COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **CRI/vbi/00167/6/**

CRIMINAL DIVISION

BETWEEN

ADRIAN PAUL GIBSON
JOAN VERONICA KNOWLES
JEROME MISSICK
PEACHES FARQUHARSON
ELWOOD DONALDSON

Applicants

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: **Mr. Damien Gomez K.C., Mr. Murrio Ducille K.C., Mr. Geoffrey Farquharson, and Mr. Bryan Bastian for the First Defendant**
Mr. Murrio Ducille K.C., and Mr. Bryan Bastian for the Second and Third Defendants
Mr. Ian Cargill for the Fifth Defendant
Mr. Raphael Moxey for the Fourth Defendant
The Director of Public Prosecutions - Ms. Cordell Frazier along with Mrs. Karine MacVean for the Respondent

Hearing Dates: **20th February, 2025; 25th February, 2025; 11th March, 2025**

RULING ON APPLICATION TO QUASH THE INDICTMENT

Salomon v. Salomon & Co. Ltd. [1897] AC 22, [1896] UKHL 1; R v Arfan {2012] EWHC 2450 (QB); Cohen (1992) (the Blue Arrow Case) The Independent 29th July, 1992; R v Gomes (1962) 5 WIR 7; Chevaneese Sasha Gaye Hall SCCrApp & CAIS No. 179 of 201; Anthony Deane CRI/con/00010/2014; Jerome Bethel v R SCCrApp No. 19 of 2013; Jonathan Armbrister v. Regina SCCrApp No. 232 of 2012; Adrian Gibson Et. Al. v. Director of Public Prosecutions SCCrApp No. 46 of 2024; Paul Bellizar v. The Attorney General SCCrApp. No. 211 of 2017 and 302 of 2018; Littlewoods Mail Order Stores Ltd v. Inland Revenue Commissioners [1969) 3 All ER 855; Gilford Motor Company Ltd v. Horne [1933] All ER Rep 109; Jones v Lipman [1962] 1 All ER 442; Adrian Gibson et al v. The Director of Public Prosecution SCConCrApp. No. 138 of 2023; Regina v David Shane Gibson 233/10/2017; Anton Bastian v. The King [2024] UKPC 14; Criminal Procedure Code, Ch. 91;

GRANT-THOMPSON, SNR. J

1. This is an application to quash the indictment against the Applicants/ Defendants herein in this matter. The application made by Notice of Motion, filed 24th January, 2025, supported by Affidavit of Counsel Mr. Ryan Eve filed on 7th February, 2025. The First named Defendant and each of them sought the following relief:

    1. ***"The Voluntary Bill of Indictment proferred against the Applicant failed to disclose a true case contrary to the mandatory provisions of S. 258 of the Criminal Procedure Code Chapter 91.***
    2. ***That the Indictment herein be quashed as it was Amended without Authority.***
    3. ***That the Indictment herein be quashed as it was proferred in contravention of the provisions of section 258 of the Criminal Procedure Code.***
    4. ***That the Indictment herein be quashed as it causes prejudice to the Defendants and each of them which no amendment can cure.***
    5. ***That the Indictment herein be quashed as it is founded on a committal based on little or no evidence sufficient to sustain the charges contained therein.***
    6. ***That the Indictment herein be quashed as it relies on inadmissible evidence.***
    7. ***That all further proceedings in this cause be stayed."***

2. Counsel for the Respondent filed on 10th February, 2025 an Affidavit of Counsel Mr. Calnan Kelly in Response to the Affidavit of Counsel Mr. Ryan Eve.

BACKGROUND

3. The trial in this matter commenced on 1st November, 2023. During the course of the trial, on 28th February, 2024, the Respondent received a statement from officers of the Central Investigations Department of the Royal Bahamas Police Force. The statement was from the then Defendant, Ms. Rashae Gibson ("Ms. Gibson") indicating the nature of her involvement in the matter.

4. On 29th February, 2024, an Agreement of full immunity was negotiated on behalf of Ms. Gibson by her Counsel Ms. Christina Galanos in exchange for her truthful testimony. As a result, Ms. Gibson was granted immunity by the Director of Public Prosecutions. On the same day, during the continuation of the trial, all parties including the Court and Counsel for the Applicants were notified, in the absence of the jury, that an Immunity Agreement had been

executed by Ms. Gibson. The parties were also advised of the Respondents intention to call Ms. Rashae Gibson as a witness. A copy of the Immunity Agreement, the Witness Statement were laid over to the Court and all parties. The Respondent respectfully informed the parties and petitioned the Honourable Court to amend the indictment to reflect the reduced charges.

5. On the same day, a Notice of Additional Evidence ("the Notice") was electronically filed. The Notice was served on the Applicants on 1st March, 2024 along with a thumb drive and the further chain of custody report of Officer Cadet, filed on 25th August, 2022.

6. On 4th March, 2024, Counsel for the Applicants were handed, in the face of the court, a copy of the Nolle Prosequi regarding Ms. Gibson, a copy of the Amended Indictment (which was not filed and acts as an aide memoire). The Attorneys for the Applicants, however, objected to the latter for varying reasons, none of which involved the issues raised in this present application. On 5th March, 2024, this Court ruled against the Applicants on their respective objections in this regard. The Respondent sought leave to have the Indictment No. 167/6/2022 amended pursuant to section 150 of the Criminal Procedure Code, Chapter 91 ("the CPC") to remove the name Ms. Rashae Gibson wherever it appeared, to have the counts impacting the respective Applicants re-read to them. There were no objections made by the Applicants in this regard. Further, the Applicants that were impacted by the amendments pled not guilty to the relevant counts, which further indicates their lack of objection. The Court was also invited to endorse the previously "filed" Indictment No. 167/6/2022 reflecting the changes. This the Court did. The Court has complied with the directions given by Mr. Justice Isaacs, JA (as he then was) to the lower Court by the Court of Appeal in **Jonathan Armbrister v Regina SCCrApp. No. 232 of 2012** at paragraph 66:

> *"66.Section 150(2) mandates that "a note of the order for amendment shall be endorsed on the information". Once that is done, the endorsed information is treated for the purposes of all proceedings in connection therewith as having been filed in the amended form. To my mind therefore, this requires a judge or Registrar to endorse the amendment on the information previously filed in accordance with sections 141, 256 and 258 of the CPC."*
>
> *[Emphasis added]*

7. In the view of this Court the indictment was properly amended therefore the ground 2 of the extant application "that the Indictment herein be quashed as it was amended without Authority" hereby fails.

8. Further, the Applicants appealed the Court's decision which granted the Respondent leave to allow Ms. Gibson to give evidence by way of the Notice of Additional Evidence. An Appeal against the Courts decision to allow Ms. Rashae Gibson to give evidence by virtue of the Notice of Additional Evidence was filed in the Court of Appeal. The appeal heard on 14th March, 2024, the Court of Appeals decision was handed down on 21st March, 2024 dismissed the Applicants appeal in this regard (see SCCrApp No. 46 of 2024).

THE ISSUES

a) Whether the Voluntary Bill of Indictment proffered against the Applicants/ Defendants contains a true case as required by the Criminal Procedure Code Chapter 91 (hereinafter "the CPC");

b) Was the presentation of the said Indictment in its current form of committal for trial in the Supreme Court which the law would recognize or was it void and a nullity;

c) Is the Information Indictment proffered in the Voluntary Bill of Indictment overloaded, so that no jury properly directed could comprehend and remember all the matters necessary to determine guilt or innocence in the case; and

d) Having added additional witnesses to the Information, did the Respondent fail to proffer a fresh VBI in accordance with the mandatory requirements of S. 258 of the CPC.

LEGISLATION

9. Section 259 of "the CPC" outlines the provisions of the Code which applies to Bills of Indictment. It states as follows:

> *"259. The provisions of this Code and of any other law respecting the form and contents of an information and respecting the proceedings on information in the Supreme Court, shall apply, mutatis mutandis, to the form and contents of a bill of indictment, and to the*

proceedings following upon the filing of a bill of indictment in that Court, whether a Voluntary Bill of Indictment or otherwise, as if the references in those provisions to an information were references to a bill of indictment."

10. Section 150 (1), (2) and (6) of the CPC relates to amending the VBI. This section provides:

"150. (1) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court considers necessary to meet the circumstances unless, having regard to the merits of the case, the required amendments cannot be made without injustice. Any such amendments shall be made upon such terms as to the court shall seem just.

(2)When an information is amended under the provisions of this section, a note of the order for amendment shall be endorsed on the information and thereafter the information shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(6) Any power conferred upon the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes."

11. Section 166 of the CPC speaks to additional witnesses for the prosecution. This section states:

"166. No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.

Such notice must state the witness's name and give the substance of the evidence which he intends to give. It shall be for the court to determine in any particular case what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and decided to call him as a witness:

Provided that when, under the provisions of section 120 of this Code, the plan of a surveyor or the report of a medical practitioner or analyst has been tendered at the preliminary inquiry it shall not be necessary for the prosecution to give notice of the intention to call any such surveyor, medical practitioner or analyst as a witness at the trial of the information."

THE APPLICANTS SUBMISSIONS

12. Counsel for the Applicants submitted that the Bill of Indictment served against the Defendants utterly failed to set out a prima facie case on any charge, or any element of any charge. Counsel further submitted that in all ordinary circumstances, committal for trial in the Supreme Court by the preferment of Bills of Indictment are subject to the strict provisions of Section 256 of the CPC. This section provides:

"256. (1) Notwithstanding section 36 the provisions of Part V of this Code and the provisions of the Preliminary Inquiries (Special Procedure) Act, the Attorney-General may make application by summons to a judge of the Supreme Court for an order of consent to prefer a bill of indictment against any person charged with an indictable offence; and where a bill of indictment signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions has been so preferred, the judge shall if he is satisfied that the requirements of subsections (2) and (3) have been comp lied with, direct —

(a) the bill to be filed with the Registrar of the Supreme Court together with such additional copies thereof as are necessary for service upon the accused person; and

(b) the issue by the Registrar of a summons requiring the attendance of the accused person before the judge at a date specified in the summons, which date shall not be earlier than two days after service upon the accused person of the documents mentioned in paragraph (a).

