REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC CIVIL APPLICATION NO. 109 OF 2019

REPUBLIC.....APPLICANT

and

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE….....2NDRESPONDENT

CHIEF MAGISTRATE'S COURT AT NAIROBI.....3RD RESPONDENT

ANd

ERICK OTIENDE ADEDE.....EX PARTE APPLICANT

JUDGMENT

The Parties

1. The applicant is a male adult Kenyan residing in Nairobi.

2. The first Respondent is the Director of Criminal Investigations established pursuant to section 28 of the National Police Service Act [1] under the direction, command and control of the Inspector-General of Police.

3. The second Respondent, Barclays Bank of Kenya Limited is a financial institution duly registered under the Banking Act [2] carrying on banking business in Kenya.

4. The third Respondent, the Director of Public Prosecutions (herein after referred to as the DPP), is established under Article 157 of the Constitution. Pursuant to Article156 (6) of the DPP exercises State powers of prosecution and may— (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed; (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and (c) subject to clauses (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

The Factual Matrix

5. The applicant states that he is the account holder of a box held at Barclays Bank, Queens Way Branch, since 25th November 2017. He states that on or about 19th March 2019, at around 1600hrs, the first Respondent with the connivance of the second Respondent tipped the media and proceeded to illegally and without a court order, enter into the said Bank and opened a box containing his private contents.

6. The applicant further states that in an inventory dated 19th March 2019, the second Respondent recorded that the said box contained USD 20,067,900. He also states that the second Respondent recorded 10 wrapped bundles in polythene bag resembling USD currency and thereafter he was arrested alongside others and arraigned in court on 26th March 2019.

7. In addition, the applicant states that the said box contained genuine US Dollars amounting to USD 20,067,900 as per the signed inventory drawn by the investigators and the applicant. He states that the said sum does not form part of the charges against him in criminal case number 538 of 2019.

Legal foundation of the application

8. The applicant states that the first Respondent is under a public duty to be fair and just in the execution of his duties. He also states that the DPP acted, and continues to act in excess of his powers in refusing to release to him the said sum of USD 20,067,900 which is not being used in criminal case number 538 of 2019.

9. In addition, the applicant states that the DPP acted and continues to act in excess of his powers by refusing to carry out his public duties to rely only on forensic analysis of the contents of the alleged fake currency as alleged in the inventory. He also states that the DPP tampered with his property. Lastly, the applicant states that the DPP has wrongfully abdicated and or abandoned his duties and powers in withholding the exercise of his aforesaid public duty of releasing documentary material that dos not form part of a criminal case.

The Reliefs sought

10. The applicant seeks the following orders:-

a. An order of Mandamus directed against the Director of Criminal Investigations to produce before this court the safe box belonging to the applicant seized at the Barclays Bank of Kenya Limited, Queens Branch.

b. An order of Mandamus directed to the first Respondent, namely, the Director of Criminal Investigations to hand over all the contents of the safe box belonging to the applicant, namely, USD 20, 067,900, assorted books and magazine within 24 hours of the hearing of this application.

c. Costs of this application be provided for.

First and third respondent's Replying Affidavit

11. Cpl Daniel Ptalam, an officer attached to the Directorate of Criminal Investigations, Flying Squad Unit, and one of the investigating officers swore the Replying dated 3rd May 2019. He averred that the functions of the first Respondent include collecting and providing criminal intelligence, undertaking investigations on serious crimes, maintaining law and order, directing and preventing crime, apprehension of offenders, forensic analysis, execution of the directions given to the Inspector General by the third Respondent pursuant to Article 157(4) of the Constitution and any other function conferred on it pursuant to any other written law.

12. He averred that on 19th March 2019, the Flying Squad Unit acting on a tip off from members of the public found the applicant together with Mohamed Ejaz, Mary Wanjiru Mwangi and Irene Wairimu Kimani at Barclays Bank Queensway Branch along Mama Ngina Street inside the safe custody viewing room with a black metallic safe. He deposed that the applicant and three others were detained by Mr. Jackson Owino, ASP, PC Cheruiyot, PC Allan Njoka and PC Kosom as the Bank Management was informed of the situation at hand.

