

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
BETWEEN

2022
V.B.I. No 167/6

ADRIAN PAUL GIBSON	Applicant 1
RASHAE LENORA GIBSON	Applicant 2
JOAN VERONICA KNOWLES	Applicant 3
JEROME MISSICK	Applicant 4
PEACHES FARQUHARSON	Applicant 5
ELWOOD DONALDSON	Applicant 6
vs.	
THE DIRECTOR OF PUBLIC PROSECUTIONS	Respondent

Before: The Honourable Madam Senior 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., Ms. Joan Knowles, and Mr. Jerome Missick; Counsel Mr. Raphael Moxey- appearing for Ms. Peaches Farquharson; Counsel Mr. Ian Cargill along with Mr. Donald Saunders appearing for the Applicant Mr. Elwood Donaldson; Counsel Ms. Christina Galanos and Ms. Jacklyn Conyers- appearing for the Applicant for Ms. Rashae Gibson

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

Date of Hearing: 4th of December, 2023; 5th of December, 2023; 22nd of January, 2024

RULING ON NOTICE OF MOTION; *The Queen v David Shane Gibson BS 2019 SC 26; Attorney General v. Sean Cartwright et al No. 8 of 2004; Williams & Pratt et Al BS 2006 SC 78; Mallard v. The Queen [2005] HCA 68; The State v. Paul (Michael) et al (1999) 57 W.I.R. 48; Berkeley Administration Inc. and McClelland 1990; Water and Sewerage Corporation Act Cap. 196*

GRANT-THOMPSON J

BACKGROUND

1. On the 4th day of December, 2023, whilst the trial of the Applicants herein was underway, Mr. Damien Gomez, KC, filed a Notice of Motion relative to the evidence of Water and Sewerage engineer, Ms. Diedre Taylor, who was declared by the Court to be an expert. The herein KC challenged the correct interpretation of the obligations of the Chairman and General Manager pursuant to the Water and Sewerage Act, Chapter 196. The Notice read as follows:

*“Take Notice that the continuation of the trial herein, the Accuseds and each of them intend to object to the elicitation of oral evidence of any alleged procedure or process or practice pursued at all material times by staff members or employees of the Water and Sewerage Corporation that are in violation of the Water and Sewerage Corporation Act Cap. 196 sections 4,5,6(1)(g), 19, the First Schedule and Second Schedule sections 1,2,3,9,10, and 11 and are therefore ultra vires the Water and Sewerage Corporation Act Cap. 196 and by reason thereof void and irrelevant to the determination of the trial issues herein; **AND FURTHER TAKE NOTICE THAT ALTERNATIVELY** the Accuseds and each of them intend to seek an Order granting the stay of proceedings herein until such time as the Office of the Director of Public Prosecution provides to the Accuseds and each of them disclosure of any or all documentation including any emails stored in the electronic database of the Water and Sewerage Corporation affecting its allegations of the existence at all material times of such procedures, processes or practices related to the procurement of services by the Water and Sewerage Corporation and of any alleged limitation to the powers of the Board of the Water and Sewerage Corporation, the Executive Chairman and or the General Manager or such other Order providing directions to prevent the continued abuse of process adversely affecting the defences of the respective Accuseds **AND FURTHER TAKE NOTICE THAT** the Accuseds intend to rely on the viva voce evidence comprised of the testimony of Deidre Taylor given at the trial herein **AND FURTHER TAKE NOTICE THAT** the Accuseds rely on their respective rights to a fair trial at Common*

Law and by virtue of Article 20 of the Constitution of The Bahamas which right has been and continues to be infringed by the non-disclosure hereinbefore referred to.”

