SARBAN SINGH (f/n SANTA SINGH) v RAM UDIT (f/n RAM LAL) and 5 Ors (ABU0017 of 2005)

COURT OF APPEAL — CIVIL JURISDICTION

WARD P

7, 13 April 2005

Administrative law — judicial review — first Respondent applied for tenancy but unsuccessful both in Agricultural Tribunal and Central Agricultural Tribunal — interlocutory order — Agricultural Landlord and Tenant Act s 61(1) — Court of Appeal Act s 12(2)(f).

The Agricultural Tribunal dismissed the first Respondent's (R1) application for tenancy over land at Naboro. The Central Agricultural Tribunal (CAT) also dismissed R1's appeal. R1 applied for leave to apply for judicial review of the CAT decision. The Appellant and the remaining Respondents opposed the application and were heard by the High Court. The High Court granted leave on 14 January 2005, set a timetable for legal submissions and adjourned the substantive hearing to 7 March 2005 but gave no reasons for the decision. The Appellant then applied for leave to appeal the grant of leave to apply for judicial review; and that the hearing of the judicial review and any subsequent proceedings be stayed pending the outcome of the appeal. The High Court dismissed the application and written reasons for the decision were handed down. The leave to apply for judicial review was an interlocutory order. The issue was whether there were compelling reasons for the grant of the leave to appeal the interlocutory order.

Held — The leave to appeal against interlocutory orders should not be given unless there are compelling reasons to do so. In this case, there were no compelling reasons for the grant of leave to appeal. All the matters referred to by the counsel for the Respondents can be properly raised in the application for judicial review. An appeal at this stage will simply delay the hearing for judicial review.

Application dismissed.

No cases referred to.

S. Maharaj for the Appellant

S. Khan for the first Respondent

Ward P. Some years ago, the first Respondent (R1) brought an application before the Agricultural Tribunal to declare a tenancy in his favour over land at Naboro. He was unsuccessful and the tribunal, on 25 June 1998, refused to grant the tenancy. The R1 then appealed to the Central Agricultural Tribunal. He was again unsuccessful and, on 26 March 2004, the appeal was dismissed.

On 25 June 2004, the R1 applied for leave to apply for judicial review of the decision of the Central Agricultural Tribunal. The grounds for review were stated to be that the decisions of both tribunals were "made ultra vires the powers and/or jurisdictions of the Tribunal and Central Tribunal and the Tribunal and Central Tribunal misinterpreted and/or misconstrued the effects of the relevant provisions of ALTA … and accordingly erred in law and further that the decisions of the Tribunal and Central Tribunal were arbitrary and/or capricious and/or unreasonable and being contrary to the provisions of the Agricultural Landlord and Tenant Act …"

The application was opposed by the present Applicant and the remaining Respondents and was heard by Singh J. He granted leave on 14 January 2005, set a timetable for legal submissions and adjourned the substantive hearing to 7 March 2005. He gave no reasons for his decision.

On 3 February 2005, the present Applicant filed this application for leave to appeal the grant of leave to apply for judicial review and also that the hearing of the judicial review and any subsequent proceedings be stayed pending the outcome of the appeal.

The proposed grounds of appeal are:

1. That the learned judge erred in law and in fact in granting the leave for judicial review when the court had no power or jurisdiction to review a judicial decision of the Central Tribunal dated 26 March 2004.
2. That decisions of the Agricultural Tribunal and the Central Tribunal are not administrative decisions but judicial decisions and therefore the High Court had no jurisdiction to review the decisions and as such the granting of the leave for judicial review was wrong in principle and in law.
3. That the learned judge erred in law and in fact in granting the leave for judicial review when it had no jurisdiction to review the judicial decisions of the tribunal and the Central Tribunal.
4. That the granting of the leave for judicial review by the learned judge is contrary to the provisions of common law and the inherent jurisdictions of the court when the decision of the Central Tribunal from the decision of the Agricultural Tribunal is final in terms of s 61(1) of the Agricultural Landlord and Tenant Act.

The application was refused by Singh J on 9 March 2005 and written reasons for the decision handed down. In part, that judgment explained his reasons for granting leave.

The learned judge notes that his grant of leave was interlocutory and therefore required leave to appeal. He sets out the principles governing leave to appeal from interlocutory orders pointing out that the object of s 12(2)(f) of the Court of Appeal Act is "to reduce appeals as much as possible in interlocutory matters". He continues:

> It prevents delays in the disposal of cases as continuous appeals in an action to the Court of Appeal on interlocutory matters would only result in proceedings being shuttled in a ping pong manner between the Court of Appeal and High Court. That surely is not in the best interests of the litigants …

In cases of leave to appeal against interlocutory orders, the Appellant must show not only that the primary judge was wrong but in addition that some substantial injustice would result if the decision is not reversed … I had not decided the substantive matter. I had only granted leave for judicial review …

What was before me was a leave stage of judicial review. At that stage, I did not have to go into the matter in great depth. I felt after hearing counsel that the Applicant had an arguable case. At that stage, not all the evidence was before me either. The record of the tribunal and Central Agricultural Tribunal were not before me and therefore the issues were not fully argued nor could they in absence of such records.

The learned judge then went on to find that "leave to appeal should be refused because it would only delay proceedings as it runs the risk of two appeals, increase costs and consume extra time of the court". He therefore refused leave to appeal.

The application to this court was filed on 14 March 2005. Mr Maharaj for the Applicant suggests that this case does not raise issues for judicial review. He suggests that both the tribunal and the Central Tribunal are judicial bodies not administrative, that the decisions of the Central Tribunal are not to be called into question and that both tribunals have acted within their powers.

Those are all matters which can and should be dealt with by the High Court at the application for judicial review. That is the court which will have the evidence to make those determinations. It has been stated frequently by this court that leave to appeal against interlocutory orders ought not to be given unless there are compelling reasons to do so.

I see no compelling reasons for the grant of leave to appeal. All the matters referred to by counsel for the Applicants can be properly raised in the application for judicial review. An appeal at this stage will simply delay that hearing.

The application for leave to appeal is refused with cost of $200 to the R1 to this application.

Application dismissed.