

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION  
2018/CLE/gen/00317**

**BETWEEN**

**TYPHANY CLARKE**

**Plaintiff**

**AND**

**THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS**

**First Defendant**

**AND**

**THE NATIONAL INSURANCE BOARD**

**Second Defendant**

**AND**

**PARLIAMENTARY REGISTRATION DEPARTMENT**

**Third Defendant**

**AND**

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**Fourth Defendant**

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION  
2018/CLE/gen/00318**

**BETWEEN**

**ERICA WILLIAMS**

**Plaintiff**

**AND**

**THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS**

**First Defendant**

**AND**

**THE NATIONAL INSURANCE BOARD**

**Second Defendant**

**AND**

**PARLIAMENTARY REGISTRATION DEPARTMENT**

**Third Defendant**

**AND**

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**Fourth Defendant**

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION  
2018/CLE/gen/00319**

**BETWEEN**

**KIZZY MAURICE**

**Plaintiff**

**AND**

**THE GOVERNMENT OF THE COMMONWEALTH OF THE BAHAMAS**

**First Defendant**

**AND**

**THE NATIONAL INSURANCE BOARD**

**Second Defendant**

**AND**

**PARLIAMENTARY REGISTRATION DEPARTMENT**

**Third Defendant**

**AND**

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**Fourth Defendant**

**(Consolidated by Order of the Honourable Madam Justice G. Diane Stewart, Justice of  
the Supreme Court of The Bahamas, the 30<sup>th</sup> October 2018)**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Mr. Obie Ferguson Jr. for the Plaintiffs  
Mr. Kenny Thompson, Mr. Rashied Edgecombe and Mrs. Kayla  
Green-Smith for the Fourth Defendant  
Ms. Roberta Quant for the Second Defendant**

**Judgment Date: 18<sup>th</sup> March, 2022**

**JUDGMENT**

1. Each of the Plaintiffs in the three named actions, which were heard concurrently, seek damages from the Defendants as a result of their alleged negligence in failing to make the work place reasonably safe for all of their employees in breach of Section four of the Health and Safety at Work Act (the "Act").
2. At the close of the evidence, I made an order that the First and Third Defendants were not proper parties to the actions and they were removed as parties as they were not juridicial entities. Any reference therefore to the Defendants are with respect to the Second and Fourth Defendants only.

3. The Plaintiffs' sought the same relief, which arose from the same armed robbery which occurred while they were allegedly employed with the Defendants. I therefore ordered that the matters be heard together.
4. The Plaintiffs' allegations stem from being robbed at gun point by a lone gunman while they were seconded to the Parliamentary Registrar's Department (**the "Department"**). They were seconded from various government offices to assist with the handling and distribution of voters cards for the 2017 general elections. There were several distribution centers however, these Plaintiffs were sent to work at the St. Barnabus Church Hall location between the hours of 8:00 a.m. to 9:00 p.m. (**the "Church Hall"**) during the time in question.
5. On the 21<sup>st</sup> March, 2017, the Plaintiffs claimed that while stationed at the Church Hall they were provided with a police officer from the Royal Bahamas Police Force (**the "RBPF"**) and a defence force officer as security from 8:00 a.m. to 4:00 p.m. However, from 4:00 p.m. until 9:00 p.m. there were no officers present. Around 8:30 p.m., after the bus left the Church Hall with the voters card boxes and after turning away a gentleman who came looking for one of their colleagues, before the door could be locked, a fair skinned gentleman with a towel over his nose and mouth entered through the door, pointing a gun, forcing them to the ground and demanding that they give him all of their money (**the "Incident"**).
6. The Plaintiffs all claimed to be acutely traumatized from the Incident and claimed that without continuing psychotherapy, they would have suffered from post-traumatic stress reactions which could be devastating to them and their families.
7. By action C.L. No. 317 of 2018, the Plaintiff, Kizzy Maurice, who worked in the Compliance Department at the National Insurance Board ("**NIB**") ("**Ms. Maurice**"), claimed that at the time of the incident, she was four months pregnant and suffered severe emotional distress as a result of the Defendants' negligence in failing to ensure that the Church had proper security presence.
8. As a result she sought interest at 10% pursuant to section three of the Civil Procedure (Award) of Interest Act, 1992, damages and the following special damages:

(i)	<b>"Clinical visit at The Renaissance Institute International Ltd. – Dr. David E. Allen</b>	<b>\$250.83</b>
(ii)	<b>Drivers license</b>	<b>\$60</b>
(iii)	<b>National Insurance replacement card</b>	<b>\$10</b>
(iv)	<b>Cell phone</b>	<b>\$106.43</b>
	<b>TOTAL</b>	<b>\$427.26"</b>

9. By action C.L. No. 317 of 2018, the Plaintiff, Typhany Clarke, a Senior Clerk in the Human Resources Office at the Ministry of Works ("**Ms. Clarke**"), also sought interest at 10% pursuant to section 3 of the Civil Procedure (Award) of Interest Act, 1992, damages and the following special damages:

<b>"11. Clinical visit at The Renaissance Institute International Ltd. – Dr. David E. Allen</b>	<b>\$250.83"</b>
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10. By action C.L. 318 of 2018, the Plaintiff, Erica Williams, a contractual worker in the Registration Department at NIB (“Ms. Williams”) sought interest at 10% pursuant to section 3 of the Civil Procedure (Award) of Interest Act, 1992, damages and the following special damages:

**“11. Clinical visit at The Renaissance Institute International  
Ltd. – Dr. David E. Allen**

**\$250.83”**

11. The Defendants denied that they did not provide adequate security for the entire period that the Plaintiffs were required to work. They claimed that the Church was not a public office and that it was the responsibility of an employee of the Church, to ensure that it was locked and secured.
12. They maintained that they discharged the duty imposed on employers to make the work environment reasonably safe for all employees pursuant to section 4 of the Act. Consequently, they denied that the Plaintiffs were entitled to any relief.

