

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 261 of 2023**

**BETWEEN:**

**[1] RAYMOND CLINTON MAGDALENO**

Applicant

**and**

**[1] SECURITY SERVICES COMMISSION  
[2] COMMISSIONER OF POLICE  
[3] ATTORNEY GENERAL**

Respondents

**Appearances:**

Kimberly Wallace for the Applicant

Agassi Finnegan and Stanley Grinage for the Respondents

-----  
2023: July 28

September 1

November 24  
-----

**RULING ON APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW**

[1] **CHABOT, J.:** Raymond Clinton Magdaleno is a Police Inspector with the Belize Police Department (the “Department”). Mr. Magdaleno applies for the judicial review of a decision of the Security Services Commission (“SSC”) to transfer him retroactively from Training Officer, Eastern (Police) Division, Belize City, Belize District, to

Professional Standards Branch, Belmopan City, Cayo District with effect from 1<sup>st</sup> March 2022 (the “decision”). Mr. Magdaleno alleges that the decision breaches the Belize Police Departmental Orders,<sup>1</sup> the Belize Police Department Policies & Procedure Manual, and the Belize Constitution (Public Service) Regulations, 2014.<sup>2</sup> The respondents oppose the application on the grounds that it discloses no arguable case, that it is delayed, and that an alternative remedy exists to address the matter.

- [2] For the reasons outlined in this decision, I dismiss the application. The discretionary bars of alternative remedy and delay apply. The Belize Advisory Council (“BAC”) is an alternative remedy which can resolve the questions raised in this matter fully and directly. This application was filed four months from the date when the grounds for the application first arose, and Mr. Magdaleno has not provided a good reason for extending the period within which the application can be made.

## **Background**

- [3] On 10<sup>th</sup> January 2023, the SSC approved Mr. Magdaleno’s transfer from Training Officer, Eastern (Police) Division, Belize City, Belize District, to Professional Standards Branch, Belmopan City, Cayo District with effect from 1<sup>st</sup> March 2022. The SSC’s decision was contained in a letter dated 30<sup>th</sup> January 2023, which Mr. Magdaleno claims he received on 9<sup>th</sup> February 2023.
- [4] According to Mr. Magdaleno, in 2022 he received a letter dated 22<sup>nd</sup> February 2022 from the Commissioner of Police (the “Commissioner”) informing him of the Department’s intention to transfer/repost him with effect from 1<sup>st</sup> March 2022. His then attorney wrote to the Commissioner of Police to note that it was unreasonable for Mr. Magdaleno to relocate his family and conduct a handing over of his desk within seven days from receiving the letter from the Commissioner. Mr. Magdaleno’s attorney requested that he be granted “ample time to relocate and hand over his desk”, and that notice of transfer be given between January and March for a transfer to take place in July or August, in accordance with the procedures and principles in the PSR, the

---

<sup>1</sup> No. 16 of 2013.

<sup>2</sup> Statutory Instrument No. 59 of 2014 (“PSR”).

Police Act, and other legislation. The Department responded to Mr. Magdaleno, advising him to address his concerns internally. No follow up with regard to Mr. Magdaleno's transfer was made until he received the letter from the SSC advising him of the decision to transfer him.

[5] On 3<sup>th</sup> April 2023, Mr. Magdaleno's new attorney wrote to the Commissioner requesting the transfer to be rescinded. On 26<sup>th</sup> April 2023, DCP Bartholomew F. Jones, on behalf of the Commissioner, responded that the Commissioner of Police is not the proper forum to accede to Mr. Magdaleno's request.

[6] Mr. Magdaleno challenges the decision on the grounds that it breaches the established procedure for the transfer of police officers as set out in the Belize Police Departmental Orders, the Belize Police Department Policies & Procedure Manual, and the PSR. Mr. Magdaleno is fifty-three years of age, and less than two years away from retirement. Mr. Magdaleno argues that this factor should have weighed against the transfer in accordance with the regulations and policies in place. Mr. Magdaleno also challenges the decision on the ground that the SSC exceeded its powers by making the transfer retroactive, and that the transfer was ordered for improper motive.