Submissions by Applicants

2. By oral arguments, Counsel Mr. Damien Gomez, KC, submitted he received a document entitled “The Bahamas Water and Sewerage Corporation Policies and Procedures Manual” (the Manual herein) from the Office of the Director of Public Prosecutions. Mr. Gomez KC described it as a composite document which comprised fourteen (14) parts: (See December 7th, 2023, transcript

“this is a composite document comprising of 14 separate parts. There are 14 tabs and our review of the documents overnight indicate that each of the tabs, or subset, which could or might ... How the document was compiled, but might have been created at different times”)

3. He walked the Court through each of the fourteen (14) tabs of the manual. Mr. Gomez, KC, pointed out that the tabs nor tabbed documents were signed by the Chairman, nor the Deputy Chairman of Water and Sewerage Corporation as mandated by the Water and Sewerage Act, Chapter 196 (see Section 29 of the Second Schedule, Clause 1).
4. Mr. Gomez, KC, submissions are as follows: (See transcript dated December 7th, 2023)

“if these are the policies and procedures that are being alleged as having been in existence and relating to the functioning of the Board of Directors of the Water & Sewerage Corporation, that's a non-starter because it is flatly inconsistent with the expressed provisions

of the statute; and as such, this would be a complete irrelevance to the charges laid at the feet of the First and the Sixth Accused...

The other persons would not have had any administration of the management of the Water & Sewerage Corporation. They were merely vendors. That's the case what I understand from the disclosure and from the opening that was made by my learned friend. These documents, but for the charter, are ultra vires to the Act”.

5. Mr. Gomez, KC, clarified the role of the Chairman, who is not functioning as a solo maverick, he is answerable at all times to the Board, ultimately to the Minister of Public Works. He submitted that:

“If it is intended to rely on these documents to establish that these were policies that affected the Board, that cannot be so because to the extent that the General Manager may have signed it, he is answerable to the Board, responsible to the Board. He can't be telling the Board what to do”.

6. In summary Mr. Gomez KC, submissions were that:

- i. The amount of funds the Board can contract is not provided for in the Act or Schedule attached hereto;
- ii. The mandatory signatures requested by the Schedules are not provided for in the documents relied upon;
- iii. This illustrates the position that The Bahamas Water and Sewerage Corporation Policy and Procedures Manual does not and can not bind successive Board members;

Submissions By The Respondent

7. In response, Madam Director of Public Prosecutions submitted that:

“I will start with putting this document in proper context. This was a manual that was compiled by the Defendant, Elwood Donaldson.”

8. Following this, the Respondent submitted that: (See Transcript, dated December 7, 2024)

“... in respect of the Water & Sewerage Corporation Corporate Governance Guidelines, my learned friend would have stated that the only document that bears the signature of the Chairman and the Audit Committee Chairman would have been that of a single document headed, "Audit Committee Charter". I would start by saying that that is a misconception, and I will show the Court that that document is a part of the Corporate governance. So my learned friend is misguided to identify that document as a single document”

9. In the Respondent’s written response to the Applicants “Notice of Motion” (herein the Notice) the Respondent addressed the submissions of the Applicants under four (4) main headings. The first being that of a **Preliminary objection**. Under this heading the Respondents submitted that:

“The Notice of Motion filed by the Applicants is void of Affidavit in Support of the same; therefore, there is no evidence placed before this Honourable Court to support the bare allegation contained in the Notice of Motion. The result is that the application is improperly brought.

Further, as this present application is not an Appeal by the Director of Public Prosecutions the said party is not an Appellant for the purposes of these proceedings”

Abuse of Process

10. Under the “Abuse of Process of Court”, the Respondent submitted this:

*“The basis of the objection is grounded in the fact that the complaints outlined in the Notice of Motion can be dealt with in the normal trial process and the Applicants need not raise a Constitutional breach. The Supreme Court case of **The Queen v David Shane Gibson BS 2019 SC 26** at paragraph 122, is instructive in this regard where the Honourable Madam Justice Indra H. Charles (as she then was) opined:*

[122] “In my opinion, every complaint the Defence makes can be dealt with in the ordinary course of his trial. In fact, the matters in dispute are all about the trial process. They have nothing to do with the fundamental right to a fair trial guaranteed by the Constitution which I shall consider momentarily. There is therefore no real basis for suggesting that the Applicant will not have a fair trial.” [Emphasis Mine]”