### **ISSUES**

13. The issues for determination are :-

- i. Whether the Defendants had a statutory duty of care to the Plaintiffs pursuant to section 4 of the Act? If so, whether the Defendants were negligent in carrying out that duty which constituted a breach? If so, what damage was suffered by each Plaintiff?
- ii. Whether the Defendants had a duty of common law to the Plaintiffs? If yes, whether they were negligent in carrying out that duty which constituted a breach? If so, what damage was suffered by each Plaintiff?

### **EVIDENCE**

#### **PLAINTIFF’S EVIDENCE**

##### **Evidence of Ms. Clarke**

14. Ms. Clarke averred that on the 21<sup>st</sup> March 2017 at 4:00 p.m., while at the Church, the male police officer left to attend classes at 5:00 p.m. and she was given permission to pick up a fellow employee around 5:45 p.m. and continue the voter card distribution upon her return. At about 6:00 p.m., the female police officer left and therefore there were no more officers at the Church with them.
15. A gentleman had questioned one of the church’s staff members about the police protection which was supposed to be there. He was told that they had left and that a gentleman from the church, who was an elderly man, would assist them with locking up. At 8:00 p.m. the bus responsible for collecting the voters card boxes arrived to collect them. Shortly after the bus left, a dirty man came to the door looking for a lady by the name of Rhonda. They told him that she had left already.

16. Thereafter, one of her colleagues went outside and when she returned, a man with a gun was following her with a gun pointing at her face and demanding money from them. Ms. Clarke stated that she questioned what money he was referring to and that she told him that there was no money there. She then walked towards him but after realizing the gun was real, she walked backward, slid under a table and dialed 911. The gunman asked who was under the table with the phone which led her to slide the phone under her stomach.
17. The gunman then went to the other workers and demanded money. One of the workers told him that she had no money, while two others threw what they had towards the gunman. He also took Ms. Kizzy Maurice's cell phone. The gunman apologized for what he did but stated that he really needed the money. She said that "**her heart was in her toe**" because she thought that she was going to be shot.
18. After the gunman left, she called 911 to inform the police of the Incident. Shortly after, the bus returned to the Church and although the driver was knocking on the door, they did not open it until the police arrived because they were traumatized.
19. During cross-examination Ms. Clarke testified that the officer who left the Church the day of the Incident at 4:00 p.m. was a female officer. She explained that the bus that came to collect the voters card boxes was the parliamentary bus and that they came to the Church at 8 p.m. She had been working with the Department since 17<sup>th</sup> January 2017 and with the Church starting from the beginning of March 2017. She worked from 9:00 a.m. to 3:00 p.m. at the Ministry of Works and from 3:00 p.m. to 9:00 p.m. at the Department.
20. After the 7<sup>th</sup> March 2017, she no longer had to report to the Ministry. Her secondment was confirmed in writing and ended in May 2017. Ms. Clarke stated that at the end of the day, when registrants stopped coming in to collect their voters cards, they had to pack up the remaining voters cards and ensure that the boxes were in order for pick up. Once the bus picked up the counter foils, they had no further duties.
21. During re-examination, Ms. Clarke stated that a lady by the name of Ms. Jolly had instructed them to work from 8:00 a.m. until 9:00 p.m.

#### **Evidence of Ms. Williams**

22. Ms. Williams averred that at 5:00 p.m. on 21<sup>st</sup> March 2017 she left NIB and went to the Church along with Ms. Clarke, Ms. Maurice and other employees. Upon arriving at the office, she noticed that the female officer who had been there the first two afternoons was not in the back of the Church like she usually would be. She walked to where she would normally sit and started her work. Around 8:00 p.m., the doors were closed to the public and they began their counts for card registration.
23. The voters card boxes were collected around 8:05 p.m. and she called her ride to pick her up. As she was waiting, she noticed a woman by the name of D'Esther Fox ("**Ms. Fox**"), pacing up and down while using her phone. Ms. Fox left and when she returned, a man wearing a dark blue hat, coral buttoned shirt, a blue jeans split on one side, tan shoes and an aqua towel entered behind her. The man pointed the gun in the room and shouted for them to give him the money.

24. She and Ms. Clarke told him that there was no money while walking towards him because they thought that the gun was not real. She thought that it was a joke because she felt as if Ms. Fox had a slight smile on her face. Ms. Williams then saw a pregnant Ms. Maurice get on the floor and go under the table. The gunman pointed the gun directly in Mr. Moss's, (the Church's employee) face. After she realized that the gun was real, she and Ms. Clarke started walking backwards.
25. Ms. Clarke gave the gunman \$3.00 by placing it on a table then got down under the table. The gunman then took Ms. Maurice's cell phone and placed the gun in another colleague's face and demanded that she open her purse and was ordered to give him the money out of the purse. As the gunman left he said that he was sorry he had to rob them but he needed the money.
26. After the gunman left, the gentleman who came to collect the voters card boxes came to their aid. However, out of fear, they did not open the door. Once the police arrived, they gave them a description of the gunman and they all gave the officers their statements about what they had witnessed.
27. During cross-examination, Ms. Williams averred that at 8:00 p.m. the doors closed and the public was no longer allowed to enter to register or receive voters cards. Once the voters cards were collected, she and the other staff were able to leave. She added that it was fair to say that on the day of the Incident, her shift had ended at NIB and that she had never received a letter from them assigning her to the Department.
28. NIB had never requested her to go the Church. Ms. Williams confirmed that the cheques exhibited were received from the Department and that she had received them the same time that she received cheques from NIB.
29. During re-examination, Ms. Williams testified that Ms. Jolly had instructed her to work from 5:00 p.m. to 8:00 p.m.,