(2) An application under subsection (1) shall be accompanied by the bill of indictment, together with —

(a) statements of the evidence of witnesses whom it is proposed to call in support of the charge; and

(b) a declaration signed by the Attorney-General or by any legal practitioner acting on his behalf that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

(3) No bill of indictment charging any person with an indictable offence shall be preferred unless the bill is preferred by the direction or with the consent of a judge or pursuant to directions given under section 82 of the Penal Code.

(4) Unless the judge to whom an application is made under subsection (1) otherwise directs in any particular case, his decision on an application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses. If the judge thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

(5) For the purposes of subsection (2), the term "statement" has the meaning ascribed to it by section 2 of the Preliminary Inquiries (Special Procedure) Act.

13. Counsel strongly relied on the first instance authority of **Paul Bellizar v The Attorney General 2015/CRI/VBI/329/11** at paragraph 9 where then Senior Justice Mrs. Estelle Gray-Evans, opined that: ***"In that regard counsel complains on behalf of the Applicant that the aforesaid Voluntary Bill of Indictment is not a true Bill that it is therefore a nullity and should be quashed. He seeks an order under the inherent jurisdiction of the court to that effect."*** This is the essence of Counsel's submission in the instant case that the VBI is not a true bill and should be quashed. Reference was made to paragraph 13 of the ruling where Senior Justice Gray-Evans considered the requirements for a proper Voluntary Bill. She stated, ***"Also accompanying the VBI was a statement made pursuant to Section 258 (2)(b). Aforesaid that the evidence shown by the statements filed herein would be available at the trial and that the case disclosed by the statements is to the best of my knowledge, information and belief substantially a true case."*** It is Counsel's submission that the application to quash the indictment in the Bellizar case, at first instance, was not made at the beginning of the trial but rather ***"way down in the case."*** Ordinarily, an application would be brought up at the

commencement of the trial. This case is further authority that it can be challenged at a later stage.

14. Counsel further referred to paragraph 36, of **Blackstone Criminal Practice 2010** Edition. At paragraph 11.95, Counsel stated that "***Either party may move to quash either the whole indictment or a count thereof. They suggest that the obvious time for doing so is before the accused is arraigned, but point out that it seems that the defense may make the application at any stage of the trial."*** It was robustly submitted by Counsel, Mr. Farquharson that on the authority of Blackstone, the application to quash the indictment can be made at any stage of the trial. The Court accepted and agreed with this submission notwithstanding that given the stage this trial has reached it appears the application could more properly have been laid at the No Case Stage.

15. Reference was made by Counsel to paragraph 37 of the judgment which referred to **Commonwealth Caribbean Criminal Practice and Procedure, Second Edition by Dana S. Seetahal**, which stated at page 203:

> ***"It used to be thought that a Court would not examine the evidence in the depositions to determine if it could support a valid committal. This, it was felt, could be the subject of a no-case to answer submission at the appropriate time of trial."***

16. Counsel contended that based on Seetahal, the old position is that a person could not make a submission to quash, but that they would have to wait and make their arguments at the time when a No-Case Submission is made. The new position Counsel stated was noted in the decisions of **Neill v North Antrim North Magistrates' Court (1993) 97 Cr App R 121 HL** and **R v Bedwellty JJ ex p Williams [1996] 3 WLR 361 HL**. The Applicant had been committed for trial, or tried and convicted by committal proceedings similar or identical to The Bahamas preliminary inquiry proceedings. In each case the indictment or committal or conviction was quashed because there was some irregularity in the committal proceedings. If there were in fact material irregularities in the committal proceedings in this present matter, the appropriate consideration for this Court is whether we should quash these committals. Counsel referred to Paragraph 40 the judgment which referenced the cases of **R v Gee; R v Bibby; R v Dunscombe [1936] 2 KB 442, [1936] 2 All ER 89** where the Appellants were charged with shop breaking. The committing justices in those cases did not take the depositions in the manner

prescribed by Section 17 of the Indictable Offences Act, 1848. It was held that ***"The proceedings before the committing justices were so defective by reason of non-compliance with Section 17 of the Indictable Offences Act that there was no lawful committal for trial and consequently no bill of indictment could be preferred again the appellants."***

17. In **Neill v North Antrim, supra** inadmissible evidence from under aged witnesses were admitted into the proceedings which formed the basis of the committal. One of the men applied for an Order of Certiorari on the grounds that the boys' statements were inadmissible. The Divisional Court agreed that the statements were inadmissible, but refused to quash the committal. On appeal to the House of Lords, the appeal was allowed. It is not enough to say that there is evidence in the VBI, nor in the statements contained in the VBI, but that evidence must be admissible evidence. The Court should ensure strict compliance with the formal requirements, it is imperative that the evidence contained in the VBI must be admissible evidence.

18. In **R v Bedwellty, supra** the issue in that case was again the inclusion of inadmissible evidence. Their Lordships quashed the committal. **Dave Dion Moxey v The Attorney General's Office** case, where Senior Justice Gray Evans opined that the Applicant's complaint was that the statement served upon him together with the Voluntary Bill did not disclose any evidence which was the subject of the charge against him. However, sometime after filing the Voluntary Bill, the Crown served the Applicant with copies of two statements, which although made prior to the filing and serving of the VBI had been omitted from the VBI. Turner J (as he then was) found that the failure of the Crown to file and serve the statements with the VBI impugned the VBI which the Learned Trial Judge quashed on the basis that the Bill contained no statement making that a case against the Applicant. Therefore, the Voluntary Bill of Indictment failed to conform to the clear provision of Section 258 of the Criminal Procedure Code Act as it did not constitute a true case. Counsel contended that the requirement to set out a true case is a mandatory requirement to produce papers in the Voluntary Bill which established a prima facie case against the Defendant. This is crucial in this application.

19. Paragraphs 6 and 7 of His Lordship, Mr. Justice Turner (as he then was) judgment helpfully provided that when the Applicant was committed by the Magistrate by way of Voluntary Bill of Indictment it must be presumed until the contrary be shown that all circumstances which occurred, that all

conditions were fulfilled which were necessary to give validity to the Applicants committal. His Lordship said ***"I have considered this submission, but I entirety fail to see how this is an answer to an allegation of the statements filed by the Respondent in the VBI did not contain any evidence against the Applicant. Properly considered, having regard to the requirements of section 258 of the CPC, there is no presumption which can apply to any act of the Learned Magistrate, because in VBI proceedings pursuant to that section, the Magistrate's functions are restricted to",*** **as per subsection** ***"(5) Where a Voluntary Bill and Summons have been produced to the Magistrate pursuant to subsection (4), the Magistrate, in accordance with the provisions of The Bail Act, 1994, may admit the person charged under the Voluntary Bill to bail conditioned to appear before the Supreme Court on the relevant date specified in the summons or remand him into custody so to appear; and, upon so admitting the person charged to bail or remanding him into custody, the jurisdiction of the magistrate to deal with him in respect of the charge shall cease,…"*** Counsel submitted that although his Lordship quashed the indictment, he nevertheless referred the matter back to the Magistrate Court. He did not invite me to do so in the instant case.

New Indictment

20. Counsel for the Applicants submitted that the Respondent produced VBI No. 167A/6/2022 as a new indictment in this matter. Counsel contended that in order to amend an indictment, an application must be made to the Court, there has to be a hearing, the parties have to say what it is, why they believe it either should or should not be amended, the Court has to rule. Then the Director of Public Prosecutions has to bring into Court and share with all of the defendants a copy of the indictment amended in the terms set out by the Court. Counsel further submitted that the Defendants have been tried on an information that does not exist, which is 167A/6/2022. Notwithstanding he contended that the information does not exist, yet it is information on which all of these Defendants have been tried every day up to the present date.

21. On Voluntary Bill of Indictment Number 167/6/2022 the Director of Public Prosecutions now sets out Eighty-eight (88) counts. Those counts with the possible exception of the first count Making a False Declaration has five or six, sometimes eight or nine elements and in addition to the various elements set out in the law each of the other counts have predicate offenses. This submission is correct there are predicate offences. On the third page of Mr. Robert Deals statement there is no criminality alleged at all and Mr. Adrian

Gibson MP name has not even been called. Counsel carefully submitted at this stage none of the companies have been named in this statement. Counsel submitted that there is no evidence of any acts of impropriety with respect to any Defendant on any allegations now contained in the Eighty-eight (88) counts in this indictment. Where is the criminality, he asked. How does the evidence led to date support any allegations contained in the 88 counts in this indictment. These are the witnesses that the prosecution named on the back of their indictment. Counsel contended in this particular application there is nothing before this Honourable Court on the submissions of the Director of Public Prosecutions on which the Court could properly exercise its mind to determining whether the prima facie case was made out against any Defendants in that matter. If there is no compliance with the rules for committal, there is no committal. Therefore, then, there is no indictment. This entire trial would end.

The Salomon principle

22. Counsel suggested that none of the requirements for legal liability for criminal acts either as it relates to a natural or a corporate person are alleged to have been committed by the Defendants in any capacity. The principles set out in the case of **Salomon v. Salomon & Co. Ltd. [1897] AC 22, [1896] UKHL 1** establish the difference between a natural person and a corporate person. Counsel averred that the general rule for attributing liability to companies in the criminal law is the common law 'identification principle'. This states that where a particular mental state is required, only the acts of a senior person representing the company's "controlling mind and will" can be attributed to the company.