13. Mr. Ptalam averred that on inspection and in the presence of the Branch Manager and other bank employees together with representatives from Central Bank of Kenya, it was found that the contents in the safe were papers intended to resemble and pass as currency notes in denominations of 100USD. He deposed that after the seizure of the safe box and its contents, the crime scene was documented by crime scene support personnel through photographs. He further deposed that he filed an application at the Chief Magistrates Court seeking 10 days to further investigate the contents of the safe box and any other relevant information and the court granted a further 5 days, and, the contents were subjected to forensic examination by the first Respondents Document Examiners, Central Bank of Kenya Forensic Department and United States Secret Service Investigative Specialist.

14. Mr. Ptalam averred that the investigations carried out by the first Respondent disclosed reasonable suspicion that the applicant and three others committed various offences for which charges were brought against each of them vide Milimani Chief Magistrates Court Criminal Case Number 538 of 2019, *Republic v Eric Otieno Aedede and Others*. He also deposed that a report from the first Respondent's Document Examiner and United States Secret Service Investigative Specialist found that the said contents were counterfeit US Dollars, and, that, the safe box and its contents are exhibits in the criminal case. Lastly, Mr. Ptalam deposed that the applicant has not demonstrated any breach of the Constitution.

The second Respondent's Replying Affidavit

15. Michael Massawa, the second Respondent's legal counsel swore the Replying Affidavit dated 30th April 2019. He averred that the applicant is the holder of a safe deposit held by the second Respondent at the Queensway Branch. In addition, he averred that on 19th March 2019, the applicant requested to be granted access to his SDB, but upon entering the vault that holds the SDB's a person who introduced himself as a police officer also entered the vault and indicated that he was investigating the applicant's SBD. He deposed that the said officer apprehended the applicant and four other individuals who had come with the applicant. He also deposed that the applicant was requested by the police officer in the presence of the custodians and the head of forensics to open his safe custody box which he did after he signed it off from the second Respondent's custody and that the head of the flying squad took over the control of the scene thereafter.

16. Reacting to the alleged connivance. Mr. Massawa averred that the second Respondent was not aware there was an investigation into the applicant's SDB and that it did not contact the media or connive with the first Respondent to grant access to the applicant's SDB. He also all averred that the applicant was present at all times when the police officer made inquiries, and in any event, the second Respondent has a duty to co-operate with law enforcement agencies.

First and third respondent's Preliminary Objection

17. On 10th May 2019, counsel for the first and third Respondents filed a Preliminary Objection stating that the applicant's substantive Notice of Motion is incompetent for not being supported by an affidavit. However, this objection is misconceived because the substantive application clearly states that it is supported by the Statutory Statement and the Affidavit annexed to the application seeking leave. I say no more about it.

Issues for determination

18. I find that only one issue falls for determination, that is, whether the applicant has established any grounds for the court to grant the orders of *Mandamus* sought.

19. The crux of the applicant's counsel's argument as I understand it is the sum of USD 20,067,900 which was allegedly contained in the impounded box does not form part of the charges preferred against the applicant in criminal case number 538 of 2019. On this ground, counsel sought to persuade the court that there is no basis for holding the said sum.

20. To buttress his argument, counsel propounded the argument that the first Respondent has no constitutional basis to hold the said sum, hence, the continued holding of the same is a violation of Article 40(3) of the Constitution. Based on the above facts, the applicant's counsel submitted that the application discloses grounds for review as provided under section 7(2) of the Fair Administrative Action Act.[3] He placed reliance on *Onyango v Attorney General*,[4] *Attorney General v Ryath*[5] and *Pastoli v Kabale District Local Government Council & Others*[6] all of which illuminated the grounds for judicial review which are in any event uncontroverted and which are illegality, irrationality and procedural impropriety.

