

COMMONWEALTH OF THE BAHAMAS

2023

IN THE SUPREME COURT

**CRI/con/00007/
00008/
00009**

CRIMINAL/ CONSTITUTIONAL DIVISION

**IN THE MATTER of Articles 20(1) of the Constitution of The Commonwealth of
The Bahamas**

BETWEEN

**ADRIAN PAUL GIBSON
JOAN VERONICA KNOWLES
JEROME MISSICK**

Applicants

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

**Appearances: Mr. Murrio Ducille KC, along with Mr. Bryan Bastian-
Counsel for the Applicants, Mr. Adrian Gibson M.P., Ms.
Joan Knowles, and Mr. Jerome Missick- Counsel for the
Applicants**

**Director of Public Prosecutions (Acting) Ms. Cordell Frazier
along with Mrs. Karine MacVean -Counsel for the
Respondent DPP**

Date of Hearing: 6th of July, 2023.

**CONSTITUTIONAL JUDGMENT - ARTICLES 20(1) OF THE
CONSTITUTION; Challenge to Third Schedule Offences- Proper Application For
Constitutional Applications- Fair Trial; *William Fox, Mark Curtis et al v. Attorney General
of the Bahamas Supreme Court of the Bahamas(Unreported) No. 31/02/2005 (Delivered,
November 18, 2011); Boolell v. State [2007] 2 LRC 483; Hall v Attorney General BS 2011 SC
176; Attorney General v. Hall (2016) UKPC 23***

Headnote: The Applicant and his co-accused having appealed a Constitutional Ruling of this Honourable Court dated the 15th of May, 2023, to The Bahamas Court of Appeal, heard on 22nd of May, 2023. The Appellate Court heard and dismissed the matters. The stay of the trial which was originally imposed by the Appellate Court was removed. The matter was ordered to this Honourable Court for trial. All Defendants have pled not guilty to the pending charges in this matter under the Penal Code, Prevention of Bribery Act, Proceeds of Crime Act, and the Prevention of Bribery Act. The Appeal before the Court of Appeal was from a Constitutional challenge. This ruling concerns the second Constitutional challenge which goes to the root of the Indictment.

The current Constitutional Motion is laid pursuant to Article 20 (1) of the Constitution of the Commonwealth of The Bahamas. On the 23rd of June, 2023 the Applicant filed an Originating Notice of Motion (which was heard on the 27th of June, 2023). The motion stated that the Applicants constitutional right to a fair hearing within a reasonable time by an independent and impartial court had been violated. In addition to this the Applicants also assert that the Supreme Court has no jurisdiction to hear the offences for which they are charged as there was a failure to put the right of election to them in the Magistrates Court or at all.

Held: (i)The Applicants application is overruled. The Application was filed on the wrong side of the Court and in an incorrect manner. The Court will overrule the technical errors in order to consider the substance of the case.

(ii)Relative to the challenge to the unconstitutionality of the nature of the charges, the Court finds that it has the requisite jurisdiction to hear the offences for which the Applicants are charged. These pending offences are rightfully before the Court.

(iii) The issues which arose for consideration in this matter are as follows: (a) Whether the Applicants Constitutional right to a fair hearing within a reasonable time -pursuant to Article 20(1) of the Constitution- has been infringed; and

(b) Whether this Court has the power to hear and try the offences for which the Applicants are charged; Are these charged fatally flawed that is void *ab initio*

In making this decision the trial judge relied on the following cases: *William Fox, Mark Curtis et al v. Attorney General of the Bahamas Supreme Court of the Bahamas*(Unreported) No. 31/02/2005 (Delivered, November 18, 2011); *Boolell v. State* [2007] 2 LRC 483; *Hall v Attorney General BS 2011 SC 176*; *Attorney General v. Hall* (2016) UKPC 23;

Grant- Thompson J

1. By Originating Notice of Motion filed by the Applicant, Mr. Adrian Gibson Member of Parliament (M.P.), of #25 Saint Street, Adastra Estates, along with Mr. Jerome Missick of #93 Lumumba Lane, Sea Breeze, Eastern District, and Ms. Joan Knowles of #37 Victor Road, Coral Heights West, Coral Harbour, Western District, of New Providence, the Applicants brought their constitutional application herein. These Constitutional Applications were supported by the Affidavits of Messrs. Adrian Gibson M.P., Mr. Jerome Missick, and Ms. Joan Knowles, also filed on the 23rd of June, 2023.
2. The Applicants were arrested and questioned by the Criminal Investigation Department, in which they were later charged with the various offences under the Penal Code of The Bahamas, Chapter 84 and under the Prevention of Bribery Act, Chapter 88. The offences against all of the Defendants ranged from Making a False Declaration (1 Count), Conspiracy to Commit Bribery (10 Counts), Bribery (18 Counts), Conspiracy to Commit Fraud by False Pretences (8 Counts), Fraud by False Pretence (5 Counts), Receiving (21 Counts), Money Laundering (Acquisition) (5 Counts) and Money Laundering (30 Counts). The counts relative to the Applicant, Mr. Adrian Gibson M.P., were comprised of (1) Count of Making False Declaration contrary to Section 452 of the Penal Code, Chapter 84; (31) Counts of Conspiracy to Commit Bribery, contrary to Section 89(1) of the Penal Code, Chapter 84 and 4 (2)(A) of the Prevention of Bribery Act; (12) Counts of Bribery contrary to Section 4 (2)(A) of the Prevention of Bribery Act, Chapter 84; (18) Counts of Receiving. Contrary to Section 358 of the Penal Code, Chapter 84; (25) Counts of Money Laundering contrary to Section 9(1)(A) and 9(1)(c) of the Proceeds of Crime Act, 2018. The counts relative to Mr. Jerome Missick and Ms. Joan

Knowles were comprised of Conspiracy to Commit Bribery, Bribery, Conspiracy to Commit Fraud by False Pretences, Fraud by False Pretence, Money Laundering (Acquisition), and Money Laundering. Ms. Joan Knowles was also charged with the offence of Receiving.

