

COMMONWEALTH OF THE BAHAMAS

VBI No. 167/6/2022

IN THE SUPREME COURT

Criminal Division

BETWEEN

ADRIAN PAUL GIBSON

APPLICANT

RASHAE LENORA GIBSON  
JOAN VERONICA KNOWLES

JEROME MISSICK  
PEACHES FARQUHARSON  
ELWOOD DONALDSON

DEFENDANTS

V

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

BEFORE: **The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**

APPEARANCES: **Mr. Damien Gomez KC and Mr. Murrio Ducille KC along with Mr. Bryan Bastian- appearing for Mr. Adrian Gibson M.P. the Applicant herein**

**Ms. Joan Knowles, and Mr. Jerome Missick the Defendants herein; Counsel Ms. Christina Galanos and Ms. Jacqueline Conyers- appearing for Ms. Rashae Gibson (Defendant); Counsel Mr. Raphael Moxey- appearing for Ms. Peaches Farquharson (Defendant); Counsel Mr. Ian Cargill along with Mr. Donald Saunders appearing for Mr. Elwood Donaldson- Counsel for Defendants**

**Madam Director Ms. Cordell Frazier along with Counsel Mrs. Karine MacVean and Mr. Rasheid Edgecombe of the Office of the Director of Public Prosecutions for Respondent**

HEARING DATES: 1<sup>st</sup> November 2023; 6<sup>th</sup> November, 2023

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**“GAG ORDER” JUDGMENT;** *Donna Vasyli v R. SCCrim App No. 255 of 2015; R v Edwardo Ferguson a.k.a Kofhe Goodman SCCrim App & CAIS No. 306 of 2013; Montgomery v HM Advocate [2003] 1 AC 641; Grant v Director of Public Prosecutions [1981]3 WIR 246; Stephen Stubbs v The Attorney General SCCrApp No. 153 of 2013;*

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*Criminal Law- “Gag Order”- Pre-trial Publicity- Article 20(1) of the Constitution of The Bahamas*

**Headnote: The Applicant and the Defendants were arrested on the 26<sup>th</sup> day of May 2022, questioned by the Criminal Investigation Department and subsequently charged with various offences totaling some Ninety-Eight (98) counts under the Penal Code of The Bahamas, Chapter 84, The Prevention of Bribery Act, Chapter 88. The offences included Making a False Declaration (1 Count), Conspiracy to Commit Bribery (10 Counts), Bribery (18 Counts), Conspiracy to Commit Fraud by False Pretences (8 Counts), Fraud by False Pretence (5 Counts), Receiving (21 Counts), Money Laundering (Acquisition) (5 Counts) and Money Laundering (30 Counts).**

**The Applicant, Mr. Adrian Gibson M.P., by an Application requested the Honourable Court to implement a “Gag Order” for the duration of the trial, to prevent adverse trial publicity. Counsel for the Applicant submitted that the potential trial publicity could be prejudicial to his trial and that a “Gag Order” is necessary to ensure that the Applicant’s Constitutional right to a fair trial is not infringed. Counsel for the Respondent strongly objected to the imposition of a “Gag Order” for this trial. The Crown submitted that there has been no substantial evidence produced that shows that the pre-trial publicity has been prejudicial to this trial, nor would any newspaper reports of the evidence be prejudicial. Further Counsel for the Respondent submitted that there has been no evidence provided that the Applicant would not be able to receive a fair trial.**

***Held:* (i)The Court ruled it is not persuaded that the pre-trial publicity has been nor will any potential trial publicity be sufficiently adverse so as to vitiate the Applicant’s right to a fair trial. Therefore, the “Gag Order” would**

**not be implemented. There has been no evidence provided that proves that the Applicant would not be able to receive a fair trial. The reports of the mainstream newspapers and media houses have not been objected to and have been adequate and responsible. Social media is still an unknown and as yet an uncontrolled element.**

