

ROYAL COURT
(SAMEDI DIVISION)

164

25th November, 1993

Before the Judicial Greffier

FIRST APPEAL

BETWEEN
AND

Kenneth Skinner
Island Development Committee

APPELLANT
RESPONDENT

AND

SECOND APPEAL

BETWEEN
AND

Kenneth Skinner
Island Development Committee

APPELLANT
RESPONDENT

Appeals from administrative Decision under Part XII
of the Royal Court Rules, 1992.

Application by the Appellant for Further and Better Particulars
of the Committee's Statements in both appeals.

Advocate P.C. Sinel for the Appellant
Advocate S.C.K. Pallot for the Respondent

JUDGMENT

JUDICIAL GREFFIER: 23rd July, 1992, the Committee served two
notices on the Appellant as follows:-

- (a) the first, to which the first appeal relates, requiring that an unauthorised structure be removed by the Appellant; and
- (b) the second, to which the second appeal relates, ordering that unauthorised parking of heavy commercial vehicles and associated depot use and activities cease.

On 30th July, 1992, the Appellant served notices of appeal upon the Committee against these notices.

The case proceeded quite slowly because the Committee attempted to strike out the first two grounds of appeal set out in the notices of appeal, but this application failed.

On 6th July, 1993, the Committee filed its Committee's statement in both these appeals. The Appellant is now seeking Further and Better Particulars of the Committee's statement in both the appeals.

As far as I am aware, this is the first application for Further and Better Particulars of a Committee's statement. The application raises the important issue as to precisely what information should be contained in a Committee's statement in an administrative appeal.

Rule 12/3(1) of the Royal Court Rules, 1992, as amended, reads -

"Within one month after receiving notice of appeal, the Committee shall lodge with the Greffier a statement of the decision from which the appeal is brought (in this part of these Rules referred to as the "Committee's statement")."

Rule 12/3(3) of the Royal Court Rules, 1992, as amended, reads as follows:-

"At any time before the expiration of two months after the day on which the Committee's statement was delivered to the appellant, the appellant shall lodge with the Greffier the contentions to be urged by the appellant in support of his appeal (hereinafter referred to as the "appellant's case")."

Rule 12/3(5) of the Royal Court Rules, 1992, as amended, reads -

"The Committee shall, within two months after delivery to it of the appellant's case, lodge with the Greffier the contentions to be urged by the Committee at the hearing of the appeal (in this Part of these Rules referred to as the "Committee's case")."

The procedure in relation to an administrative appeal is different from other procedures. In particular, it is unusual because the Committee, which is the Respondent to the appeal, files a document before the Appellant's case is lodged. It is also unusual because the Committee's pleadings effectively come in two parts, the first part being the Committee's statement and the second part being the Committee's case. All that the Royal Court Rules tell me about the division between the two is that the first is a statement of the decision from which the appeal is brought and the second is contentions to be urged by the Committee at the hearing of the appeal.

Advocate Pallot, helpfully, produced for me a statement of the matters which, in his opinion, the Committee's statement did not include. These were the following:-

(1) evidence;

(2) reasons for the decisions save insofar as is necessary to describe accurately what the decision was;

(3) contentions; and

(4) facts or matters relied upon in support of the contentions.

I believe that it is possible to expand the categories which he mentioned by adding two further possible categories as follows:-

(5) the facts upon which the decision was based; and

(6) the nature of the enquiries that were made prior to the making of the decision.

I mention in passing that Advocate Sinel particularly urged that particulars relating to the way in which the matters came to the Committee's knowledge be ordered at this stage.

I have considered these points in the light of the Royal Court Rules and in the light of the fact that this is, at the end of the day, an appeal against a decision and that, therefore, one would normally expect the Appellant to raise the details of the basis of the appeal first. There is clearly a danger of forcing the Committee to plead matters which properly belong in its case as part of its statement and that should be avoided.

I agree with Advocate Pallot insofar as evidence, contentions and facts or matters relied upon in support of the contentions are concerned, and find that these do not belong within the Committee's statement.

However, it appears to me that in addition to full details in relation to the decision which has been made by the Committee, the Committee's reasons for the decision ought to be given. It also appears to me that Item (5) above namely, the facts upon which the decision was based should be included as part of the reasons for the decision. However, it does not appear to me to be right that the nature of the enquiries which were made be included as these are more in the nature of evidence than of reasons.

Thus, I have found that the essential elements of the Committee's statement are as follows:-

(1) a full statement of the nature of the decision against which the appeal is brought;

(2) a statement of the reasons for the decision; and

(3) a statement of the findings of fact upon which the decision of the Committee was based.

Naturally, any Committee's statement is found to include other matters which are by way of explanation of the context in which the decision was made and there can be no objection to these being produced. However, they are not essential elements of the Committee's statement.

I am working on the principle that, where matters which are not essential elements of the Committee's statement are concerned, the application should be refused because these matters will be irrelevant unless mentioned in the Committee's case. If they are not properly particularised in the Committee's case then further and better particulars can be sought of that.

I turn now to apply these principles to the specific requests in this case as follows:-

(1) I begin with the First Appeal as follows:-

- (a) I find that items (i), (ii), and (iii) under paragraph 1 are part of the background to the matter and do not fall within the category of being essential parts of the Committee's statement. For that reason, I find that it is not appropriate that I should order the provision of these particulars.
- (b) The request under (iv) under paragraph 1 for the precise size and location of "the premises" falls within the category of a full statement of the nature of the decision. The Committee is alleging that a certain area is within the domestic curtilage of "the premises" and therefore it ought to define precisely the extent of "the premises".
- (c) All three of the requests under paragraph 2 are seeking information which falls within the category either of reasons for the decision or of facts upon which the decision was based and I am therefore going to order that these be provided.

(2) In relation to the Second Appeal I have made the following decisions on the requests:-

- (a) The case of the Committee appears to be that a certain area was designated for a certain use but that a different area is being used for this purpose. It therefore appears to me that all four of the requests under paragraph 1 fall within the categories of reasons for the decision or facts upon which the decision was based.
- (b) The requests under paragraph 2 (i), (ii) and (iii) are similar to those under paragraph 1 (i), (ii) and (iii) of the First Appeal action and fail for the same reason.
- (c) The request under paragraph 2 (iv) falls within the category of reasons for the decision or facts upon

which the decision was based and I am therefore ordering this.

- (d) The requests under paragraph 2 (v) and (vi) are essentially requests for facts or matters relied upon in support of contentions and therefore fall outside of the ambit of the Committee's statement but will no doubt be dealt with in the Committee's case and I am therefore refusing the application for these particulars.
- (e) The requests under paragraph 3 appear to fall either into the category of evidence or into the category of the nature of the enquiries that were made and I am therefore refusing these.
- (f) The request under paragraph 4 (i) for the dimensions of the vehicles in question appears to fall within the category of facts upon which the decision was based and I am therefore ordering that this be provided.
- (g) Under paragraph 4 (ii) the request for further particulars of the visual amenity in question does not appear to me to be a question which is capable of being answered in the sense that visual amenity is, in my view, in the context in which it is used in the Committee's statement, virtually the equivalent to the word "appearance". I believe that it would be wrong to order particulars of the visual amenity in the sense that what the Committee is saying is that the parking of the large vehicles affects the appearance of the area. I am therefore refusing this request.

Finally, I will need to be addressed upon the matters of the time period for the furnishing of the particulars and the costs in relation to these applications.

Authorities

Royal Court Rules 1992: Part XII.