[7] Mr. Magdaleno seeks permission to apply for the following reliefs:

1. An order that the Applicant be granted permission to apply for judicial review to challenge a decision of the 1<sup>st</sup> Respondent, contained in a Memorandum bearing reference number P/SP/386/23(9), dated 31<sup>st</sup> January, 2023, which enclosed a letter addressed to the Applicant, with reference number SSCP/192/23(20), dated 30<sup>th</sup> January, 2023, purporting to transfer the Applicant from Training Officer, Eastern (Police) Division, Belize City, Belize District, Belize, to Professional Standards Branch, Belmopan City, Cayo District, Belize, with effect from 1<sup>st</sup> March, 2022, including for declaratory relief that the decision is *ultra vires*, in breach of natural justice, done without adequate consultation, unreasonable and irrational and an order of certiorari quashing the decision.
2. An injunction staying the 1<sup>st</sup> Respondent's decision pending the outcome of this matter.
3. An order that, if necessary, the Honorable High Court extend the time for the Applicant to seek permission to apply for Judicial Review.
4. Such further or other relief as may be just.

5. Cost in the cause.

- [8] The respondents object to permission to apply for judicial review being granted because the decision to transfer Mr. Magdaleno retroactively was not unreasonable, irrational, or contrary to the Departmental Orders. Mr. Magdaleno was one of sixteen superior officers in the Department who were transferred retroactively around February 2023. The need for retroactive transfers arose from the fact that the period of appointment of the members of the SSC ended, and new members needed to be appointed. The last meeting held by the previous SSC was on 3<sup>rd</sup> May 2022. The Department's request to transfer Mr. Magdaleno did not reach the SSC before its last meeting. Because there was no meeting of the SSC until December 2022, there was a backlog of matters. Upon the SSC being reconstituted, matters were addressed by order of priority.
- [9] The respondents argue Mr. Magdaleno has no arguable case. The SSC acted lawfully and in the best interest of the Department when it approved Mr. Magdaleno's transfer with effect from 1<sup>st</sup> March 2022, in compliance with the PSR. The respondents further argue that there is an effective alternative remedy available to Mr. Magdaleno, the BAC, and that Mr. Magdaleno's application was not made promptly or within three months from the date when the grounds of the application first arose.

### **Legal Framework**

- [10] Rule 56.3 of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR") requires a person wishing to apply for judicial review to first obtain permission from this Court. Under CPR 56.2, an application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application. The first step in the analysis is therefore to determine whether the applicant has the required interest to seek judicial review.
- [11] The second step in the analysis is concerned with the application itself. In **Sharma v Deputy Director of Public Prosecutions & Ors (Trinidad and Tobago)**,<sup>3</sup> the Privy

---

<sup>3</sup> [2006] UKPC 57.

Council laid out what is now referred to as the “usual test”<sup>4</sup> for permission to apply for judicial review:

(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in *R(N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable *mutatis mutandis* to arguability:

“... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to “justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen”: *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733 [italics in original],

- [12] For permission to apply for judicial review to be granted, therefore, an applicant must satisfy the court that she or he has an arguable case having a realistic prospect of success. The court must also be satisfied that no discretionary bar, such as delay or an alternative remedy, applies to the case. The threshold to be met

---

<sup>4</sup> See for instance *Ian Haylock v Prime Minister of Belize et al.*, Claim No. 43 of 2021 at para. 16, citing *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44 and *National Commercial Bank Jamaica Ltd v Industrial Disputes Tribunal and Peter Jennings* [2016] JMCA App 27; *Julian Johnathan Myvett v Comptroller of Customs et al.*, Claim No. 761 of 2019 at para. 8.

under the **Sharma** test is considered to be low,<sup>5</sup> “at a height which is necessary only to avoid abuse”.<sup>6</sup>

## **Analysis**

[13] The parties do not dispute that Mr. Magdaleno has the required interest to apply for the judicial review of the decision. Mr. Magdaleno has been adversely affected by the decision, and as such he meets the requirement in CPR 56.2.

[14] I dismiss the application because two discretionary bars apply. An alternative remedy is available to Mr. Magdaleno, and Mr. Magdaleno has failed to provide a satisfactory justification for not using it. In addition, the application was filed outside the three-month time limit provided for in the CPR, and Mr. Magdaleno failed to provide a good reason for extending the time period within which to bring the application.

### *Alternative Remedy*

[15] Mr. Magdaleno challenges the decision of the SSC to transfer him retroactively. The decision could have been appealed to the BAC. Mr. Magdaleno is a member of the Belize Police Department, a “security service” as defined in section 110D(2) of the Belize Constitution. Pursuant to section 110D(1), the Security Services Commission has the power to appoint persons to hold or act in offices in the security services, “including the power to make appointments, and to deal with all matters relating to the conditions of service of such officers”:

110D.-(1) Subject to the provisions of this section, the power to appoint persons to hold or act in offices in the security services, including the power to make appointments, and to deal with all matters relating to the conditions of service of such officers and, subject to the provisions of section 111 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons shall vest in the Security Services Commission established under section 110C of this Constitution.