23. Counsel further submitted that committal by Voluntary Bill of Indictment (VBI) is an unusual procedure reserved for special circumstances **R v Arfan [2012] EWHC 2450 (QB)**. It was submitted that none of the special circumstances which would justify the use of the VBI procedure are present in this case. Accordingly, the purported committal under the VBI procedure is void and a nullity. Moreover, Counsel submitted that whether proceeding by the proper procedure under S. 256 or S. 258 of "the CPC", lawful committal requires that the documents served with the Bill of Indictment set out a prima facie case against the Defendants. It is useful to outline S. 258 of "the CPC". This section states:

"258. (1)Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a Voluntary Bill of Indictment in the Supreme Court against a person who is charged before a magistrate's court with an indictable offence whether before or after the coming into operation of this section, in the manner provided in this section.

(2)Every Voluntary Bill shall be signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions, and shall be filed with the Registrar of the Supreme Court, together with —

(a) statements of the evidence of witnesses whom it is proposed to call in support of the charge;

(b) a statement signed by the Attorney-General or by any legal practitioner acting on his behalf, to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of his knowledge, information and belief, substantially a true case; and

(c) such additional copies of the Voluntary Bill and of the respective statements mentioned in paragraphs (a) and (b) as are necessary for service upon the accused person.

(3)Upon the filing of a Voluntary Bill, the Registrar shall issue a summons requiring the attendance of the accused person before a judge at a date specified in the summons, which date shall not be earlier than seven days after service upon the accused person of the documents mentioned in paragraph (c) of subsection (2).

(4)Where a Voluntary Bill is filed against a person who is before a magistrate's court charged with an offence triable on information, the prosecutor shall, within a reasonable time after the filing of the Voluntary Bill, produce to the magistrate and to the person charged, respectively, a copy of the Voluntary Bill and of the relevant summons issued by the Registrar under subsection (3).

(4A) Where a Voluntary Bill of Indictment and Summons have been produced to a magistrate pursuant to subsection (4), the magistrate shall —

(a) carefully explain to the accused that should he wish to adduce evidence of an alibi at his trial before the court he would not be able to do so unless he gives notice of particulars of the alibi and the witnesses he intends to call in support of that alibi to the Attorney-General within 21 days from the end of the preliminary inquiry;

(b) give to the accused a written notice of the explanation under paragraph (a).

(5)Where a Voluntary Bill and Summons have been produced to a magistrate pursuant to subsection (4), the magistrate, in accordance with the provisions of the Bail Act, may admit the person charged under the Voluntary Bill, to bail conditioned to appear before the Supreme Court on the relevant date specified in the summons or remand him into custody so to appear; and, upon so admitting the person charged to bail or remanding him into custody, the jurisdiction of the magistrate to deal with him in respect of the charge shall cease, but the warrant of the magistrate shall be sufficient authority for the detention of the person named therein, by the officer in charge of any prison.

(6) The provisions of sections 141 to 144 shall mutatis mutandis apply to an accused person against whom a Voluntary Bill is filed as if that person were a person who has been committed for trial by a magistrate.

(7) Where the accused person fails to attend upon the date specified in the summons issued under subsection (3), or the judge is satisfied that he is avoiding service of the Voluntary Bill, the attendance of the accused person may be enforced by the issue of a warrant for his arrest.

(8) Upon the appearance before the judge of an accused person in person or by live television link in respect of whom a Voluntary Bill is filed, the Voluntary Bill shall be read over to him by the Registrar and the accused person shall be required to plead instantly thereto, unless he shall object that copies of the documents mentioned in paragraph (c) of subsection (2) have not previously been served upon him or he raises objection to the Voluntary Bill as in this Code provided.

(9) If upon arraignment the accused person pleads guilty he may be convicted thereon.

(10) Repealed.

(11) Every statement purporting to be evidence of witnesses submitted under subsection (2) shall be deemed a deposition taken in accordance with the provisions of the Evidence Act relating to the taking of oral evidence and shall notwithstanding anything to the contrary in any other law be treated as evidence taken under Part V of this Code.

(12) In this section, the term "voluntary bill" means a Voluntary Bill of indictment filed by the Attorney-General in accordance with the provisions of this section."

24. Counsel submitted that the purported VBI alleges Eighty-eight (88) complex counts, all of which, with the exception of the First Count, require predicate offences against five separate Defendants, with differing liability. It was further submitted that it has taken more than eighteen (18) months to date for the Respondent to lay out its allegations and present its case. To date, no evidence connecting any Defendant to the matters alleged has yet been put before the jury. There have been innumerable adjournments of the trial through no fault of the Defendants they allege, with which the Court respectfully differs. Counsel relied on the authority of **Cohen (1992) (the Blue Arrow Case) The Independent 29th July, 1992** where it stated:

"By January, 1992, the only course open to the judge was to discharge the jury. The awesome time-scale of the trial, the multiplicity of issues, the distance between evidence, speeches and retirement and the two periods of absence by the jury (amounting to 126 days) combined to destroy a basic assumption. That assumption was that a jury determined guilt or innocence upon evidence which they were able both to comprehend and remember, and upon which they had been addressed at a time when the parties could reasonably expect the speeches to make an impression upon the deliberation… the length and complexity of the trial were directly attributable to the length and complexity of the indictment… The complexity of the indictment was proved to be unnecessary… for there was a central issue. The summing-up demonstrated that the appellants could have been

tried manageably and fairly. This was not an example of the unprosecutable allegation."

25. Counsel further submitted that the Respondent entered into a criminal conspiracy with a witness to immunize her to give unlawful evidence under the provisions of the Companies Act Ch. 308 and The Banks and Trust Companies (Regulations) Act Ch. 316. The Respondent purported to amend the information in the course of the trial to name additional witnesses, and additional evidence. This evidence, which was available to the Respondent at the time of the committal was purportedly added merely by virtue of a Notice of Additional Evidence and statements of the purported evidence. Counsel relied on the case of **R v Gomes (1962) 5 WIR 7.** The Supreme Court of Guyana in this case found that the evidence was inadmissible by such a procedure. If the Crown wanted to rely on that evidence it must return to the Magistrates' Court and commit the Defendants afresh. They cannot bolster the case midtrial in this fashion Counsel strongly objected.

Applicants reply to Respondent's Submissions

26. In response to the Respondent's submissions, Counsel submitted that the DPP did not attempt to say what witness, if any, present even a shred or scintilla of evidence as to any criminality engaged in by any Defendant. Counsel further indicated that the VBI contains errors with persons names spelt incorrectly. For example Mr. Harold Fountain was spelt "H-a-r-l-o-d" Fountain and Ms. Chelsea Fernander spelt "C-h-e-l-s-a" Fernander which is incorrect. These irregularities are included on the back of the Indictment.

27. Counsel for the Applicant further averred that the Bahamian Courts and Courts of superior jurisdiction have ruled repeatedly that it is improper, would not be condoned by the Court for persons to include in the same indictment, allegations of conspiracy along with the substantive offenses. That is not allowed. Unless the Conspiracy Count adds something to the substantive counts, which Counsel frankly submitted is simply not the case here. Counsel further averred that there is no witness, anywhere, among the Thirty-eight (38) persons listed on the back of 167/7/2022, no witness gives any statement about any public servant, who without lawful authority or reasonable excuse solicited or accepted any advantage as an inducement or award on account of his giving assistance or using influence in or having giving assistance in the promotion, execution or procurement of any contract. The only public officer among the Defendants is Mr. Adrian Gibson, the Member of Parliament for

Long Island. Everything that Mr. Adrian Gibson MP did, he did as Chairman of the Water and Sewerage Board acting on the authority of the Board unanimously given. No one can say that Mr. Adrian Gibson MP acted without lawful authority. It is manifestly clear on the face of the record that he acted with the authority of the Board. No witness suggested that he did not. There is no witness who says that Mr. Adrian Gibson MP acted in agreement with anybody to extend any contract to anybody, other than the Board of the Corporation, Water & Sewerage Corporation which he was duty-bound to do and which is not an offense.

28. The Respondent also alleged "Receiving" pursuant to section 358 of the Penal Code Chapter 84. Receiving requires like almost all of the offenses listed in this Voluntary Bill of Indictment, a predicate offence. There must be some theft of some kind. It must be theft as laid out in Section 23 of the Penal Code Ch. 84. There is no witness in any document served with this Voluntary Bill of Indictment that alleged that there was any theft or any kind of criminality whatsoever as set out in Section 23 of the Penal Code Ch. 84 carried out by Mr. Adrian Gibson MP specifically, nor any of them. There is no evidence of that in any witness statement at all in the Voluntary Bill of Indictment. Even if there was theft which there is not, the person alleged to have been the receiver must be found with the items, having recently been stolen. No one said they found Mr. Adrian Gibson MP or any other Defendant with any stolen item, obtained fraudulently, or illegally, as would fall within the principle of Possession of Recently Stolen Goods. In terms of Fraud by False Pretences, Counsel submitted that charge on the VBI was contrary to ss. 53 and 59 of the Penal Code. It was his submission that there is no witness that said that they are aware of anybody having been motivated to part with the ownership of any items by means of any deceit on the part of any of the defendants.

29. The VBI also includes numerous charges of Money Laundering contrary to S. 9(1)(a) and 9(1)(c) and 9(1)(d) of the Proceeds of Crime Act Ch. 93. Counsel submitted that there is no witness anywhere in the Voluntary Bill of Indictment who alleged any such action on behalf of any Defendant in this courtroom. Counsel suggested a motive as the reasons for these spurious allegations were made against the Defendants.