11. Further, the Respondent also submitted that in regard to the Applicants reliance on **Article 20** of the Constitution of The Bahamas, the proviso to **Article 28(2)** of the Constitution of The Bahamas prohibits the Applicants from resorting to the Constitution where there are adequate remedies available under the Common law. In support of their submissions the Respondent relied on the case of **Attorney General v. Sean Cartwright et al No. 8 of 2004** where the Court found *inter alia* that:

“it was not reasonably necessary therefore, for copies of the audio tapes to be made in order to prepare a defence. As to the videotapes, it is usual that photographs are given to defendants after they are exhibited in Court-either at the preliminary inquiry or trial and as Tolson’s case indicates, they are prima facie admissible. We do not think, therefore, that insisting on copies of the videotapes at this stage is “reasonably necessary” for the preparation of the defence”

Mr. Gomez, KC, in response pointed out that this Notice of Motion was not a Constitutional Application.

Elicitation of Oral Evidence of Procedures, Process and Practices

12. The Applicants Objected to the Elicitation of Oral Evidence of Procedures, Process and Practices pursued by staff/employees of Water & Sewerage Corporation in violation of the Water and Sewerage Corporation Act, Chapter 196 Sections 4, 5, 6(1)(g), and 19, the First Schedule and the Second Schedule Sections 1, 2, 3, 9, 10 and 11 and stated that they are therefore ultra vires. The Respondent submitted that there is no merit in the Applicants’ complaint. Moreover, the evidence led by witnesses Ms. Vaneke Johnson, Ms. Chelsa Fernander and Ms. Deidre Taylor relative to practices, procedures, and processes for the procurement of services at the Water & Sewerage Corporation (WSC) followed by staff of the corporation are relevant to the issues before the Court and therefore admissible.

13. In addition to this the Crown submitted that the Applicants have not presented any authority to support their position that the evidence led or to be led in respect to the practices and procedures for the procurement of services are not relevant to the issuance of the impugned contracts awarded. The general provisions of Section 4, 5 and 6(1)(g) of the Water

& Sewerage Corporation Act which deals with the establishment of the Corporation, functions of the Corporation powers of the Corporation are not violated by the elicitation of evidence of the practices and procedures of how the Corporation carries out the general functions and powers provided for under these provisions. Section 19 of the Water & Sewerage Corporation Act is not in dispute. The evidence as it relates to the practices and procedures to maintain and extend the water supply and sewerage systems has not been violated.

14. The Respondent averred that the First Schedule and the Second Schedule Sections 1, 2, 3, 9, 10 and 11 are not applicable to any issue of the admissibility of otherwise relevant evidence of the practices, procedures and processes of employees and members of staff at WSC in relation to the procurement of services and the limitation of approvals by various levels of staff.

Disclosure

15. The Respondent also addressed the point of Disclosure. In their submissions the Respondent stated that “*It is trite law that the Respondent has a duty to disclose all material it intends to rely on and that which may assist the defendant in its case*”. Further it was also submitted that:

*“There exists a general duty to disclose any information, in the possession of the Prosecution to the Defence under our criminal procedure and rules. It is trite law that the Prosecution has a duty to provide full and frank disclosure to their learned friends on the other side. This was shown in the case of **Williams & Pratt et Al BS 2006 SC 78**, at paragraph 45 where Sir Gummow, Hayne, Callinan and Heydon, JJ., in the case of **Mallard v. The Queen [2005] HCA 68**, was quoted:-*

Disclosure of Crown Case

The Crown has a general duty to disclose the case in-chief for the prosecution to the defence.

Normally full disclosure of all relevant evidence will occur unless in exceptional circumstances full disclosure prior to the trial will undermine the administration of justice, or when such disclosure may endanger the life or safety of a witness.”