21. The first and third Respondent's Advocate submitted that the applicant has not established any grounds for the court to grant the judicial review orders sought. For this proposition he relied on *Republic v National Employment Authority & 3 Others ex parte Middle East Consultancy Limited*[7] and added that the applicant has failed to demonstrate breach of constitutional provisions or any law to warrant the orders sought. He submitted that the Respondent is vested with powers to keep and protect exhibits to be produced in court. He placed reliance on *Simon Okoth Odhiambo v Republic*[8] for the holding that exhibits should never be released by the court until it is satisfied that in the case of conviction, no appeal has been preferred and if the appeal has been filed, such exhibits should only be released once the appeal has been heard and determined.

22. In addition, counsel submitted that *mandamus* only issues to compel a person who has failed to perform a legal duty. He submitted that the applicant has no legal right to have exhibits released to him without following the law.

23. The second Respondent did not file submissions.

24. The applicant seeks orders of *Mandamus* to compel the first Respondent to surrender to him US Dollars seized during investigations. The applicant and others are facing a criminal prosecution arising from the investigations that led to their arrest and seizure of the said US Dollars. The charges preferred include being in possession of forged US currency. There is no contest that the first respondent is under the law authorized to undertake investigations where a criminal offence is suspected to have been committed. Similarly, the powers of the DPP to prosecute are not in doubt. The applicant argues that the money seized is not part of the criminal trial in the lower court. The said argument is legally frail and unsustainable. It is an invitation to this court to evaluate the evidence to be presented before the lower court and determine whether the said US Dollars are genuine or not. With tremendous respect that is the function of the lower court. Our courts have severally stated time without a number that it is not the function of the High Court to assess the veracity of an accused persons' defence in the lower court.

25. The second ground upon which the applicant's arguments fails is that evidence seized for use as exhibits in criminal proceedings is generally held by the police or prosecuting authority until the time when it is formally introduced into evidence during the trial of an accused person. Such evidence is then considered to be *custodia legis* or in custody of the court until the final disposition of the case either by the lower court or where an appeal is preferred by the final appellate court. On this ground alone, the orders sought are not available.

26. In any event, it is common ground that an order of *Mandamus* will issue to compel a person or body of persons who has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.[9] *Mandamus* is a judicial command requiring the performance of a specified duty which has **not been** performed. Originally a common law writ, *Mandamus* has been used by courts to review administrative action.[10] The applicant is an accused person for all intends and purposes in the lower court. Unless and until the trial court clears him or he is cleared on appeal and or all the rights of appeal have been exhausted and he is ultimately cleared, he cannot claim any legal right to have the exhibits released to him.

27. Perhaps I should add that *Mandamus* is employed to compel the performance, when refused, of a Ministerial duty, this being its chief use. It is also employed to compel action, when refused, in matters involving judgment and discretion, **but not to direct** the exercise of judgment or discretion in a particular way, nor to **direct the retraction or reversal of action already taken in the exercise of either**.[11]

28. In any event, *Mandamus* is a discretionary remedy, which a court may refuse to grant even when the requisite grounds for it exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles. It is in public interest that alleged offender be prosecuted. It is also in public interest that the innocent should not be punished. On this basis, the guilty or innocence of the applicant will be determined at the lower court. This court cannot exercise its discretion and order the release of exhibits before trial. As stated earlier, the trial court is better placed to make such a determination.

29. The provisions of the Constitution conferring powers upon the High Court to grant such remedies as *Certiorari*, *Prohibition*, *Mandamus* or permanent stay of criminal proceedings are a device to advance justice and not to frustrate it. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the

court or that the ends of justice require that the proceedings ought to be quashed. Similarly, *Mandamus* will only issue to compel clear performance of a legal duty where there is wilful refusal to perform such a duty.

30. The saving High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice or issue *Mandamus* to compel action where there is wilful refusal to act.