30. Counsel averred that Mr. Sylvanus Petty, former Chairman of the Water and Sewerage Corporation, gave his statement on 13th April, 2022. In his witness statement he indicated that he requested an investigation into the Water & Sewerage Corporation based on the routine audit report conducted by Ms.

Dian Saunders-Adderley, Acting Assistant General Manager of the Water & Sewerage Control & Compliance Division and her team discovered irregularities, during investigation, associated with the affairs of the former Chairman, The Honorable Adrian Gibson MP, which caused her concern. Mr. Petty then directed the matter to the Minister and ultimately The Prime Minister. Counsel submitted that an irregularity is not a crime. Counsel also submitted that there is nothing in Ms. Saunders-Adderley report (dated 15th May, 2022) that indicated any criminal behavior by any Defendant. In relation to Mr. Robert Deal, General Manager of Water and Sewerage Corporation, Counsel submitted that again no criminal behavior is disclosed by Mr. Robert Deals testimony, as contained in the witness statement in the Voluntary Bill of Indictment.

The Witnesses

31. Counsel further averred that the witnesses: Ms. Tanya Demeritte, Mr. Lanado Gibson, Ms. Rashae Gibson, and Ms. Alexandria Mackey are subject to both the common law duty of confidentiality with respect to their corporate business having regard to their fiduciary responsibilities in accordance with The Banks and Trust Companies Regulations Act Ch. 316 with respect to bank secrecy, confidentiality of evidence of financial business done on behalf of a company acting as Directors and Board Members thereof. Therefore, the evidence given by those witnesses are collectively inadmissible in any court of The Bahamas without a court order, which has not been sought nor granted in this matter. Counsel invited the Court retroactively to strike their testimony from the record.

32. Counsel addressed the evidence of the witness, Mr. Anthony Moxey, given on the 16th May, 2022. Counsel stated that Mr. Moxey stated that he, Mr. Moxey, was a contracted painter, contracted from time to time by the Water and Sewerage Corporation to paint. Mr. Moxey gave evidence that he was contracted to paint both Somerset House and the George E. Moss buildings.

33. Counsel also addressed the statement given to the Royal Bahamas Police Force by Mr. Dwayne Herbert Woods on the 26th of April, 2022. The statement of Mr. Woods disclosed no criminal behavior on behalf of any of the Defendants.

34. Counsel addressed the statement of Mr. Erno Bowe, given on the 14th April, 2022. Again, no suggestion, hint, trace, nor scintilla of any criminality in the given statement.

35. Counsel addressed the statement of Ms. Deidre Taylor Corporate Engineer, again it was his respectful submission that the totality of her evidence revealed no criminality committed on behalf of any of the Defendants.

36. Counsel submitted that the statement of Ms. Latoya Polecek failed to reveal any criminal behaviour by the Defendants. Similarly, the statements of Mr. Rexville Pratt and Ms. Vaneke Johnson respectfully, both fail to suggest any criminality by or on behalf of the Defendants.

37. Counsel addressed the statement of Counsel and Attorney Mr. Myles Parker. He also happen to be the Personal Attorney for the General Manager, Mr. Robert Deal. In his witness statement and in his testimony he is alleged to have stated that there was a property transaction. Notwithstanding same, this does not ipso facto establish Receiving or Fraud, nor any other criminality. Counsel addressed the statements given by Mr. Harold Fountain and Ms. Chelsa Fernander, reiterating that neither of them suggested any criminality against the Defendants.

38. Counsel addressed evidence by the witnesses: Ms. Patrice Munroe, Ms. Sabrina Walkine, Mrs. Mynez Cargill-Sherman. No statement suggested any criminal behavior by the Defendants. However, Counsel addressed the statement given by former Minister of Government Mr. Desmond Bannister, who was the Minister, stating that Mr. Bannisters statement failed to suggest criminal behaviour against the Defendants, but rather, gave a statement indicating that there was no criminal behaviour, no improper behaviour of any sort by any Defendant in this matter.

39. Counsel addressed the evidence by: Superintendent Mr. Bradley Pratt, Mr. Carl Clayton Oliver Jr., Mr. Emrick Seymour Jr., Inspector Mr. Kelsin Colebrooke, Inspector Mr. Antoine Mackey. Counsel stated that none of those witnesses proved to a prima facie standard any criminal activity, by any Defendant.

40. Counsel referred to the evidence by: Detective Sergeant Armbrister, Sergeant 3576 Bowleg, Detective Corporal Deandre Cadet, stating that there were no suggestions of criminality against the Defendants. Also, Counsel considered

the evidence given by: Mr. Clay Smith, Ms. Carolyn Wallace-Whitfield, Detective Sergeant 3421 Ernest Pratt, Mr. Rex Adderley, and Mr. Walton Winters, stating that they all failed to suggest any criminal activity against the Defendants.

41. Counsel stated that the Learned Director of Public Prosecutions respectfully drew the Courts attention to the decision of Justice of Appeal Mr. Jon Isaacs delivering the Judgment in **Jonathan Armbrister v Regina SCCrApp No. 232 of 2012**, relative to the proper preparation of the Voluntary Bill of Indictment in The Bahamas. Counsel distinguished the case on the obiter dicta comments of the Court.

42. Counsel submitted that the Court had been provided with ample authority which indicated that a successful application to quash can be made where it turns out the evidence on which the prosecution intended to rely should be ruled inadmissible. Counsel relied on the relevant authorities, reminding the Honourable Court that the only evidence connecting their clients to these allegations are inadmissible. Counsel relied on the relevant authority of the persuasive text of Ms. Dana Seetahal recognizing the Courts position that it would be unfair to impose on a Defendant, the costs of a further trial, once it becomes clear that the trial is doomed for failure, that there is no reasonable basis for the allegation.

43. Learned Counsel for the Applicants submitted that the DPP erred when directing the Court that there is a limit on time which a Motion to quash on the basis of a lack of true case. Counsel furthered by stating that he has requested the Voluntary Bill of Indictment from the DPP but was unsuccessful. To date, he has been unable to obtain such VBI from his colleagues on the other side and the Court due to the reorganization of the documents in preparation for trial.

THE RESPONDENTS SUBMISSIONS

The VBI proffered contains a true case – Judicial Review

44. The Learned Director of Public Prosecutions relied on both their oral and written submissions as well as the Affidavit of Counsel Mr. Calnan Kelly filed 10th February, 2025. The Respondent submitted that in the case of **Paul**

Bellizar at first instance as well as the appellate decision, any decision to review the authority of the Attorney General, now the DPP, in respect of proffering a Voluntary Bill of Indictment is properly made pursuant to Article 78(4) of the Constitution of The Bahamas, **that is by way of Judicial Review**. This is important to note because the allegations by the Applicants is that the Respondent did not comply with various provisions. The only appropriate question is the administrative exercise of their discretion.

45. The DPP accepted that the Applicants have collectively challenged the sufficiency of the evidence in respect to the VBI proffered. The question is, at what stage should this application be made. The Applicants have relied on the authority of Blackstone and on first instance in the **Paul Bellizar** case. The Respondents respectfully reminded the Court, that the Court of Appeal in **Paul Bellizar v. The Attorney General SCCrApp. No. 211 of 2017 and 302 of 2018** concluded the proper application in the challenge for the Indictment should be by way of Judicial Review. Counsel for the Respondent averred that since the commencement of the trial, the Applicants have not filed an application in its proper form for Judicial Review seeking to have the VBI quashed entirely or in part. Counsel relied on the authority of **Paul Bellizar**, supra where Counsel for the First Applicant made a similar application to this current application before this Honourable Court. Justice of Appeal Jon Isaacs was very instructive on the issue at paragraphs 14 – 16:

> *"14. Meanwhile, the Judge was about to embark upon a voir dire due to a representation made earlier by Mr. Farquharson that the appellant's alleged confession had not been made voluntarily. Notwithstanding foreshadowing his course of action, Mr. Farquharson presented the Judge with a new development; as he put it:*
>
> ***"MR. FARQUHARSON: Again, my Lady, I have brought to the attention of counsel and to the Court, the fact that there is an issue of jurisdiction with respect to this matter and the issue of jurisdiction goes to the (sic) whether there is in fact anything before the Court or whether everything that we've done here with respect to this trial is (sic) nullity and that, my Lady, is based on the requirements under Section 258(1) and I believe (4), of the Criminal Procedure Code with respect to committals by the way of Voluntary Bill of Indictment." [Page 34 of the transcript dated 22nd September, 2017]***

15. Mr. Farquharson was submitting that the provisions in section 258 of the CPC had not been complied with. The Judge heard the submissions together with Mr. Brathwaite's response and rendered her decision thereon.

16. My first comment on this issue is that the Judge ought not to have entertained Mr. Farquharson's oral application at the stage at which the trial had reached. Mr. Brathwaite's contention that the application Mr. Farquharson wished to make ought to have been brought via a judicial review — properly prepared, filed and served on opposing Counsel; and was an abuse of the processes of the court, is in my view well founded. I have every sympathy for Mr. Brathwaite's view. If the defence wished to challenge the court's jurisdiction on the basis that the VBI was a nullity was to be raised, that ought to have been done much earlier in the proceedings; and certainly not after the jury had been empanelled and the court was about to embark on an exercise to determine the voluntariness or otherwise of the appellant's confession statement."

46. The Respondent similarly submitted that the extant application should not be entertained at this stage in the proceedings. If the Applicants wished to challenge the court's jurisdiction on the basis that the VBI was a nullity that ought to have been done much earlier and certainly not after the jury had been empaneled nor nearing the closing of the Respondent's case. Counsel submitted that in the instant case, there are ten (10) witnesses remaining for the Prosecution and they are almost at the close of their case. At no point during the arraignment process before the Magistrates Court when the formal charges were preferred did any of the Applicants indicate that the papers which they had received was or did not disclose a substantially true case.