16. Notwithstanding this, the Crown submitted that their responsibility to disclose “does not include details of every twist and turn of an investigation...”. As per the case of **The State v. Paul (Michael) et al (1999) 57 W.I.R. 48**:

“The defence has no right to see material, which is available to the prosecution but unused, except where such disclosure is dictated on the ground and the defence can show that prejudice would result from nondisclosure. Nor is the prosecution under any consequential duty to preserve all material gathered in the course of an investigation, except to the extent that it would be unfair not to preserve unused material or where its non-disclosure would be an affront to the public conscience as undermining accepted standards of fairness”

17. No application was made for disclosure of emails affecting the processes and procedures prior to the Notice of Motion. The burden is on the Applicants in such an application to prove the relevance of the documents requested. Senior Justice Charles J, then a judge of concurrent jurisdiction (now Justice of Appeal) provided this guidance in the case of **The Queen v David Shane Gibson BS 2019 SC 26** at paragraphs 105-106:

“105. The prosecution is under a duty to disclose as soon as is reasonably practicable all relevant material. The question of what material should be disclosed was considered in **Keane (1994) 99 Cr. App. R. 1**. The Court of Appeal said that the test of what was discloseable was to determine whether the material was relevant (or possibly relevant) to the issue in the case, or raised (or possibly raised) a new issue the existence of which was not apparent from the prosecution evidence, or held out a real prospect of providing a lead on evidence relevant to these matters. If the prosecution was in doubt about the materiality of information the Court should be asked to rule.

106. The principle establishes that it will be for the defence to establish why the material might be expected to assist them. The requirement that it might “reasonably be expected” to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure. On the other hand, if proper explanation of the relevance of the material and as to how it might assist is given, the Court will be under a duty to order disclosure in the interests of a fair trial.”

18. The Prosecution also relied on the *ratio descendi* of Mustill LJ in **Berkeley Administration Inc. and McClelland 1990 FSR 381 at 382** where he opined:

“(1) there is no jurisdiction to make an order for the production of documents unless... (a) there is sufficient evidence that the documents exist which the other party has not disclosed; (b) the document or documents relate to matters in issue in the action; and

(c) there is sufficient evidence that the document is in the possession, custody or power of the other party.

(2) When it is established that those three prerequisites for jurisdiction do exist, the Court has a discretion whether or not to order disclosure”

19. The Respondent submitted that due to the late request for Disclosure there is no evidence to support the fact that these documents, if they ever existed, still exist as the Respondent is not under any duty to save unused material. Further, the Water & Sewerage Corporation Governance Guidelines specifically addresses the need for Ministerial Approval for contracts above Two Hundred Fifty Thousand Dollars (\$250,000.00). It was submitted that Counsel for the Applicants did not provide this Court with any evidence which proved that their clients would be prejudiced by the non-disclosure of the said documents. The Court finds that the Respondent has discharged their duty to disclose, and Counsel for the Applicant would not be prejudiced by the late or non-disclosure of certain documents.

Elicitation of Oral Evidence of Procedures, Process and Practices of the Water & Sewerage Corporation

20. The Court accepts there is a Policies and Procedure Manual of the Water and Sewerage Corporation, intended to govern the business’ process and controls. Guided by the Manual the Audit Committee periodically reviews and evaluates the procedures of the Corporation and if necessary external audits are called in.

21. Mr. Damien Gomez, KC, in his oral submissions having walked the Court through each of the fourteen (14) tabs of The Bahamas Water and Sewerage

Corporation Policy and Procedures Manual, submitted that none of the tabs nor tabbed documents were signed by the Chairman, nor the Deputy Chairman of Water and Sewerage Corporation as mandated by the Water and Sewerage Act, Chapter 196. The absence of the signatures of the Chairman and the Deputy Chairman in the Water Sewerage Corporation Policies and Procedures Manual he submitted is inconsistent with the expressed provisions of the statute and the Schedule attached thereto. As a result of this the aforementioned Manual would be irrelevant to the charges laid at the feet of the First and the Sixth Accused. Moreover, it would also be ultra vires to the Act which governs the Water and Sewerage Corporation and should be ignored as an acceptable basis to ground criminally on behalf of these Defendants. Section 3 is the Interpretation section of the Act. It sets the Mission statement of the Water and Sewerage Corporation providing its reasons for incorporation to protect Water which is a national resource of The Bahamas.

