



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025: No 247

BETWEEN:

SOPHIA CANNONIER

APPLICANT

AND

(1) THE DIRECTOR OF PUBLIC PROSECUTIONS

(2) THE ATTORNEY GENERAL

(3) THE ACTING MAGISTRATE

RESPONDENTS

Ex parte application for leave to issue judicial review proceedings under RSC Order 53; delay and extension of time for “good reason”; appeal from Magistrates Court; Covid 19 regulations; right to a fair hearing.

MARTIN J In Chambers

Date of hearing: 10 November 2025

Date of Decision: 12 November 2025

Appearances:

Vaughan Caines of Forensica Legal for the Applicant

Judgment of Martin J

Introduction

1. This is an application for leave to issue judicial review proceedings against the decision of the Worshipful Khamisi Tokunbo dated 24 June 2024 by which he convicted the Applicant in respect of 2 offences contrary to the Quarantine (COVID-19) (No 3) Amendment (No 2) Order

2021 as read with section 11 of the Quarantine Act 2017 (to which I will refer as “the Covid Regulations” for short). The court has refused the application for the reasons set out below.

Factual background

2. The brief history of the matter is set out below. The Applicant and her family returned to Bermuda from a trip overseas on 11 July 2021. They did not have proof of current Covid vaccinations, and they did not have a valid Travel Authorisation form which were both required under the Covid Regulations at the relevant time.
3. The Applicant and her family were directed to quarantine at a hotel for a period of 14 days. They refused to do so. They were later charged with offences under the Covid Regulations for (i) refusing to comply with a direction to quarantine as directed by a Health Officer and (ii) failing to complete a travel authorisation form in breach of the relevant provisions of the Covid Regulations.
4. The matter proceeded to a trial in the Magistrates Court before Wor. Khamisi Tokunbo. The trial lasted 5 days. It was spread over several sittings on 9 and 10 June, 25 and 27 July 2022 and 11 May and 12 June 2023. The case was adjourned to allow counsel for both sides to make written submissions with a view to a judgment being handed down in August 2023, prior to the intended retirement of the learned magistrate on 14 September 2023.
5. The essential issue in the case was whether the Applicant and her family were required to comply with the Covid Regulations because they had acquired natural immunity. They called expert evidence in support of their defence.
6. The learned magistrate did not deliver his decision before he retired on 14 September 2023. For reasons that are unexplained and for which there is no clear evidence, the matter was left in abeyance until May 2024 when the learned magistrate was invited to prepare and deliver his reasons in this matter, which he did in a written decision dated 24 June 2024.
7. The learned magistrate convicted the Applicant of the offences as charged and gave his reasons for doing so in a ten-page written ruling. He did not consider that the expert evidence adduced by the Applicant as to natural immunity was relevant to the charges that were before him, which were simply whether the Applicant had refused to follow the direction given by the Health Officer and her failure to produce a valid Travel Authorization form.

The present applications

8. The Applicant seeks leave to issue judicial review proceedings against the decision primarily on the ground that she has been denied a fair trial in breach of section 6 of Schedule 2 to the Bermuda Constitution Order 1968 (“the Constitution”). The Applicant says that the delay of about 10 months between the delivery of written submissions following the hearing in August 2023 and the delivery of the decision on 23rd June 2024 means that she was denied a fair trial within a reasonable time under section 6 of the Constitution.
9. The Applicant did not seek leave to issue judicial review proceedings until 30 September 2025, some 15 months after the delivery of the decision that the Applicant wishes to challenge. Order

53 rule 4 of the Rules of the Supreme Court 1985¹ requires an application for judicial review to be commenced “*promptly and in any event within six months from the date when the grounds for the application first arose*”, unless there is “*good reason*” for the court to extend that period of time.

10. Therefore, the Applicant also requires an extension of time in which to apply for leave to issue judicial relief proceedings. These applications engage different considerations which are addressed separately below.

Application for an extension of time within which to seek leave to bring judicial review proceedings

11. The application for leave to commence judicial review proceedings ought to have been made before 24 December 2024. The Applicant has not sought to explain the delay in making her application in her affidavit, nor has she attempted by any evidence to explain why there is a good reason why the court should extend the time for her to make the application for leave to seek judicial review.
12. The Applicant’s counsel has advanced various possible reasons which included the need to consider the matter with her legal advisers, the preparation of evidence, the complexity of the matter, and the fact that the Applicant was unrepresented². However, the court can only act on evidence otherwise there is no material upon which the court’s discretionary power to extend time can bite. The Applicant’s affidavit is completely silent on any matters that go to “good reasons” why the court should extend time.
13. Even if the reasons advanced by her counsel had been set out in the Applicant’s affidavit, these explanations would not have amounted to good reasons to extend time to seek leave to issue judicial review proceedings. The point at issue is straightforward: was the delay in delivering the reasons for the Applicant’s conviction a breach of her constitutional right to a fair trial within a reasonable time?
14. While the court expresses no views on the merits of the proposed application for judicial review, it is plain that it does not require 15 months to determine whether there is a basis to make an application for judicial review or to take advice on whether to proceed. The court observes that the delay by the Applicant was 5 months *longer* than the delay she complains about in relation to the delivery of the learned magistrate’s reasons.
15. There are no facts presented to the court which would justify the conclusion that there is a “good reason” to extend the time for making this application for leave to commence judicial review proceedings, nor are there any other reasons that would justify the court in granting an extension of time based on the interests of justice or the maintenance of public confidence in the “good administration” of the judicial system.

