

COMMONWEALTH OF THE BAHAMAS

2025/CRI/GEN/FP/00001

IN THE SUPREME COURT

Criminal Division

IN THE MATTER OF An Application pursuant to section 104 of the Fisheries Act

AND

IN THE MATTER Of an Application for the release of a 2018 Freeman 42 LR Sports Fishing vessel (US Coast Guard # 1291270)

BETWEEN

MARK TSURKIS

Applicant

AND

THE ATTORNEY GENERAL

1st Respondent

AND

THE MINISTER OF AGRICULTURE AND MARINE RESOURCES

2nd Respondent

Before: The Honourable Justice Mr. Andrew Forbes

Appearances: K. Brian Hanna for the Applicant

Patrick Sweeting, for the First and Second Respondents

Eureka Wilkinson Coccia for the Director of Public Prosecutions

(Watching brief)

Date of Hearing: 22nd April 2025

DECISION

FORBES, J

INTRODUCTION

[1.] This Application seeks an Order for the release of the vessel “Highly Migratory, a 2018 Freeman 42 LR Sports Fishing Vessel (US Coast Guard #1291270) (“the Vessel”) pursuant to section 104 of the Fisheries Act, 2020.

BACKGROUND

[2.] This application stems from the arrest of the Vessel that was seized as a result of a collaborative effort by teams of Officers from various agencies, including a United States Agency, who commenced an undercover operation upon receiving information. As a result, individuals posing as clients boarded the Vessel. Mr. Sheikh, Mr. Bacallo, and Mr. Logman were on the boat. At some point, the ship was apprehended, and the individuals were questioned. It was determined that the Applicant was not on board. The three named men were subsequently arrested and individually interviewed under caution.

[3.] Initially the three named men were charged with Engaging in commercial fishing contrary to section 31(1) (a) of the Fisheries Act; Engaging a fishing vessel without a license contrary to section 46(1) (a) of the Fisheries Act; Possession of an Unlicensed Firearm contrary to section 5(a) of the Firearms Act, Possession of a Prohibited weapon contrary to section 30(1) (c) of the Firearms Act and Possession of ammunition contrary to section 9 (2) (a) (i) of the Firearms Act. Subsequently, by way of Voluntary Bill of Indictment, the three men were all charged with Engaging a Fishing Vessel Without a License contrary to section 46(12) of the Fisheries Act (1 Count), Possession of an Unlicensed Firearm contrary to section 5(a) of the Firearms Act, Possession of a Prohibited weapon contrary to section 30(1) (c) of the Firearms Act and Possession of ammunition contrary to section 9 (2) (a) (i) of the Firearms Act (2 Counts). These individuals have been arraigned, and all have pleaded not guilty to the charges, with a case management date set for September 10, 2025. Further, the individuals are all on Cash Bail of Twenty Thousand Dollars (\$20,000.00) each. Additionally, the Vessel was ordered detained by the Court until the case was concluded.

APPLICATION

[4.] The Notice of Application and an Affidavit in Support of the Application made by the Applicant were filed on the 19th March 2025.

[5.] In the Affidavit, the Applicant averred that

- a. he is a businessman and resides in Florida, one of the States of the United States of America;
- b. he is the registered owner of the vessel named Highly Migratory a 2018 Freeman 42LR Sports Fishing vessel, which Bahamian authorities have seized;
- c. The ship Captain, Mr. Sheikh and Mr. Bacallo were charged with the following offences:
 - i. Engaging in commercial fishing contrary to section 31(1) (a) of the Fisheries Act; and
 - ii. Engaging a fishing vessel without a licence contrary to section 46(1) (a) of the Fisheries Act.
- d. The charge sheet was exhibited in the Magistrate Court, evidencing that those charges were filed;
- e. he is concerned about the value of the Vessel being diminished if it is detained for months;
- f. He notes that the boat requires specific maintenance. Namely, the battery needs to be charged and maintained daily, failure to do so could result in the bilge pump being destroyed; if the engine remains in water for an extended period, it can cause the lower units to become corroded and clogged; the fish well requires daily cleaning; and the hull can deteriorate if sitting in salt water for an extended period.
- g. He avers that the boat is not being maintained, which poses a potential risk of being rendered a total loss.