#### **Evidence of Ms. Maurice**

30. Ms. Maurice averred that she and a team of workers, while at the Church, asked whether their safety could be guaranteed by the Department. The representatives of the Department assured her that it would be. There was a defence force officer stationed at the Church from 8:00 a.m. to 4:00 p.m. and police officers who would work from 4:00 p.m. until they left.
31. On the day of the Incident she reported to work about 11:00 a.m. and noticed that both officers were on duty which was a first. At about 4:00 p.m., both officers left. At 8:00 pm., she sat at the back of the room because she felt tired due to her being four months pregnant at the time. Ms. Fox went outside and when she returned she was followed by a man who was pointing a gun at her.
32. Ms. Maurice stated that she got on the ground on her stomach and waited for the gun to go off. The gunman went to Mr. Moss, the church security and demanded money. In response Mr. Moss stated that he did not have any money and two other ladies handed him money. The gunman apologized for the robbery as he was leaving. When she got up off of the floor, she reached for her cell phone, only to discover that it was missing as

it was taken by the gunman along with her NIB card, her driver's licence and bank cards. After the robbery she attended therapy sessions to obtain help for the trauma.

33. During cross-examination, Ms. Maurice agreed that the counter foils which contained the voters cards had been collected, her duties for the day were complete and that she was free to go. She confirmed that on the day of the Incident she was working for the Department and not NIB and that NIB could not be responsible for her safety.
34. Ms. Maurice confirmed that she worked at the Department from January 2017 while she was also still working with NIB and that she had received a letter from the Department with respect to her secondment.

#### **Evidence of Plaintiffs' Witnesses**

35. Dr. David F. Allen, a leading psychiatrist with over thirty years' experience and founder of the Renaissance Institute International Ltd ("**Dr. Allen**"), stated that the Plaintiffs had consulted him as a result of the Incident.
36. It was his assessment that the Plaintiffs had been acutely traumatized. Without continuing psychotherapy, the effect of the incident could lead to a post traumatic stress reaction, which could have devastating consequences for them and their families. He recommended that there be compensation for their traumatizing experiences and continual therapy. His findings were contained in a November 2017 report.
37. During cross-examination, Dr. Allen testified that when he assessed an individual he would consider their appearance, he would listen closely to how they told their story and he would try to get an understanding about how they felt about what happened.
38. A traumatized person would not be able to give an accurate description of what happened and their story would be conflicting. If the story was conflicting, he would then conduct an examination for biological signs such as whether they slept okay or if they experienced any flash backs, whether there were any panic or anxiety attacks or any reactions of being on alert or fearful. The process was referred to as a mental status examination.
39. He saw the Plaintiffs together because they were experiencing the same trauma, it was helpful to do so. He felt that they were all traumatized at the time and that one or two of them did contact him individually after the session. He described a thorough mental status examination in his report but a more comprehensive report was contained in his personal notes.
40. He was informed by the Plaintiffs that because of their financial status, they could not pay for any additional sessions with him. He informed them that they were unable to attend work and questioned whether they deserved compensation from the government. He agreed that as a medical professional he was not authorized to suggest that the Plaintiffs should be compensated but because they were challenged with making ends meet, he felt as if something should be done to help them.
41. The session with the Plaintiffs lasted for about an hour and a half and took place sometime in November or December of 2017 and that he had not seen them since. At

the time he did see them however, he felt that if they did not have a proper follow-up they could go into a post-traumatic state.

42. He would not have been surprised if the Plaintiffs were able to function in such a state as women were able to bear a higher level of traumatization than men and still function. He could not presently say if any of the Plaintiffs were presently suffering from the trauma.

## DEFENDANTS EVIDENCE

43. Superintendent Roderick Mckenzie, an officer of the RBPF ("**Spt. Mckenzie**") averred that on the day of the Incident he, along with Asst. Supt. Bradley Pratt ("**ASP Pratt**"), were instructed by the then Assistant Commissioner of Police Dean ( "**ACP Dean**") to alternate an officer to work at the Church in two shifts, 8:00 a.m. to 4:00 p.m. and 4:00 p.m. until closure.
44. Later that evening he received a phone call from ACP Dean who informed him that there was a robbery at the Church and that ACP Dean stated that "**apparently, there was no officer performing any security duties at St Barnabus Church Hall.**" As a result of being informed of the incident he and ASP Pratt visited the scene.
45. During cross-examination, he confirmed that ACP Dean had told him that registration activity would usually end around 8:00 p.m. He was responsible for the 8:00 a.m. to 4:00 p.m. shift and ASP Pratt's was responsible for assigning an officer for the 4:00 p.m. shift. He never got any instructions from NIB with respect to assigning officers to the Church.
46. Ms. Cyprianna Bethel, the Deputy Director of Human Resources at NIB ("**Ms. Bethel**"), stated that Ms. Maurice was a permanent employee of NIB as a Clerk II. NIB had received a circular dated the 15<sup>th</sup> February 2017 from the Cabinet Office requesting individuals to be assigned to the Parliamentary Registration Department (**the "Circular"**). A letter dated the 2<sup>nd</sup> March 2017 was then received by NIB from the Office of the Parliamentary Commissioner (**the "OPC"**) referring to the Circular.
47. The letter identified Ms. Maurice as a person to be released to the Department immediately, in order to assist with voter registration. On the 9<sup>th</sup> March 2017, NIB wrote to the OPC acknowledging the Letter. By letter dated the 13<sup>th</sup> March 2017, NIB approved Ms. Maurice's secondment to the Department, effective the 14<sup>th</sup> March 2017. Ms. Bethel stated that even though NIB remained responsible for paying Ms. Maurice's salary during her secondment to the Department, NIB had no control over her work environment, work location or her hours of work.
48. Ms. Clarke, a contract worker with NIB, was neither released nor instructed by NIB to work at or with the Department at the Church as she was not requested to do so by the Parliamentary Commissioner. There was no Assignment of Personnel letter for her.
49. She confirmed Ms. Clarke's evidence that she had reported to work at NIB at 9:00 a.m. until it was time for her to get off at 5:00 p.m. on the day in question. There was no overtime authorized for her to work at the Department between the hours of 5:00 p.m. and 9:00 p.m. on the day of the Incident and that Ms. Clarke had left NIB for approximately three and a half hours before the Incident.