22. Additionally, Mr. Gomez KC rightfully called for further disclosure pointing out that the Court had no documents evidencing the existence of practice, process, or procedure which fettered the discretion of the Chairman and Board having regard to the clear wording of the Act and Schedule. Clause 21 of the Second Schedule required the “Common Seal of the Corporation to authenticate the signature of the Chairman or Deputy Chairman and the other member, which signature and seal could then be officially and judicially noted.

23. In response to this the Respondent submitted that there is no merit in the Applicants’ complaint. Moreover, the evidence led by witnesses Ms. Vaneke Johnson, Ms. Chelsa Fernander and Ms. Deidre Taylor relative to practices, procedures, and processes for the procurement of services at the

Water & Sewerage Corporation (WSC) followed by staff of the corporation are relevant to the issues before the Court and therefore admissible.

24. In addition to this, the Crown contended that early in the discovery process they provided the Policies and Procedures Manual, which Counsel for the Applicants failed to consider. They took the Court to Tab 2, Chapter Two of the Water and Sewerage Corporation Governance Guidelines providing for the Functions of the Boards and General Managers/Management. Chapter Two is as follows (See page 35 of Transcript dated December 5th, 2023):

- i. To hold regular board meetings at a minimum and quarterly basis, and attend at least 75 percent of meetings in a given year;*
- ii. To formulate policy in consultation with management, and subject to the specific and general direction of the Minister in respect of*
 - a. income;*
 - b. expenditure;*
 - c. Contracts for supply of plant equipment and services;*
 - d. staff selection and training; and*
 - e. conditions of service*
- iii. To formulate rules under the relevant legislation for approval of the Minister;*
- iv. To approve proposal by Management in respect of one, annual budget; two, long-term planning; and*
- v. To approve capital expenditure and projects up to \$250,000 and to recommend those in excess of \$250,000 for the Minister's approval.*

25. Madam DPP in her oral submissions continued on by stating that:

“So while we submit, my Lady, that there is absolutely no legal requirement for all policies and procedures to be documented, we

say in regard to this case before the present court, there was, in writing, the actual provision which is the thrust of the prosecution's case. So a cursory read of 5 on page 6 of those Corporate Guidelines of the Water & Sewerage Corporation would show that all parties in sundry had notice of the \$250,000 in excess of that, has to be for the approval by the minister”

26. The Crown pointed out that there was no request for further disclosure, either informally or formally by letters. The first notice the Crown had of a challenge was the service of a Notice of Motion. This they say is consistent with the "Defence by ambush" employed since the commencement of the trial, wherein, two Constitutional Motions were made and appealed to the Court of Appeal without any proper notice to the Prosecution. The documents Mr. Gomez KC asks for in disclosure they say requires further and better particulars.

27. The Corporation established by Section 1 of the Act is a separate legal person from the Government of The Bahamas. All sides accept it is not a Department within the Ministry of Works. The Minister of Public Works has limited powers to intervene in its activities. They are an independent and a separate body. On this basis Mr. Gomez KC submitted that

“There is nothing in this Act which enables either the Minister of Finance or anyone in his Ministry to so interfere with the governance of the independent Water & Sewerage Corporation to limit the Board in his ability to enter into contracts, the value of which exceeds Two Hundred and Fifty Thousand Dollars (\$250,000). Nor is there any provision in this Act limiting the General Manager in his power to enter into contracts on behalf of

the Corporation where those contracts exceed One Hundred Thousand Dollars (\$100,000).” (See pages 15-24 of Transcript dated December 5, 2023).

28. Taking this into consideration the Court partially agrees with the submissions made by Mr. Damien Gomez, KC. Having perused the Act which governs the Water and Sewerage Corporation the argument can be made that the documents contained within the Manual does require the signatures of the Chairman or the Deputy Chairman, to be valid. However, notwithstanding this partial agreement the Court is of the view that The Bahamas Water and Sewerage Corporation Policy and Procedures Manual, is still a binding document. This Manual was never challenged or disputed by the successive Boards or Board members, but rather as a matter of practice appears to have been accepted by them as a binding document. Through their silence this Court is of the view that the following Boards and Board members would have acquiesced to the validity of the document. Moreover, after the aforementioned Manual was enacted its credibility was never questioned. The successive Boards simply adhered to its policies and procedures for years. The Manual in compliance with the Act and its Schedule was originally signed by the Chairman of the Board of Directors and the Audit Committee Chairman of the Corporate Governance Guidelines, these were the necessary signatures and they bind the Board.

