COMMONWELATH OF THE BAHAMAS ***2023/***

IN THE SUPREME COURT

CRI/CON

In the Matter of Article 20(1) of the Constitution of the Commonwealth of The Bahamas

SERGEANT ANTOINE SWEETING

First Applicant

AND

INSPECTOR RAYMOND SAUNDERS

Second Applicant

AND

SERGEANT *3039* JAMAL JOHNSON

Third Applicant

AND

CORPORAL *3226* DEANGELO ROLLE

Fourth Applicant

AND

Attorney General of The Commonwealth of The Bahamas

First Respondent

AND

HER MAJESTY'S CORONER

Second Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: Mr. Keevon Maynard for Applicants

Mr. Patrick Sweeting for the First Respondent

Mr. Basil Cumberbatch for the Second Respondent

Hearing Date: 21 July, 2023

Williams J

1. By Originating Application, the applicants seeks, *inter alia*, to move the Court:

"**The Applicants makes this application of Appeal for:**

(a) The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25trh day of May, 2023 in violation of Article 20 (1) of the Constitution of the Commonwealth of The Bahamas the right to a fair hearing;

(b) The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on 25th day of May 20123 on the basis that a formal application by virtue of an Original Notice of Motion along with an Affidavit in support was filed on the 10th day of May,2023 by the Applicant to have the Coroner's Inquest stayed as a result of pre trial prejudice;

(c) 'The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 on the basis that the Learned Coroner ignored and/or refused to consider the Applicant and Affidavit in support for constitutional relief in violation of Article 20(1) of the Constitution of the Commonwealth of The Bahamas;

(d) The Court set aside and or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 0n the basis that the Learned Coroner ignored and/or refused to consider the oral application made on behalf of the Applicant on the 26th day of May, 2023;

(e) **The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 on the basis that the Learned Coroner failed to and/or refused to refer the constitutional application to the Supreme Court to be adjudicated by virtue of Article 28(3) which states that** *"if any proceedings in any court established for the Bahamas other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any provisions of the said Articles 16 to 27 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.";*

(f) **The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 on the basis that the Learned Coroner has no jurisdiction or right by law to refuse any constitutional application or point raised on behalf of the Applicant;**

(g) **The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 on the basis that the charges of Homicide by Way of Murder, Homicide by Way of Manslaughter and Justifiable Homicide are flawed; and**

(h) **The Court to set aside and/or quash the decision of Homicide by Way of Manslaughter handed down by the jury on the 25th day of May, 2023 on the basis that the evidence placed before the court was evidence that if heard and was decided upon by an impartial and independent tribunal would have been in the Applicant's favour.**

2. The applicants seek a number of reliefs:

i.) **A Declaration that the Article 20 (1) of the Constitution of the Commonwealth of The Bahamas which affords the**

the Applicants the right to a fair hearing within a reasonable time by an independent tribunal established by law has been infringed;

ii.) **A Declaration that the coroner erred in law by failing to and/or refusing to refer the Constitutional point raised on behalf of the Applicants to the Supreme Court to be heard and adjudication;**

iii.) **A Declaration that the decision of the inquest was improper and unsafe as a result of the pre – trial prejudice;**

iv.) **A Declaration that the Applicant was not afforded a fair trial; and**

v.) **In the alternative, that a fresh coroner's Inquest be held."**

3. Distilled to its core, the applicants by their Originating Application complain that they were prejudiced by, and hence the finding upon inquest influenced by pre – trial publicity adverse to themselves; further, the Coroner ignored and or refused to consider an application and or refused to refer an application for constitutional relief to the Supreme Court.

4. The Respondents submit:

"3. That the coroner is required by legislation to inquire into a reportable death, that is any death that is unexpected, unnatural, unusual, violent or by an unknown cause and determine *inter alia* and as far as possible, the causes and circumstances of death and; further and to refer the death to them if satisfied that the public interest would be served by their investigating it in the performance or exercise of their functions, powers or duties. To assist the coroner in fulfilling this statutory duty legislation allows that he or she may make a decision to hold an inquest to further the inquiry into the death.

4. The Respondents argue, that the inquest, is not a formal hearing within the meaning of Article 20(1) but merely an investigative tool to further the coroner's inquiry into the death of the deceased to know how he came by his demise."