---

<sup>5</sup> Maharaj v Petroleum Company of Trinidad and Tobago Ltd (Trinidad and Tobago) [2019] UKPC 21; Attorney General of Trinidad and Tobago v Ayers-Caesar [2019] UKPC 44.

<sup>6</sup> Senator Michael Peyrefitte v Minister of Finance et al., Claim No. 563 of 2021 at para. 40.

(2) In this section “security services” means service in the Belize Police Department, the Belize National Coast Guard Service, and in the military service as defined in subsection (3) of this section:

Provided that the provisions of this Part shall not apply to the Commissioner of Police, the Commander, Belize Defence Force or the Commandant, Belize National Coast Guard Service [emphasis added].

[16] The BAC is empowered under section 54(12) of the Belize Constitution to hear appeals from officers to whom section 110D applies:

(12) Notwithstanding subsections (10) and (11), in any case where the Council is convened to discharge its duties under section 88, 98, 102, 105, 108 or 109 of this Constitution, or where the Council is convened to hear an appeal from an officer to whom section 106, 107, 110D or 110F of this Constitution applies, the Chairman shall preside at that meeting.

[17] Mr. Magdaleno is an officer to whom section 110D applies. The power conferred to the SSC under section 110D to make appointments and deal with all matters relating to the conditions of service of such officers includes the power to transfer police officers from station to station. In addition, section 123(1) of the Belize Constitution states that “any reference in this Constitution to power to make appointments to any public office shall be construed as including a reference to the power to make appointments on promotion and transfer to that office”. Mr. Magdaleno is being transferred to a different office. The BAC is therefore constitutionally empowered to hear Mr. Magdaleno’s appeal of the SSC’s decision.

[18] While the court has the discretion to find that judicial review is more appropriate than an alternative remedy available to an applicant, the onus is on the applicant to provide sufficient information in support of their contention that the alternative remedy should not be pursued in the particular circumstances of their case. Judicial review is a remedy of last resort. As I noted in **Bryant Williams dba Griga Line et al. v Minister of Youth, Sports & Transport et al.**,<sup>7</sup> citing **Benjamine Company Serviced Ltd. v**

---

<sup>7</sup> Claim No. 134 of 2022 (“Williams”).

**Anguilla Financial Service Commission**,<sup>8</sup> where an alternative remedy exists, there must be exceptional reasons for judicial review to be pursued instead:

26. As rightly noted by the Respondents, judicial review is a remedy of last resort; where an alternative remedy exists, absent exceptional circumstances courts will refuse leave to apply for judicial review. As held by the Eastern Caribbean Supreme Court in *Benjamine Company Serviced Ltd. v Anguilla Financial Service Commission*, where there exists an avenue of appeal or review created by statute, an applicant must show some exceptional reason why they should be pursuing judicial review instead:

[31] There is a presumption against judicial review where an alternative remedy exists and the Court may not grant leave where the Court forms the view that some other form of legal proceedings or avenue of challenge is available. The most obvious type of substitute remedy is an avenue of appeal or review created by statute. It is therefore for the Applicant to show some exceptional reason why the avenue of judicial review was pursued instead of the statutory appeal avenue [...]

27. The court in *Benjamine* expanded on the issue of “exceptional reason”, noting that the inconvenience, cost, and delay of the statutory procedure would not meet the threshold, nor is the fact that the time for filing the appeal has passed.

[19] As explained in **Halsbury’s Laws of England**, the modern approach to the question of alternative remedy is one of restraint and deference to Parliament’s intent:

[...] recent cases have emphasised that the courts must guard against granting judicial review merely because it is more effective and convenient since to do so risks undermining the will of Parliament. Usually the alternative remedy must be ‘clearly unsatisfactory’; the mere fact that the alternative procedure cannot grant a quashing order or declaration does not mean that it is inappropriate and an appeal by way of rehearing is capable of remedying even serious defects in procedure. Recent developments in the position of tribunals within the justice system mean that the respect given to them by the higher courts has risen and older cases are now of less help. Factors to be taken into account by a court when deciding whether to grant relief by judicial review when an alternative remedy is available are whether the alternative statutory remedy will resolve the question at issue fully and directly; whether the statutory procedure would be quicker, or slower, than the procedure by way of judicial review; and