50. Ms. Clarke was not paid by NIB for the work done at the Department and that Ms. Emily Jolly of NIB's Compliance Department had no authority to assign or instruct Ms. Clarke to work for the Department or any third party.
51. During cross examination, Ms. Bethel confirmed that while Ms. Maurice was seconded, NIB continued to pay her salary. At NIB she worked between the hours of 9:00 a.m. to 5:00 p.m. She could not speak to the work Ms. Maurice did at the Department and she was only aware of what was on her file with respect to the Incident.
52. Geoffrey McPhee, who was also seconded to the Department as the Assistant Parliamentary Commissioner ("**Mr. McPhee**"), averred that on the date of the Incident, he was in election operations. It was determined that the distribution centers for the voters cards would open from the 13<sup>th</sup> March 2017 between the hours of 10:00 a.m. to 8:00 p.m. The Church was a new distribution center to service the new constituency of St. Barnabas.
53. The staff at the distribution centers were responsible for the distribution of the voters cards and 8:00 p.m. was the latest a voter could arrive at a distribution center and expect to be issued with a voters card. Once the distribution of voters cards ended for the day, a bus would collect the cards from the centers shortly after 8:00 p.m. and transport them to the Department. Once this was done, there was no longer a need or a duty for anyone to remain at the centers and most staff were usually in the process of packing up to leave at or around 8:00 p.m.
54. The RBPF would have a designated officer assigned to each distribution center with a view to protecting the voters cards, staff and to support the integrity of the distribution for the duration of the period the voters cards were at the centers. This arrangement was made with the RBPF who delegated the officers to report to the centers for the prescribed periods.
55. During cross-examination, Mr. McPhee testified that the Parliamentary Commissioner was responsible for determining when the distribution centers would open and the hours of operation. His understanding about the RBPF officers as security was that they were supposed to patrol the areas throughout the day while an officer was to be stationed there after dark.
56. He did not know whether any officer was there at the time of the Incident and no schedule existed indicating which police should have been in place. Mr. McPhee was sure that there were rare occasions when members of the public would show up to the stations after 8:00 p.m. to collect their voters cards and that they would not have been turned away.
57. His role was to ensure that each day the distribution centers would open on time, the voters cards would be delivered to the respective centers and that the staff would show up for work. As the Church was nearest to the Department, it was one of the last stops for the collection bus. On the night of the Incident, he received a call from one of the drivers of the collection bus advising him that there was a problem at the Church.
58. As he left to investigate the problem, he was informed by someone else that a lady at the Church said that the problem was a robbery. The Parliamentary Commissioner would instruct him on when to report to work and what his duties were.

59. During re-examination, Mr. McPhee averred that the Parliamentary Commissioner would have also been able to change his hours or his role. NIB was not involved in any meeting with the Parliamentary Commissioner where decisions were made with respect to which distribution centers should be used nor with assigning staff to the various distribution centers. The cut off time for the distribution of the voters cards was 8:00 p.m. for each center and sometimes fifteen minutes thereafter. He could not say what time distribution ended at the Church on the date of the Incident.
60. The distribution centers were staffed with people from various government ministries, mostly females and very few males. They collected their base salary for their work during normal working hours and for any time worked beyond that, they were paid an overtime stipend by the Department. Their base salary was still paid by the relevant ministry they were assigned to. He could not say if that was the arrangement for contract workers.

## **WHETHER THE DEFENDANTS HAD A STATUTORY DUTY AND A COMMON LAW DUTY TO THE PLAINTIFFS**

### **SUBMISSIONS**

#### **PLAINTIFFS' SUBMISSIONS**

61. The Plaintiffs contended that they were lawfully authorized by their employer to participate in the voter registration process in preparation for the 2017 general elections and specifically to work at the Church. Their action in negligence could be sustained as they had proven that they suffered loss and damages because of the Defendants' negligent performance of their duty of care to provide adequate security and a safe work environment for them, both statutorily and at common law.
62. They relied on **Wayne Anthony John v. February Point Resort Estates Limited SC No. 00205 of 2004** where Allen J, as she then was, discussed the three components of negligence.

**"...there are three components of negligence, namely the existence of a duty of care owed by the defendant to the Plaintiff, the failure to attain that standard of care, prescribed by the law, resulting in a breach of such duty; and damage which is casually connected to such breach and recognized by the law, has been occasioned by the plaintiff."**

63. In **Wayne Anthony John**, Allen J accepted the dicta of Goddard LJ in **Naismith v. London Fil Productions Ltd.** on the duty of care owed by employers to provide a safe system of work for its employees.

**"The duty of employers to provide a safe system of work includes, "not only the duty to warn employees against unusual dangers known to them but also to make the place of employment as safe as the exercise of reasonable skill and care would permit."**

64. The Plaintiffs cited Section 4 (2) (e) of the Act as the provisions applicable to them. The sections state as follows:

**“4.It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.**

**(2) Without prejudice to the generality employer's duty under subsection (1) the matters to which that duty extends include in particular --**

**(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.”**

65. They submitted that they were all employed by the Defendants. Ms. Williams was an employee of NIB as proven by her contract of employment. Ms. Maurice was also an employee of NIB as Clerk II and was seconded to the Department. Ms. Clarke was employed with the Ministry of Works and was deployed temporarily to the Department.