31. However, the High Court's inherent powers to quash, stay, *rohibit* or issue *mandamus* in criminal proceedings are wide as they imply the exoneration of the accused even before the proceedings have been culminated by way of trial. Noting the amplitude of these powers and the consequences which they carry, the Supreme Court of India[12] revisited the law on the issue and held that 'these powers should be exercised sparingly and should not carry an effect of frustrating the judicial process.' The Supreme Court of India in the above case delineated the law in the following terms:-

> *"The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and in the rarest of rare cases and the Court cannot be justified in embarking upon an inquiry as to the reliability or otherwise of allegations made in the complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at uncalled for stage nor can it 'soft-pedal the course of justice' at a crucial stage of proceedings…The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of the power of the court, but the more the power, the more due care and caution is to be exercised in invoking these powers."* ***[13]***

32. *Mandamus* is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for *mandamus* is set out in *Apotex Inc. vs. Canada* (*Attorney General*),[14] and, was also discussed in *Dragan vs. Canada* (*Minister of Citizenship and Immigration*).[15] The eight factors that must be present for the writ to issue are:-

(i) There must be a public legal duty to act;

(ii) The duty must be owed to the Applicants;

(iii) There must be a clear right to the performance of that duty, meaning that:

a. *The Applicants have satisfied all conditions precedent; and*

b. There must have been:

I. *A prior demand for performance;*

II. A reasonable time to comply with the demand, unless there was outright refusal; and

III. An express refusal, or an implied refusal through unreasonable delay;

(iv) *No other adequate remedy is available to the Applicants;*

(v) The Order sought must be of some practical value or effect;

(vi) There is no equitable bar to the relief sought;

(vii) On a balance of convenience, mandamus should lie.

33. As stated above, there is an active criminal trial and the prosecution states that the money sought to be released forms part of its exhibits. This is clear evidence that the dispute is still active in the criminal court. I have already stated earlier the law on exhibits is that they remain in the custody of the prosecution until they are produced in court as evidence, after which it remains in the custody of the court until the matter is finally determined. *Mandamus* cannot issue while the matter in dispute is still subject to ongoing criminal litigation. Differently put, no legal right can arise in favour of the applicant at this stage.

34. Even assuming that such a legal right existed (and it does not), for *mandamus* to issue, the second test is a reasonable notice before *Mandamus* can issue. There is nothing in this case to show that there was demand for the exhibits to be released and reasonable notice to comply with the demand.

35. The other test enumerated in the above authority is "an express refusal, or an implied refusal through unreasonable delay." *First*, as I have concluded above that there was no demand in the first place, so an express refusal does not arise. Similarly, *"unreasonable delay'* does not arise in the circumstances of this case. *Secondly*, an express refusal or even implied cannot arise in the circumstances of this case. The parties were litigating in the lower court. The applicant now wants part of the prosecution evidence to be used against him to be released. In

other words he is asking this court to help him deflate the prosecution evidence by forcing them to surrender part of the evidence against him. This is a mischievous way of misusing this court's powers. The applicant will have an opportunity in the lower court to demonstrate that the US Dollars held by the police are not connected with the offence. *Mandamus* can only issue where it is clear that there is *wilful* refusal or *implied* and or *unreasonable* delay. None of these are present in this case.

36. Applying the above tests to the facts and circumstances of this case, I find and hold that the applicant has not satisfied any of the above conditions. It follows that there is no basis at all for the court to grant the orders of *Mandamus* sought.

37. I need not add that the Constitution establishes an independent office of the **DPP** under Article 157 (10) of the Constitution. The Article declares that the **DPP** shall not require the consent of any person or authority to commence criminal proceedings and that in the exercise of his powers or functions, the **DPP** shall not be under the direction or control of any person or authority. This position is replicated in Section **6** of the Office of the Director of Public Prosecutions Act[16]which provides that pursuant to Article **157 (10)** of the Constitution, the Director of Public Prosecutions shall- **(a)** not require the consent of any person or authority for the commencement of criminal proceedings; **(b)** not be under the direction or control of any person or authority in the exercise of his powers or functions under constitution, this Act or any other written law; and **(c)** be subject only to the Constitution and the law.