---

<sup>8</sup> AXAHCV2017/0066.

whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body. Further, a court should bear in mind the purpose of judicial review and the essential difference between appeal and review.<sup>9</sup>

[20] In my view, where, as here, the alternative remedy available is not merely statutorily, but constitutionally mandated, the threshold for a finding that the BAC is not an adequate alternative remedy is even higher. The reasons provided by an applicant to pursue judicial review instead of appealing to the constitutional body the People of Belize have designated to hear appeals from public officers, including police officers such as Mr. Magdaleno, must be truly exceptional. An applicant must be able to clearly demonstrate that pursuing an appeal to the BAC would either be impossible, for example because the BAC does not have jurisdiction<sup>10</sup> or the applicant does not have the *locus standi* to appeal a decision to the BAC,<sup>11</sup> or that the applicant would be denied justice should they be compelled to pursue an appeal to the BAC, for example because the BAC is not empowered to grant an effective remedy to the appellant. Vague allegations to the effect that the process before the BAC is ineffective and delayed, without supporting evidence, will not be sufficient for this court to invoke its discretion to grant permission to apply for judicial review.<sup>12</sup>

[21] Mr. Magdaleno argues that he should not be compelled to appeal the decision to the BAC before applying for judicial review, for two reasons. First, relying on **Vacarro**, Mr. Magdaleno argues that the BAC does not have the jurisdiction to deal with issues of transfer. **Vacarro** is distinguishable because it does not deal with a decision of the SSC. In **Vacarro**, the applicants were customs officers who sought to judicially review a decision of the Public Services Commission not to promote them to the position of Assistant Comptroller. The issue in **Vacarro** was whether section 111(1)(a) of the Belize Constitution grants the BAC jurisdiction to deal with a decision of the Public Services Commission in relation to promotion. **Vacarro** does not deal with sections

---

<sup>9</sup> Halsbury's Laws of England, Judicial Review, Volume 61A (2023) at 58.

<sup>10</sup> Dave Vaccaro; Rackel Waight v The Public Services Commission, Consolidated Claims No. 730 and 731 of 2021 ("Vacarro").

<sup>11</sup> Bartholomew Jones v The Security Services Commission, Claim No. 318 of 2023.

<sup>12</sup> Edgar Ek v Ministry of the Public Service, Constitutional and Political Reform, and Religious Affaires et al., Claim No. 338 of 2022.

54(12) and 110D of the Belize Constitution because the matter in **Vacarro** did not fall within the matters enumerated at section 54(12). This matter does. Furthermore, section 111(1)(a) is not relied upon by the respondents and, in any event, does not apply to this matter because section 111(1)(a) only deals with appeals from decisions of the SSC to remove a public officer from office or to exercise disciplinary control over an officer. The BAC has jurisdiction to hear appeals in relation to decisions on transfer made by the SSC.

[22] Second, Mr. Magdaleno argues that the BAC is not a suitable alternative because it would not resolve the questions fully and directly, and would not be able to grant the reliefs he seeks. Mr. Magdaleno states that he is pursuing writs of declarations, *mandamus*, and damages. These reliefs are only available to him by way of judicial review, and not the appeal process. Part 56 of the CPR gives the court great flexibility in dealing with claims for administrative orders, including with respect to remedies, and the court can award damages even if damages are not pleaded. For example, the court may decide at the end of proceedings not to grant an order of *certiorari* but compensate the applicant in damages instead. This is not something the BAC has the power to do.

[23] According to Mr. Magdaleno, the nature of these proceedings deal with the authority of the Commissioner and the SSC, and the declarations sought are properly to be made by a court and not an administrative tribunal. Mr. Magdaleno's case deals with the interpretation of the Constitution, and rules and policies regarding transfers and rights, which should be considered by way of judicial review. These are exceptional circumstances warranting the court to exercise its jurisdiction to judicially review the decision.

[24] The BAC can resolve the questions raised in this matter fully and directly. Contrary to his submissions, Mr. Magdaleno is not seeking orders of *mandamus* or damages. He is seeking to quash the decision of the SSC with a view to rescinding his transfer. For ease of reference, the substantive relief sought by Mr. Magdaleno is reproduced below:

An order that the Applicant be granted permission to apply for judicial review to challenge a decision of the 1<sup>st</sup> Respondent, contained in a Memorandum bearing reference number P/SP/386/23(9), dated 31<sup>st</sup> January, 2023, which enclosed a letter addressed to the Applicant, with reference number SSCP/192/23(20), dated 30<sup>th</sup> January, 2023, purporting to transfer the Applicant from Training Officer, Eastern (Police) Division, Belize City, Belize District, Belize, to Professional Standards Branch, Belmopan City, Cayo District, Belize, with effect from 1<sup>st</sup> March, 2022, including for declaratory relief that the decision is ultra vires, in breach of natural justice, done without or without adequate consultation, unreasonable and irrational and an order of certiorari quashing the decision.