66. They relied on the evidence led by the Defendants that the various centers of the Department were staffed with individuals from various other ministries; all government employees. They were paid their usual base salary for normal working hours from their respective ministries and for anything beyond that they were paid an overtime stipend by the Department. Ms. Maurice relied on the letter dated the 2<sup>nd</sup> March 2017 from the Parliamentary Commissioner which identified her to be released to the Department.

67. The Plaintiffs further relied on the Defendants' evidence that the police were supposed to conduct patrols and pass by the Church during the day and be stationed there after dark. The officers were also instructed by ACP Dean to alternate an officer to work at the Church in two shifts, 8:00 a.m. to 4:00 p.m. and 4:00 p.m. until the distribution center closed and the voters cards were collected. However, at the time of the robbery there was no officer performing security duties at the Church.

68. The Plaintiffs cited **Wilson & Clyde Coal Company Limited v English [1938] A.C. 57** where Lord Wright stated,

**“I think the whole course of authority consistently recognizes a duty rests on the employer and which is personal to the employer to take reasonable care for the safety of his workmen whether the employer is an individual, a firm or a company and whether or not the employer takes any share in the conduct of the operations. The obligation is threefold so I have explained the provision of competent skilled men, adequate material and a proper system and effective supervision.”**

#### **DEFENDANTS SUBMISSIONS**

69. The Second Defendant, the National Insurance Board submitted that they did not owe any of the Plaintiffs a duty of care pursuant to the Act or otherwise as Ms. Williams was moonlighting after hours and Ms. Maurice was seconded to the Department. Further, they neither operated nor controlled the Church at the material time or at all.

70. Ms. Williams confirmed that she was on contract with them and that she worked from 9:00 to 5:00 p.m. She confirmed that she did not receive a letter from them which deployed her to the Department. The Department paid her separately for her hours worked which were not the hours when the Incident occurred. No evidence was led to contradict the fact that Ms. Jolly had no authority to authorize her to work on behalf of the Department.

71. The Second Defendant contended that they were instructed to release Ms. Maurice to the Department by Cabinet; a fact which was acknowledged by Ms. Maurice. They further contended that the Department was responsible for the nature of her work while she was seconded with them. They pointed out that the Defendants' evidence from Mr. McPhee and Spt. McKenzie confirmed that they had no involvement with the staffing and day to day operations of the distribution centers.

72. The Department and the RPBF were responsible for the safety of the Church. Further, the Act did not impose a duty on an employer to prevent an employee from being harmed by the willful criminal acts of a third party after working hours and away from the workplace. They relied on the authorities as set out below.

73. In **Dutton & Clark Ltd. v Daly [1985] IRLR 363**, Sir Ralph Kilner Brown stated,

**"Under section 2(1) of the Health and Safety at Work Act 1974 an employer is required "to ensure, so far as is reasonably practicable the health and safety of employees....unhappily, experience shows that it is quite impossible to ensure the safety of employees against determined bank robbers however elaborate and comprehensive the precautionary measures may be. It is very unlikely that Parliament intended this statutory provision to apply to protection against criminal activity. However, even if this were to be so, the employer is not made an insurer of safety, but is required to take such steps as are 'reasonably practicable'."**

74. In **Mitchell v Glasgow City Council [2009] 1 AC 874**, Lord Hope stated,

**"Three points must be made at the outset to put the submission into its proper context. The first is that foreseeability of harm is not of itself for the imposition of a duty of care. The second, which flows from the first, is that the law does not normally impose a positive duty on a person to protect others. As Lord Godd of Chieveley explained in **Smith v Littlewoods Organisation Ltd [1987] AC 241**, the common law does not impose liability for what, without more, may be called pure omissions. The third, which is a development of the second, is that the law does not impose a duty to prevent a person from being harmed by the criminal act of a third party based simply upon foreseeability."**

75. Lord Hope continued,

**"We are dealing here with an allegation that it was the defenders' duty to prevent the risk of harm being caused to the deceased by the criminal act of a third party which they did not create and had not undertaken to avert....I agree that cases of this kind which arises from another's deliberate wrongdoing cannot be founded simply upon the degree of foreseeability. If the defender is to be held responsible in such circumstances it must be because, as Lord Reed suggests, in para 97, the situation is one where it is readily understandable that the law should regard the defender as under a responsibility to take care to protect the pursuer from that risk."**

76. The authorities demonstrated the impact that deliberate criminal acts of third parties have on the potential liability of an employer.

77. They also cited **Barber v Somerset County Council [2004] UKHL 13** where it was held that,

**“the overall test of an employer’s duty of care was that of the conduct of the reasonable and prudent employer, taking positive thought for the safety of his employees in the light of what he knew or ought to have known.”**

78. The Fourth Defendant, the Attorney General contended that the duty of care claimed by the Plaintiffs was not a duty generally imposed by law and in the circumstances was not owed to them. Specifically, they contended that neither at statute nor at common law, was there a general duty by an employer to provide security in the work place. Therefore, there was no duty to prevent the injuries to the Plaintiffs by providing security.
79. Additionally, there was no duty of care owed by them to prevent the injuries to the Plaintiffs by providing security. They alternatively submitted that on the grounds of public policy, the Fourth Defendant could not be held liable for the injuries to the Plaintiffs. Further, the pleaded facts were insufficient to establish causation on the part of the Fourth Defendant for the injuries to the Plaintiffs.