See also the cases of *Donna Vasyli v R. SCCrim App No. 255 of 2015*); *R v Edwardo Ferguson a.k.a Kofhe Goodman SCCrim App & CAIS No. 306 of 2013*; *Montgomery v HM Advocate [2003] 1 AC 641*; *Grant v Director of Public Prosecutions [1981]3 WIR 246*; *Stephen Stubbs v The Attorney General SCCrApp No. 153 of 2013*

## **GRANT-THOMPSON J**

### **THE TRIAL**

1. On the 1<sup>st</sup> of November, 2023 the trial of the Defendants namely Mr. Adrian Gibson, Member of Parliament “M.P.” for Long Island, Ms. Rashae Gibson, Ms. Joan Knowles, Mr. Jerome Missick, Ms. Peaches Farquharson and Mr. Elwood Donaldson began with the empaneling of the nine (9) member Jury. Counsel for the Applicant indicated to the Court that they had two (2) points to raise in limine, which were:
  - a. The Applicant, Mr. Adrian Gibson, Member of Parliament (M.P.) for the Southern constituency of Long Island, The Bahamas, seeks to be excused every Wednesday in order to attend to the concerns of his constituents in the House of Assembly; and
  - b. For the duration of the trial the Honourable Court should impose a “Gag Order” to prevent any reference to the trial in the public domain.

2. The Court gave the sworn and affirmed Jury their instructions and adjourned them to the 6<sup>th</sup> of November, 2023 for the commencement of the hearing of evidence. Counsel then made their submissions on their points in limine in the absence of the jury.

### **BACKGROUND**

3. The Defendants were arrested on the 26<sup>th</sup> day of May 2022, questioned by the Criminal Investigation Department and subsequently charged with various offences totaling some Ninety-Eight (98) counts under the Penal Code of The Bahamas, Chapter 84, and The Prevention of Bribery Act, Chapter 88. The offences included Making a False Declaration (1 Count), Conspiracy to Commit Bribery (10 Counts), Bribery (18 Counts), Conspiracy to Commit Fraud by False Pretences (8 Counts), Fraud by False Pretence (5 Counts), Receiving (21 Counts), Money Laundering (Acquisition) (5 Counts) and Money Laundering (30 Counts). The Jury which was previously empaneled on the 28<sup>th</sup> of June, 2023 had to be discharged as two (2) of the jurors failed to disclose that they allegedly knew Mr. Adrian Gibson intimately. Mr. Gibson M.P. was not responsible for this. One of them by virtue of being directly related to her Long Island relatives and the Applicant's constituents. Regarding the second juror, her husband was allegedly directly related to the campaign of Mr. Gibson M.P. In contravention of the express direction of the Court the two (2) jurors discussed their limited involvement with the case with their spouses, family, and each other. The Court could proceed by law with eight (8) jurors but not seven (7). The entire jury panel had to be discharged as the result. The matter was adjourned to November 1<sup>st</sup>-30<sup>th</sup>, 2023, for commencement and completion of a new trial. A "Gag Order" was implemented to avoid the publication of the new trial date and to avoid the potential contamination of the new jury pool.

## **POINTS IN LIMINE**

### **A “House of Assembly”-**

4. The Court heard oral submissions from Counsel for the Defendants, Counsel for the Applicant and Counsel for the Respondent herein. The Court ruled on the 1<sup>st</sup> day of November, 2023, that Mr. Adrian Gibson M.P. would be permitted to attend the meetings of the House of Assembly scheduled to be held on successive Wednesday mornings in order to perform his Parliamentary duties. Thus, the Court would forgo its normal start time of 10:00am for the hearing of the evidence of this trial, and instead commence at 2:30pm until 4:30pm on Wednesday afternoons. The party’s attention was drawn to Section 7 of The Rules of the House of Assembly Chapter 8, which outlines the Order of business for Parliamentary meetings. These Rules permit an Honourable Member of Parliament (as per item number 11) the opportunity to raise “Motions for leave of absence, leave to resign seat and new writs”. Mr. Gibson M.P. could if he wished, sought a leave of absence from the House business. That is however is a matter for the Member personally. From what the Court understands this is not an option which the Applicant, Mr. Gibson M.P., has chosen to exercise.
  