[25] CPR 56.3(3) provides that a person wishing to apply for judicial review must first obtain permission, and shall state in their application the relief sought. Mr. Magdaleno did not state in his application that he is seeking an order of *mandamus* or damages. Mr. Magdaleno's submission that he should be granted permission to apply for judicial review because this court may decide to grant damages on its own initiative cannot be accepted, for two reasons. First, at this stage this scenario is completely hypothetical. Second, and most importantly, since the court has the discretion to fashion an appropriate remedy in any matter that comes before it, accepting this argument would lead to the absurd result that the court could never decline to grant permission to apply for judicial review where an alternative remedy exists. This would go against the weight of authorities stating that judicial review is a remedy of last resort.

[26] Mr. Magdaleno's case is that the policies and procedures in place were not adhered to by the SSC and the Commissioner in deciding to transfer Mr. Magdaleno retroactively to a position in Belmopan when he is less than two years away from retirement. Mr. Magdaleno is not challenging the policies and procedures themselves, but how they were applied in his specific case. Mr. Magdaleno wishes for the transfer to be rescinded. As an appeal body, the BAC has the jurisdiction to consider and decide these issues. The BAC has the jurisdiction to grant an appeal from Mr. Magdaleno and dismiss the SSC's decision to transfer him retroactively. The outcome would be effectively the same.

[27] In closing, Mr. Magdaleno asks this court "not to close the gates of justice" to him. He also suggests that the issue of alternative relief can be considered at the substantive

hearing where he will have a full opportunity to set out his case. Starting with the second point, the availability of an alternative remedy is a threshold issue which is only relevant at the permission stage. The issue would become moot upon permission being granted. As for the first point, Mr. Magdaleno continues to have full access to justice. Mr. Magdaleno can avail himself of his right to appeal the SSC's decision with the body constituted under the Belize Constitution for that very purpose. Should Mr. Magdaleno be dissatisfied with the BAC's decision, he can apply to this court for the judicial review of the BAC's decision.

### *Delay*

[28] I find there was unreasonable delay in bringing this application. The application was not filed within three months from the date the grounds for the application arose, and Mr. Magdaleno failed to provide a good reason for extending the time within which to make the application.

[29] Under CPR 56.5(3), an application for permission to apply for judicial review must be made promptly, and in any event within 3 months from the date when the grounds for the application first arose. CPR 56.5(3) allows the court to extend the period within which the application can be made, provided there is a good reason to do so.

[30] The grounds for the application first arose on 10<sup>th</sup> January 2023 when the SSC made its decision. The decision was recorded in a letter dated 30<sup>th</sup> January 2023. Mr. Magdaleno alleges he received the letter on 9<sup>th</sup> February 2023. This timeline was not disputed by the respondents. Mr. Magdaleno applied for permission to apply for judicial review on 9<sup>th</sup> May 2023, four months after the grounds for the application first arose. Since the application was not filed within the three-month time limit provided for in CPR 56.5(2), the court must consider whether there is a good reason for extending the period within which the application can be made.

[31] In **Maharaj v National Energy Corporation of Trinidad and Tobago (Trinidad and Tobago)**,<sup>13</sup> the Privy Council explained that a court can take a variety of factors into account in making a decision to extend the statutory timeframe:

37. The obligation on an applicant is to bring proceedings promptly and in any event within three months of the grounds arising. The presence or absence of prejudice or detriment is likely to be a key consideration in determining whether an application has been made promptly or with undue or unreasonable delay. Thus, for example, in 1991 in *R v Independent Television Commission, Ex p TV Northern Ireland Ltd* reported [1996] JR 60 Lord Donaldson MR warned against the misapprehension that a judicial review is brought promptly if it is commenced within three months.

“In these matters people must act with the utmost promptitude because so many third parties are affected by the decision and are entitled to act on it unless they have clear and prompt notice that the decision is challenged.” (p 61)

Similarly, in *R v Chief Constable of Devon and Cornwall, Ex p Hay* [1996] 2 All ER 711, Sedley J observed (at p 732A):

“While I do not lose sight of the requirement of RSC Order 53 rule 4 for promptness, irrespective of the formal time limit, the practice of this court is to work on the basis of the three-month limit and to scale it down wherever the features of the particular case make that limit unfair to the respondent or to third parties.”