29. This Court finds that notwithstanding that the tabled documents within The Bahamas Water and Sewerage Corporation Policies and Procedures Manual were eventually signed by the Chairman or Deputy Chairman, it is in fact still binding on any and all of the successive Boards and Board members (29th of June, 2009). The Audit Committee Charter is co-signed

by the Chairman of the Board along with the Auditor Committee Chairman as required by the Water and Sewerage Act and the Schedule.

30. This Court also took into consideration the point of Disclosure raised by Mr. Ian Cargill, Counsel for the Applicant Mr. Elwood Donaldson. Mr. Cargill in his oral submissions that the key issue regarding his client is whether the Board would have instructed the General Manager to do certain things. Mr. Cargill submitted that in order for the aforementioned question to be answered full disclosure of any Minutes, Resolutions by the Board, correspondence between the then Minister and the Board, and/or the Executive Chairman are required. Mr. Cargill implored the Court that these documents are necessary for his client to adequately respond to the charges against him.

31. This Court understands the concerns raised by Mr. Cargill, Counsel for Mr. Donaldson. However, the Minutes and Resolutions have been provided. It would be helpful to the Court if Mr. Cargill could particularize any additional documents which he requires. See **David Shane Gibson (supra)** which stated that *“the requirement that it might “reasonably be expected” to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure”*.

Stay of Proceedings

32. Relative to “Stay of Proceedings”, the Respondent relied on the ratio decidendi of the House of Lords in **R v. Maxwell [2010] U.K.S.C. 48** and by the **Privy Council in Warren v. Attorney General for Jersey [2011] U.K.P.C. 10, [2011] 2 All E.R. 513**, which stated that:

“It is well established that the court has the power to stay of proceedings in two categories of case, namely (i) where it will be

impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will 'offend the court's sense of justice and propriety' (per Lord Lowry in R v. Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 A.C. 42, 74 g) or will 'undermine public confidence in the criminal justice system and bring it into disrepute' (per Lord Steyn in R v. Latif [1996] 1 W. L. R. 104, 112 f)."

33. Further reliance was placed on the case of **The Queen v David Shane Gibson BS 2019 SC 26** at paragraph 38 which provided that:

"The law is settled. Weighing countervailing considerations of policy and justice, it is for the judge in the exercise of his discretion to decide whether there has been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed"

34. The Respondent reiterated the position that the Applicants did not provide any evidence that they cannot have a fair trial. Neither can the Applicants say that in all the circumstances a trial will 'offend the court's sense of justice and propriety'. Therefore, the Respondent humbly prayed that the Applicants' Notice of Motion filed on the 4th of December, 2023 be dismissed and that there be no order for a stay of these proceedings.

Application

35. This Honourable Court has reviewed and heard the submissions provided by both Counsel for the Applicants and Counsel for the Respondent.

Preliminary Objection

- i. The Notice of Motion filed by the Applicants should have been produced along with Affidavit evidence. Further, the Notice should have been correctly titled and formatted. This is not an Appeal and therefore the parties should have not been referred to as Appellants. However, notwithstanding these technical errors the Court fully considered all of the Applicants issues which were addressed in the Notice of Motion.

Abuse of Process

- ii. The Respondent contended that the Applicants Notice of Motion was an Abuse of the Courts Process in seeking to rely on **Article 20** of the Constitution of The Bahamas. They correctly reminded the Court that the proviso to **Article 28(2)** of the Constitution of The Bahamas prohibits the Applicants from resorting to the Constitution where there are adequate remedies available under the Common Law. (The Crown relied on the cases of *The Queen v David Shane Gibson BS 2019 SC 26* and *Attorney General v. Sean Cartwright et al No. 8 of 2004*)
- iii. In response to this Counsel for the Applicants Mr. Gomez KC, in his oral submissions stated that the Notice of Motion presently before this Honourable Court was not a Constitutional Application. Therefore, it cannot be an Abuse of the Courts Process. This Court agrees with Mr. Gomez, KC, that the Notion of Motion is not an Abuse of the Courts

Process as it is not a Constitutional Application. Therefore, the issue does not need to be discussed any further.