5. Subsequent to the Court ruling regarding Mr. Adrian Gibson’s attendance in the House of Assembly, this Honourable Court was further informed by letter dated the 2<sup>nd</sup> of November, 2023 from the House of Assembly addressed to Madam Director of Public Prosecutions, Ms. Cordell Frazier, forwarded to the Court that “*the sittings of the House of Assembly have been suspended until Wednesday 29<sup>th</sup> November, 2023 at 10:00am. Members of Parliament have the freedom to attend to public and private affairs and obligations.*”. As a result of this it is clear to this Court that Mr. Adrian

Gibson's attendance to his trial will not interfere with his Parliamentary duties and obligations.

6. Regarding the second issue of the implementation of a "Gag Order", the Court adjourned until the 6<sup>th</sup> of November, 2023, for a ruling.

## **B "Gag Order"-**

### **Submissions of the Defendants**

7. On the 1<sup>st</sup> day of November, 2023 (after the empanelment of the jury) Mr. Damien Gomez, KC, respectfully requested that this Honourable Court implement a "Gag Order" with immediate effect. A "Gag Order" is a colloquial expression used typically to cover the imposition of a legal Court Order, to restrict information being made public relative to the witnesses called to give evidence in this criminal trial. Mr. Damien Gomez, KC, orally submitted that;
  - a. A "Gag Order" should be enforced for the duration of this trial as the political climate within The Bahamas to use his terms has "heated up". According to Mr. Gomez, KC, this is due to the fact that there is currently a Bye-Election campaign pending in the country in the second city of Freeport, Grand Bahama, Bahamas, in order to replace the Member of Parliament position of West Grand Bahama and Bimini. As the sitting Cabinet Minister, Minister Obediah Wilchcombe, is recently deceased on the 25<sup>th</sup> of September, 2023;
  - b. If evidence is commenced to be taken in this trial without a "Gag Order" in place, a variety of sentiments **may** be expressed during this political race which would absolutely be detrimental to Mr. Adrian Gibson's M.P., ability to have a fair trial; and
  - c. These proposed sentiments may lead to the disruption of this Court's proceedings and/or a mistrial of this matter. The jurors live in The

Bahamas, he cautioned the Court, which is a relatively small archipelago of Island nations. Thus, they may at some point hear these potential sentiments and be influenced by them.

8. In his oral submissions Mr. Damien Gomez, KC, referred to a “Gag Order” allegedly imposed by His Majesty’s Privy Council in the case of *The Queen v Vasyli [2020] UKPC 8*. The Privy Council ordered a “Gag Order” until the retrial was concluded. These submissions for the “Gag Order” which were made by Mr. Damien Gomez, KC, were supported by the fellow Defence attorneys, namely, Mr. Murrio Ducille KC, Mr. Ian Cargill, Mr. Donald Saunders, Mr. Raphael Moxey and Ms. Christina Galanos.

9. **After the submissions had closed, the Court adjourned to rule on Monday 6<sup>th</sup> November, 2023. Counsel for the Applicant without seeking leave of the Court filed and served an Affidavit after 4:30pm on Friday 3<sup>rd</sup> November, 2023.** The Affidavit provides inter alia that: (evidence taken from paragraphs 5- 19 in the Affidavit entitled “Affidavit of Adrian Gibson”)

5. *“On the 1<sup>st</sup> of November, 2023, Mr. Adrian Gibson appeared before the Honourable Madam Justice Cheryl Grant-Thompson for jury empaneling. After the jury had been empaneled one of Mr. Gibson’s Counsel, Mr. Damien Gomez KC, submitted to the Court serious concerns about the Pre-Trial Publicity surrounding the fairness of his trial and the need for the continuation of the “Gag Order” implemented previously against the media;*

