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LOW
PRIORITY

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A. 43/84

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IN THE MATTER of Part I of the Judicature
Amendment Act 1972

BETWEEN: MALCOLM ROBERT HILL

Applicant

A N D: PETER JOHN BATE

First Respondent

A N D: NEVILLE CLARKE JAINE

Second Respondent

A N D: RICHARD RONALD KEARNEY

Third Respondent

A N D: HUGH ROBERT FLOWER

Fourth Respondent

Hearing: 4 November 1985

Counsel: Applicant in Person
A.G. Keesing for All Respondents

Judgment: 17/3/86

JUDGMENT OF JEFFRIES J.

The applicant acts on his own behalf and over recent years, to this court's knowledge, has been involved in a number of cases in the High Court concerning his affairs. He is not unfamiliar with the procedure of review under the Judicature Amendment Act 1972 and its amendments. In these proceedings he seeks to review various decisions

made by no less than three District Court judges who are respectively named as first, second and third respondents, and the actions of a Ministry of Transport officer, who is named as fourth respondent.

I set out the facts, most of which are not of themselves much in dispute between the parties. Applicant, although he describes himself as a management consultant of Wellington, has in fact been involved in the licensed industry of taxicab service. On 21 May 1981 fourth respondent laid two informations in the District Court at Wellington naming applicant as defendant. Information no. 1085014570 was in fact heard before District Court Judge Gilbert on 7 April 1982 and dismissed and, therefore, need not be specially referred to again. Information no. 1085014571 naming applicant as defendant charged that on 9 March 1981 being the owner of a taxicab registered number FM 9063, did on a road, namely Lambton Quay, carry on a taxicab service otherwise than pursuant to the terms of the taxicab service licence granted under Part VII of the Transport Act 1962. The charge was an alleged breach of section 108(1) of the Transport Act 1962. The date of hearing was set for 2 July 1981 in the District Court at Wellington. Applicant required an adjournment which was granted and, at the same time, sought particulars pursuant to s.17 of the Summary Proceedings Act 1957. Some communications took place between applicant and fourth respondent between that date and 3 September 1981 to which date the information had been adjourned. On 3 September 1981 when it was sought by the Ministry of Transport to adjourn further the information, such adjournment was disputed by applicant. Judge Graham, who heard the application, adjourned it to 1 October 1981 on the understanding that written submissions would be exchanged between the parties concerning the request for an adjournment, which would be decided by the then District Court judge sitting on that day. It was called in the morning before District Court

Judge Bate, who is named as first respondent, and he stood it down until 2.15 p.m. After 2.15 p.m., in circumstances which will be described hereafter, he granted the adjournment. That decision is to be reviewed in these proceedings. However, it should be stated here in the narrative of the facts applicant appealed that decision to the High Court and it came before White J. who dismissed the appeal on 25 November 1981 on the grounds there was no jurisdiction to bring an appeal against a decision on an adjournment. The decision of White J. has not been taken further.

Whilst the appeal matter was being dealt with the two informations concerning applicant were called again before the court on 12 November 1981 on which date the Ministry of Transport officer requested further adjournments and they were granted by Judge Jaine, who is named as second respondent, and that decision of his to grant the adjournments is a subject of review.

For the sake of continuity of narrative I repeat that information no. 1085014570 was heard on 7 April 1982 before Judge Gilbert and was dismissed. It is not clear from the papers why the second information was not heard on that day but it was in fact adjourned to 9 July 1982 on which date it was adjourned again to 29 July 1982 because the traffic officer witness was not available. On that date the evidence on the information was heard after applicant pleaded not guilty and resulted in a conviction being entered by Judge Kearney. After conviction from about August 1982 applicant, in the District Court, sought to have the judge state a case on law for the High Court pursuant to s.107 of the Summary Proceedings Act 1957. There were considerable negotiations and argument involving Crown counsel, applicant and the District Court judge himself who ultimately ruled that his decision was

not properly appealed against by way of case stated but the proceedings should be by general appeal. Judge Kearney is named as third respondent in these proceedings.

The fourth respondent is the officer of the Ministry of Transport who laid the information in May 1981 against applicant and appeared in court in the proceedings. His application for adjournments of the two informations on 12 November 1981, which was in the period in which there was to be a hearing before the High Court on the adjournment granted by Judge Bate on 1 October 1981, and which was ultimately disposed of by the decision of White J. on 25 November 1981, is to be reviewed.