5. According to the Respondents, the issues to be determined are:

a.) Whether the coroners erred in requiring and completing the inquest;

b.) Whether the findings of the inquest violated the Applicants rights under Article 20 (1) of the Constitution of the Commonwealth of the Bahamas;

c.) Whether the applicants were adversely affected by publicity surrounding the case;

d.) Whether sufficient cause exists to quash the findings of the inquest;

e.) Whether the release of a certain video adversely affected the interests of the Applicants at inquest.

6. The Originating Application is intituled:

"In the Matter of Article 20(1) of the Constitution of the Commonwealth of The Bahamas"

7. The applicants refer throughout their submissions refer to "fair hearing within a reasonable time", "trial", "pre – trial prejudice" and "pre – trial publicity". These are acts, procedures, and or issues which are cognizable in a criminal proceedings, of which a coroner's inquest is not.

8. Article 20(1) of the Bahamas Constitution reads:

"If any person is **charged** with a **criminal offence**, then unless the

charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

9. Article 20 (1) *et sequens* (ss.2-3) is one of several falling under the rubric

"PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL"

10. Article 28(1) states:

> "If any person alleges that any of the provisions of Articles 16 to 27(inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress."

11. At the time of the convening of the inquest, the Applicants had not been **charged with a criminal offence.** A coroner's inquest is not concerned with criminality, though the issue of criminality may be considered as a result of a finding thereof. The Applicants are not now charged. There is not now, nor has there been any indication that the Applicants are likely to be charged with a criminal offence.

12. I take judicial notice of the fact that there has been and continues during the pendency of this action to be much publicity around the death of the subject of the inquest. This publicity consists of social media postings, commentary, and interviews and even a website and podcast with hundreds of thousands of views seemingly established solely for this purpose and has been facilitated by digital, print and broadcast media. Several persons interviewed have repeatedly and explicitly called for the indictment of the Applicants and continue to do so. The resulting decision may very well have been influenced by that publicity; that however, is not a matter for consideration here.

13. Notwithstanding, the issue here is a narrow one. In this vein, the words of Lord Diplock in ***Harrikissoon v Attorney General of Trinidad and Tobago*** [1980] AC 265 @ page 268 are instructive:

> "**… .** The right to apply to the High Court under section 6 (Article 28(1) Bahamas) of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action."

14. The issue here is not that of control of administrative action, but that of a decision rendered as a result of the proceedings of a coroner's inquest lawfully convened. The remedy of constitutional relief is one of last resort. Applicants seeking constitutional relief must exhaust all other remedies. To be certain, there is no question of the breach of any fundamental or constitutional right here. The Applicants were not **charged**, are not charged and as of this moment, no indication will be charged **with a criminal offence.**

15. The Applicants seek constitutional redress for matters which are appropriate to another forum, and which if brought thereto implicate substantial factual dispute. Their Lordships dealt with the issue of inappropriateness in such circumstances in ***Jaroo v The Attorney General of Trinidad and Tobago*** [2002] UKPC 5:

> **"36.Their Lordships wish to emphasize that the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes of fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law. As Lord Mustill indicated in *Boodram v Attorney General of Trinidad and Tobago* [1996] AC 842, 854, in the context of a complaint that adverse publicity would prejudice the appellant's right to a**

fair trial, the question whether the appellant's complaint that the police were detaining his vehicle was well founded was a matter for decision and, if necessary, remedy by use of the ordinary and well-established procedures which exist independently of the Constitution.

38. …The appropriateness or otherwise of the use of the procedure afforded by section 14(1) must be capable of being tested at the outset when the person applies by way of originating motion to the High Court. All the court has before it at that stage is the allegation. The answer to the question whether or not the allegation can be established lies in the future. The point to which Lord Diplock drew attention was that the value of the important and valuable safeguard that is provided by section 14(1) would be diminished if it were to be allowed to be used as a general substitute for the normal procedures in cases where those procedures are available. His warning of the need for vigilance would be deprived of much of its value if a decision as to whether resort to an originating motion was appropriate could not be made until the applicant had been afforded an opportunity to establish whether or not his human rights or fundamental freedoms had been breached.

39. Their Lordships respectfully agree with the Court of Appeal that, before he resorts to this procedure2, the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued

use in such circumstances will also be an abuse."

16. I find their Lordships advice applicable in the particular circumstances of this matter. In the premises, having considered the submissions of counsel for the Applicants and counsel for the Respondents, the authorities cited, and, finding that there exist alternative remedies not exhausted, I decline to set aside and or quash the finding or verdict of homicide in the coroner's inquest; further, the declarations sought at paragraphs 2 – 6 are refused.

Dated this 10th day of March, A.D. 2024

Franklyn K M Williams
Justice