6. *In this regard, copies of national media and tabloid outlets disseminating reports about my trial are now produced and shown to me and is attached hereto and marked ‘AG-1’;*

7. *Mr. Gomez KC, further submitted to the Court that there is an upcoming bye election in the West Grand Bahama and Bimini Constituency which runs the high risk of potentially using the coverage of Mr. Gibson's trial as a part of a political campaign smearing which would be highly prejudicial to my defense;*
8. *Mr. Gomez KC, further submitted to the Court, that the bye election which has been slated for some time at the end of November would be simultaneously occurring during his trial and would present unfairness to my defense;*
9. *Mr. Gomez KC, further submitted to the Court, that also the Progressive Liberal Party ("P.L.P") would be holding their party's convention in November, runs the high risk of potentially using the coverage of Mr. Gibson's trial as part of political campaigns would be severely prejudicial to his defense;*
10. *My trial has attracted widespread national media coverage before the commencement of the evidence and would be severely prejudicial in his defense should the "Gag Order" against the media be uplifted;*
11. *My trial has even been subjected to various public, unprovoked scathing attacks by Members of Parliament and the Senate while his matter is still before the Court;*
12. *An official copy of the transcripts from the Honourable Senate and articles from the House of Assembly is now produced and shown to me is attached hereto and marked "AG-2";*
13. *Even up to yesterday there has been recent national publications in relation to my trial is now produced and shown to me and is attached hereto and marked "AG-3";*



14. *The large volume of adverse pre-trial publicity since I have been charged crosses the thin line between freedom of press and the demands of a fair trial;*
15. *Due to the volume and magnitude of the publicity, no jury can try the case as an unbiased, independent and impartial tribunal;*
16. *The prejudicial effect on the minds of the currently empanel jurors which in turn will have a prejudicial effect on me. Thus, the prejudice is so widespread that it is inevitable that it will be impressed the minds of the sitting jurors. It is therefore impossible for a jury to fairly and properly assess it;*
17. *No direction can be given to the sitting jury to cure the adverse publicity or counteract the prejudicial effect of the said publicity;*
18. *The adverse publicity has fundamentally and irreparably distorted the credibility of this case; and*
19. *In the circumstances, I hereby humbly ask that the Court's "Gag Order" remain in effect until the completion of the trial.*
20. *The information contained herein is correct and true to the best of my knowledge, information and belief."*

10. The Court imposed a temporary "Gag Order" between the last aborted trial on the 28<sup>th</sup> of June, 2023 and the commencement of the current trial. The reason was to avoid the disclosure of when the trial would commence. That "Gag Order" has since expired.

### **Submissions of the Respondent**

11. Madam Director of Public Prosecutions, Ms. Cordell Frazier, strongly objected to the imposition of a "Gag Order" in this criminal trial. Madam Director of Public Prosecutions ("DPP") submitted that there is no evidence before this Court that proves that the Applicant nor the Defendants would

be prejudiced from having a fair trial. Further, Madam DPP submitted that the projected Bye Election has nothing to do with the Member of Parliament for Long Island, Mr. Adrian Gibson, nor any of the other Defendants.

12. Counsel for the Respondent submitted that a “Gag Order” should be used on a case-by-case basis, not as a general escape. The Director of Public Prosecutions then relied on the ratio descendi in the cases of *Donna Vasyli v R. SCCrim App No. 255 of 2015*, and *R v Edwardo Ferguson a.k.a Kofhe Goodman SCCrim App & CAIS No. 306 of 2013*. Madam DPP Frazier submitted that the current Application is premature. No evidence has been provided to this Court which proves that sentiments have been or will be uttered which would prejudice the Defendants or infringe upon their Constitutional right to have a fair trial, pursuant to Article 20(1) of the Constitution of The Bahamas.