80. The Fourth Defendant considered s. 4 of the Act and contended that the provision of security in the work place was not listed as a particular duty. They relied on **Sturup v Resorts International (Bahamas) 1984 Ltd. [1991] BHS J No 103** where Hall J stated:

**“The mere fact that an injury – even a serious injury – is sustained by a person on the premises of another does not, without more, establish negligence. Even in the work place, in my judgment, an employer would have to be in breach of his common law or statutory duty or there would have to be some unusual dangers (as in *Jennings v Cole* [1949] 2 ALL ER 191) to ground liability for injuries so received.”**

81. They contended that the spirit of the Act espouses the idea that the health, safety and welfare are matters defined having regard to the nature of the employment. To the extent that it is reasonably practicable, the employer should ensure that the risks to the health, safety and welfare are eliminated through provisions put in place by the employer. They cited the definition of system of work as defined by Lord Greene MR in **Speed v Thomas Swift and Co Ltd [1943] KB 557** as:-

**“the physical layout of the job; the setting of the stage so to speak; the sequence in which the work is to be carried out; the provision in proper cases of warnings and notices, and the issue for special instructions. A system may be adequate for the whole course of the job, or it may have to be modified or improved to meet the circumstances which arise.”**

82. The Fourth Defendant contended that the Plaintiffs' jobs were simply to issue voters cards. As there was no handling of cash, there could be no anticipation of contentious violent behavior. The police officers were asked to assist with a view of ensuring the integrity of the process. Additionally, no person could collect a voters card after 8:00 p.m. Thereafter, there was no further contact by the Plaintiffs with the public. As a result, the injuries were not sustained by the Plaintiffs during the course of their employment.
83. There was no general duty to prevent a third party from causing harm to another. Further, the role and function of police officers limited their potential liability in tort generally. They cited several authorities in support of this.

84. In **Dorset Yacht Co. Ltd v. Home Office [1970] AC 1004, 1070** Lord Diplock held:

**“The risk of sustaining damage from the tortious acts of criminals is shared by the public at large. It has never been recognized at common law as giving rise to any cause of action against anyone but the criminal himself.”**

85. In **Hill v Chief Constable of West Yorkshire [1989] AC 53**, Lord Keith of Kinkel noted that police officers owed the general public a duty to enforce the criminal law; however, he recognized that the Chief Constable retained a very wide discretion as to the manner in which this duty was discharged. Further, that foreseeability of harm is not in itself a sufficient test of liability in negligence. He distinguished **Dorset** and concluded that no duty of care was owed by the Chief Constable.

**“It is plain that vital characteristics which were present in the *Dorset Yacht* case and which led to the imposition of liability are here lacking. Sutcliffe was never in the custody of the police force. Miss Hill was one of a vast number of the female general public who might be at risk from his activities but was at no special distinctive risk in relation to them, unlike the owners of yachts moored off Brownsea Island in relation to the foreseeable conduct of the borstal boys. It appears from the passage quoted from the speech of Lord Diplock in the *Dorset Yacht* case that in his view no liability would rest on a prison authority, which carelessly allowed the escape of an habitual criminal, for damage which he subsequently caused, not in the course of attempting to make good his getaway to persons at special risk, but in further pursuance of his general criminal career to the person or property of members of the general public. The same rule must apply as regards failure to recapture the criminal before he had time to resume his career. In the case of an escaped criminal his identity and description are known. In the instant case the identity of the wanted criminal was at the material time unknown and it is not averred that any full or clear description of him was ever available. The alleged negligence of the police consists in a failure to discover his identity. But, if there is no general duty of care owed to individual members of the public by the responsible authorities to prevent the escape of a known criminal or to recapture him, there cannot reasonably be imposed on any police force a duty of care similarly owed to identify and apprehended an unknown one. Miss Hill cannot for this purpose be regarded as a person at special risk simply because she was young and female. Where the class of potential victims of a particular habitual criminal is a large one the precise size of it cannot in principle affect the issue. All householders are potential victims of a habitual burglar, and all females those of an habitual rapist. The conclusion must be that although there existed reasonable foreseeability of likely harm to such as Miss Hill if Sutcliffe were not identified and apprehended, there is absent from the case any such ingredient or characteristic as led to the liability of the Home Office in the *Dorset Yacht* case. Nor is there present any additional characteristic such as might make up the deficiency. The circumstances of the case are therefore not capable of establishing a duty of care owed towards Miss Hill by the West Yorkshire police.”**

86. In **Brooks v Commissioner of Police of the Metropolis and others [2005] 1 WLR 1495**, the House of Lords held that duties of care impinged on the police’s function of investigating and not preventing crime. In Brooks, the plaintiff, an eighteen year old black male and his friend were violently attacked and stabbed by a group of white men. The plaintiff’s friend later died and the way the matter was investigated was the subject of an inquiry. Numerous failures were exposed by the police. The Plaintiff sued the police for negligence as he alleged that he had suffered from severe post-traumatic stress disorder as a result of the attack.

87. In **Brooks, the Plaintiff's** claim was grounded on the submission that the police breached five duties of care owed to him, including a duty to take reasonable steps to afford him the protection, assistance and support commonly afforded to key eye-witnesses to a serious crime of violence and to take reasonable steps to investigate the crime with all reasonable diligence. At first instance, the claim was struck out however, on appeal, the appeal was allowed in part, effectively allowing his claim in negligence to proceed.