[6.] The Crown in its affidavit in response filed on the 28th April 2025 and sworn by Fisheries Officer L'Dina Pelecanos, in which it was averred that:

- a. there was an investigation commenced concerning the fishing vessel Highly Migratory, a 2018 Freeman 42 LR sports fishing vessel #1291270 of an illicit foreign charter operation;
- b. due to this operation, several Government agencies would have placed this vessel under surveillance since 2023.
- c. due to the activities, the vessel was engaged and seized, and charges were laid before the Supreme Court;
- d. the alleged evidence in the case is very cogent and presents the hallmarks of fishing ventures that ought to be prevented as a means of national maritime security interest;

- e. the affidavit further avers that there was a violation of the Customs Management Act; however, it is again notable that no charges were proffered;
- f. the two captains were employees of the Applicant, and it is alleged that the Applicant was the principal person responsible for the entire operation;
- g. there is an ongoing investigation concerning the Vessel and alleged illegal activities.
- h. the release of the Vessel will interfere with or impede those investigations and the Vessel's return would greatly impact all future seizures.
- i. A bond would be inappropriate and improper for the Vessel, which can be removed from the jurisdiction.
- j. the Court ought to await the outcome of proceedings, as a possible forfeiture order might be granted.
- k. the Vessel is being stored at Bradford Marine and is incurring storage costs that should be considered. The Court notes an invoice dated 15th April 2025 of Three Thousand Eight Hundred Seven Dollars and forty-nine cents (\$3,807.49). Also exhibited is a news clip and a link to the website for applying for licenses.

SUBMISSIONS

[7.] The Court gave directions that all arguments and documents related to this matter were to be filed and served no later than 30 April 2025 by 5 pm. As of the 9th May 2025, 4 pm, my Clerk received an email attaching a correspondence dated 8th May 2025 requesting an extension. Firstly, the Court is unaware that applications for extension are advanced by correspondence, and second, this Court has already given Directions, which have not been rescinded. Nonetheless, the arguments of Counsel are attached below.

Applicant's Submissions

[8.] The Applicant's Counsel in submissions laid over reference sections 104 (2) of the Fisheries Act. They also reference sections 19(1) (a) to (z) of the Act, which empowers the Minister to make regulations for various purposes. Counsel submits that on the 26th January 2025, a permit was granted by the Minister to Remel Sheikh, authorizing him to engage in foreign fishing for "sporting purposes" using the Highly Migratory vessel. The permit's expiry date was noted as 26 April 2025 and had been exhibited to the Affidavit of Police Officer Corporal Harris Cash, and filed on 6 February 2025. The Court notes that the affidavit referred to was filed in connection with the Bail Application of Mr. Sheikh and others. The Court takes Judicial Notice of the Permit,

which bears a stamp from the Bahamas Customs Department dated January 26, 2025. The permit indicates that the individual, Remel Sheikh, is authorized to engage in foreign fishing conducted for sport fishing purposes using Highly Migratory registration #1291270, dated January 26, 2025, at 10:56 am Eastern Standard Time, with an expiration date of April 26, 2026. According to the permit, the individual issued the licence could not transfer or assign it. The permit authorized only the named vessel to conduct sports fishing, authorizes a maximum use of six reels, and authorizes a maximum catch of the Fisheries resource as established by the regulations.

[9.] Counsel argues that section 107 of the Fisheries Act empowers the Court to make a forfeiture in respect of any item used or involved in the commission of the offence. He further submits that an order for forfeiture may only be made following a conviction. He asserts that the individuals have a valid defence against the charge of fishing or fishing activities.

[10.] Further, Counsel submits that section 46 (1) (a) includes commercial fishing but excludes sport or charter sport fishing, and further argues that section 32 (1) (a) excludes sport fishing and charter sport fishing from the activity of fishing conducted on a commercial fishing boat. He again refers to the permit and asserts that the individuals charged have a valid defence and will likely not be convicted; hence, the Vessel will not be forfeited without a conviction. In the meantime, the Vessel is rapidly losing value, resulting in substantial economic loss for the owner. They recommend that the bond not exceed Ten Thousand Dollars (\$10,000.00).

Respondent's Submissions

[11.] Submissions laid over by Counsel of the Attorney General repeat the facts surrounding the arrest of the Vessel and the arrest of the three individuals for the charges above. Counsel asserted that the three individuals were also charged with Possession of a Prohibited Weapon Contrary to Section 30(1)(c) and 30(2)(a) of the Firearms Act and Possession of Ammunition Contrary to Section 9(2)(a) and 9 (2)(b)(1) of the Firearms Act. Moreover, Counsel submits that the defendants are agents of the Applicant.

[12.] Counsel further submits that the issues for the Court to consider are i. whether the authorities acted lawfully in seizing the Vessel; and ii. Whether the Court should exercise its discretion in favor of a reasonable bond, counsel submits that the Vessel was lawfully seized as a

part of an investigation by several agencies. Noting that the Vessel had made 18 trips to the Bahamas since 2021 and did not have the appropriate registration, inspection, and licenses required to operate as a foreign fishing charter. Counsel asserts that the only permit held by the Applicant at the time was a cruising permit.