13. Further submissions were provided in the Respondent’s Affidavit-In-Response which stated:

- a. That during the said ‘gag order’ application, the Applicant produced no evidence to substantiate his claim that it was necessary for the court to impose a ‘gag order’ due to the widespread publication of his case;*
- b. That in relation to paragraph 6 of the Applicant’s affidavit, the majority of the national media and tabloid reports annexed predates the initial ‘gag order’ in which no complaint was made by this or any other defendant that they could not have a fair hearing due to pretrial publicity;*
- c. Furthermore, the application was heard and the matter adjourned for decision;*

- d. Paragraphs 7-9 of the Applicant's Affidavit is speculative at best. That the Applicant has not produced any evidence to substantiate his belief that there is a risk that the bye-election campaign would prejudice him in his defence or present unfairness to his defence;*
- e. The Respondent repeats paragraph 5 of its Affidavit in response to paragraph 9 of the Applicant's Affidavit;*
- f. That contrary to the Applicant's assertion at paragraph 10 of his Affidavit, his trial was not widely spread but moderately reported. That such reporting was not unduly prejudicial to the Applicant which resulted in him being unable to have a fair hearing;*
- g. The Respondent repeats that the evidence in support of the Applicant's Affidavit already argued application predates the Application for initial 'gag order' which the Applicant never made any complaint of pre-trial publicity. Further, the imposition of the initial 'gag order' on the Courts own motion was as a result of the isolated incident and not a complaint by the Applicant;*
- h. That the articles relied on in this Applicant's Affidavit existed before 24th July, 2023 when the initial 'gag order' was put in place and the Applicant at no time complained that he could not have a fair hearing due to pre-trial publicity;*
- i. The copy of the transcripts from the Official Hansard from the Senate dated the 18th and the 22nd of May, 2023 were requested by the Applicant. This suggest that the same is not readily available nor widespread. As one would have had to have viewed the actual sitting to hear the inferences made by the Member speaking at the time;*
- j. That the national publication referred to by the Applicant is from Bahamas Press. That the article merely states that the Applicant will have his day in Court and set out that he and five others were charged with over 90 counts;*

- k. *That the alleged volume of adverse pre-trial publicity evidence in this Applicant's Affidavit is repetitious and in no way demonstrates that his case is being widely spread;*
- l. *As it relates to paragraphs 14 and 15 of the Applicant's Affidavit, the same is denied. The Respondent avers that the reporting of the Applicant and his co-defendants trial does not cross the line between Freedom of the Press;*
- m. *That the Applicant and each of the defendants can have a fair hearing as provided by Article 20(1) of the Constitution of the Commonwealth of The Bahamas. That the jury can try the Applicant and his co-defendants' case as an unbiased, independent and impartial tribunal;*
- n. *That contrary to what the Applicant avers at paragraph 16, the empaneled jury has not been prejudiced by any pre-trial publicity. Further, it is still possible for the Applicant and his co-accused to have a fair trial;*
- o. *That contrary to what the Applicant alleges at paragraph 17, not only can this Honourable Court give directions that will ameliorate the risk of prejudice but the Court has a discretion to make an order restricting what can be reported;*
- p. *That the Court must balance the public's interest in hearing the case with the Applicant's right to a fair hearing. That in the absence of evidence of undue prejudice, the scale must weigh in the balance of the public's interest;*
- q. *That paragraph 18 of the Applicant's Affidavit is unfounded or substantiated; and*
- r. *In the circumstances, the Respondent prays that the 'gag order' previously imposed be lifted and that the Court imposed restricted reporting if warranted."*

## The Law

14. “Gag Orders” also known as confidentiality orders or protective orders are court-issued legal measures that limit the disclosure of particular material in the course of Court proceedings. These orders are critical in preserving sensitive material, guaranteeing a fair trial, and defending the rights of parties involved in legal disputes. This Court has a balancing act to perform between the public right to know and the transparency and truth which the public reposes in the Court system to ensure impartial proceedings guaranteed by the Constitution of The Bahamas. This may be balanced and contrasted with any particular prejudice which may exist in a particular case.

15. Article 20 (9) of the Constitution of The Bahamas provides that “*All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.*”

16. In the case of **Edwardo Ferguson aka Kofhe Goodman v. Regina SCCrimApp & CAIS No.306 of 2013** The Bahamas Court of Appeal as per paragraph 9 used the case of **Grant v Director of Public Prosecutions [1981]3 WIR 246** which stated that:

*“For the purpose of these proceedings a remedy under the Constitution is only available if the applicants can establish that there is likely to be a contravention of section 20(1) of the Constitution. This they can only do by showing that there is likely to be a failure to afford them a fair hearing by an independent and impartial tribunal. It is not sufficient for them to establish-as they have done-that there has been adverse publicity which is likely to have a prejudicial effect on the minds of potential jurors. They must*

*go further and establish that the prejudice is so widespread and so indelibly impressed on the minds of potential jurors that it is unlikely that a jury unaffected by it can be obtained. We are not satisfied that they have established this, having regard to the common law remedial measure which we indicate are available to a trial court.”*

This Court does not find that any prejudice has been established nor that it would be so widespread as to affect the jurors. Such reports that have been carried by the mainstream media have been responsible. **This Court sends a warning to all media houses and social media that any coverage of this trial must be fair and responsible.** The Public has a right to know what is transpiring within the Criminal Courts. Nothing has been established to cause the Court to decide otherwise. The potential adverse references in the Hansard reports produced by Counsel for the Applicant have the shield of Parliamentary privilege. However, Parliament will not be sitting for the duration of the trial. The potential “reckless” comments would then therefore be curtailed.

17. Similar sentiments were expressed in the case of **Stephen Stubbs v The Attorney General SCCrApp No. 153 of 2013** where the Court of Appeal stated at paragraph 43 that:

*“In Boodram v. The Attorney General of Trinidad and Tobago [1995] 47 WIR 459 one of the several complaints was that having regard to pre-trial publicity the likelihood of a fair trial was impossible. In dismissing the appeal the Court of Appeal held that the Appellant had failed to discharge the heavy onus of establishing that the pre-trial publicity had been so widespread and indelibly impressed on the minds of prospective jurors that it was unlikely that an impartial jury could be empaneled”*

18. Further, at paragraph 10 the case of **Edwardo Ferguson aka Kofhe Goodman (supra)** also utilized the case of **Montgomery v HM Advocate [2003] 1 AC 641**, which stated that:

*“Nevertheless the risk that the widespread, prolonged and prejudicial publicity that occurred in this case will have a residual effect on the minds of at least some members of the jury cannot be regarded as negligible. The principal safeguards of the objective impartiality of the tribunal lie in the trial process itself and the conduct of the trial by the trial judge. On the one hand there is the discipline to which the jury will be subjected of listening to and thinking about the evidence. The actions of seeing and hearing the witnesses maybe expected to have a far greater impact on their minds than such residual recollections as may exist about reports about the case in the media. This impact can be expected to be reinforced on the other hand by such warning and directions as the trial judge may think it appropriate to give them as the trial proceeds, in particular when he delivers his charge before they retire to consider their verdict”*

19. In the case of **Donna Vasyli v R SCCrim App No. 255 of 2015** at paragraph 29 also relied on the case **Montgomery v HM Advocate [2003] 1 AC 641** where Lord Hope of Craighead (at page 667) opined that:

*“The Common law test, which is applied where pre-trial publicity is relied upon in support of a plea of oppression, is whether the risk of prejudice is so grave that no direction by a trial judge, however careful, could reasonably be expected to remove it...”*

The potential Bye-Election in West End and Bimini does not involve the Member of Parliament for Long Island, Mr. Adrian Gibson M.P.

20. In addition to this the case of **Donna Vasyli (supra)** at paragraph 30 also outlined a test that can be utilized when determining the effect of prejudicial pre-trial publicity on the right to a fair trial. In this case the Court of Appeal stated that it must be taken into consideration “(i) whether the pre-trial publicity is of such a nature that there is an objectively justified fear the jury would be, or would appear to be, impartial and (ii) whether the safeguards that are available would be effective to remove the effects of the publicity.”

21. The current matter before this Court may be perceived as high-profile in nature. As a result of this the issue of pre-trial publicity has become relevant. Counsel for the Applicant submitted that in order to prevent any form of prejudice against the Applicant and other Defendants in this matter the “Gag Order” should be implemented. The Respondent on the other hand strongly disagrees with the Applicant’s assertion and submits that no evidence is before this Court to prove that the Applicant or fellow Defendants would be adversely affected if a “Gag Order” is not implemented.

22. After reviewing the oral and written submissions provided by both Counsel, this Honourable Court finds that the Applicant and Defendants would be able to receive a fair trial in the absence of another “Gag Order” being implemented. As shown in the case of **Grant v Director of Public Prosecutions (supra)** and **Stephen Stubbs (supra)**, in order for the Applicant to show that his Constitutional right to a fair hearing would be contravened by the absence of a “Gag Order”, it must be shown to this Court that there is likely to be a failure to afford them a fair hearing by an independent and impartial tribunal. There has been no real evidence provided to this Court which substantiates the Applicant’s assertion that he



would not be able receive a fair trial if a “Gag Order” is not put into place. This Court agrees with the Respondent that the evidence produced by the Applicant is speculative at best.

23. Counsel for the Applicant has provided to this Court in the Affidavit of Adrian Gibson M.P., evidence which they say shows Mr. Gibson M.P. in a negative light. Counsel for the Applicant submits that Mr. Gibson M.P., would be further prejudiced in his trial if the requested Order is not implemented. However, as shown in the case of **Grant (supra)** it is not sufficient simply to establish that there has been adverse publicity which is likely to have a prejudicial effect on the minds of potential jurors. The Applicant must be able to prove to this Court that prejudice is so widespread and so indelibly impressed on the minds of potential jurors that it is unlikely that a jury unaffected by it can be obtained. Regarding this jury, there has been no evidence that this new jury has been affected by any of the previously published articles regarding the Applicant and the Defendants. Further, even if the new panel of jurors had seen the published articles there has been no evidence put before this Court which proves that the publication had such an effect on the minds of the jury, so much so that they cannot be impartial. The Hansard reports are privileged and private and must be requested by a Member of Parliament. This means that a normal public citizen would not be able to easily obtain the Hansard reports, which in return lowers the risk of them being influenced by them. Additionally, the references to the trial attributed to by “Bahamas Media’ merely states that the trial is due to commence.

24. This Court is also instructed by the case of **Montgomery v HM Advocate (supra)** which was also referenced in the case of **Edwardo Ferguson aka Kofhe Goodman (supra)**. In this case it was shown that the principal

safeguards of the objective impartiality of the tribunal lie within the trial process itself and the conduct of the trial by the trial judge. On the 1<sup>st</sup> of November, 2023, after the jury was empaneled before me. The Court gave express directions to the newly sworn and affirmed jurors not to engage in any research or investigation of this matter. The jurors were also cautioned not to engage in conversations/communications about this trial with the anyone outside of the jury room. Taking this into consideration this Honourable Court is of the view that the actions of this Court provide adequate safeguards to ensure an impartial and unbiased jury, which in return would result in a fair trial for both the Applicant and the Defendants.

25. The case of **Montgomery v HM Advocate (supra)** which was also referred to in **Donna Vasyli v R(supra)** established a test which must be applied when dealing with pre-trial publicity. The question that must be answered is “*whether the risk of prejudice is so grave that no direction by a trial judge, however careful, could reasonably be expected to remove it*”. After examining the evidence provided, this Court is of the view that Counsel for the Applicant has not provided any substantial evidence which proves that the non-implementation of a “Gag Order” would absolutely lead to prejudicial material being published/ uttered against him which would be detrimental to his Constitutional right to a fair trial. In addition to this Counsel for the Applicant has also not proved to this Court that even if there was evidence of pretrial publicity properly before the Court, in the instant case, the publicity does not rise to the level of oppression, and the risk of prejudice is not so grave that directions by a Learned Trial Judge could not be reasonably expected to remove it. There is therefore no basis to conclude that the Applicant could not have a fair trial. This is a new jury. They would have not seen the old material based on the former “Gag Order”.

26. When dealing with the issue of Adverse trial Publicity the Court is tasked with balancing both the rights of the Applicant to have a fair trial and the right to freedom of press, which represents the interests of the public. Given that there has been no evidence provided to this Court which shows that the right of the press to report should be stifled and/or taken away from them completely in this matter, this Court finds that the scale must be weighed in the favor of the public interest. This Court notes that in similar trials of former Members of Parliament Mr. David Shane Gibson, Mr. Frank Smith, Mr. Kendred Dorsett, those criminal trials were not conducted under “Gag Order” by other Judges of concurrent jurisdiction. The decision of these judges do not fetter the exercise of the discretion of this Court to impose a “Gag Order” in this case. However, in the view of the Court it is not warranted.

27. This Court is also instructed by the dicta provided in the case of **Stephen Stubbs (supra)** at paragraph 45 which stated inter alia that:

*“To stay proceedings would in my view, be a serious indictment on the people of The Bahamas because the Court would in effect be saying that you cannot get twelve fair minded, impartial and independent persons to judge the accused. I make bold to say that like Lawton J I have enough confidence in the people of the Commonwealth of The Bahamas that they would be approach the instant matter fairly and without prejudice notwithstanding whatever they may have read or heard. Additionally, the trial judge will give the appropriate warning and directions to the jury on their approach to the issue of pre-trial publicity. I am therefore not persuaded that the pre-trial publicity will inevitably lead to an unfair trial warranting a remedy of a permanent stay..... As Sharma JA said in delivering the leading judgment in the Court of Appeal in the*

*Boodram case “a balance must be struck between freedom of the press and the demands of a fair trial”.*”

The Crown made a reference to a stay, this was not the Application of the Applicant.

28. This Honourable Court agrees with the findings made in the **Stephen Stubbs (supra)** case. The current jurors sitting on this case would in fact be able to approach the instant matter fairly and without prejudice. They would be warned to disregard anything that they may have read or heard. The Court finds that the Applicant has failed to discharge the heavy onus of establishing that the pre-trial publicity had been so widespread and indelibly impressed on the minds of prospective jurors that it was unlikely that an impartial jury could be empaneled.

### **Conclusion**

29. After reviewing the law and evidence produced by Counsel for the Applicant this Honourable Court is not persuaded that the pre-trial publicity has been sufficient to influence or will infringe the Applicant’s Constitutional right to a fair trial. Furthermore, this Court is not persuaded that “the risk of prejudice is so grave that no direction by a trial judge, however careful, could reasonably be expected to remove it”. This Court finds that there are factors- such as the passage of time, the multiple distractions of life and the other compelling new stories that will be published- which exists that will be able to significantly mitigate the impact of any potential pre-trial publicity in this matter (**See Donna Vasyli**).

30. It is the view of this Honourable Court that it has not been established that the impartiality of the current jurors has been so compromised by negative

publicity against the Applicant that it is not possible to have a fair trial. As a result of this, this Court finds that a “Gag Order” is not to be issued for the duration of this trial. The press is sternly admonished to be fair in their reporting of this matter. This Court accepts that this is an open Court. The public has a right to know what transpires within these hallowed walls.

31. I promised to put my reasons in writing, this I now do.

**Dated this 6<sup>th</sup> day of November A.D., 2023.**

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**The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**