47. In the Court of Appeal decision in **Bellizar**, the Appellant was challenging the Voluntary Bill of Indictment. Mr. Jon Isaacs, JA, as he then was, opined at paragraphs 32-37 of the judgment that:

"32. As the appellant challenges the VBI, it is useful to set out the statutory underpinnings for the discretion exercised by the Attorney-General (now the Director of Public Prosecutions ("the DPP")). Section 258(2)(b) of the CPC provides that the Attorney-General include in the filings with the Registrar of the Supreme Court a statement " ***to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by***

the statements is, to the best of his knowledge, information and belief, substantially a true case*".*

33. Unlike section 256 of the CPC which envisages an application being made by the Attorney-General to a judge of the Supreme Court "for an order of consent to prefer a bill of indictment against any person charged with an indictable offence", section 258 enables the Attorney-General (now the DPP) to bypass the proceedings for committals in the Magistrates' Courts and the need for seeking the consent of a judge to fast track a defendant to appear in the Supreme Court for his trial. As far as I am aware, the VBI procedure in The Bahamas has no statutory equivalent in England. Thus, cases emanating from that jurisdiction may be of only limited utility in the determination of the issues raised on this appeal. Indeed in the Jamaican case of Lloyd Brooks v The Director of Public Prosecutions and The Attorney General Privy Council Appeal No. 45 of 1992, Lord Woolf when considering the power of the DPP there to prefer an indictment observed at page 5:

> ***"Section 2(2) makes it clear that the position in Jamaica is different from that which now exists in England and Wales since the counterpart of the DPP in England has no personal power to prefer an indictment.*** *In England and Wales it is a judge of the High Court alone who has the power to prefer a Voluntary Bill."*

34. Article 78 of the Constitution of The Bahamas states, inter alia:

> ***"78. (1) The Attorney-General shall have power in any case in which he considers it desirable so to do —***
>
> ***(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;***
>
> ***…***
>
> ***(4) In the exercise of powers conferred upon him by this Article the Attorney-General shall not be subject to the direction or control of any other person or authority."***

35. However, by virtue of section 78A of the Constitution which was introduced by the Constitution (Amendment) Act, 2017, (which came into force on 10 May, 2018) the DPP is now largely responsible for the institution and undertaking of criminal proceedings against persons in The Bahamas.

36. Notwithstanding Article 78(4) of the Constitution, the power of the Attorney-General (now the DPP) would be reviewable by the courts via judicial review. It would also be possible for a court on a no case to answer application at the close of the Prosecution's case to test the sufficiency of the Crown's evidence effectively enabling the court to give concrete oversight of the Attorney-General's (now the DPP) discretion.

37. It is important to recognise that section 258 of the CPC merely requires the Attorney-General to provide a "statement" " ***to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of his knowledge, information and belief, substantially a true case****". It is clear that all the Attorney-General is being asked to do is to make a written statement of his opinion formed from a reading of the witnesses' statements, that a true case is substantially disclosed. It is not as if he is being required to "certify" that the witnesses' statements disclose a true case. There is, in my view, sufficient maneuverable room to allow the Attorney-General a degree of flexibility when deciding to prefer a VBI."*

48. The Court is bound by the doctrine of stare decisis, the law will stand by things decided by a Higher Court, a fundamental legal principle of the common law. The Applicants were charged before the Magistrate's Court on 14th June, 2022. The Voluntary Bill of Indictment (VBI) was filed on 25th August, 2022, Mr. Elwood Donaldson and Ms. Peaches Farquharson were served on 26th August, 2022, and Mr. Adrian Gibson MP was served on 14th September, 2022. All of the Applicants would have appeared before the Supreme Court on 23rd September, 2022. Counsel submitted that there has been some two years and four months approximately since the Applicants were in possession of the Voluntary Bill of Indictment and its contents. Yet it was not until the 24th January, 2025, this Court is being met with an application challenging the sufficiency of the evidence.

49. It is also important to note the Voluntary Bill of Indictment was served along with three bundles of supporting documents which are to be read in conjunction with the statements. In relation to sufficiency of the Voluntary Bill of Indictment one has to properly consider those statements, they must be read in conjunction with the documents which they reference. The bankers provided bank documents for Baha Maintenance, Elite and Adams

Landscaping contained in the three volumes. Important documents were contained in the bundles of documents that are exhibited to the evidence of Mr. Fountain at Bahamas Customs. It cannot be said that the VBI disclosed No-Case or no true case against the Applicants before this Court. The Applicants have not only failed to mount the current application in the correct form which is the judicial review process. They have also failed to make the application at the appropriate time.

50. The case of **Dave Dion Moxey** and the case of **Bellizar**, at first instance were the primary cases that were relied on by the Applicants in respect of this application. In respect of the **Dave Dion Moxey** case, the VBI which was 86/4/2015 was filed in the Supreme Court on the 14th April, 2015, and the application to quash the indictment was made on the 29th May, 2015, a month after it was served. In the **Bellizar** first instance decision, that application to quash the indictment was made prior to the evidence being taken by the Court. Counsel submitted that this is significant because in both cases relied on, it was clear that the appropriate time to make the Application would have been before the evidence was taken or as the Court of Appeal said in the **Bellizar** case at the earliest opportunity before arraignment. In the face of the authorities relied on, those applications were made early. In the instant case the Prosecution is imminently due to close its case. They are being faced with the application that the evidence disclosed in the Voluntary Bill of Indictment being 167/6/2022 does not disclose a true case.

The Prosecution had not complied with Section 258 of CPC

51. An objection was taken as contained in the application that the Applicants aver that the Respondent had not complied with Section 258 of the CPC. It is important to look precisely at what section 258 indicates relative to what the Respondent has not complied with. At section 258 of the CPC, the Attorney General containing duties which now rest in the hands of the Director of Public Prosecutions may file a Voluntary Bill of indictment in the Supreme Court against a person who is charged before the Magistrate's Court with an indictable offence. The Director of Public Prosecutions in respect of this matter filed on the 25th August, 2022, a VBI against the Applicants who were charged before the Magistrate's Court in June, 2022 and so they were charged with indictable offences.

52. Section 258(2) indicates that every VBI shall be signed by the Attorney General now the DPP or someone acting on his behalf and it must be filed with the Registrar of the Supreme Court. This was completed. The VBI must be together with statements and that's subparagraph A, statements of the evidence of witnesses whom it proposed to call in support of the charge. This was done. Subsection B indicates that a statement signed by the Attorney General which is now the DPP or any legal practitioner acting on his behalf to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by the statement is to the best of his knowledge, information and belief substantially a true case. This section was complied with. A part of VBI document was the actual indictment, the statement pursuant to Section 258(2)(B). The Respondent complied with that section. 258(2) (C) states that such additional copies of the Voluntary Bill and respective statements mentioned in paragraphs A and B as are necessary for service. Counsel submitted that this was done. Subsection three indicates that upon filing the Voluntary Bill the Registrar shall issue a summons.

53. Counsel submitted that the summons was issued. The Applicants in respect of this matter appeared before then Senior Justice Mr. Bernard Turner. Subparagraph four states ***"Where a Voluntary Bill is filed against a person who is before the Magistrate's Court charged with an offence triable on information, the prosecutor shall give reasonable time after the filing of the Voluntary Bill produced to the magistrate and to the person charged in respect of the copy of the bill."*** Counsel averred that the Applicants were charged, they were filed, they were served with a Voluntary Bill therefore, section 258 (4) was complied with. The Act further states that at subsection five ***"Where a Voluntary Bill and summons have been produced to the Magistrate pursuant to subsection 4, the Magistrate in accordance with the provisions of the Bail Act may admit the person charged under the Voluntary Bill of indictment to bail."*** Counsel submitted that the Applicants were in fact admitted to bail. The other provisions of the Section simply provide for when the individual does not appear which are not applicable in so far as the application is concerned. Counsel averred that the Respondent has demonstrated that they have complied with Section 258 of the CPC. What the Applicants are concerned with is whether the learned Attorney General, now the DPP were wrong in putting the statement whether a substantially true case is made out. Counsel reiterated that this application should be made by judicial review, reviewing the Constitution provision under 78(4), to review

the decision of the DPP to proffer the charge on the basis of their insufficient evidence.

54. In dealing with the sufficiency of the evidence, at paragraph 39 of the **Bellizar** case at first instance, it is very instructive. The Court stated ***"I note that in each of the cases referred to by Counsel for the Applicant, the Applicant/ Defendant, had been committed for trial and, or tried and convicted via committal proceedings similar or identical to our preliminary inquiry proceedings and in each case the indictment or committal or conviction was quashed because there was some irregularity in the committal proceedings."*** If we move to paragraph 48 of the same decision, the Court stated *"Nevertheless, having regard to the aforesaid so once section 258 has been complied with, it becomes, in my view, a matter for the Crown to prove the charges which have been laid".* Counsel for the Crown submitted that they have complied with the provisions of section 258 of the CPC. The Applicants have not demonstrated that there has been some irregularity or procedural error on the part of DPP in compliance with or in their performance of their duty under section 258. The Crown must prove its case, to prove each and every charge. Crown Counsel averred that the appropriate time for such application to be made is at the "No-Case" Submission stage. We are at a stage not before the arraignment, nor when the Defendants were charged before the Magistrate with the offences, the trial is at the stage where the majority of the Prosecution witnesses have given their evidence.