88. The matter was then heard by the House of Lords where Lord Steyn stated,

**"[30] ..... the core principle of *Hill* has remained unchallenged in our domestic jurisprudence and in European jurisprudence for many years. If a case such as the Yorkshire Ripper case, which was before the House in *Hill*, arose for decision today I have no doubt that it would be decided in the same way. It is, of course, desirable that police officers should treat victims and witnesses properly and with respect: ..... But to convert that ethical value into general legal duties of care on the police towards victims and witnesses would be going too far. The prime function of the police is the preservation of the Queen's peace. The police must concentrate on preventing the commission of crime; protecting life and property; and apprehending criminals and preserving evidence: ..... A retreat from the principle in *Hill* would have detrimental effects for law enforcement. Whilst focusing on investigating crime, and the arrest of suspects, police officers would in practice be required to ensure that in every contact with a potential witness or a potential victim time and resources were deployed to avoid the risk of causing harm or offence. Such legal duties would tend to inhibit a robust approach in assessing a person as a possible suspect, witness or victim. By placing general duties of care on the police to victims and witnesses the police's ability to perform their public functions in the interests of the community, fearlessly and with despatch, would be impeded. It would, as was recognised in *Hill*, be bound to lead to an unduly defensive approach in combating crime."**

89. In **Renee Symonette v The Government of The Bahamas et al 2000/CV/0111**, Adderley J (as he then was) acknowledged that the findings in **Brooks** was the appropriate law with respect to a police's duty of care. He stated,

**"10. Having reviewed the pleadings as I have summarized them above and the numerous authorities, I am satisfied that the state of the law is as set forth in the headnote of the case of Brooks v. Commissioner of Police of the Metropolis and others [2005] UKHL applying Hill's case"**

**"that as a matter of public policy the police generally owed no duty or care to victims or witnesses in respect of their activities when investigating suspected crimes, and that, since the duties of care alleged by the claimant had been inextricably bound up with the investigation of a crime, his claims based on those duties should be struck out."**

**11. In my opinion the principal is applicable to this case even though parties other than the police are joined as defendants. It means that even if the degree of proximity existed so as to prima facie found a duty of care, as a matter of public policy the law denies the Plaintiff a remedy. Furthermore, on the pleadings Mr. Symonette agreed to assume the risk associated with the activity and is thereby estopped from claiming any damages for injuries caused. Alternatively the persons who shot him are unknown and there is no basis set out in the pleadings upon which a nexus can be established between Mr. Symonette's investigation activities and the shooting."**

90. The Fourth Defendant contended that these authorities established that it was plain that liability would not ordinarily attach to a police officer in respect of matters which fall within the ambit of the general duties of investigating and suppressing crime. The actions or lack thereof of the police officers, was immune from suit as a matter of public policy.
91. The Fourth Defendant speculated whether this was the reason the RBPF was not joined as a party. In any event they argued that as employers of the Plaintiffs, they had no duty to provide security or to protect them against the actions of a third party. Alternatively, if the court was minded to find that there was a duty to them as employers, they contended that they did discharge their duty by arranging with the RBPF to be present at the station. The fact that they did not remain at the location for the entirety of the shift was out of their control.
92. They maintain that public policy considerations militated against the imposition of a duty of care at common law and secondly, in and of themselves, they conferred immunity from suit upon the police in respect of matters falling within the sphere of their general function of crime prevention.
93. The Plaintiffs failed to establish causation by failing to show that the Defendants conduct resulted in the damage complained of and that the damages were not too remote a consequence of any wrongdoing. .
94. Based on the Plaintiff's pleadings, there is no causal link between the alleged acts of negligence and the injuries received by the Plaintiffs and that they failed to meet all three requirements required to establish a claim in negligence.

## DECISION

95. The Plaintiffs' claims are based on the common law tort of negligence and the statutory duty of care imposed upon an employer by the Act. Where such duty of care is imposed any act by the employer which causes harm to the employee is deemed negligent. Negligence is a legal wrong which results in damage suffered by one person at the hands of another person in breach of their duty of care. The latter is presumed to have failed to take proper care to avoid what a reasonable person would regard as a foreseeable risk. The situation can exist whether there is a contractual relationship or not. The locus classicus, which established the common law principle, is **Donoghue v Stevenson (1932) AC 562**. After **Donoghue**, the issue has been repeatedly considered and the principle has been expanded to provide formulae for the numerous instances or circumstances in which the tort may arise.
96. I consider the following section of the Act applicable to these cases:-
- “4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.  
(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —  
(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.”**



97. The remaining provisions relate to an employer ensuring that there is a safe place and system of work in relation to the structure and the equipment provided for the employees which is not applicable based on the facts of these cases. Whereas ensuring there are arrangements for an employee's welfare is ensuring that the place of work is as safe as can reasonably be for the employee's health, happiness and fortunes.

98. In **Russell v. Commonwealth Bank - [2019] 1 BHS J. No. 49**, Winder J considered a claim for breach of an employer's duty pursuant to section 4 of the Act and negligence against an employer.

**"28 It is accepted that in a claim for negligence it is essential for the plaintiff to prove, on a balance of probabilities, that the defendant's act caused, or materially contributed to, the injuries complained of. She must adduce evidence to show a sufficient causal link between the injuries and the defendant's act, or omission. In the House of Lords case of *Bonnington Castings Ltd v Wardlaw* [1956] AC 613 an employee of a dressing shops foundry was exposed to a noxious dust from the grinders which he alleged caused him to contract pneumoconiosis. The employer had failed to ensure that the grinders were compliant with the statutory requirements. In determining that the employee and not the employer bore the onus of proving causation the court nonetheless was satisfied that the employee had met the burden. According to Lord Reid:**

**"In my judgment, the employee must in all cases prove his case by the ordinary standard of proof in civil actions: he must make it appear *at least that on a balance of probabilities the breach of duty caused or materially contributed to his injury.*" (emphasis added)"**

99. To establish negligence and whether there was a breach of the statutory and/or common law duty of care, there are several components of the principle which must exist and which must be established by the Plaintiffs on a balance of probabilities. These are the duty of care, the breach of that duty, causation of damage and the damage itself.