38. A reading of Article **157** of the Constitution leaves no doubt that the **DPP** is required to not only act independently, but to remain fiercely so. It is also important to mention that Article **245 (4) (a)** of the Constitution provides that:-"no person may give a direction to the Inspector General with respect to the investigation of any offence or offences." Just like the constitutionally guaranteed independence of the **DPP**, this provision is aimed at ensuring that investigations are undertaken independently. The powers of the police are expressly provided under section 24 of the National Police Service Act.[17]The search, arrest, impounding of the exhibits and arraignment in court was done in a manner consistent with the law.

39. The Constitution vests the **DPP** with the sole Authority, power and responsibility to exercise control over the prosecution of all criminal matters except the institution of cases at the Court?Martial.[18] A fair and effective prosecution is essential to a properly functioning criminal justice system and to the maintenance of law and order. Individuals involved in a crime – the victim, the accused, and the witnesses – as well as society as a whole have an interest in the decision whether to prosecute and for what offence, and in the outcome of the prosecution. Thus, the proper and effective administration of the criminal justice system is a matter of great public interest.

40. Also, one key consideration to guide the **DPP** in instituting court proceedings is to advance or protect public interest as opposed to private interest. The decision to prosecute or not to prosecute is of great importance. It can have the most far-reaching consequences for an individual. Even where an accused person is acquitted, the consequences resulting from a prosecution can include loss of reputation, disruption of personal relations, loss of employment and financial expense, in addition to the anxiety and trauma caused by being charged with a criminal offence.

41. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system. For victims and their families, a decision not to prosecute can be distressing. The victim, having made what is often a very difficult and occasionally traumatic decision to report a crime, may feel rejected and disbelieved. It is therefore essential that the prosecution decision receives careful consideration.

42. As stated earlier, it is a fundamental principle of law that it is not for this court to determine the veracity or to weigh the strength of the evidence or accused persons defence. That is a function for the trial court hearing the criminal trial. This court can only intervene if there are cogent allegations of violation of the Constitution or the law or violation of Constitutional Rights or threat to violation of the rights or in clear circumstances where it is evident that an accused will not be afforded a fair trial or the right to a Fair Trial has been infringed or threatened or where the prosecution is commenced without a factual basis.

43. The inherent jurisdiction of the High Court to interfere with a prosecution to prevent an abuse of process is to be exercised only in exceptional circumstances.[19] The essential focus of the doctrine is on preventing unfairness at the trial through which the accused is prejudiced in the presentation of his or her case or where there is clear breach of fundamental rights to a fair trial.

44. The initial consideration in the exercise of the discretion to prosecute is whether the evidence is sufficient to justify the institution or continuation of a prosecution. This is a decision constitutionally vested on the **DPP**.Where discretion is conferred on the decision-maker the courts also have to determine the scope of that discretion and therefore need to construe the statute purposefully.[20]One can confidently assume that Parliament intends its legislation to be interpreted in a meaningful and purposive way giving effect to the basic objectives of the legislation.

45. The **DPP** is mandated to independently evaluate the evidence and make the decision to prosecute independently. When evaluating the evidence regard should be had to the following matters:-

> *i. Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute?*
>
> *ii. If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?*
>
> *iii. Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?*
>
> *iv. Does a witness have a motive for telling less than the whole truth?*

v. Whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute.

vi. Whether the alleged offence is of considerable public concern and

vii. The necessity to maintain public confidence.

46. As a matter of practical reality the proper decision in most cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution.

47. I have carefully analyzed the material presented before me. There is nothing to suggest that the **DPP** or the Director of Criminal Investigations acted carelessly, maliciously or abused their powers. The applicant has not demonstrated that there was no factual basis to justify the seizure of the exhibits. There is nothing to show that the exhibits do not form part of the prosecution evidence. As stated earlier, it is not the function of this court to weigh the veracity of the evidence or to assess which exhibits are relevant to the prosecution case. That would amount to this court descending into the arena of the trial court. A prosecution should be instituted or continued if there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. It has not been established that the facts presented in this case do not disclose an offence known to the law.