[13.] Further, Counsel for the AG asserts that section 104(1) (2) of the Fisheries Act allows for the bond of the Vessel. The Applicant acted promptly in making its application. Further, the Court must consider whether the Vessel and property are required as an exhibit or reasonably required for further investigations. Counsel asserts that the case has been ‘fast-tracked’ to the Supreme Court for adjudication via a voluntary bill of indictment. That there would be no considerable delay. The Vessel is an exhibit and evidence before the Court for the anticipated trial. Moreover, if a bond were granted, the Court would lose its discretionary power of forfeiture, as per Section 107 of the Fisheries Act. Finally, there is a possibility that the vessel will return to Bahamian waters and engage in further illegal activities.

Director of Public Prosecution’s Submissions – Watching Brief

[14.] Submissions filed by Counsel of the Director of Public Prosecution, as a non-party watching brief, assert that the Commissioner of Police or the Director of Public Prosecutions is not a party to these proceedings. Only the Commissioner of Police or the Director of Public Prosecutions can institute criminal proceedings under section 58 of the Criminal Procedure Code, Chapter 91 of the Statute Laws of the Commonwealth of the Bahamas. Counsel for the Respondents further argues that the Applicant is neither a defendant before any criminal court within the Bahamas, nor does the Applicant have any right to intervene in a criminal complaint. The only way the Applicant can engage in these proceedings is to submit to the jurisdiction and opt to face charges. Counsel asserts that section 46 (1) (b) does not assist the Applicant as he is not a proper party before the Court. Further, she contends that the submission served on their office does not afford sufficient time for an appropriate response, and that the submissions should have been served on the named Respondents. The Application is premature as the matter has been referred to the Supreme Court for Trial. The Director of Public Prosecutions reserves the right to file substantive arguments. And also reserves the right to have legal representation of the Attorney

General. The Affidavit in response is not a submission to the jurisdiction of the Court for a proceeding that had been improperly instituted before the Honourable Court.

LAW

[15.] Section 46 (1) states:

(1) Subject to subsection 2, no fishing vessel shall –

(a) engage in fishing or fishing-related activities in the Bahamian Fisheries waters without a valid licence issued under this Act;

[16.] Further 46 (12) states:

A person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding three years or to both.

[17.] Section 102 (1) states:

(1) Subject to section 90(2). All property seized, except where such property has been released or disposed of under this Act, shall be held in the custody of the Commissioner acting on behalf of the Minister until —

(a) a decision is made not to lay any information or charge in respect of the alleged offence for which the property was seized; or

(b) where such a charge or information is laid. Upon the completion of proceedings in respect of the alleged offence for which the property was seized, **or such time as the Court may determine.**

[Emphasis added.]

[18.] Section 104 states:

(1) Any person who claims any item was seized or the owner or person entitled to possession of the item seized may apply to the Court for the release of the item within sixty days of such seizure.

(2) Upon receipt of an application under subsection (1). The Court may order, unless the vessel, property or other item is required as an exhibit in Court or reasonably required for any further investigation of offences under this Act—

(a) the payment into Court of a bond, surety or other security, taking into account —

- (i) the fair market value of the vessel, property or other item and catch on board,
 - (ii) the maximum fine provided for the offences charged
 - (iii) the cost likely to be incurred by the prosecution if a conviction is entered; and
- (b) The release of the vessel, property or other item, upon receipt of the bond, surety or other security referred to under paragraph (a) and may require such conditions for such release as it considers necessary.
- (3) If there is an appeal from an order of forfeiture, the Court may –
- (a) continue any such bond, surety or other security deposited in accordance with subsection (2)(a) during the pendency of the appeal and any retrial or rehearing on remand; or
 - (b) require additional security to be deposited with the Court
- (4) The discharge of a bond, surety or other security under this Act shall be conditional upon the return of the released item to the Court without any impairment of its value, or until any final proceedings under the Act have been disposed of or determinations are paid, discontinued, and any fines, penalties or other determinations are paid.

ANALYSIS AND DISCUSSION

[19.] To put it mildly, the Court was initially perplexed by the Affidavit supporting the Attorney General's objection and the preliminary arguments filed on behalf of the Director of Public Prosecutions. The information refers to one (1) count of engaging in fishing without a license and other offences related to firearm and ammunition charges. The Court will speak to those charges at a later stage. The Crown, at a minimum, will have to establish that none of the occupants, nor the Vessel, was granted a license, as this can be considered, within the law, a strict liability offence. The Court again, without comment, is directly aware of a document the Crown exhibited in an Affidavit filed in opposition to a Bail hearing, which purported to show an issued license.