#### **Was there a duty of care towards the Plaintiffs by the Defendants?**

100. The Plaintiffs were employed by the National Insurance Board and the Ministry of Works. Ms. Maurice and Ms. Clarke were officially seconded to the Department as was confirmed in writing. While Ms. Williams did not provide any written proof that she was seconded to the Department, she provided cheques received from the Department confirming that her secondment with them was acknowledged.

101. While they were still being paid by NIB and the Ministry of Works, where they returned after the process had ended, during their time at the Department and more importantly the time of the Incident, they were under the Parliamentary Registration care and control as they carried out duties subject to the Department and were paid by them.

102. In the circumstances, there was a sufficient connection between the Plaintiffs and the Fourth Defendant to establish that the Fourth Defendant held a duty of care towards the Plaintiffs. There is not a sufficient connection between the Plaintiffs and the Second Defendant at the time of the Incident to impose a duty of care.

#### **Was there a breach of that duty?**

103. By the evidence adduced the Plaintiffs made their concerns about their safety known which led to the Fourth Defendant providing officers from the RBPF and the Royal Bahamas Defence Force for their security. By doing so, they ensured that they provided and maintained a safe environment of work as reasonably practicable. This was confirmed by the Plaintiffs' evidence that prior to the Incident, RBPF and RBDF officers would remain at the Church during the respective shifts.
104. A sub issue is whether the Fourth Defendant could be held responsible for the acts of the police officers, specifically their failure to remain at the station for the duration of the shift. On the day of the Incident, the Plaintiffs stated that on the days prior, there were officers present during both shifts. There is no evidence that the Plaintiffs nor anyone else at the Church made the Fourth Defendant aware of the officers' absence.
105. In **Fegan v Assistant Chief Constable and the Chief Constable of the Police Service of Northern Ireland [2011] NIJB 45**, the Court of Appeal of Northern Ireland had to consider whether the Police Service of Northern Ireland owed a duty of care to a social worker in a children's home run by a religious order, when informing his employers that following an investigation into allegations of sexual abuse, he was not a fit person to continue to be employed as a social worker. Although the facts are not identical to the facts of these cases, the duty of care owed by a police officer was considered.
106. Girvan LJ in delivering the judgment of the Court considered the cases of **Brooks and Hill v Chief Constable of West Yorkshire** and followed the findings in **Hill** where it was concluded that there is no general duty of care owed by the police officers to identify or apprehend an unknown criminal nor did they owe a duty of care to individual members of the public who might suffer injury through the criminals activities save where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime.
- [21] ..... Lord Keith pointed out in *Hill v Chief Constable of West Yorkshire [1988] 2 All ER 238, [1989] AC 53* that by common law police officers owe to the general public a duty to enforce the criminal law. Common law, while laying on chief officers of the police an obligation to enforce the law, makes no specific requirement as to the manner in which that obligation is to be discharged. That is not, as Lord Keith said, a situation where there can be readily inferred an intention of the common law to create a duty towards individual members of the public. In *Hill* the House of Lords concluded that there is no general duty of care owed by the police officers to identify or apprehend an unknown criminal nor did they owe a duty of care to individual members of the public who might suffer injury through the criminals activities save where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime. However, the House of Lords also rejected the plaintiff's claim on a wider basis. As a matter of public policy the police were immune from action for negligence in respect of their activities in the investigation and suppression of crime."
107. I am satisfied that there is no general duty owed by the police to individual members of the public who might suffer injury through criminal activities of others unless it can be

shown that there was a failure to apprehend a criminal in circumstances which resulted in an exceptional risk greater than the normal risk.

108. Was it foreseeable therefore that in the absence of the police's presence, there would be an armed robbery for money and not the voters cards? When considering foreseeability, the occurrence of the event must not be a mere possibility. There is no doubt that various crimes are perpetrated throughout the country however, there was no evidence led by the Plaintiffs which would suggest to the court that other voters card stations were being robbed at gunpoint nor that there were robberies in the area of the Church around the time of the Incident which would necessitate the presence of police at all times. Therefore I am not satisfied that it was foreseeable that there would be an obvious risk of an armed robbery for money at the voters card distribution center in the absence of the police.
109. While the RBPF has not been named as a party in these proceedings, it has been decided in numerous cases, that it would be too high of a duty to expect them to prevent crime or to be held liable for not preventing one. I adopt the finding of Girvan LJ in **Fegan v Assistant Chief Constable** which upheld the House of Lords decision in **Hill** and held that the police officers owed no duty of care to injured members of the public who suffered injury as a result of criminal activity except where there is a failure to apprehend him in circumstances which have created an exceptionally added risk different in incidence to the general risk to the public at large from criminal activities so as to establish sufficient proximity of relationship between the police and victims of crime.
110. Accordingly, while I sympathize with what the Plaintiffs experienced, I find that the Fourth Defendant did not breach its duty to provide or maintain a safe working environment for the welfare of the Plaintiffs pursuant to the Act or at common law. They cannot be held responsible for the absence of the RBPF or RBDF officers as they were unaware of the same nor can they be held responsible for the unforeseeable event that occurred as a result of their absence. The Second Defendant owed no duty of care to any of the Plaintiffs for the injury sustained because at the time of the Incident they were not working for the Second Defendant.

#### **Causation and Damages**

111. There was no breach of duty by the Defendants therefore the actions of the armed robber cannot be attributed to them. The experience of the Plaintiffs was an unfortunate one, especially the trauma that ensued as a result. However, as there was no causal link between the actions of the armed robber and the Second or Fourth Defendant, the damages sustained were not as a result of any breach of the Defendants' duty, whether statutorily or at common law.
112. The Plaintiffs action are hereby dismissed. The Defendants are awarded their costs to be taxed if not agreed.

Dated this 18<sup>th</sup> day of March 2022

  
Hon. G. Diane Stewart