of the facts arising from a government departmental memorandum referred to in Mr. Drumgold's affidavit referred to above.

The law on departmental circular memorandum issued by government authorities.

The question of whether judicial review can be applied to departmental circulars was discussed by the House of Lords in **Gillick v. West Norfolk Area Health Authority** [1985] 3 All E.R. 402. At page 462, Lord Bridge of Harwick said-

> "...**The question whether the advice tendered in such non-statutory guidance is good or bad, reasonable or unreasonable cannot, as a general rule, be subject to any form of judicial review. But the question arises whether there is any exception to that general rule...**"

His Lordship answered the second question in the affirmative. That is, there were exceptions to the rule but said such exceptions were rare. His Lordship cited **Royal College of**

Nursing of the UK v. Department of Health and Social Security [1981] 1 All E.R. 545 where an order was made declaring that a circular advising a certain course of action was unlawful. That case was an exception because there had been a conflict of legal advice and the true legal position needed to be authoritatively stated.

In fact, Lord Templeman at page 436 said-

> "...**The issue is not whether the DHSS is exercising a statutory discretion in a reasonable way but whether by mistake of law the DHSS, a public authority, purports by the memorandum to authorize or approve an unlawful inference with parental rights...**"

That is, there were defects in the circular memorandum which amounted to a mistake of law. However, referring to exceptions to the general rule, His Lordship at page 437 said-

> "...**In cases where any proposition of law implicit in a departmental advisory document is interwoven with questions of social and ethical controversy, the court should, in my opinion, exercise its jurisdiction with the uttermost restraint, confine itself to deciding whether the proposition of law is erroneous and avoid either expressing ex cathedra opinions in areas of social and ethical controversy in which it has no claim to speak with authority or proffering answers to hypothetical questions of law which do not strictly arise for decision...**"

So there is a warning though that the court has to be very careful about dealing with the issue so as not to overshoot the boundaries of the issue.

Departmental circulars being a different kettle of fish and do not attract certiorari.

The case **Gillick v West Norfolk Health Authority** cited above does not seem to indicate that certiorari is the remedy for departmental circulars cases falling into the exception

recognized in that case. At page 427, Lord Bridge of Harwich said-

> "... **We must now say that if a government department, in the field of administration in which it exercises responsibility, promulgates in a public document, albeit non-statutory in form, advice which is erroneous in law, then the court, in proceedings in appropriate form commenced by an applicant or plaintiff who possess the necessary locus standi, has jurisdiction to correct the error of law by an appropriate declaration...**"

That is, any advice given which is erroneous in law can be corrected by way of a declaration, being the appropriate remedy. Certiorari is an inappropriate remedy in this case.

I have therefore come to the conclusion that I cannot make an order of certiorari. I refuse to make that order as requested.

Conclusion.

In the result, I will not grant orders for mandamus and of certiorari. The application is dismissed. I make no order as to costs.

F.O. Kabui, J.