Indeed, when considering whether an application is sufficiently prompt, the presence or absence of prejudice or detriment is likely to be the predominant consideration. The obligation to issue proceedings promptly will often take on a concrete meaning in a particular case by reference to the prejudice or detriment that would be likely to be caused by delay.

38. In the same way, questions of prejudice or detriment will often be highly relevant when determining whether to grant an extension of time to apply for judicial review. Here it is important to emphasise that the statutory test is not one of good reason for delay but the broader test of good reason for extending time. This will be likely to bring in many

---

<sup>13</sup> [2019] UKPC 5.

considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest [emphasis added].

[32] Mr. Magdaleno mistakenly argues that the application is not late because it was filed within three months from the date when he learned of the decision to transfer him. As I noted in **Vaccaro**, citing **R v Secretary of State for Transport ex p. Presvac Engineering Ltd.**,<sup>14</sup> “the question of when a claimant first learnt of the decision or action under challenge is irrelevant to the issue of whether the three month timeframe has been met”, however, “knowledge may be relevant to the question of whether an extension of time should be granted”.<sup>15</sup> In coming to my decision that Mr. Magdaleno did not provide a good reason for extending the period within which the application can be made, I considered the one-month delay between the decision and notification to Mr. Magdaleno. Despite this month’s delay, Mr. Magdaleno was under a duty to act promptly once made aware of the decision. Mr. Magdaleno has to justify why he waited another three months after being notified of the decision before filing this application.

[33] In oral submissions, counsel relied on a sentence found at paragraph 16 of Mr. Magdaleno’s affidavit in which Mr. Magdaleno states that he “immediately started to source funds to retain an attorney” once he was notified of the decision to argue that Mr. Magdaleno was unable to retain counsel sooner to assist him with this application. The issue with this argument is that it is clear that by 3<sup>rd</sup> April 2023, Mr. Magdaleno had retained counsel. The 26<sup>th</sup> April 2023 letter from DCP Jones to Bradley Ellis & Co. LLP refers to “your letters dated 3<sup>rd</sup> April 2023”. Even if I found that sourcing funds to retain an attorney is a good reason for the delay in bringing this application, the fact is that Mr. Magdaleno was represented by counsel since at least 3<sup>rd</sup> April 2023, but waited an additional month before filing this application, knowing that the clock was ticking.

---

<sup>14</sup> (1991) 4 Admin L. Rep 121 at 133-134, cited in *Odean Grant v The Commissioner of Police & Anor*, [2017] JMSC Civ 78 at para. 28.

<sup>15</sup> *Vaccaro* at para. 50.

[34] In his written submissions, Mr. Magdaleno notes that the delay in filing the application is of only 29 days beyond the three-month time limit provided for in the CPR, and that the respondents did not provide evidence they would be prejudiced should permission be granted despite the delay. The respondents argue that the delay would be prejudicial to good administration, and that it would not be in the public interest for such matters to be brought months after executive decisions are made. I agree. As noted by the English Court of Appeal in **O'Reilly v Mackman**,<sup>16</sup> “the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision”.<sup>17</sup> The public interest in good administration has been particularly affected in this case considering that Mr. Magdaleno has obtained an interlocutory injunction preventing his transfer pending the determination of this matter.

[35] I find that Mr. Magdaleno did not act with the required promptitude in bringing this application. Mr. Magdaleno filed this application three months after learning of the SSC's decision to transfer him, and at least one month after securing the assistance of an attorney. The latter delay has not been explained. The delay is prejudicial to good administration and the public's interest in ensuring that the Belize Police Department is properly staffed to accomplish its critical mission. Mr. Magdaleno has failed to persuade me that there is a good reason for extending the period within which he can bring his application.

[36] Having found that the discretionary bars of alternative remedy and delay apply, this application is dismissed.

[37] In view of CPR 56.13(6), no costs are awarded to the respondents. The parties will bear their own costs.

---

<sup>16</sup> (1983) 2 AC 237 at 280.

<sup>17</sup> See also *Odean Grant v The Commissioner of Police and Another* [2017] JMSC Civ 78.

**IT IS HEREBY ORDERED THAT**

- (1) The application is dismissed.
- (2) Each party shall bear their own costs.

**Geneviève Chabot**  
High Court Judge