Disclosure

- i. Regarding the point of Disclosure the Applicants requested in their Notice of Motion, “*disclosure of any or all documentation including any emails stored in the electronic database of the Water and Sewerage Corporation affecting its allegations of the existence at all material times of such procedures, processes or practices related to the procurement of services by the Water and Sewerage Corporation and of any alleged limitation to the powers of the Board of the Water and Sewerage Corporation, the Executive Chairman and or the General Manager*”.
 - ii. Having reviewed the submissions Counsel for the Applicant and Counsel for the Respondent, this Court agrees with the position held by the Respondent that their duty to disclose does not include details of every twist and turn of an investigation.
 - iii. This Honourable Court takes guidance from the ratio descendi held in the decided case of **The Queen v David Shane Gibson BS 2019 SC 26**. Here it is shown that the burden rests upon the shoulders of the defence to prove the relevance of the documents requested. Further, the case of **David Shane Gibson (supra)** also stated that “*The requirement that it might “reasonably be expected” to assist means that fishing expeditions or fanciful possibilities will not suffice as reasons for an order for disclosure*”.
36. Taking this into consideration the Applicants have failed to satisfy this Court the need/ true relevance of the alleged emails. There has been no substantial evidence provided to this Court proving that the Applicants

would be disadvantaged in their defence in this trial if the alleged emails were not produced. As a result of this Court finds that that the burden which rests on the shoulders of the Applicant has not been discharged. Therefore, this Court does not order any additional disclosure for the requested alleged emails.

37. Moreover, in reliance of the principle established in the case of **Berkeley Administration Inc. and McClelland (supra)** this Court is further of the view that the Applicants have failed to even prove that the requested emails even exists or that the Respondents are in possession of the said emails.

38. However, this Honourable Court finds that it has not been satisfied of the relevance of the disclosure of the requested emails, the Court found it necessary for the full disclosure of the Bahamas Water and Sewerage Corporation Policies and Procedure Manual which the Court understands has now been provided, disclosed and distributed to the Applicants in order to ensure they receive a fair trial. (In the eyes of the Court everything in the Prosecutions hands have been fully disclosed. Any additional documents required should be particularized and requested.) The Court had previously ordered the Crown to produce a copy of the full Policies and Procedures Manual to the Applicants.

39. Secondly and alternatively, the Notice of Motion seeks orders related to the Disclosure of any or all documentation, including any e-mails stored in the electronic database of Water & Sewerage Corporation affecting its allegations of the existence of such procedures, processes or practices related to the procurement of services by the Water & Sewerage Corporation, and of any limitation to the powers of the board, the General

Manager or the Chairman. If these emails exist, and have not been disclosed, they should be provided.

Stay of Proceedings

40. Regarding the point of “Stay of Proceedings” the Respondent submitted that the Applicants did not provide any evidence that they cannot have a fair trial. Neither can the Applicants say that in all the circumstances a trial will ‘offend the court's sense of justice and propriety”. However, this Court is of the view that the Applicants are not expressly asking for a stay in this matter. The Court finds that no stay of the proceedings is required.

Conclusion

41. In conclusion this Court finds that:

- i. The Notion of Motion produced to this Court is not a Constitutional Abuse of the Courts Process, the Applicants submissions do not support the invocation of Article 28 of the Constitution. They are in fact relying on the Common Law position of the Court and Statute;
- ii. The documents within The Bahamas Water and Sewerage Corporation Policies and Procedures Manual revealed the necessary signatures of the Chairman and the requisite Members. It is in fact still binding on any and all of the successive boards and board members; and
- iii. The Court had ordered the Crown to produce a copy of the full policies and procedures manual to the Applicants, along with the relevant Minutes and Resolutions of the Board.

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

Dated this 22nd day of January A.D., 2024.

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson