COMMONWEALTH OF THE BAHAMAS **2025/PUB/CON/FP/00002**

IN THE SUPREME COURT

Public Law Division

IN THE MATTER OF an application pursuant to Chapter Three (3) of the Constitution of the Commonwealth of the Bahamas

IN THE MATTER OF an Application by Emmajane Fitzgerald

B E T W E E N

EMMAJANE FITZGERALD

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Mr. Justice Andrew Forbes

Hearing Date: 20TH May, 2025 & 2nd June 2025

Appearances: Mr. Jeffery Farquharson c/o. Ms. Fitzgerald

Mrs. Ashley Carroll c/o. The Director of Public Prosecutions

DECISION

FORBES, J

BACKGROUND

[1.] The Court heard legal arguments from Counsel for the Applicant and the Respondent and indicated that it would render a decision, which it does now. In the Court's view, the Application is ill-conceived, and the Court therefore dismisses it. The reasons for this dismissal are as follows.

[2.] The Applicant was arrested and charged with the offence of Murder and arraigned before Madam Justice Estelle Gray-Evans (as she then was) on 5 December 2016. The Applicant was granted bail in the amount of Twenty Thousand Dollars ($20,000.00) with one (1) or two (2) sureties; required to be outfitted with an electronic monitoring device (EMD); had curfew conditions between the hours of 9 pm to 6 am daily and had reporting conditions to the Central Police Station Freeport Grand Bahama every Monday, and Friday on or before 6 pm.

[3.] On 20 December 2017, the Court varied the bail of the Applicant; as such, she was no longer subject to curfew conditions, but the EMD remained in place. A further variation of bail was granted on 7 May 2018. The Applicant sought the removal of the EMD to obtain employment and provide for her young child. On 10 May 2018, the Court varied the conditions, allowing for the removal of the EMD, and required the Applicant to make a further application to the Court in the event she required travel.

[4.] One of the sureties, Mr. Reid, sought to be removed as a surety, and the Court granted that request, leaving only Ms. Ferguson as surety. The Applicant, on multiple occasions, failed to appear for case management, which eventually resulted in a warrant for her arrest. Applicant was deported from Colombia and was subsequently arrested and charged before the Magistrates Court with Violation of bail contrary to section 12(A) of the Bail Act. On the 16 August, 2024 the Applicant she pleaded guilty of the offence, was convicted and sentenced to a fine of Four Thousand Dollars ($4,000.00) or in default of payment Eight (8) months at the Bahamas Department of Correctional Services (BDCOS). It is notable that when asked whether an appeal had been filed, Counsel was evasive at best. The Applicant would have then served the sentence imposed, which is said to have expired in May 2025.

[5.] On the 27th August 2024, the remaining Surety applied to the Court to be removed and was granted leave. Also, on August 27, 2024, the Respondent advanced an application in these proceedings for the revocation of the Applicant's bail. On the 28 August, 2024 an affidavit was filed on behalf of the Applicant opposing the Director of Public Prosecutions' (DPP) application for revocation of bail. After the hearing, the Court rendered a written ruling in which the Court stated at paragraph 35,:

"In considering all the circumstances relevant to this hearing, I find that the respondent is not a fit and proper person to remain on bail with varied conditions and that no conditions placed on the defendant could ensure that she would make herself available for trial. In the interest of justice, I revoke the Respondent's bail for the following reasons... (d) She is a dual passport holder and even if conditions are placed on the Respondent, it is unlikely, considering all previous circumstances that she will remain in the jurisdiction. I am satisfied that she is a flight risk..."

THE APPLICATION

[6.] The Applicant filed an Originating Notice of Motion on the 11th April 2025, which they seek the following relief:

(a) A declaration that sections 12A and 12B of the Bail (Amendment) Act are unconstitutional.
(b) A declaration that the Applicant's purported arrest, trial, and sentence pursuant to the Act are all unconstitutional and void.
(c) A declaration that the Applicant's detention constituted an unlawful imprisonment.
(d) A declaration that the Applicant's detention constituted malicious prosecution.
(e) A declaration that the rights guaranteed to the Applicant under Chapter Three (3) of the Constitution of the Bahamas.
(f) An order that the Applicant immediately be readmitted to bail.
(g) Damages for breach of constitutional rights.
(h) Damages for false imprisonment.
(i) Damages for malicious prosecution.
(j) Aggravated damages.
(k) Exemplary damages.
(l) Cost.

[7.] The Applicant articulated the grounds as follows:

(i) The Act arrogates to the administration powers which are within the exclusive jurisdiction of the courts.
(ii) The Act devolves to the magistrate's powers, which are exclusive of the Supreme Court.
(iii) The Act creates a summary offence to be heard in a trial previously committed to the jurisdiction of the Supreme Court.
(iv) The provisions of the Act purport to extinguish rights granted to the Applicant under the provisions of the Bail Act, Chapter 103, and the Criminal Procedure Code, Chapter 91.
(v) The Act grants to the magistrate the power to administer bail proceedings afoot before the Supreme Court;
(vi) The Acts grant magistrates the power to administer bail proceedings in the absence of an underlying complaint before the magistrate.

(vii) The Act grants to a magistrate the power to compel testimony from a justice of the Supreme Court.

(viii) The learned Judges refused to consider properly and properly determine the Applicant's lawful reasons for failing to meet the conditions of her bail.

(ix) The learned Judge failed to apprehend that the Applicant was prevented by force majeure from complying with the conditions of her bail.

(x) The learned Judge failed to apprehend that the Respondent made an Application for revocation of the Applicant's bail under the provisions of the Bail Amendment Act 2016, which at the date of the Application had been repealed.

(xi) The learned Judge failed to apprehend that the Respondent represented that the Applicant's bail had been revoked by operation of law since 2019. Accordingly, the Respondent was estopped by this representation from applying to revoke her bail in 2024.

(xii) The learned Judge failed to apprehend that, as the Applicant's bail had been revoked in 2019, the sentence imposed by the learned magistrate in the Court below was unlawful and void.

(xiii) And accordingly, both that sentence and the revocation were without lawful basis and void.

[7.] In support of the Application, the Applicant swore an Affidavit filed on the 11th April 2025, in which she avers that she was born on the 12th May 1981 and resides at 142 Lime Wood Lane, Freeport, Grand Bahama. That while on bail, she was detained in Colombia. Upon her return to the Bahamas in August 2024, she was sentenced for breach of bail conditions, and her bail was revoked.

[8.] She further avers that both her sentence and revocation were imposed under the provisions of the Bail Amendment Act 2016, and referred to the Respondent's submissions. She avers further that she is advised by her Attorney that the amendment was repealed on August 12, 2024, and that proceedings pursuant to the Act were null and void. She contends that she fully complied with her bail conditions for almost two years before she applied to vary those conditions in August 2017.

[9.] In December 2017, her Application was heard, and *Madam Justice Adderley* granted the variation by removing the EMD and curfew conditions, requiring her to report to the Central Police Station every Monday and Friday by 6 pm. In July 2019, she became aware of a particular medical procedure available in Colombia and travelled to determine if it was realistic.

[10.] She asserts that she was arrested and convicted, which she claims is purposeless to rehash. Upon her release, she made arrangements to return to the Bahamas and acquired a ticket from Colombia to Panama, then to Nassau. There was the contention that she mistakenly thought she would be required to seek approval to travel if she missed her reporting conditions. Several other claims were made. However, those were the substantive assertions made.

[11.] The Respondent filed an Affidavit in Response on 19 May 2025, sworn by Corporal 3913 Harris Cash Jr. He avers that he is attached to the Court Liaison Section in the Office of the Director of Public Prosecutions and recounts specific facts that were highlighted. Notably, the Applicant was arraigned before *Madam Justice Evans* on the charge of Murder. An exhibit of the Voluntary Bill was duly exhibited.

[12.] He noted that the Applicant was granted bail in the amount of twenty thousand ($20,000.00) dollars, outfitted with an electronic monitoring device, with curfew and reporting conditions. That the Applicant sought permission to remove the EMD in August 2017 which was granted. That in September 2018, Suretor Kevin Reid was removed as a suretor at his request, and no additional suretor was named to replace him.

[13.] On 4 October 2019, the Applicant failed to attend Court, and the matter was then adjourned for 24 October 2019. He further avers that the Applicant again failed to appear on the 24th October 2019, and as a consequence, a warrant was issued for her arrest. The warrant is duly exhibited. In December 2019, the Respondent filed an Application seeking to revoke the bail of the Applicant.

[14.] In July 2020, the Application was heard before *Madam Justice Evans*, who adjourned the matter to allow the surety, Ms. Ferguson, to obtain legal advice. The record does not indicate that an order was made at that time. In August 2024, the Applicant was deported to the Bahamas from Colombia and was arrested. She was charged and arraigned before the Magistrate, where the Applicant pleaded guilty and was convicted and sentenced. The officer further avers that he is aware that no appeal was ever filed against either the magistrate's decision or the judge's decision.

SUBMISSIONS

[15.] The Court read the submissions of both the Applicant and Respondent in full and gave the arguments consideration. However, the entirety of the submissions made to the Court are not reproduced below.

[16.] The substance of the Respondent's skeleton Arguments is extensive; however, the Court, for these purposes, will incorporate for convenience paragraphs 42 to 51, which read as follows:

> "42.In respect to ground 1, the Applicant has failed to identify, demonstrate and prove how Sections 12A and 12B of the Act arrogates power to the administration.
>
> 43. In respect to ground 2, the Applicant has failed to demonstrate that the Act devolves to Magistrates powers that are the exclusive jurisdiction of the Court.
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> 44. In respect to ground 3, the Applicant has failed to demonstrate how Sections 12A and 12B of the Bail Act devolves to Magistrates powers which were exclusive jurisdictions of the Supreme Court. It is submitted that violation of bail was never an offence triable in the Supreme Court prior to the 2016 amendment.
>
> 45. In respect to ground 4, the Applicant has failed to identify which rights the Act has purportedly extinguished.
>
> 46. In respect to ground 5, it is submitted that this is a misinterpretation of the Act. The Magistrate cannot administer bail proceedings to the Supreme Court under the Act. It is further contended, that this section only provides an avenue for the Prosecution to make an application to the Supreme Court for the revocation of bail.

47. In respect to ground 6, this ground is also without merit, as no term in the section grants a Magistrate the power to administer bail proceedings in the absence of an underlying complaint. It is submitted that the issue of bail (grant or refusal of bail) for the substantive complaint in which a person is before a Court for, is a completely separate issue of an offence for the violation of bail. Both issues may have separate results and can be dealt with separately.

48. Ground 7, is also without merit has sections 12A and 12 B do not grant a Magistrate the power to compel testimony from a Justice of the Supreme Court and the Applicant has failed to demonstrate the contrary.

49. In relation to grounds 8 - 11, it is submitted that these are not constitutional issues and should be dealt with on an appeal of the Learned Judge's decision.

50. In relation to ground 12 and 13, the Applicant has failed to provide evidence that bail was revoked prior to the August 2024 hearing.

51. Accordingly, we ask that the relief sought in Applicant's Notice of Motion be refused and dismissed. "

[17.] The arguments advanced by Counsel for the Applicant were similarly extracted and the most relevant portions highlighted as follows:

"Accordingly, it is submitted that the Appellant's continued remand is unlawful and in breach of her constitutional rights for which, again, she is entitled to compensation. In **R v Liverpool City Justices ex p DPP (1993) QB 233** the Court made clear that that the mere fact of an arrest under section 7 was not of itself enough to justify a refusal of bail. And, in fact, the proper approach, set out in Vickers, makes clear that remand is only appropriate in the most egregious of cases and is usually inappropriate..... And then, at paragraph 18, the Court goes on to detail the proper approach to what the consequence is to be if a breach has been established. In the instant case, the Learned Justice utterly failed properly to consider the evidentiary issues, proceeded to rule on matters which were not before her and on which no arguments were presented, conflated the several issues and procedures appropriate to the lawful adjudication of such an application and, in the end, failed to give any consideration whatsoever as to whether to further admit the Appellant to bail...."

LAW

[18.] Given that the Applicant's Counsel filed what is titled a Constitutional matter and noted that no specific provision of the Constitution was cited as being in breach. Counsel sought to argue that all of the rights of the individual were breached. After further questions from the Court, Counsel for the Applicant then narrowed his arguments to Articles 17 & 19.

[19.] These provisions are as follows:

"17. (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment. (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 10th July 1973.....

19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases — (a) ***in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal*** *(b)* ***in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;*** *(c)* ***for the purpose of bringing him before a court in execution of the order of a court;*** *(d)* ***upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;***

[20.] There was also a reliance on sections 12A & 12 B of the Bail Act. Which current iteration reads as follows:

"12A. (1) Any person released on bail in criminal proceedings who breaches any conditions of bail commits an offence.

(2) Where a person is arrested on reasonable grounds that he committed an offence under subsection (1) and is brought before a Magistrate, the person shall be remanded in custody pending the trial and sentencing for the offence.

(3) Where a person is convicted of an offence under subsection (1), the prosecution shall, within twenty-one days of his conviction, make an application to the court which granted the bail for the revocation of the bail in respect of which he was convicted. (4) The prosecution shall give to the convicted person, seven days' notice of the hearing of the application.

12B. Penalty for violating conditions of bail. (1)13 An offence under section 12A is punishable on summary conviction to a term of imprisonment not exceeding five years. (2) In criminal proceedings for an offence under section 12A, a document purporting to be a copy of the part of the prescribed record which relates to granting14 of bail of the accused person, and duly certified to be a true copy of the record, shall be evidence of the conditions of bail...."

[21.] The Court finds that the application of law on the issues before it is similar on some grounds and opts to group the issues in the following manner:

i. Whether the Bail Act, its wording or application is unconstitutional (grounds 1,2,3,4,5,6,7 and 11); and

ii. Whether the Magistrates court/ Supreme Court made the relevant considerations no her, in this instance, revoking bail (ground 8, 9, 10, 12, and 13).

ANALYSIS AND DISCUSSION

Whether the Bail Act, its wording or application is unconstitutional (grounds 1,2,3,4,5,6,7 and 11)?

[22.] The Court first acknowledges that the Constitution is the Supreme law of the land and any law inconsistent with it is void to the extent of its inconsistency. Article 2 of the Constitution expressly states this:

> 2. **This Constitution is the supreme law of the Commonwealth of The Bahamas** and, subject to the provisions of this Constitution, **if any other law is inconsistent** with this **Constitution, this Constitution, shall prevail and the other law shall, to the extent of the inconsistency, be void**.
>
> [Emphasis added.]

[23.] It may be argued that there is a constitutional right to be heard for the admittance of Bail per Article 19(1); 19 (3) and 20 of the constitution, however, the court has both the statutory, and inherent power to either grant (with or without conditions), vary and or revoke the bail of an individual.

[24.] Moreover, where there is a breach of any of the fundamental rights and freedoms the Court has the power to grant redress. Specifically, Article 28 states:

> 28. (1) **If any person alleges that any of the provisions of Articles 16 to 27** (inclusive) **of this Constitution has been, is being or is likely to be contravened in relation to him** then, without prejudice to any other action with respect to the same matter which is lawfully available, **that person may apply to the Supreme Court for redress**
>
> [Emphasis added.]

[25.] However, Article 28(2) gives a proviso to the Court's originating jurisdiction and provides:

> (2) **The Supreme Court shall have original jurisdiction –**

(a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

Therefore, if an adequate means of redress is available to a person concerned the Court is restrained from using its powers pursuant to this article.

[26.] The Court finds that the relief sought with regards to these specific grounds can only be exercised in its original jurisdiction as empowered by Article 28 of the Constitution of The Bahamas.

[27.] Counsel sought to suggest that sections 12A & 12B of the Bail Act were unconstitutional in the 2016 amendment of the act; neither in the arguments advanced nor in the originating motion was a rational basis established for the Unconstitutionality of sections 12A or 12 B. The Court adopts a portion of the arguments advanced by the Respondents as being aligned with the law— **Attorney General of Trinidad and Tobago v. Ramesh Dipraj Kumar Mootoo** (1976) 28 WIR 304, and specifically at page 336, where *Corbin Justice* of the Trinidad and Tobago Court of Appeal citing Black on Interpretation of Laws (1911) at p.110 which read as follows:

"**Every Act of the legislature is presumed to be valid and constitutional until the contrary is shown.** All doubts are resolved in favor of the validity of the Act. Suppose it is fairly and reasonably open to more than one construction. In that case, the construction will be adopted that reconciles the Statute with the Constitution and avoids the consequences of unconstitutionality." He then cited Seervai's Constitutional Law of India at p.54, which read: "There is a presumption in favor of constitutionality and a law will not be declared unconstitutional unless it is as clear as to be free from doubt; to doubt the constitutionality of a law is to resolve it in favor of it validity…" And he notes as follows: "There is a heavy burden cast on the person challenging the validity of any piece of legislation since the presumption that the legislature understands and correctly appreciates the needs of the people and that its laws are directed to problems made manifest by experience. **The Court will only declare a statute invalid if it conflicts with the Constitution, and so the onus is on anyone seeking to impugn a statute to show that in the circumstances which existed at the time it was passed, the legislation violated rights enshrined in the Constitution…**"

[28.] Section 12A and 12B of the 2016 Bail Act was the law at the time and stated as follows:

"12A. Offence of violating conditions of bail. Any person who, having been released on bail in criminal proceedings and who breaches any conditions of bail, commits an offence.

12B. Penalty for violating conditions of bail.

(1) An offence under section 12A is punishable on summary conviction to a fine not exceeding $50,000.00 or o a term of imprisonment not exceeding five years or to both such fine and term of imprisonment.

(2) In criminal proceedings for an offence under section 12A, a document purporting to be a copy of the part of the prescribed record which relates to the granting of bail of the accused person, and duly certified to be a true copy of that part of the record, shall he evidence of the conditions of bail.",

[29.] However, at the time of the revocation hearing the act was amended as previously mentioned in paragraph 20 of this judgment.

[30.] The Court agrees with Counsel for the Respondent that the sections, as amended, created new penal sections for the breach of bail and that these penalties were not within the ambit of the Supreme Court at the time of the passing of The Act. The charge for Breach of bail was as a result of the Applicant absconding in 2019; whether as a result of her own or otherwise.

[31.] The "immediate revocation" of bail on the conviction for breach of bail was not implemented until the 2020 amendment of the Bail Act. Which is not applicable to the current facts, and not within the ambit of this current application before the Court. Counsel for the Applicant was reminded of a case which he argued before the Court of Appeal, albeit that case was before the amendment and consolidation of the current Bail Act, the case of **Bartholomew Pinder v. The Queen** SCCrApp. No. 94 of 2020 involved an appellant whose bail was revoked under the then-existing provisions of the Bail Act, 2020. Counsel argued that the Judge did not have jurisdiction to revoke the appellant's bail and further that the conditions imposed were unconstitutional. The president of the Court of Appeal, *Sir Michael Barnett*, 26 said as follows:

> "**In my judgment, there was ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court**. The fact that section 12 was recited in the summons is inconsequential. **If the issue of jurisdiction had been raised by the appellant before Justice Turner, he could have readily granted leave to the Crown to amend the summons to refer to the courts' inherent jurisdiction**. This ground has no merit and cannot be the basis for allowing an appeal against the judge's decision to revoke the bail if the decision was otherwise correct…"

And at paragraph 48, he said as follows: "Clearly, the imposition of conditions on the grant of bail is not in and of itself unconstitutional…."

[32.] Counsel for the Applicant contends that the current Bail Act was not in effect at the time the Applicant was granted bail. As such, the current Act constitutes a usurpation by Parliament of the judicial function. The irony is that what he appears to be arguing is that the bail given to the Applicant should be reinstated under the previous legislation. If one adopts the logic to its natural conclusion, the last Act was also a usurpation by the Legislative branch. He seeks to argue that Dame Sawyer (as she then was) in the case of **Bradley Ferguson et al. v. The Attorney General** SCCrApp. No. 57,106,108, 116 of 2008 supports his argument. In this matter, the Court was examining the Bail Act and the attempt by Parliament at the time to restrict judges' discretion in considering the question of bail. The Court noted that parliament had overstepped its authority. See the comments at paragraph 17, which illustrate this point clearly:

> "It is now beyond peradventure that having regard to this series of decisions on bail originating from Mauritius (Noordally, Hurnam and Kyhrotti) that in a sovereign democratic state, which the Bahamas is, with entrenched constitutional provisions similar to articles 1, 15 and 19 of the Bahamas constitution, parliament has not got the power by ordinary legislation to deprive the judiciary of the right to the grant of bail, and any law passed prohibiting the grant of bail may not only be inconsistent with article 19, but also is inconsistent with the constitutional provision which declares that state to be a sovereign democratic state(article 1 of the Bahamian constitution) because one of the tenets of such a state is that there must be separation of powers between the judiciary, executive and legislature and it is only the judiciary which exists to protect the fundamental rights of citizens and the right to grant bail is a power that belongs intrinsically to the judiciary…."

[33.] Counsel for the Applicant appears to argue that the case prohibits the Legislative Branch from enacting laws, and in this case, the current Bail Act, 2025, is unconstitutional. The Court in **Bradley Ferguson**'s case did not suggest that at all, but rather, it rejected the contention that Parliament could enact a law that limited the exercise of judicial discretion. Paragraphs 21 and 22 say as much:

> "21. **I would therefore hold that section 4 (2)(a) of the Act is inconsistent with the provisions of articles 1 and 19(3) of the constitution and is therefore void to the extent only that it prohibits the judiciary as distinct from the magistracy from 10 granting bail in the circumstances set out in the Act.** I do so in accordance with Article 2 of the Constitution, which declares that the Constitution is the supreme law of the land, and if any law is inconsistent with this Constitution, it shall, **to the extent of the inconsistency, be**

void. 22. The judiciary has an inherent or intrinsic power or discretion to grant bail in all cases. The discretion has to be exercised judicially on well-established principles…"

[34.] Further, Counsel for the Applicant submitted that the Magistrate cannot be given powers that were within the ambit of the Supreme Court. Furthermore, doing so would amount to Parliament breaching the principles of separation of powers. With regard to this ground, Counsel cited *locus* of **Hinds v R** [1976] 1 All ER 353 which held Parliament, in delegating the powers of a high -court to that of a summary Court's jurisdiction is *ultra vires* the constitution and breaches the principles of separation of powers.

[35.] However, the Court notes that *Lord Diplock* at paragraph 367 stated:

'But more important, for this is the substance of the matter, **the individual citizen could be deprived of the safeguard which the makers of the Constitution regarded as necessary, of having important questions affecting his civil or criminal responsibilities determined by a court**, however named, **composed of judges whose independence from all local pressure by Parliament or by the executive was guaranteed by a security of tenure more absolute than that provided by the Constitution for judges of inferior courts.**'

[Emphasis added.]

[36.] In this case, the Applicant failed to identify which aspect of sections 12A and 12 B were unconstitutional. The Court notes the case of **Riclaude Tassy v. The Director of Public Prosecutions**, MCCrApp. No. 129 of 2022, a case that discussed the applications of sections 12A and 12 B. This was a case in which the Appellant was convicted of violating sections 12A and 12B and sentenced accordingly. At paragraph 14 et. seq. Sir Michael Barnett, president of the Court of Appeal, said as follows:

"The section applies to any person released on bail in any criminal proceedings. That is so whether the proceedings are in the Magistrates Court, the Supreme Court, or the Court of Appeal. The section also applies to any condition whether the condition relates to attending court on the date(s) fixed for attendance, curfew, area restriction, reporting requirements or the wearing of an electronic monitoring device.

15. The offence created by section 12A is a summary offence. It is triable only in the Magistrates Court, notwithstanding that the bail and conditions may have been imposed by the Supreme Court or the Court of Appeal. The penalty for committing the offence is a fine not exceeding $50,000.00 or imprisonment for a term not exceeding 5 years or to both a fine and imprisonment. By any reference, these are heavy penalties and reflect a desire by Parliament that a breach of bail conditions be regarded as a serious offence, and one that should be dealt with quickly by the courts.

16. Nothing in the Bail (Amendment) Act, 2016 and sections 12A and 12B curtailed or modified the provisions of section 12 of the Bail Act and the power of the courts to revoke bail..... Therefore, a breach of bail conditions may give rise to both criminal liability as well as the risk that bail may be revoked.

19. The making of a breach of conditions of bail a criminal offence is a recent trend in the common law. It is not peculiar to the Bahamas. For example, section 38 of the Bail Act 2000 of New Zealand.... Although the statutory provisions are different in various jurisdictions, each provides that in certain circumstances a breach of conditions or undertakings of bail may not only result in a revocation of bail, but, in addition, may amount to a substantive criminal offence. In our judgment, it is imperative that persons on bail fully understand that the conditions upon which they are released on bail must be complied with by them. Prior to the 2016 amendment, a breach of conditions could only result in the revocation of their bail; but by the 2016 amendment, not only can bail be revoked, but they can be further punished for the breach as a criminal offence. The severity of the punishment prescribed by Parliament reflects the gravity which Parliament and the society on whose behalf it enacts laws regard a breach of bail conditions. The courts must reflect that gravity in the punishment it imposes for a breach of conditions."

[37.] For the avoidance of doubt, the Court does not view Section 12B (2) as compelling the Supreme Court to give evidence, but sets an evidentiary burden when prosecuting the criminal offence of violating conditions of bail.

[38.] The Court finds that 12A as it was in 2019, in of itself, created a new summary penal offence and does not interfere with any safeguard afforded to an individual. Moreover, the Court would like to distinguish that the Applicant's bail was not revoked by 12A nor 12B of the Bail Act, 2020 or any further amendment. Rather, the Applicant's bail was revoked by way of summons filed in 2019 and refiled in 2024, neither of which cited section 12. Moreover, had it cited the section and it was objected to, the court could have granted the application be made in its inherent jurisdiction – which it was. Moreover, as the offence created was new and was not a power vested in the Supreme Court, the Court finds that the Offence created by way of section 12A of the Bail Act, 2016, is constitutional, as there is no interference with the Court's inherent power nor its codified power's to grant/vary or revoke bail.

[39.] Therefore, the Court finds that the procedural application made for the revocation of bail of the Applicant was constitutional as it was made pursuant to the inherent jurisdiction of the Court and that the section does not breach the principles of separation of powers.

Whether the Magistrates Court/ Supreme Court made the relevant considerations, in this instance, revoking bail (ground 8, 9, 10, 12, and 13).

[40.] As previously mentioned, the Court is estopped from exercising its original jurisdiction where there is an appropriate adequate remedy. The matter of **Ricardo Farrington v The King** [2025] UKPC 21 is instructive as it held that the parameters set in the proviso to Article 28 is expressed in mandatory terms and to circumvent the use of some adequate alternative remedy is an abuse of process. Specifically, at paragraphs 80-81 it was held:

> 80. In The Bahamas, the proviso to article 28(2) of the Constitution provides that where the court is satisfied that adequate means of redress are available elsewhere it "shall not" grant any relief under article 28(2). If there is doubt as to the adequacy of the alternative means of redress, so that the court is not so satisfied, then the possibility of constitutional relief remains open. However, if the court is so satisfied, then the proviso shuts out completely the grant of constitutional redress.
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> 81. The rationale underpinning the proviso to article 28(2) of the Constitution of The Bahamas is the same rationale that underpins the discretion under the Constitution of Trinidad and Tobago, namely, to prevent "misuse, or abuse, of the court's process." The proviso to article 28(2) in The Bahamas and the discretion in Trinidad and Tobago are both forms of the abuse of process doctrine. However, in The Bahamas the parameter of the abuse of process doctrine is fixed by the Constitution. The proviso is expressed in mandatory terms so that circumventing another adequate means of redress and instead seeking constitutional redress is an abuse of process.

[41.] The principal argument, with relation to this issue, advanced by Counsel for the Applicant was that the decisions of both the Magistrate and the Judge and that the conditions imposed were unconstitutional. The Court inquired whether counsel was attempting to have this Court act in some Appellant capacity over the findings of a Court of concurrent jurisdiction, and purport to act as an Appellant court in the matter of the Magistrate Court.

[42.] However, the statutory time for appeal had since elapsed, and again, Counsel sought to contend that the Application was a constitutional one. The Court again pressed Counsel for the Appellant whether there were any other remedies available to the Applicant, such as a fresh bail application or seeking leave to appeal the decisions of the Supreme Court or the Magistrates Court at the appropriate time. Counsel for the Applicant appeared somewhat reluctant to address the question. This Court is reminded of multiple cases at the Court of Appeal and the case of **Adrian Gibson et al. v. The Director of Public Prosecutions** SCCon/CrAppNo. 97 of 2023, and **Elwood**

Donaldson v. The Director of Public Prosecutions SCCon/CrApp. No. 100 of 2023, (as he then was) Justice of Appeal Jon Isaacs said at paragraph 20 the following:

> "20. I sound a word of caution that the fundamental rights provisions of the Constitution must not become the first refuge of disgruntled litigants lest those provisions lose their importance as safeguards of societal rights. I repeat the caution sounded by Lord Diplock in Harrikissoon v Attorney General of Trinidad and Tobago [1980] PC App. No. 40 of 1977 when speaking about judicial review in relation to administrative actions but is equally applicable in the context of criminal proceedings: "the notion that whenever there is a failure by an organ of the government of a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right of fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be 12 misused as a general substitute for the normal procedures for invoking judicial control of administrative actions. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."

[43.] This Court adopts the stance taken by *Justice Isaacs* in this application, although clothed as a constitutional application, it is nothing more than a somewhat clever attempt to have this Court engage in an Appellant process, or give grounding for perhaps filing an Appeal to allow the Appellant to make similar arguments at the Court of Appeal. There was nothing that precluded the Applicant to appeal the decision. Moreover, Section 8A, as amended – and applicable as the decision to revoke bail occurred in 2024, empowers a person or the prosecution to appeal to the Court of Appeal. The pleadings are devoid of any reference to the specific breach, and the arguments as they relate to sections 12A and 12B are not serious attempts at challenging the constitutionality of those provisions or the decisions of either the Justice or Magistrate.

[44.] For the above-mentioned reasons, the Court finds that there were/are available adequate remedies afforded to the Applicant with relation to the specified grounds in this issue. Moreover, as a result of the adequate parallel remedies the Court is estopped from exercising its original jurisdiction.

[45.] For the avoidance of doubt, the court notes the Counsel for the Applicant sought a declaration that "the arrest....was unlawful." At the hearing he argued that both the arrest with relation to the breach of Bail was unconstitutional and the arrest as it concerned the Voluntary bill of indictment was unlawful. The Court is of the view that there was sufficient *prima facie* evidence with relation to both matters. Therefore, the subsequent arrest of the Applicant cannot be deemed to be unconstitutional.

DISPOSITION

[46.] The court, having read and heard the legal arguments, dismisses the Application.

[47.] No order is made as to cost.

[48.] Parties are granted leave to Appeal.

Dated the 29th July Day of July, 2025

Justice Andrew Forbes