55. Counsel for the Applicants contend that the Court ought only to look at the papers. The Respondents counter that this cannot be the case. If the Court considers the sufficiency of the evidence certainly it cannot be on the basis of what is contained in the papers and the supporting documents because witnesses have testified. Counsel submitted that for the Court to embark on an exercise before a No-Case submission application is made that would be usurping the function of the jury. The Learned Director of Public Prosecution submitted that this is not a clear case as in the **Dave Dion Moxey** case where the application was made a month after receiving the Voluntary Bill, the trial had not yet commenced. There was a procedural irregularity in that case where the prosecutor at the fixture hearing provided Counsel for the Applicant with two material statements. Those two statements ought to have been a part of the VBI. It cannot be said in these proceedings that there is absolutely no evidence that the Voluntary Bill discloses no case against none of the Applicants.

56. In considering paragraph 21 of the **Dave Dion Moxey** decision on the issue of sufficiency of the evidence, the Court indicated that "***questions as to the sufficiency of evidence are matters to be left to the trial Courts. Applications challenging the sufficiency outside of the trial process would generally be discouraged as courts would be loped to encourage superfluous applications which might place the Court in the position of reviewing committal papers routinely as to the sufficiency of evidence, but there are occasions in which having regard to complete absence of evidence against the Applicant, it will be appropriate for the Court to exercise it's inherent powers and quash such a committal. I have considered the submissions and authorities cited by the Applicant in this regard and I agree that the Voluntary Bill filed in this matter ought to be quashed".*** There are matters that ought to be left to the trial court. Applications that challenges the sufficiency outside the trial Court process should generally be discouraged unless it is clearly, obviously a case where there is absolutely no evidence, then the Court ought not to embark on this process.

57. Further, Counsel commended the Court of Appeal decision of **Bellizar**, at paragraph 40 of that decision. It states: ***"Also at page 1233 of Neill Lord Mustill enunciates a useful warning about the courts entertaining applications to quash committals on grounds of insufficiency of evidence: In England and Wales these are very thin on the ground, for there is no appeal against a wrongful committal (which does not amount to a conviction) and the power to quash an indictment is not currently exercised on the grounds of insufficiency of evidence".*** **At paragraph 44 of the same decision:** ***"At page 747 Bedwelty, Lord Cooke of Thorndon opined on the appropriateness of a Court interfering with a committal on the basis of insufficiency of evidence " If justices have been of the opinion on admissible evidence that there is sufficient to put the accused on trial, I suggest that normally on a judicial review application a court will rightly be slow to interfere at that stage. The question will more appropriately be dealt with on a no case submission at the close of the prosecution evidence, when the worth of that evidence can be better assessed by a judge who has heard it, or even on a pre-trial application grounded on abuse of process. In practice, successful judicial review proceedings are likely to be rare in both classes of case, and especially rare in the second class."*** Counsel made reference to paragraph 45 where, then Justice of Appeal Mr. Jon Isaacs stated: ***"I hold that it is in only the rarest of cases should a trial judge embark upon***

an inquiry into the sufficiency of evidence even before a trial starts, where the originating process to have the person before the court is a VBI; and even then, the application should be made by a properly constituted motion well in advance of the trial date; certainly not after the jury has been empanelled and the defendant placed into their charge". At paragraph 63 of the same decision the Court noted: ***"There is nothing before the Court to suggest that when the intended appellant appeared before a Justice of Supreme Court to be arraigned on the Voluntary Bill that he raised any objection to the Voluntary Bill in accordance with Section 148(1) or 149(1) or 151(1) of the CPC".*** Counsel submitted that there is nothing in the record of these proceedings from the arraignment nor the charging of the Applicants before the Magistrate's Court to their arraignment before the Supreme Court that either of the Applicants would have indicated or raised an objection of the VBI pursuant to sections 148(1), 149(1) or 151(1) of the CPC.

58. Justice of Appeal Mr. Jon Isaacs concluded that: ***"It may be seen therefore that the CPC grants a defendant a limited means of challenge to a Voluntary Bill preferred by the Prosecution. In my view there is a further limitation that ought to be placed on the challenge to a Voluntary Bill and that is that the challenge should be made before the date that a trial is to start. It is entirety too late to raise an objection pursuant to these sections 148, 149 of the CPC where the trial is set to commence."*** And finally at paragraph 66 then Justice of Appeal stated: ***"In the present appeal, I hold the view that there is no merit in the intended appellates propose challenge that no true case is disclosed on papers disclosing the Voluntary Bill. Section 258(2)(b) states that the intended respondent is merely to be satisfied that... the case disclosed by the statement is, to the best of his knowledge, information and belief, substantially a true case. It may be seen, therefore, that once there is some evidence in the witness statements and/or confession statements placed before the intended respondent which purports to show that the accused person is involved in the commission of an indictable offence, the intended appellant cannot be faulted if he was to execute and file a statement pursuant to section 258(2)(b) of the CPC."***

59. Where there is absolutely no evidence similar to the case of **Dave Moxey** case then the Court would consider if there is an irregularity in the procedure of the committal proceedings. This matter of Mr. Adrian Gibson MP et al is not a clear and obvious case. In reviewing the guidance of the Appellate Court in **Bellizar**, the Court ought not to entertain this application at this stage. There

is a contention between what the Court should consider. Should this Honourable Court consider the Case only on the papers, or father on the papers and the evidence. The Court of Appeal accepted that this places the Lower Court in a quandary where the Learned Trial Judge has to consider if they will only look at the papers or should the Learned Trial Judge listen to the evidence particularly as the evidence which is almost complete in relation to the prosecution case. Fairness to the case dictates that the matter proceed, if the Defendants/Applicants in respect of this matter are of the view that there is absolutely no evidence against them, then that is the perfect case for a No-Case submission. It certainly cannot be entertained at this stage under these circumstances.

Amendment to VBI

60. Considering the amendment made to the VBI, Counsel for the Respondent submitted that Mr. Farquharson was not here for that amendment. Between 4th and 5th March, 2024, what transpired in these proceedings was that an immunity agreement was first reached between the witness, the then defendant Ms. Rashae Gibson and the Crown. She is no longer liable for those proceedings. Also, a Nolle Prosequi was prepared, entered on the record and the proceedings against her were discontinued.

61. The Crown made an application pursuant to Section 150 of the CPC. The Court granted the Application. Each of the Applicants Counsel, were provided with a copy of the Amended Indictment as soon as the Indictment was prepared. The Court endorsed the original Indictment. It is not for the Crown to endorse its copy, that is not the procedure. The Court has to endorse its copy and that is deemed filed (see **Jonathan Armbrister CA** decision). VBI No. 167a/6/2022 is the aide memoire that is not filed. Counsel averred that it is not filed because they had complied with the provisions of Section 150 (1) and (2) of the CPC and it is for the Court to endorse and same, in compliance with the law which states that it is deemed filed. Where the Respondent would have fallen into error is if they had filed VBI No. 167a/6/2022, which would have been a nullity. The amendments were duly made, sought, and granted.

62. Crown Counsel averred that in accordance with S. 258 of the CPC, the Respondent is only mandated to supply the Applicants with a statement and to the best of the Respondents knowledge, information and belief, the statements show a substantially true representation of the case. Before the Applicants were arraigned, they were allegedly provided with the witness

"statements" listed on the VBI and three (3) volumes of supporting documents. This has not been disputed.

63. Furthermore, the Applicants were served with the VBI before appearing in the Supreme Court. The Applicants were also made aware of the basis of the charges levied against them by the Respondent. Crown Counsel submitted that at no stage, subsequent to serving the VBI, did any of the Applicants indicate that the VBI did not disclose a true case. The Applicants accepted the evidence in the statements as is. Even after being arraigned, there was no indication that the case against the Applicants was deficient. A jury was empaneled. The trial commenced on 1st November, 2023. It was only after the Respondent made an application to have the Indictment amended due to the discontinuance of the proceedings against Ms. Rashae Gibson that the Applicants first sought to challenge the evidence contained in the VBI.

64. The Respondent submitted that it complied with the provisions of the CPC. The Applicants first issue has no merit as a substantially true case has been made out on the statements filed with the VBI. It was submitted by Counsel for the Respondent that the Court ought not to entertain the Applicants application at this stage, given that the trial has been in motion from 1st November, 2023 to present. If the Applicants felt that a true case was not disclosed, they can make a "No Case" submission at the close of the Respondents case.

65. The Applicants have failed to show how the VBI and the three (3) volumes of supporting documents do not disclose a true case against the Applicants. In the circumstances where the three companies that received the Water and Sewerage Corporation ("WSC") contracts did not submit any bids, there were no tendering process by the Engineering Department, they were unqualified, the work done was cosmetic in nature and not a matter of urgency, no ministerial approval given (in compliance with Corporate Governance Guidelines or the policy unanimously passed by the relevant Board) and there was no approval by the Board or Minister in respect to Change Order in excess of Six Hundred Thousand Dollars ($600,000.00). Further the work was done by RL Pools, a company who had provided a much lower quote to WSC. More importantly, the Respondent has proved that the First Applicant is the beneficial owner of two of the three companies which benefited from the WSC contracts. This they say is the gravamen of their case disclosed in the sum total of the statements, documents, and testimony to date.

66. The Respondent submitted that their case from the beginning to the present date has been that Elite Maintenance Inc. Ltd and Baha Maintenance were two companies (not legally owned) but beneficially owned by the First Applicant and Ms. Alexandria Mackey. It is the Respondent's submission that these two companies were incorporated for the sole purpose of receiving WSC contracts for which the First Applicant as the Water and Sewerage Corporation Executive Chairman used his influence to award the same to gain an advantage from the aforesaid two companies.

67. The Respondent contended that the only reason Elite Maintenance Inc. Ltd was incorporated in the names of Ms. Alexandria Mackey and Ms. Rashae Gibson (who remained the signatory of the bank account for that company) and then Ms. Tanya Demeritte and another was so that the First Applicant could direct the WSC contracts to that company for his benefit and by extensions that of Ms. Alexandria Mackey. The same obtained relative to Oak Bay/ Baha Maintenance & Restoration in relation to Mr. Jerome Missick (Defendant herein) and Ms. Joan Knowles (Defendant herein) (although Ms. Alexandria Mackey and Ms. Joan Knowles were sole signatories to the bank account of that company).