There are four respondents, three of whom are District Court judges, and the fourth the officer who swore the informations and appeared from time to time in support of the charges laid in the District Court at Wellington. There are four separate rulings called for by this application for review, and it is convenient to deal with each under the heading of the name of the respondent.

Decision of First Respondent - Judge P.J. Bate

In this part of the case applicant seeks a review of the decision of the first respondent made on 1 October 1981 to grant an adjournment on the application of the fourth respondent in respect of the informations. The gravamen of the complaint is that the adjournment was invalid because it was decided in chambers over the lunch break and not in open court with the parties present during the period of consideration. There has

been a memorandum filed by the first respondent for consideration of the presiding judge in the High Court which, of course, was White J. who heard the putative appeal and dismissed it on 25 November 1981. The highest it can be put for the applicant is that there is a conflict between his account of what happened as contained in paragraph 13 of his affidavit filed in support of motion for review and the memorandum of the District Court judge. What is clear is that applicant's allegation contained in his statement of claim that the decision was made in chambers is not tenable. There clearly was a hearing in open court some time after the luncheon adjournment at which applicant was indisputably present and took some part in. There already had been written submissions which the District Court judge read during the luncheon adjournment. On his return to court there was an exchange between applicant and the judge, and applicant now argues he should have had an opportunity to make further submissions on written submissions he had received the evening before.

An application for an adjournment is, in general, not of paramount importance in the judicial process. Support for that trite statement is to be found in this very case by the fact an appeal from such a decision cannot be brought in the High Court. Applicant himself had been granted an adjournment at the first hearing of the informations. I am satisfied from all the evidence which is before this court that not the slightest injustice was suffered by applicant in the procedural way in which the adjournment was heard and decided upon. An adjournment by definition does not deal with merits of the case but is procedural and was properly and fairly decided upon by the judge.

I have said before and repeat here in judicial proceedings a judge is not a supine creature entirely in the hands of litigants and counsel during the adjudicative process. He is in control which, of course, must be exercised reasonably so as to ensure a just decision. Part of that duty of control means he must avoid needless consumption of time and the presentation of cumulative submissions which are functions he must also exercise in regard to evidence. Accepting the judge did not hear applicant's further reply on opponent's submissions concerning the actual point to be decided upon; adjournment or not, that does not vitiate the decision. As far as this court is aware the complaint of applicant is that he was denied the opportunity to make what must be assumed was a cumulative submission for he does not here assert that he had a further meritorious point to advance. If courts on review yielded to arguments based as this one is they would simply make more trouble not less for lower courts and tribunals.

Mr Keesing's submission that the whole of the rest of the review proceedings flow from this event is valid, and must reflect on the decisions this court makes on them.

Decision of Second Respondent - Judge N.C. Jaine

This decision relates to Judge Jaine's further adjournment of the informations before him concerning applicant when they came up in the normal course of events on 12 November 1981. On that date an application was made by the fourth respondent for them to be further adjourned on the basis that the original decision to adjourn them on 1 October 1981 was then under appeal in the High Court. The factual matter is that fourth

respondent made the application for adjournment submitting to the court the matters referred to above. There is a worthless allegation of fraudulent oral statement by fourth respondent to the court based on the grounds for the application for the adjournment. Applicant pleaded and argued that the factual submission that the case was before the High Court meant that it was not before the District Court. Applicant was not in court, the application for adjournment was made and granted. In my view there is no ground for attacking that decision at all.

Decision of Third Respondent - Judge R.R. Kearney

The essence of applicant's case against Judge Kearney is that he dealt with the information when it was not properly before the court apparently because of alleged prior invalid adjournments. I have already dealt with the prior adjournments in this judgment and, therefore, dismiss applicant's claim in regard to the decision of Judge Kearney convicting applicant on the one information.

Decision of Fourth Respondent - Traffic Officer H.R. Flower

The factual basis of fraud is completely unfounded and I have already said that. There are no particulars of fraud pleaded and certainly there is no evidence of fraud. Not conceding that there is any merit, or worth, whatsoever in the application regarding the fourth respondent, I merely observe there is no statutory power, or the exercise thereof, in regard

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to him, and none is pleaded.

All applications contained in the motion for review are dismissed and an order for \$750.00 costs is made against applicant in favour of respondents.

A handwritten signature in black ink, appearing to be 'C. B. Smith J.', is written in the right-hand margin of the page.

Solicitors for Respondents: Crown Law Office, Wellington