

ZACCA, PRESIDENT

1. Appellant alleges that the appointment of the Board of Inquiry is vitiated by apparent bias. The Chief Justice held that the evidence he has produced disclosed an arguable case, but he emphasized that it is not possible to say at this stage of the proceedings, whether the Appellant's case will succeed if the matter goes to trial. It should be stressed that the allegation is of apparent, not actual bias, but nevertheless sufficient, Mr. Beloff, QC submits, to enable the Board's decision to be set aside.
2. The Chief Justice however refused leave to apply for judicial review because, the Appellant brought the proceedings outside the 6 month time limit which the law requires, and he held that there were no sufficient grounds to permit the time to be extended and the Appellant to proceed.
3. It is important that the Court of Appeal should say as little as possible about the nature of the allegations and the merits of the dispute. Mr. Beloff has submitted that although the Application relates to a Board of Inquiry which was established in 2005, and which reported in 2006/7, the Court should have regard to the date when the Appellant first became aware of the matters of which he now complains. That was about March 2009, and the proceedings were commenced in December 2009. On that basis, he submitted the Appellant should be held responsible only for that relatively short period of delay.
4. The Chief Justice accepted that submission and we can approach the matter in that way.
5. The Court of Appeal cannot interfere with his discretionary decision save on limited grounds, but we are concerned that he did not refer in his judgment to a factor which, in our opinion, is of substantial if not overriding concern: that is, the public interest in having an allegation of the sort which is now made fully investigated by the Court.
6. In paragraph 23 of his judgment, the Chief Justice did refer to another aspect of the public interest which was urged on him on behalf of Mr. Darrell, namely, of hearing Mr. Darrell's complaint against the Bank of Bermuda, which dated from 1996. But that is a separate matter, and on any view it is less significant than the public interest in the impartial administration of justice to which we have referred.
7. We therefore, hold that we are entitled to set aside the Chief Justice's exercise of discretion and to consider the matter afresh, and we have come to the conclusion that the Appellant should be permitted to

proceed to a substantive hearing so that the merits or lack of them can be determined.

8. Counsel for the Bank advanced a submission that Judicial Review proceedings are impermissible because an alternative remedy is or was available in the form of a statutory right of appeal against the Board's decision, s 21 Human Rights Act.
9. One practical difficulty with this submission is that the grounds for the Judicial Review application did not become known to the Appellant until long after the time for appeal had expired. But there is an objection in principle. No appeal from the Board's decision could result in an Order disqualifying the same Board from making any further decision, and that is essentially the remedy which the Appellant seeks.

Therefore, we allow the appeal; extend the time for making the application to the date when it was made. We grant leave to the Appellant to claim Judicial Review.

Costs of the appeal to be costs in the cause.

Signed

Zacca, President

Signed

Evans, JA

I agree

Signed

Auld, JA

I agree