¹ Section 68 (1) of the Supreme Court Act 1905 also provides that leave may be refused if there has been undue delay or that the grant of relief would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

² In fact, contrary to this submission, the Applicant was represented at the hearing before the learned magistrate: Mr Marc Daniels is recorded as having appeared at the hearings before the magistrate.

16. The six-month time limit placed upon making applications for judicial review exists for sound policy reasons. It would be disruptive and confusing if challenges to executive decisions could be brought long after they have been acted upon in good faith.
17. In order to justify an extension of time, there must be some solid evidence explaining both the reasons for the delay and why it is appropriate in the circumstances of the case to grant an extension of time, i.e. the “good reason” to extend the time. It is not possible to catalogue or define the types of case in which it will be appropriate to grant an extension of time. But the circumstances must be sufficiently cogent and compelling to outweigh the express rule that requires the application for leave to be made promptly and in any event within six months of the event about which complaint is made.
18. The time limits stipulated in the Rules of the Supreme Court are an important part of the framework of the administration of justice, and they are not to be departed from lightly or without sufficient justification³.
19. In this case there are no reasons advanced which are supported by any evidence, and the reasons advanced by counsel are plainly not such as to justify a 15-month delay in making the application.
20. Therefore, the application for an extension of time in which to apply for leave is refused. That is sufficient to determine the application. However, the court has also considered another important aspect of the substantive application.

Application for leave to bring judicial review proceedings

21. It is axiomatic that the rights of appeal (or other remedies available) must be exhausted before a party can apply for judicial review: it has often been said that judicial review is a remedy of last resort⁴.
22. Although it has been recognised that an application for judicial review may lie from a decision of a magistrate, this is only in rare cases where the magistrate has exceeded his or her jurisdiction or has failed to apply rules of natural justice, or the proceedings were (for some reason) a nullity. The strong judicial trend has been to require rights of appeal to be exhausted where those rights exist instead of seeking judicial review.
23. In this case, counsel has confirmed that the Applicant has also sought and has been granted an extension of time in which to appeal against the decision of the learned magistrate and she has lodged a Notice of Appeal supported by full grounds of appeal. That appeal is now pending. In those circumstances, this court will not grant leave to pursue prerogative relief in respect of the same grievance that is pending appeal before the court sitting in its appellate jurisdiction from the Magistrates’ Court.
24. To allow the Applicant to pursue relief in judicial review proceedings at the same time as she pursues an appeal in respect of the very same matter would result in (i) a duplication of costs

³ See the similar arguments that were made and rejected in **Junos v David Burt and Commission of Inquiry into historic losses of land in Bermuda** [2022] SC (Bda) 57 Civ by Southey AJ at paragraphs 12-18.

⁴ See for example **Gifford v Governor of HMP Bore** [2014] EWHC 911.

(ii) a duplication of court resources and (iii) a potential risk of inconsistent results between courts of co-ordinate jurisdiction. There is no relief that this court could give in judicial review proceedings that will not also be available to the Applicant if her appeal is successful.

25. The Bermuda court has applied this approach consistently, following the guidance of the Privy Council in holding that (i) whenever possible all issues which can be determined in the criminal proceedings should be determined in the criminal proceedings and not in separate civil or judicial review proceedings and (ii) that reliance on fundamental rights and freedoms set out in the Constitution raised in the context of criminal proceedings should be determined in the criminal proceedings and not in the civil jurisdiction of the court⁵.

26. Applying these principles to the present case, the application for leave to commence judicial review proceedings must also be refused on the separate ground that the proceedings would be duplicative of her appeal remedy and would amount to an abuse of the court's process.

Conclusions

27. For these two independent reasons, the application for leave to commence judicial review proceedings against the decision of Wor. Magistrate Tokunbo's decision of 23 June 2024 is refused.

12 November 2025



THE HON. MR. ANDREW MARTIN

PUISNE JUDGE

⁵ See **Harper v Commissioner of the Police Service in Bermuda** [2021] SC (Bda) 71 Civ per Hargun CJ at paragraphs 18-24 citing **Warren v The State (Pitcairn Islands)** [2018] UKPC 20 and **Brandt v Commissioner of Police** [2021] UKPC 12 and **Sannapareddy v Commissioner of the Bermuda Police Service** [2017] SC (Bda) 12 Civ.