68. Counsel for the Respondent submitted and relied on the authority of **Salomon v. Salomon & Co. Ltd. [1897] AC 22, [1896] UKHL 1** they distinguished the case and stated it does not assist the Applicants where fraud is concerned. Counsel relied on the authority of **Littlewoods Mail Order Stores Ltd. v. McGregor (Inspector of Taxes) Littlewoods Mail Order Stores Ltd v. Inland Revenue Commissioners [1969] 3 All ER 855 at page 860**, where Lord Denning observed:

> ***"The doctrine laid down in Salomon v Salomon and Salomon Co. Ltd, has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited liability company through which the Courts cannot see. But, that is not true. The Courts can and often do draw aside the veil. They can and often do, pull off the mask. They look to see what really lies behind".***

69. The Respondent submitted that they have produced sufficient evidence to demonstrate that the true beneficial owners of Elite Maintenance Inc. Ltd. and Baha Maintenance and Restoration is the First Applicant along with Ms. Alexandria Mackey. The Respondent contended that that Court ought to remove the mask and hold both the shareholders and beneficial owners

responsible. The “sham” is demonstrated in Ms. Tanya Demeritte’s ignorance of everything to do with Elite outside of inspecting the works of both Elite and Baha Maintenance tanks. Further, Ms. Rashae Gibson who was once a shareholder and Director was equally clueless as to the bidding of the WSC contracts, what the mobilization amounts deposited into the company’s account represented. Crown Counsel stated that they have clearly demonstrated repeatedly, vis a vis the evidence of Ms. Tanya Demeritte, Mr. Rexville Pratt, and Mr. Lanardo Gibson. One thing that is consistent in their statements and the evidence which they gave in court was that they were doing Ms. Alexandria Mackey and Mr. Adrian Gibson MP a favor. They were respectively requested to be Directors for these companies. However, they did not know what was going on in these respective companies. They were not holding any meetings or passing any resolutions. The papers in these proceedings revealed the Crown submitted that when the Water and Sewerage contracts were completed and the bank account closed in relation to Elite Maintenance and Oak Bay.

Fraud as an exception

70. Further, the Respondent averred that the Court should not allow the Salomon principle to be used as an engine of fraud. Counsel referred to two classic cases that duly indicate Fraud is an exception to the prevailing principles. They are **Gilford Motor Company Ltd. v Horne and another [1933] All ER Rep. 109 and Jones and another v. Lipman and another [1962] 1 All ER 442.** In **Horne**, Mr. Horne was an ex-employee of The Gilford Motor Company and his employment contract provided that he could not solicit the customers of the company. In order to defeat this, he incorporated a limited company in his wife's name and solicited the customers of the company. The company brought an action against him. The Court of Appeal was of the view at page 115 Farewell J opined that ***"the company was formed as a device, a stratagem, in order to mask the effective carrying on of business of Mr. Horne".*** In this case it was clear that the main purpose of incorporating the new company was to perpetrate fraud. It is the Crowns submission that Mr. Adrian Gibson MP Executive Chairman of the Water and Sewerage Board, according to the evidence on the papers told Ms. Mackey to incorporate these companies for the sole benefit of herself and Mr. Adrian Gibson. His purpose, the Crown contended, was to defraud in respect of both Elite Maintenance and Baha Maintenance.

71. In **Jones v Lipman**, a man contracted to sell his land. Thereafter he changed his mind in order to avoid an order of specific performance he transferred his property to a company. The judge specifically referred to the judgment of Gilford v Horne, supra and held at page 445 B to C that the company was ***"a mask which (Mr. Lipman) holds before his face in an attempt to avoid recognition by the eye of equity".*** Therefore, he awarded specific performance both against Mr. Lipman and the company. In respect to the First Applicant, the Crown similarly contend he hides behind a grandfather mask.

GROUND 2 - Was the presentation of the said VBI any form of committal for trial in the Supreme Court which the law would recognize or was it void and a nullity;

72. The Respondent submitted that the current trial is distinguishable from the case of **Chevaneese Sasha Gaye Hall v The Attorney General SCCrApp No. 179 of 2017**. Unlike the case of **Hall**, the charges listed in the VBI in this matter are "indictable offences" within the meaning of the CPC, not summary offences. Counsel relied on the provisions of Section 258 of the CPC and stated that the Applicants were all committed to the Supreme Court having been charged before a Magistrate on the offences outlined in the VBI No. 167/6/2022. The VBI provided to the Applicants complies, they submitted, with section 258 of the CPC. Having complied with the CPC, Counsel for the Respondent submitted that the VBI is legally recognizable and not a nullity.

GROUND 3 - Is the Information proffered in the Voluntary Bill of Indictment so overloaded that no jury could properly comprehend and remember all the matters necessary to determine guilt or innocence in the case;

73. Counsel for the Respondent submitted that the VBI is not overloaded, upon which no jury could properly comprehend. Similar cases have been tried before the Supreme Court and the jury proved capable of comprehending the issues. Reference was made to the authority of **Regina v David Shane Gibson 233/10/2017** in that regard.

74. Counsel further submitted that several witnesses have been deemed experts in these proceedings who explained the substance of their evidence which was not complex, in an understandable manner to the jury. Furthermore, the jury asked no questions for clarity, which implies that the evidence given was

comprehensible. Counsel also noted that most of the evidence in this matter is documentary which has been exhibited in these proceedings.

75. In addition, it is submitted that the Learned Trial Judge is required to provide the jury with explanations on how to approach the law in their directions to consider the evidence in their summations. Counsel referred to the Privy Council decision of **Anton Bastian v The King [2024] UKPC 14** where the Board at paragraph 57 of its decision provided instructive advice to judges to put their directions in writing to assist jurors in their deliberations in proceedings where complicated issue of law and facts arise. Should we come to that stage the Court fully intended to provide Counsel and the jurors with the summation which they can take into the jury room as they deliberate.

GROUND 4 - Having added additional witnesses to the Information, did the Respondent fail to proffer a fresh VBI in accordance with the mandatory requirements of S. 258 of the CPC?

76. Counsel for the Respondent submitted that the Applicants are misguided in asserting that additional witnesses were added to the VBI. A Notice of Additional Evidence was filed in respect of Ms. Rashae Gibson pursuant to s. 166 of the CPC. No other witnesses were added in these proceedings. Officer Cadet was already a witness in these proceedings. Additionally, the filing of a Notice of Additional Evidence does not necessitate the filing of a fresh VBI. The Applicants have not produced any authority to support their assertion. The Respondent relied on the case of **Jonathan Armbrister** in relation to this issue. Counsel further noted that the issue of adding Ms. Rashae Gibson was already ventilated in the Court of Appeal, decided and is therefore a moot point.

77. There were no additional witness added to the actual indictment. There is no legal requirement for any indictment to be sent back to the Magistrate Court to add an additional witness. As a matter of fact, in the Court of Appeal decision with respect to that issue was dealt with. Counsel for the Applicants referred to a number of cases which Counsel for the Respondents submitted were all not relevant to these proceedings because they are all distinguishable. For instance, the **Bellizar** case clearly indicates that the VBI process in The Bahamas is different from that in England and Wales. In **Afran** where dealing with a preliminary inquiry the prosecutor in that case needed leave of the

Court. A VBI is distinguishably a different process. In **R v Gomes**, that case is also distinguishable and not applicable because in relation to Ms. Rashae Gibson, that case refers to having Notice of the witness and not making them available. In this case Ms. Gibson turned Crown witness therefore her evidence was not available in that regard prior to her actually giving the police a statement and becoming a Crown witness. Counsel for the Applicants also relied on **Regina v Cohen & Others** which is not applicable.

REASONS

78. As it relates to Ground 1, it should be noted that Counsel, Mr. Farquharson was engaged to represent the First Applicant in May, 2024, six months after the trial commenced on 1st November, 2023. The filing of these two Notice of Motions were made on 24th January, 2025, approximately eight months after Counsel Farquharson's appointment. While Counsel relied on the **Dave Dion Moxey v The Attorney General's Office** case at first instance, it must be noted that the quashing of the indictment was an Application which was made before the commencement of the trial. As it was rightly pointed out by Isaac, JA, as he then was, in the Court of Appeal decision in **Bellizar** case, any challenge to the VBI being a nullity ought to have been raised much earlier in the proceedings and not after the jury was empaneled. This has not been the case. The jury, in the instant case, has been empaneled since November, 2023. The Court has heard a total of Twenty-Nine 29 witnesses. There are approximately ten (10) witnesses remaining for the Prosecution. Thereafter, the Prosecution have indicated their intention to close their case. The Court is of the view that this application should have been raised much earlier. It would not be reasonable in the circumstances to challenge the VBI at this stage in the trial. Should the Defence wish to pursue a submission of "No Case" to Answer that option is of course available to them after the Prosecution closes its case.

79. While Counsel submitted that S. 256 of the CPC is the applicable provision with respect to the Bill of Indictment. However Section 256 envisages an application being made by the Attorney General to a judge of the Supreme Court "for an order of consent to prefer a bill of indictment against any person charged with an indictable offence", Section 258 enabled the Attorney-General (now the DPP) to bypass the proceedings for committals in the magistrates' courts and the need for seeking the consent of a judge to fast track a Defendant to appear in the Supreme Court for his trial. The Act is clear as to the procedure to be used with respect to the issuance of a Voluntary Bill of

Indictment. Pursuant to S. 256 previously the Attorney General had the power the Director of Public Prosecution currently has to make an application to the Learned Trial Judge of the Supreme Court to prefer a Bill of Indictment, S. 258 allows the DPP "*to bypass the proceedings for committals in the magistrates' courts and the need for seeking the consent of a judge to fast track a defendant to appear in the Supreme Court for his trial."* Counsel Farquharson also asserted that the VBI does not contain a true case as required by the CPC. However, Counsel should note a "statement" is only required to be provided to the witnesses under s. 258. In the instant matter, the witnesses were served with the VBI before appearing in the Supreme Court. The Applicants were also provided with the witness "statements" listed on the VBI and three (3) volumes of supporting documents. The Court is satisfied that the witness statements were provided to the Applicants and that the VBI was served on the Applicants in accordance with s. 258 of the CPC. The authority of **R v Arfan [2012] EWHC 2450 (QB)** is distinguishable to the instant matter as this is a UK case where a VBI is an unusual procedure, however, in The Bahamas, the VBI is the preferred method for cases to be fast tracked to the Supreme Court.

80. Counsel also made reference to the case of **Salomon v Salomon & Co. Ltd. [1897] AC 22.** While the Court agrees that a natural person should be viewed differently from a corporate entity. It was allegedly revealed during the trial that the First Applicant was found to be the beneficial owner of Elite Maintenance Inc. Ltd. and Baha Maintenance and Restoration, which if true, may raise certain concerns which the Court will have to consider at the close of the Prosecutions case as to whether Fraud is a live issue and, in the result, the corporate veil should be pierced. Considerations such as were enunciated in **R v Galbraith (C.A) [1981] 1 W.L.R.** at page 1042 Lord Lane C.J. reminded judges that the consideration whether a case should go to the jury is based on two (2) limbs:

> *"How then should the Judge approach a submission of "No Case"? (1) If there is no evidence that the crime alleged has been committed by the Defendant, there is no difficulty. The Judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the Judge comes to the conclusion that the Prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.(b) Where however the*

Prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the Defendant is guilty, then the Judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred."

Littlewoods Mail Order Stores Ltd. v McGregor provides that Courts could pierce the corporate veil in instances where a company has been used as an instrument of fraud. This is not a matter for consideration at this stage before the close of the Prosecutions case.

81. This late Application to quash places the Learned Trial Judge in both an awkward and invidious position in being asked to decide what is effectively a point of law which should have taken in limine, at the stage in trial where a No Case submission should be considered. The Court cannot forget the evidence which was heard over the last year and a half. Therefore, the statements and documents provided by the Prosecution in support of the Voluntary Bill of Indictment which they proffered when laid alongside the testimony would be some indication as to whether they may or may not prove their case at a prima facie level had the Application been brought at the commencement of the case. In the Courts view it ought properly to have been launched at that stage. The Court would then have considered the case narrowly purely on the papers. Twenty-Eight (28) witnesses later this technical objection should form a part of the No-Case submission. However, the Court is satisfied that the legal technical objections fails. The Indictment has been suitably endorsed. The statements and documents in support of the Voluntary Bill of Indictment disclose a true case.

DELAY

82. In his submissions, Mr. Farquharson suggests that it has taken more than 18 months to date for the Respondent to lay out its allegations, present its case. He claimed that there have been innumerable adjournments of the trial through no fault of the Defendants. The duration of this trial has taken longer than anticipated, this is as a result of adjournments made for a variety of reasons. There have been numerous applications such as:

(i). The Applicants has approached the Court of Appeal on at least six (6) occasions (two (2) Applications dated the 13th June, 2023; one (1) dated the 21st July, 2023; one (1) dated the 14th March, 2024; one (1) dated 24th July, 2024; and 29th July, 2024), as is their right. They have mounted challenges to decisions delivered by the Learned Trial Judge. Counsel for the Applicants could have taken the position that they would await the verdict of the jury (should the trial reach that stage). If the verdict was against them they would then Appeal on all the errors of the trial. The various Appeals to the Court of Appeal have taken a minimum of two (2) weeks each approximately to be heard;

(ii) Additionally, there are two (2) Kings Counsel, a Director of Public Prosecutions, along with four (4) seasoned Criminal Defence Attorneys. The questions have been long and extensive. Additionally, the Court is placed in position of juggling the diaries of the jurors. The Court must consider the amount of witnesses whom the Prosecution relied on and the witnesses availability. The Court must consider, in addition to the nine (9) jurors, the five (5) Defendants and ten (10) Attorneys and juggling their diaries as well. There has been excused absences as it relates to the attendance of: emergency surgery on one of the Defendants that excused the Defendant from the 18th March, 2025 until the 18th May, 2025 which is a period two (2) months; a child graduation; pre-arranged dentist, doctors and eye surgeon visits; attendance of the CARIFTA games (swimming) as one of the attendees were the principal of the child participating in the CARIFTA games; and the competing demands of another Defendant who claimed a Constitutional right to attend the House of Assembly for one day weekly and during the National Budget Debate for a two (2) week period.

83. Notwithstanding those applications and other arrangements, the Court has remained steadfast in moving this trial along.

84. It was further suggested by Counsel Mr. Farquharson that the Respondent entered into a criminal conspiracy with a witness to immunize her to give unlawful evidence under the provisions of the Companies Act and the Banks and Trust Companies (Regulations) Act. The Respondent purportedly amended the information in the course of the trial to name additional witnesses and add additional evidence. This suggestion is not the case. There is no new indictment. In fact, the indictment was only amended to remove Ms. Rashae

Gibsons name as a Defendant since she was now a witness for the Prosecution. In the Court of Appeal decision of **Jonathan Armbrister v Regina SCCrApp No. 232 of 2012**, at paragraphs 76, 77 and 78 it was stated:

> ***"76. Judges in this jurisdiction have traditionally accepted the practice of the Crown filing informations with the amendments reflected therein and with a capital letter added to the information number apparently to differentiate it from the original. However, practice even of long standing cannot trump statute law if it is to the contrary of such statute law. Although it was some judges' practice to endorse amendments on the information this was not embraced universally and, as apparently happened in this case, a "new" information containing the amendment was filed by the Crown.***
>
> ***77. There is no provision which authorises the Crown to file an amended information. If the Crown wishes to provide copies of the information reflecting the amendment endorsed by the judge on the information originally filed, that would merely be as a convenience for the parties; and would not have to be filed in any event.***
>
> ***78. Still, I am satisfied that the challenge made by Mr. Roberts to the validity of the proceedings following the order for amendment made by the Judge based on the lack of an endorsement of the Judge's order on the information and the Prosecution's filing of an information reflecting the amendments authorized by the Judge is without merit. Notwithstanding the Judge's reference to a "new information", in truth, the appellant continued to face the selfsame counts but in amended form to the original information."***

85. The Court is of the opinion that any amendments to the VBI does not constitute a new indictment. Additionally, an amendment made to a VBI does not have to be filed.

86. With respect to Ground 2, after careful consideration of the submissions of both Counsel and having reviewed the VBI in its entirety, the Court finds that the VBI conforms to the requirements set out under Section 258 of the CPC.

87. Regarding Ground 3, the Court does not agree that the information in the VBI is overloaded that no jury could properly comprehend and remember all of the matters necessary to determine the guilt or innocence of the accused. If there is any clarification or questions that need to be dealt with at the end of this

trial, the Court is capable and willing to deal with them in its summing up. The Court intends to provide its summing up in writing for the benefit of counsel and jury, should we reach that stage.

88. The Court noted that with regards to Ground 4, no additional witnesses have been added to the VBI. The Notice of Additional Evidence related to Ms. Rashae Gibson, was filed in accordance with S. 166 of the CPC. Moreover, this issue was considered in the Court of Appeal decision which this Court is bound by.

89. Having considered the application, the supporting affidavits, the submissions of Counsel, the Court concludes that the Voluntary Bill of Indictment proffered against the Applicants/ Defendants contains a true case as required by section 258 of the CPC. It is therefore neither void nor a nullity. The Court is satisfied that the information in the VBI was not overloaded, that a jury could properly comprehend and remember all the matters necessary to determine guilt or innocence of the accused. The Court is also satisfied that no additional witnesses were added to the VBI, other than Ms. Rashae Gibson due to her now being a witness for the Prosecution. Therefore, there was no new VBI proffered in this regard.

90. Having considered the following relief sought by the Applicants/Defendants, for the reasons stated above:

a) "The Voluntary Bill of Indictment proferred against the Applicant failed to disclose a true case contrary to the mandatory provisions of S. 258 of the Criminal Procedure Code Chapter 91." The Court finds that a true case was disclosed, the Court denies this relief.

b) "That the Indictment herein be quashed as it was Amended without Authority." The Indictment was amended by the Learned Trial Judge upon Application in open Court, accordingly the Court denies this relief.

c) "That the Indictment herein be quashed as it was proferred in contravention of the provisions of Section 258 of the Criminal Procedure Code." The Court denies this relief because the application ought to have been brought by way of Judicial Review.

d) "That the Indictment herein be quashed as it causes prejudice to the Defendants and each of them which no amendment can cure." The Court denies this relief.

e) "That the Indictment herein be quashed as it is founded on a committal based on little or no evidence sufficient to sustain the charges contained therein." The Court denies this relief for the reasons stated above.

f) "That the Indictment herein be quashed as it relies on inadmissible evidence." The Court denies this relief as Fraud could be a reason to pierce the corporate veil.

g) "That all further proceedings in this cause be stayed." The Court denies this relief and refuses a stay of the proceedings.

91. For the reasons given above The Court must therefore refuse this application to quash the indictment and refuse a stay of these proceedings. The Court promised to put its reasons in writing this it now does.

Dated this 3rd day of June, A.D., 2025.

The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson

(This Judgement was given on 19th May, 2025 when Defendant Joan Knowles returned to Court).