48. The Constitutional provision in Article 157 (10) of the Constitution 2010 ensures that the **DPP** has complete independence in his decision making processes, which is vital to protect the integrity of the criminal justice system because it guarantees that any decision to prosecute a person is made free of any external influences. This court respects this Constitutional imperative and will hesitate to interfere with the functions of the **DPP** unless there is clear evidence of breach of the Constitution or abuse of discretion to prosecute.

49. No evidence has been tendered to show that the **DPP** abused his discretion or powers under the Constitution. The court is inclined to respect the decision by the **DPP** to prosecute for two reasons, **(a)** it is a constitutional imperative that the Constitutional independence of the **DPP** must be respected, **(b)** for the Court to intervene, there must be clear evidence of breach of the Constitutional duty to act on the part of the **DPP** or abuse of discretion.

50. Applying the legal tests discussed herein above to the facts of this case, I find and hold that the applicant has failed to establish any grounds for the court to grant the judicial review orders of *mandamus* sought. The allegations raised by the applicant are in my view, matters to be dealt with by the trial court hearing the criminal trial.

51. In view of my above reasoning, the conclusion becomes irresistible that the applicant's Notice of Motion dated **17th** April 2019 does not satisfy the threshold to warrant the orders sought. Simply put, the application lacks merits both in law and in substance. Accordingly, I hereby dismiss the applicant's Notice of Motion dated **17th** April 2019 with costs to the first and third Respondents.

Orders accordingly

Signed, Dated and Delivered at Nairobi this **3rd** day of **December** 2019

John M. Mativo

Judge

---

[1] Act No. 11A of 2011

[2] Cap 488, Laws of Kenya.

[3] Act No. 4 of 2015.

[4] Civil Appeal No. 52 of 1986.

[5]{1980} AC 718.

[6] P{2008} e KLR.

[7] {2018} e KLR.

[8] {2005} e KLR.

[9] See *Kenya National Examinations Council vs R ex parte Geoffrey Gathenji Njoroge & 9 Others* {1997} eKLR.

[10]W. G. & C. Byse, Administrative & Review Law, Cases and comments 119-20 (5th ed. 1970). Originally, mandamus was a writ issued by judges of the King's Bench in England. American courts, as inheritors of the judicial power of the King's Bench, adopted the use of the writ.

[11] *Wilbur vs. United States ex rel. Kadrie*, 281 U.S. 206, 218 (1930). See also Jacoby, The Effect of Recent Changes in the Law of "Non-statutory" Judicial Review, 53 GEO. IJ. 19, 25-26 (1964).

[12] See *Maharashtra vs Arun Gulab Gawali*.

[13] See *State of West Bengal & Others vs Swapan Kumar Guha& Others*, AIR, 1982, SC 949, *Pepsi Foods Ltd & Another vs Special Judicial Magistrate & Others* AIR 1998, SC 128 & *G. Ugar Suri & Ano vs State of U.P & Others*, AIR 2000 Sc 754.

[14] 1993 Can LII 3004 (F.C.A.), [1994] 1 F.C. 742 (C.A.), aff'd 1994 CanLII 47 (S.C.C.), [1994] 3 S.C.R. 1100.

[15] 2003 FCT 211 (CanLII), [2003] 4 F.C. 189 (T.D.), aff'd 2003 FCA 233 (CanLII), 2003 FCA 233).

[16] Act No. 2 of 2013.

[17] Act No. 11A of 2011.

[18] Article 157 of the constitution.

[19] See Attorney General's Reference (No 1 of 1990) [1992] Q.B. 630, CA; Attorney General's Reference (No 2 of 2001) [2004] 2 A.C. 72, HL.

[20] Sir Rupert Cross, *Statutory Interpretation*, 13th edn. (1995), pp.172–75; J. Burrows, Statute Law in New Zealand, 3rd edn. (2003), pp.177–99. For a recent example in Canada see *ATCO Gas and Pipelines Ltd vs Alberta (Energy and Utilities Board)* [2006] S.C.R. 140.