[20.] The Affidavit asserted facts without evidence, for instance, at paragraph 11, the affiant swore that the Applicant allegedly agreed to "organize the illegal charter operation for monetary gain, knowing it was illegal to do so without proper leave." It should be noted that no evidence was used to support this allegation. The Court would borrow the comments of a Justice of Appeal

in the case of **Jevon Seymour v. Director of Public Prosecutions** SCCrApp. No.115 of 2019, where the Court noted that blanket statements are insufficient:

“In Jonathan Armbrister John, JA further stated that: “17. It must, however, be borne in mind that the onus is upon the Crown to satisfy the Court that the accused person ought not to be granted bail. In acknowledging that the strict rules of evidence are inherently inappropriate in deciding the issue whether bail ought to be refused we sound the wanting that naked statement from the Prosecutor that “the witnesses are known to the appellant and so he is likely to interfere with them” without: more is unfair to the accused person and cannot stand alone”.”

[Emphasis Added]

[21.] The Affiant then sought to equate the current matter with a matter that occurred in New Providence without establishing the connection. The Affidavit in Objection is full of emotive language and very short on evidence in support. The one bit of relevant evidence was the invoice showing that the Vessel is currently being housed at Bradford Marine, not under the authority of the Commissioner of Police, but rather the Bahamas Maritime Fisheries, which falls afoul of the Fisheries Act as the Fisheries Act directs any seized Vessel to be held in the custody of the Commissioner of the Police under section 102 (1). The invoice suggests that the Fisheries is being charged Three Thousand Eight Hundred and Seven Dollars and Forty-Nine Cents (\$3,807.49) from April 1st to April 30th, 2025. Given that the Vessel remains in the Custody of Bradford Marine, it is fair to surmise that the billing will likely reflect sums due for May, which remains unknown. In a supplemental Affidavit by the same affiant, she exhibited a further invoice from the month of February to June in the amount of Twenty Thousand Four Hundred and Forty Four Dollars and Ninety Four cents (\$20,444.94).

[22.] Counsel for the Attorney General sought to submit that the Application was premature and that the Vessel is an exhibit. Section 104(1) affords the owner of a seized Vessel the power to apply to the Court within sixty days for its release on bond. The idea that the boat itself is an exhibit is not a reasonable one. The physical item is never required for a criminal trial; instead, photographs would be provided, which, once authenticated, would be admitted into evidence. Furthermore, as the alleged offences are strict liability, the need for further investigation is also unreasonable.

[23.] The question, therefore, is whether the Court ought to release the Vessel on bond, and if it does, what bond ought to be set.

[24.] The Applicant's Affidavit, at paragraph 6, states that the Vessel, with its engine, is valued at seven hundred fifty thousand dollars (\$750,000.00). In contrast, the arguments advanced by Counsel for the Applicant suggest that the bond, if considered, should not exceed Ten Thousand Dollars (\$10,000.00). Again, this argument fails to apply the considerations stated in the provisions of Section 104(2), (a), (b), and (c). The only valuation the Court has is from the sworn evidence of the Applicant. Section 119 of the Act indicates that upon conviction, the possible penalty is a fine not exceeding One Hundred Thousand Dollars (\$100,000.00), imprisonment not exceeding three (3) years, or both the fine and imprisonment. No evidence has been offered as to whether any fish were on board, and if so, what was the nature and value of the fish? Furthermore, what has happened to those items since no order was made, as required by the statute? This is just one of the unsatisfactory positions in which this Court finds itself with a rushed case.

DISPOSITION

[25.] The Court accepts that it has Jurisdiction upon an application made within sixty days. The Vessel was seized on January 27, 2025, and the Application was filed on March 19, 2025, within the sixty-day window. The Court can, therefore, determine whether a Bond should be applied for or the Vessel should remain seized.

[26.] At the current rate, if the invoice is accepted, it will potentially cost the Government of the Bahamas approximately \$3,000 per month to store. The Vessel is reportedly valued at \$700,000. The fine awardable is not more than One Hundred Thousand Dollars. In this case, the Court considers a Bond of One Hundred Thousand (\$100,000) as reasonable. The Applicant will also be required to pay the sum of Twenty Thousand Four Hundred and Forty Four Dollars and Ninety Four cents (\$20,444.94) to be paid to Bradford Marine.

[27.] The Applicant is to make further arrangements for the Vessel to be removed from Bradford Marine at his expense. The Rods and other marine material are to be returned to the boat. Any fish or other marine product seized is to be photographed if that has not occurred yet, if that remains

plausible, and distributed to the Children's and Elderly persons living facilities, which is again dependent upon there being items and if so, those items remain viable.

[28.] If there are no items or they are no longer viable, an affidavit must be filed stating the same. If distributed, then an Affidavit stating so is also required. Should the matter proceed to Trial and the Occupants are convicted, the Court will order the immediate return of the vessel; a failure to return the boat as ordered will result in forfeiture of the Bond to the Crown.

[29.] Parties aggrieved by this decision may file an Appeal.

Dated the 1st July, 2025

A handwritten signature in black ink, appearing to read 'A. Forbes', is written over a horizontal line.

Andrew Forbes
Justice of the Supreme Court