3. In order to provide a holistic view of the matter at hand (that being the second Constitutional Motion), the Court must first provide a brief synopsis of some of the events that brought us to this point.

Proper Filing Procedures

4. Before this Honourable Court can make a decision on the second Constitutional Motion before it, this Court must first address Counsel for the Applicants, Mr. Murrio Ducille KC, relative to the preparation these documents on the Criminal Constitutional side, which is the incorrect procedure.
5. **Section 7(2) of the Supreme Court Act 2008, Chapter 53** provides that:
“For the proper exercise of the Court’s jurisdiction, the Chief Justice may, by order, establish divisions of the Court for the hearing of specific matters.” (Commencement date- 1st January, 2003- it has not been repealed or replaced)
6. Pursuant to the **Supreme Court (Divisions of Court) Order Chapter 53**, any matters which is Constitutional should be under the Public Law Divisions of the Courts laid and entitled in the Public Law Division (PUB) of the Supreme Court of The Bahamas, under the direction of the Honourable Chief Justice. It should not have been laid in the Criminal Division notwithstanding that having regard to the nature of the matter the Registrar would more than likely assign it to the Criminal Division Judge

to be heard. Taking this into consideration, even though Counsel for the Applicants, Mr. Murrio Ducille KC, has a professional obligation to ensure that his clients Constitutional right to a fair and timely trial were not being infringed, this Court is of the view that the right procedure should have been followed. Particularly as Mr. Ducille KC, takes the technical point relative to the correct filing of the charges. This is a common mistake and one which should henceforth be corrected.

7. The Court notes that both their first and second Constitutional Motion were incorrectly filed under an existing criminal matter. Mr. Murrio Ducille, KC should have brought this application on behalf of Mr. Adrian Gibson MP and others, under the Public Law Division pursuant to the **Supreme Court (Divisions of Court) Order Chapter 53**, which Order has never been abolished.
8. In addition to this it is understood and agreed within the legal arena of The Bahamas that due to the revocation of the Rules of the Supreme Court all matters which were commenced/ brought after the 1st day of March 2023, must be brought under the new Civil Procedure Rules of The Bahamas.
9. The **Supreme Court (Divisions of Court) Order, Chapter 53** provides as follows:

“1. This Order may be cited as the Supreme Court (Divisions of Court) Order.

2. The Divisions of Court specified in the Schedule are hereby established for the hearing of such matters as are mentioned in the Schedule.

3. *The Registrar after consultation with the Chief Justice shall designate file numbers and colours for file folders and jackets for each Division of Court.*

SCHEDULE

DIVISIONS OF THE SUPREME COURT

COMMERCIAL DIVISION (COM)

- *Admiralty (adm)*
- *Bankruptcy and Insolvency (bnk)*
- *Applications under the Companies Act, 1992 (com)*
- *Labour (lab)*

COMMON LAW and EQUITY DIVISION (CLE)

- *Applications under the Legal Profession Act, 1992 (lpa)*
- *Quieting of Title (qui)*
- *Civil matters not allocated to any other Division (gen)*

FAMILY DIVISION (FAM)

- *Adoption (adn)*
- *Divorce (div)*
- *Guardianship and custody (gua)*
- *Applications under the Mental Health Act (men)*

PROBATE DIVISION (PRO)

- *Non-contentious probate matters (npr)*
- *Contentious probate matters (cpr)*

PUBLIC LAW DIVISION (PUB)

- *Administrative (adm)*
- *Constitutional (con)*
- *Judicial review (jrv)*

CRIMINAL DIVISION (CRI)

- *Coroner (cor)*
- *Financial crimes (fin)*
- *Bail applications (bal)*
- *Habeas Corpus (hcs)*
- *Information and Voluntary Bill of Indictment (vbi)*
- *Restraint and forfeiture applications (rfa)*
- *Criminal matters not allocated to any other Division (crg)*

APPEALS DIVISION (APP)

- *Magistrates (mag)*
- *Statutory (sts)*

10. Section 8.1 of the Civil Procedure Rules 2022 states that:-

“(1) Depending upon the nature of the proceedings and the provisions of any statutory provision or rule or practice direction, there are three methods by which a claimant may start proceedings namely, by

(a) standard claim form in Form G3;

(b) fixed date claim form in Form G4; or

(c) originating application form using Form G5 or Form G6.”

11. Following this provision, Section 8.2 of the Civil Procedure Rules states that:-

“A claimant starts proceedings by filing in the court office the original and not less than two copies of

(a) the claim form; and

(b) subject to rule 8.2, the statement of claim; or

(c) an affidavit or other document, where any rule or practice direction so requires”

12. **Section 8.15 of the Civil Procedure Rules** outlines the relevant procedures where matters are brought using an Originating Application as follows:

“The alternative procedure of an originating application form for commencing proceedings under this Part instead of by standard claim form or a fixed date claim form is intended for use where —

(1) the Court's decision is sought on a question which is unlikely to involve a substantial dispute of fact: or

(2) a statute, rule or practice direction requires or permits the use of this procedure for commencing proceedings of a specified type”

13. Therefore, the Constitutional application filed by Counsel for the Applicants, Mr. Ducille KC would not have fallen under a standard claim form or fixed date claim form (as it does not arise out of a hire-purchase or credit sale agreement, regard money lending actions or proceedings for possession of land), having regard to the nature of the application. **It should have commenced by way of an Originating Application entitled and filed in the Public Law Division not an Originating Notice of Motion filed on the Criminal Constitutional side.**

14. The contents of what should have been included within that Originating Application is outlined within **Section 8.20 of the Civil Procedure Rules**, which states:-

“(1) Where the claimant uses an originating application form it must state — (a) that this Part applies; (b) the question which the claimant wants the Court to decide or the remedy which the claimant is seeking and the legal basis for the claim to that remedy; (c) if the claim is being made under an enactment, what that enactment is; (d) if the claimant is claiming in a representative capacity, what that capacity is; and (e) if the defendant is sued in a representative capacity, what that capacity is.

(2) Every originating application form must be verified by a certificate of truth in compliance with Rule 3.8 as amended to apply to such a form”

15. Following the Defendants (the Respondents) receipt of the said Originating Application, they should have been given due and adequate time to file and serve an acknowledgement of service. **Section 8.22 of the Civil Procedure Rules** states that:-

“(1) The defendant must— (a) file an acknowledgement of service in the relevant practice form not more than fourteen days after service of the claim form; and (b) serve the acknowledgement of service on the claimant and any other party.

(2) The acknowledgement of service must state— (a) whether the defendant contests the claim; and (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is”

16. Instead, the Respondents were served on the eve of the Hearing with less than twenty-four hours' notice. This practice is really unacceptable and has

occurred when both Constitutional Applicants which were filed in this matter on behalf of Adrian Gibson MP, Jerome Missick and Joan Veronica Knowles.

17. Similarly, the Applicants first Constitutional Motion, Counsel Mr. Ducille KC had not adhere to the rules governing the proper preparation and procedure for a the filing of constitutional matter. Once again the Court finds itself having to waive the breaches. The Courts stand on the inherent jurisdiction of the Court to ensure that every Applicant has a right to be ventilated and heard, for them to draw near and be heard, which is the ultimate remit of the Court. However, Counsel for the Applicants is once again warned to observe the clear rules which govern us. These rules are not to be observed in the breach.

Delay/ Timeline of Events

18. This Court also finds it necessary to outline a timeline of events which led to the filing of this Second Constitutional Motion.

19. Case Management commenced in this matter on 8th day of November, 2022, a trial date was fixed in Case Management and the trial duly scheduled for the 1st -31st of May, 2023. Counsel for the Applicants consulted their clients, all agreed these trial dates. The following occurred;

- a. On the 27th day of September, 2022 Counsel for the Applicants, Mr. Murrio Ducille KC, requested from this Court that the Honourable Madam Justice Mrs. Cheryl Grant-Thompson recuse herself from hearing the matter. Mr. Ducille KC averred that the Learned Trial judge would not be able to be impartial throughout the proceedings thus infringing upon his client's right to a fair

trial. Justice Grant- Thompson rejected Mr. Ducille's request and provided a full ruling relative to the reasons the Court did not recuse itself. Additionally, she reminded Mr. Ducille KC that the matter at hand was to be tried by the Jury and not a Judge;

- b. On the 8th day of November,2022 the matter was adjourned to the 9th day of November, 2022 at 9:30am for Case Management. A trial date for the matter was then set for 1-31 May, 2023. An alternate date for adjournment was also set for the 14th day of November, 2022 at 9:30am in the event Tropical Storm Nicole or Hurricane Nicole was to hit the country. (Tropical Cyclone Nicole was the fourteenth named storm and the eight hurricane of the 2022 Atlantic Hurricane season. November at 1800 UTC the centre of Nicole made land fall on Great Abaco Island, The Bahamas as a tropical storm.)
- c. On the 14th day of November,2022 the Court was once again adjourned to the 30th day of November, 2022 at 9:30am to allow for the Statement from Mr. Leonard Deleveaux, Record of Interview of Ms. Alexandria Mackey, and a Copy of Audio or Video of Record of Interview, to be provided to Mr. Ducille KC by the Crown;
- d. On the 30th day of November,2022 the time for Case Management was then extended to the 2nd day of December,2022;
- e. On the 28th day of February, 2023 several documents were still outstanding and needed to be provided by the Prosecution. As a result of this the Court adjourned to the 29th of March,2023 for further Case Management;

- f. On the 28th day of March,2023 the Court noted that Mr. Donald Saunders was to provide his Case Management form to the Court by the 30th day of March,2023. The Crown had outstanding the Audio and Video Recordings which the Court ordered to be served by the 3rd or 7th day of April, 2023. **No further Case Management was required and the trial date was confirmed for the 1-31 of May 2023;**
- g. At the Pre-trial Review held on the 27th day of April,2023 the Court noted several things- firstly, that the Audio and Video Recordings requested were not served on the Defence. Secondly, that Mr. Donald Saunders did not comply with the Case Management Order. Thirdly, that Counsel for Ms. Rashae Gibson, Mr. Brian Dorsett had requested to withdraw as Counsel from Ms. Rashae Gibson as he had not been properly instructed (permission was granted). That Mr. Ducille KC had asserted that several documents were not served on/ disclosed to him by the Prosecution. The Court instructed Crown Counsel to conduct a full Audit of all documents requested by Defence Counsel and a confirmation of when they were served. The Court then adjourned to the 8th day of May, 2023 (Submissions where to be filed by Counsel for the Defence by the 2nd day of May 2023, and a response by the Crown was to be filed by the 4th day of May 2023);
- h. The jury panel was present on the 1st day of May, 2023. The trial could not commence as Counsel for the Applicant, Mr. Murrio Ducille KC, was required before another Court. He was required to be present for the trial of the “Fox Hill Murders” before my brother Justice, The Honourable Mr. Gregory Hilton. During this

time, the “Fox Hill Murder” trial was for the Defence, the Closing Submissions and Summation stage and required additional time;

- i. The Court then adjourned to the 8th of May, 2023;
- j. On the 8th day of May 2023 Mr. Ducille KC then indicated that he needed an additional three (3) days for the trial. The Court adjourned to the 10th day of May, 2023. On that date Mr. Ducille KC, brought a formal objection that Ms. Alexandria Mackey should not be allowed to give evidence via video link. The Crown was not provided with notice of the pending application. This matter was then adjourned for hearing;
- k. All Counsel made oral submissions on the video link application;
- l. Mr. Ducille KC, asked for an adjournment to travel on the 11th of May, 2023 and 12th of May, 2023, respectively;
- m. Accordingly, the Ruling was adjourned to Monday 15th day of May 2023;
- n. On Thursday 11th of May 2023, Mr. Ducille KC filed an irregular Constitutional Application by Originating Motion unbeknownst to this Court, Counsel for the Crown or other Counsel;
- o. On the 15th of May 2023 when the Court was ready to make a ruling in regard to the video link application, the Constitutional Application was brought. The Court ordered all Counsel be provided with copies of Mr. Ducille KC filed documents in order to prepare their arguments;
- p. In reference to being blindsided, the Court commented that it is an unsavory practice for Counsel to forget ordinary rules of practice, courtesy, and procedures relating to time, filing and serving documents- allowing all Counsel the requisite time to

prepare and respond. Trial by ambush is not encouraged within the hallowed walls of Justice. It is understood and agreed that the Crown is a Minister of Justice, however this does not allow the defence to refuse to play by the very same rules;

- q. On the 15th of May 2023 the Court determined and ruled on both the Constitutional Application and Video link application filed by Mr. Ducille KC. The Constitutional Application was overruled. The Video link application was allowed;
- r. On the 18th of May 2023 the jury was duly summoned to appear. A total of nine (9) individuals were empaneled before The Honourable Court to hear evidence in this trial;
- s. On the day of the empaneling of the jury Ms. Christina Galanos-Counsel for Ms. Rashae Gibson- brought an application in *limine* at the beginning of the court proceedings. Once again, with no notice nor sufficient copies of authorities provided for the Court or Counsel for the Crown or other parties present for the application. Ms. Galanos ironically complained of the late service of documents by the Crown on the Defendant, whilst bringing an application without Notice and without obeying the proper rules. The Court notes that this conduct must stop. There is no concern being shown for the jury who were (at that time) patiently waiting. There is no regard for seeking to bring legal arguments on days the jury were not summoned. As a result of this the empaneling process did not commence until 12 noon. This Court will commence under the Supreme Court (Criminal Case Management) Rules, 2012 to consider the imposition of sanctions for future irregular occurrences and the flagrant

disrespect of the rules which seeks to protect the proper functioning of the Court;

- t. Ms. Galanos submitted that her client would suffer prejudice if the decisions of this Honourable Court dated the 15th of May, 2023 were not reopened. Ms. Galanos asserted that it is necessary for this Court to reopen its decision, made on the 15th of May 2023, firstly, because there has been a change in circumstances as it relates to the evidence of Ms. Alexandria Mackey being taken by way of live video link. Ms. Galanos submitted that before the Court read its judgment into the record on the 15th of May 2023, Madam Director of Public Prosecution Ms. Cordell Frazier stated that they have taken steps to have the witness, Alexandria Mackey, present in court to testify. Thus, Ms. Galanos contends that Madam DPP Ms. Frazier has vitiated the basis and ground upon which the Court made that decision;
- u. Secondly, Ms. Galanos submitted that after receiving the Court's decision that the defence would have adequate time and facilities to prepare its defence, the Crown served three Notices of Additional Evidence, the day after the Court had made its decision, on the 15th of May, 2023. As a result of this Ms. Galanos submitted that this was a change in circumstances and the Court ought to reopen, reconsider and take the factors into consideration adversely against the Crown and refuse them leave to call their witnesses;
- v. Lastly, it was also submitted by Ms. Galanos relative to the Court's determination that it had no jurisdiction to stay the proceedings, again the Court was asked to reconsider, having

regard to the fact that Counsel for Mr. Elwood Donaldson is set to travel for two weeks (from June 2nd to 18th 2023);

- w. Counsel Mr. Ian Cargill confirmed to this Honourable Court his requested adjournment for a period of two (2) weeks in order to travel. He promised to and did lay over the documentary evidence of his travel. Mr. Cargill also submitted that he expected the trial to last from the 1-31 of May 2023. Counsel Mr. Cargill also contributed to the delay by requesting an adjournment from the 18-22nd of May 2023, which was also inclusive of Mr. Elwood Donaldson attending a family member's graduation ceremony. The Court graciously agreed to the adjournment to the 23rd of May 2023. It should also be noted that ironically Mr. Donaldson filed an appeal to the Court of Appeal of The Bahamas, which was originally set to be heard during the same period he submitted he would be out of the jurisdiction.
- x. The Court reminds Counsel, Mr. Ian Cargill that as an experienced criminal trial attorney, he is well aware that no criminal trial fits neatly into a scheduled period for trial. It can end earlier or later depending on the issues. Our late start whilst Mr. Ducille KC completed another matter evidences this factor. We all gave reasonable approximations of the time the trial would take. We are in the matter until it concludes;
- y. On the 18th day of May 2023, the trial of the Applicants began and was subsequently adjourned to the 23rd day of May 2023, to allow Mr. Cargill and his client to travel;
- z. On the 23rd day of May 2023, the Court received notice that the Court of Appeal ordered a stay in this matter, until the 13th day of June 2023, when the appeal would be heard. Thus, this Court

adjourned the matter to the 27th day of June 2023, in order for the Appellate Court to sit and determine the matter. Counsel gave the Court no notice that it had filed an appeal;

aa. In this matter the jury was empaneled on the 18th of May, 2023.

However, on the 16th of May, 2023 one of the Applicants filed a Notice of Appeal, followed by another Defendant on the 19th of May, 2023, along with a Certificate of Urgency. According to the Affidavit of Janessa Murray (filed by the Prosecution) pursuant to paragraph 29, which Affidavit has gone unchallenged, provides as follows “*The Court of Appeal then set the hearing of the Notice of Appeal down for the 22nd of May, 2023, however, due to the Applicant’s non-compliance with the filing of his submissions and his documents not being in order*” the Court Appeal adjourned the matter to the 13th of June, 2023. This Honourable Court then adjourned the matter to the 27th of June, 2023 in order to facilitate the Court of Appeal hearing the matter.

bb. The jury pool for May/June was then dismissed on the 27th of June, 2023. The Court adjourned the matter to the 24th of July, 2023 for the selection of a new jury. A voir dire was conducted of the first jury. Two members were found to be biased. They were dismissed for cause, pursuant to the Juries Act, Chapter 59, the Court cannot proceed with only seven jurors.

cc. **Mr. Ducille KC asked the Court for additional time to get his documents ready for the trial. The Court gave him one month to prepare as well as the additional two months he would have had since the matter was originally filed and commenced (i.e. May 1, 2023). The matter was therefore adjourned to the 24th of July, 2023 for the jury to be selected**

and the trial to commence. The video link order relative to Alexandria Mackey was discharged. She will give evidence in person.

Background On This Present Constitutional Application

20. The Applicants present Constitutional Application sought the following:

- a. A Declaration pursuant to Article 20(1) of the Constitution of the Commonwealth of The Bahamas which affords the Applicants the right to a fair hearing within a reasonable time by an independent and impartial court established by law;
- b. That the Voluntary Bill of Indictment that was brought before this Court is fatally flawed, void and of no effect, and as a result this Honourable Court has no jurisdiction to proceed with this matter;
- c. That Count 1: Making a False Declaration, contrary to section 452 of the Penal Code, Chapter 84, whereby the Applicants are charged with a misdemeanor. This is not a charge which may be lawfully laid before this Honourable Court by way of the Voluntary Bill of Indictment process;
- d. That Counts 2 through 4 which deals with Conspiracy to Commit Bribery, contrary to Section 89(1) of the Penal Code, Chapter 84 and 4(2)(A) of the Prevention of Bribery Act, Chapter 88 are not justiciable before this Honourable Court;
- e. That Counts 12 through 23 which deals with Bribery, contrary to Section 4(2)(A) of the Prevention of Bribery Act, Chapter 88 are not justiciable before this Honourable Court;
- f. That Counts 43 through 60 which deals with Receiving, contrary to Section 358 of the Penal Code, Chapter 84 are not justiciable by this

Honourable Court in accordance with Section 258 of the Criminal Procedure Code;

- g. That Counts 69 through 82 and Counts 88 through 98 which deal with Money Laundering, contrary to Section 9(1)(A) and 9(1)(C) of the Proceeds of Crime Act, 2018 are not justiciable by this Honourable Court in accordance with Section 258 of the Criminal Procedure Code;
- h. That these charges may not be brought lawfully before this Honourable Court via the Voluntary Bill of Indictment process;
- i. That there be a Declaration staying the proceedings herein.

Issues

21. The issues which arose for consideration in this matter are as follows:-

- a. Whether the Applicants Constitutional right to a fair hearing within a reasonable time -pursuant to Article 20(1) of the Constitution- has been infringed; and
- b. Whether this Court has the power to hear and try the offences for which the Applicants are charged; Are these charges fatally flawed that is void *ab initio*.

22. It is useful to consider the Constitutional Applications of all of the Applicants together as they are raised based on similar issues. This I now do.

The Affidavit of the Applicants

23. The (incorrect) Originating process of the Applicants which in the case of Mr. Adrian Gibson, M.P., raises the exact same paragraphs save and except for the paragraphs listed below which read;

- a. **The Voluntary Bill of Indictment brought before this Court is fatally flawed, void and of no effect, and as a result this Honourable Court has no jurisdiction to proceed with this matter;**
- b. **The offences for which the Applicant stands charged before the Honourable Court ought not to be brought by way of V.B.I;**
- c. **The intended prosecution should be permanently stayed and the process is unconstitutional.**

24. The Applicant, Mr. Jerome Missick, submitted by Affidavit dated the 23rd day of June, 2023, that;

- a. On the 22nd of April, 2022 the Applicant, Mr. Jerome Missick, was arrested and questioned at the Criminal Investigation Department and later released;
- b. On the 9th of May, 2022, the Applicant, Mr. Jerome Missick, was rearrested and taken to the Grove Police Station, where he was then transported to the Criminal Investigation Department for questioning and later released;
- c. On the 13th of June, 2022 the Applicant, Mr. Jerome Missick, was arrested and charged with the following offences;
 - i. Counts 9 through 11, Conspiracy to Commit Bribery, contrary to Section 89(1) of the Penal Code, Chapter 84 and 4(1)(A) of the Prevention of Bribery Act, Chapter 88;
 - ii. Counts 27 through 29 Bribery, contrary to Section 4(1)(A) of the Prevention of Bribery Act, Chapter 88;
 - iii. Counts 35 through 37, Conspiracy to Commit Fraud by False Pretences, contrary to Section 89(1) and Section 348 of the Penal Code, Chapter 84;

- iv. Counts 40 through 42, Fraud by False Pretence, contrary to Section 348 of the Penal Code, Chapter 84;
- v. Counts 64 through 68, Money Laundering (Acquisition), contrary to Section 11(1)(A) and 15 (1)(A) of the Proceeds of Crime Act, 2018;
- vi. Counts 83 through 87 Money Laundering, contrary to Section 9(1)(D) of the Proceeds of Crime Act, 2018;
- d. The Applicant, Mr. Jerome Missick, made the same assertions as Mr. Adrian Gibson M.P., in the remainder of his Affidavit relative to the Constitutional relief which he seeks. Thus, the same is accepted.

25. The Applicant, Ms. Joan Knowles, submitted by Affidavit dated the 23rd day of June, 2023, that;

- a. On the 25th of April, 2022 the Applicant, Ms. Joan Knowles, was booked into Central Police Station for question and later transferred to the Grove Police Station;
- b. The Applicant, Ms. Joan Knowles, remained in police custody until the 26th of April, 2022, where the Applicant, Ms. Joan Knowles, was later released pending investigation;
- c. On the 13th of June, 2022 the Applicant, Ms. Joan Knowles, was arrested again and later charged with the following offences;
 - i. Counts 9 through 11, Conspiracy to Commit Bribery, contrary to Section 89(1) of the Penal Code, Chapter 84 and 4(1)(A) of the Prevention of Bribery Act, Chapter 88;
 - ii. Counts 27 through 29 Bribery, contrary to Section 4(1)(A) of the Prevention of Bribery Act, Chapter 88;
 - iii. Counts 35 through 37, Conspiracy to Commit Fraud by False Pretences, contrary to Section 89(1) and Section 348 of the Penal Code, Chapter 84;

- iv. Counts 40 through 42, Fraud by False Pretence, contrary to Section 348 of the Penal Code, Chapter 84;
 - v. Counts 61 through 63, Receiving, contrary to Section 358 of the Penal Code, Chapter 84;
 - vi. Counts 69 through 79, Counts 88 through 92 and Count 98, Money Laundering contrary to Section 9(1)(A) and 9(1)(C) of the Proceeds of Crime Act, 2018.
- d. Similarly, to Mr. Jerome Missick, the Applicant, Ms. Joan Knowles made the same assertions as Mr. Adrian Gibson M.P., relative to her Affidavit relating to the Constitutional relief which she seeks in the remainder of her Affidavit. Thus, the same is accepted.

Affidavit In Response

26. In response to the submissions of the Applicants, Counsel for the Respondent Director of Public Prosecutions, Ms. Cordell Frazier by Affidavit in Response, filed the 27th day of May 2022, claimed that:

- a. The Applicants rights under Article 20 (1) of the Constitution of The Bahamas have not been violated by the Respondent in relation to the Voluntary Bill of Indictment (filed 25th of August, 2022);
- b. The Applicants Originating Notice of Motion amounts to an abuse of the process of the Court. There was adequate remedy available to the Applicants. Therefore, they ought not to have invoked the Constitution;
- c. The aforementioned Voluntary Bill of Indictment is not fatally flawed, void and of no effect and as such this Honourable Court has jurisdiction to hear this matter. They relied on the following factual matrix:
- d. The Applicants have been charged with the following offences;

- i. Making A False Declaration contrary to Section 452 of the Penal Code, Chapter 84;
- ii. Conspiracy to Commit Bribery contrary to Sections 89(1) of the Penal Code, Chapter 84 and 4(2)A of the Prevention of Bribery Act, Chapter 88;
- iii. Bribery, contrary to Section 4(1)(A) of the Prevention of Bribery Act, Chapter 88;
- iv. Conspiracy to Commit Fraud by False Pretences, contrary to Section 89(1) and Section 348 of the Penal Code, Chapter 84;
- v. Fraud by False Pretence, contrary to Section 348 of the Penal Code, Chapter 84;
- vi. Receiving contrary to Section 358 of the Penal Code, Chapter 84; and
- vii. Money Laundering contrary to Sections 9(1)(A) and 9(1)(C) of the Proceeds of Crime Act, 2018;
- viii. Money Laundering (Acquisition), contrary to Section 11(1)(A) and 15 (1)(A) of the Proceeds of Crime Act, 2018;
- ix. No time during the service of the Voluntary Bill of Indictment before the Learned Magistrate Carolyn Vogt- Evans on the 14th of September, 2022 or at his arraignment before the Learned Acting Chief Justice Sir Bernard Turner did the Applicant by himself or his Counsel object to any of the charges brought before the Court;
- x. Had the Applicant had a valid challenge the appropriate course of action would be to make that application to have the particular charge remitted to the Magistrate's Court and not to resort to the Constitution for Constitutional relief which should only be used as a remedy of last resort;

- xii. The Applicants were arraigned before the Acting Chief Justice Bernard Turner on the 23rd of September, 2022 where they pled not guilty to the offences. That during the Applicants arraignment there was no objection to any of the charges being improperly brought before the Court by Counsel for the Applicant. The matter was thereafter transferred to this Honourable Court;
- xiii. On the 27th of September, 2022 the Applicant appeared before the Learned Justice Grant- Thompson for fixture and for the setting of Case Management dates. On said date, Counsel for the Applicant made a recusal application. The Respondent objected to the same. The Court adjourned the matter for decision to the 29th of September, 2022;
- xiv. On the 29th of September, 2022 the Court rendered a decision dismissing the recusal application and fixed a trial date of the 1st to the 31st of May, 2023. Court adjourned the matter for further Case Management on the 7th of November, 2022;
- xv. On the 10th of May, 2023 the Applicants Constitutional Motion filed on May 4, 2023 was heard. A decision dismissing the same was rendered by this Court on the 15th of May, 2023;
- xvi. During the hearing of the initial Constitutional Motion filed on the 4th of May, 2023 the Applicant although raising the issue of a violation of his rights under Article 20(1) of the Constitution of The Bahamas failed to challenge the appropriateness of any charge being placed before this Court. As such the Respondent avers that this second Constitutional Motion filed herein on the 23rd of June, 2023 is an abuse of the Court's process;

- xvi. On the 26th of June 2023, hours before the Applicants trial was due to commence, a second Constitutional Motion was filed and served on the Respondent;
- xvii. Besides the bare assertions made by the Applicants in their Affidavit that the Voluntary Bill of Indictment is fatally flawed, void and of no effect resulting in the Court not having jurisdiction to proceed with this matter, the Applicants has failed to provide any support for this assertion;
- xviii. Further there is no evidence to support the assertion at paragraph 19 (of Adrian Gibson M.P's Affidavit) that the offences for which the Applicants are charged ought not to be brought by way of Voluntary Bill of Indictment;
- xix. As it relates to the offence of Making a False Declaration contrary to Section 452 of the Penal Code, Chapter 84 the same is a Third Schedule offence which is an indictable offence triable summarily. That the Respondent elected to proceed by way of Information pursuant to Section 258 (1) of the Criminal Procedure Code, Chapter 91;
- xx. Also having regard to the fact that the Applicants are charged with a number of indictable offences all arising out of the same facts it would be in the interest of the administration of justice that he be tried once for the said offences. Therefore, the Applicants are properly before this Honourable Court for the present charge of Making a False Declaration;
- xxi. As it relates to the offence of Conspiracy to Commit Bribery contrary to Sections 89(1) of the Penal Code, Chapter 84 and 4(2)(A) of the Prevention of Bribery Act, Chapter 88, pursuant to Section 10(a) of the Prevention of Bribery Act, Chapter 88, the Applicants can be tried on information. They

were so charged under that provision by the Respondent as the Applicants have no right of election in respect to this offence. Therefore, the Applicants are properly before this Honourable Court for the present charges of Conspiracy to Commit Bribery;

xxii. As it relates to the offence of Bribery contrary to Section 4(2)(A) of the Prevention of Bribery Act, Chapter 88 this again is an offence punishable under Section 10(a) of the Prevention of Bribery Act, Chapter 88. The Applicants may be tried on information. They are respectively charged under that provision by the Respondent as the Applicants have no right of election in respect to this offence. Therefore, the Applicants are properly before this Honourable Court for the present charges of Bribery;

xxiii. As it relates to the offence of Receiving contrary to Section 358 of the Penal Code, Chapter 84, these offences may be found in the Third Schedule. Third Schedule offences are indictable offences triable summarily. The Respondent elected to proceed by way of Information pursuant to Section 258(1) of the Criminal Procedure Code, Chapter 91. The Applicants are charged with a number of indictable offences all arising out of the same facts it would be in the interest of the administration of justice that they be tried once for the said offences. Therefore, the Applicants are properly before this Honourable Court for the present charge of Receiving;

xxiv. In relation the offence of Money Laundering contrary Sections 9(1)(A) and 9(1)(C) of the Proceeds of Crimes Act, 2018 pursuant to Section 15(1)(b) of the Prevention of Bribery Act, Chapter 88, the Applicants can be tried on

information. They were so charged under that provision by the Respondent as they had no right on election. Therefore, the Applicants are properly before this Honourable Court for the present charges of Money Laundering contrary Sections 9(1)(A) and 9(1)(C) of the Proceeds of Crimes Act, 2018;

xxv. As the Applicants rights under Article 20(1) of the Constitution of The Bahamas have not been violated by the proffering of the Voluntary Bill of Indictment as the charges contained therein are all properly before the Supreme Court and as such this Honourable Court has jurisdiction to proceed to trial in this matter. That the said process is not unconstitutional;

xxvi. The Applicants have not adduced any evidence that would cause this Honourable Court to exercise its rare jurisdiction to permanently stay these proceedings against the Applicants. That the Applicants faces very serious allegations affecting justice.

27. Notwithstanding that the Court accepts that there is alternative redress available to the Court to remit the matter to Senior Magistrate Vogt Evans for the election of mode of trial to be determined, the Court does not find that the charges laid are so fatally flawed as to require that course of action. The Court does not find the Voluntary Bill of Indictment fatally flawed. **Section 151 of the Criminal Code, Chapter 91** states;

“(1) No objection to an information shall be taken by way of demurrer, but if any information does not state in substance an indictable offence or states an offence not triable by the court, the accused may move the court to quash it or in arrest of judgment.

(2) If the motion is made before the accused pleads, the court shall either quash the information or amend it, if, having regard to the interest of justice, it considers that it is proper that it should be amended.

(3) If the defect in the information appears to the court during the trial and the court does not think fit to amend it, it may, in its discretion, quash the information or leave the objection to be taken in arrest of judgment.

(4) If the information is quashed, the court may direct the accused to plead to another information founded on the same facts when called on at the same session of the court.”

28. Section 58 (8) of the Criminal Procedure Code (which was inserted by the amendment of 2017) also states that:

*“Where an offence is triable either summarily or on information, an accused person has **NO** right to elect the mode of trial. The prosecution of such an offence may be commenced on behalf of the Crown either summarily as permitted by section 213 of this Code or on information as permitted by this Code, without any reference to the Magistrate for the determination of the mode of trial.”*

29. Section 2 of the CPC (amended in 2017) and reads as follows:

“In this Code unless the context otherwise requires –

...

‘indictable offence’ means any offence which is triable on information before the Supreme Court”

30. In the case of **Attorney General v. Hall (2016) UKPC 23** at paragraph 46 (c) and (g) it was held that:

“(c) Where an offence falls into category (ii) the prosecution may invite the magistrate to proceed either by way of summary trial or by way of preliminary inquiry with a view to committal to the Supreme Court for trial by judge and jury on information. The accused has no right to elect trial by jury. But the prosecution does not have unfettered power to decide the mode of trial. That power belongs to the magistrate, who may determine either that a case which the prosecution would be content to be tried summarily ought to be sent to the Supreme Court, or that an offence which the prosecution would prefer to go to the Supreme Court ought to be tried summarily. The magistrate will no doubt hear both parties before arriving at a decision as to mode of trial.

(g) Whether the Attorney General ought to have power to prefer a voluntary bill in the case of category (ii) offences, thus removing the necessity for a preliminary inquiry before the magistrate, is a matter of policy for Parliament; a comparatively simple legislative amendment can achieve that result if Parliament so decides.”

31. In the view of the Court Parliament did so make this amendment as laid out above.

Fair Hearing & Delay

32. The Constitution of the Commonwealth of The Bahamas (“the Constitution”) by virtue of Article 20 (1) confers unto all individuals the right to a fair trial:-

“(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law”

33. As outlined by both Counsel for the Applicants and the Respondent, from the commencement of this matter there have been numerous delays and adjournments. (As previously listed under Delay/ Timeline of Events).

34. As a result of this the question of “whether a fair trial is still permissible” in the circumstances is a live issue. The trial involves circumstantial evidence and is bolstered by what purports to be accounts from some forty-two (41/42) witnesses in total (38 on the indictment and 3/4 by way of Notice of Additional Evidence).

35. However, it must be noted that this matter is not one that will be tried by any Learned Trial Judge but will be tried by a panel of the Applicants peers (a jury). Thus, in order to successfully address the issue of a fair hearing, the circumstances surrounding the jury must be examined.

36. As a result of this, from the multiple adjournments the question of whether due to the delay, the members of the jury were capable of remembering and recalling all of the salient facts they would have heard thus far arises. The answer to the aforementioned question is crucial to ensuring that the Applicants right to a fair trial is in no way compromised if this trial continues.

37. Justice must be fair between all the parties. Not only must justice be done, but it must also be manifestly seen to be done. The Applicants are entitled, as are all citizens, to a fair trial.

38. In this matter the jury was empaneled on the 18th of May, 2023. However, on the 16th of May, 2023 another Defendant, Mr. Elwood Donaldson filed

the Applicant filed a Notice of Appeal and on the 19th of May, 2023 a Certificate of Urgency. The Court of Appeal then set the hearing of the Notice of Appeal down for the 22nd of May, 2023, however, according to the Crown, due to the Applicant's non-compliance with the filing of his submissions and his documents not being in order the Court Appeal adjourned the matter to the 13th of June, 2023. This Honourable Court then adjourned the jury trial to the 27th of June, 2023 in order to facilitate the Court of Appeal hearing and rendering its decision.

39. Taking the Constitutional rights of all of these Applicants into question as well as a proper consideration of the rights and factors which may have affected the jury, into consideration this Court dismissed the jury pool for May/June and adjourned the matter to the 24th of July, 2023 for the reselection of a new jury from a fresh pool of jurors.
40. Through this act of dismissal, I am of the view that the Applicants would not be prejudiced in any way by the continuation of the matter as they would be afforded a fresh/new jury who will not be privy to any of the delays or the alleged reasons which would have occurred in this matter- which in turn would eliminate any prejudicial thoughts or behavior held by the previous panel.
41. Furthermore, it must be noted that this Honourable Court was ready to proceed with this matter from the 1st of May, 2023. However, based on the variety of applications, the matter had to be adjourned/ stood down several times.
42. In the case of *William Fox, Mark Curtis et al v. Attorney General of the Bahamas Supreme Court of the Bahamas (Unreported) No. 31/02/2005 (Delivered, November 18, 2011)* it accepted that the case of *Boolell v. State [2007] 2 LRC 483 at 495* is applicable to The Bahamas. In that case, the

Privy Council considered two propositions relevant to an application under Article 20(1) of the Constitution of The Bahamas. It was said in Boole's case that:

“(1) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of s 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.”

[2] Second, the Privy Council adopted a series of propositions in Dwyer v. Watson [2002] 4 LRC 577 to determine whether the right to be tried within a reasonable time had been violated. These propositions are:

...the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further, since the Convention is directed not to departures from the ideal but to infringements of basic human rights. The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives ground for real concern, two consequences follow. First, it is necessary for the Court to look into the detailed facts and circumstances of the particular case. The Strasbourg case law shows very clearly that the outcome is closely dependent on the facts of each case. Secondly, it is necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.

The Court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognised,

realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any appellate hearing. But with any case, however complex, there comes a time when the passage of time becomes excessive and unacceptable.

The second matter to which the Court has routinely paid regard is the conduct of the defendant. In almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by making spurious applications and challenges, changing legal advisers, absenting himself, exploiting procedural technicalities and so on. A defendant cannot properly complain of delay of which he is the author. But procedural time wasting on his part does not entitle the prosecuting authorities themselves to waste time unnecessarily and excessively.

The third matter routinely and carefully considered by the Court is the manner in which the case has been dealt with by the administrative and judicial authorities. It is plain that contracting states cannot blame unacceptable delays on a general want of prosecutors or judges or Courthouses or on chronic under funding of the legal system. It is, generally speaking, incumbent on contracting states so to organise their legal systems as to ensure that the reasonable time requirement is honoured. But nothing in the Convention jurisprudence requires Courts to shut their eyes to the practical realities of litigious life even in a reasonably well-organised legal system. Thus it is not objectionable for a prosecutor to deal with cases according to what he reasonably regards as their priority, so as to achieve an orderly dispatch of business.”

43. Applying the above ratio descendi to the matter at hand, as previously stated this Court was ready to proceed with the matter from the 1st of May, 2023. It was also (and still is) the Court's intention to have the trial of the matter this year. However, there have been several delays which occurred- that include but are not limited to the Applicants filing of their first Constitutional Motion. The Applicants then filed their second Originating Motion on the 23rd of June, 2023. Though both Constitutional Motions were filed irregularly and improperly, in the interests of justice this Honourable Court still allowed the Applicants to proceed with their applications without being a hinderance or imposing any sanctions on the parties.
44. This Honourable Court has shown throughout these proceedings that it is truly interested in the execution of proper justice on both sides. This is shown from the dismissal of the jury to prevent any potential bias against the Applicants, further allowing these improperly and incorrectly filed applications to proceed. Therefore, it can be reasonably asserted that on the face of the matter there are no grounds for real concern regarding the Applicants receiving a fair and impartial trial, nor being tried within a reasonable time. This Honourable Court is of the view that the Applicants Constitutional right pursuant to Article 20(1) of the Constitution of The Bahamas has not been infringed.
45. This Court also takes note of the obiter commits in **Hall v Attorney General BS 2011 SC 176** which stated that *“In almost any fair and developed legal system it is possible for a recalcitrant defendant to cause delay by...changing legal advisers, absenting himself, exploiting procedural technicalities and so on. A defendant cannot properly complain of delay of which he is the author.”* This Court trusts this is not the case nor will it arise here.

Jurisdiction of the Court

46. The offence of Making a False Declaration are outlined within **Section 452 of the Penal Code, Chapter 84** which states that:

“Whoever, in order that he may obtain or be qualified to act in any public office or to vote at any public election, makes, signs, publishes or uses any declaration, statement or oath required by law in such case, or any certificate or testimonial as to his conduct or services, or as to any other matter which is material for the obtaining by him of the office, or for his qualification to act in the office or to vote at the election, shall, if he does so, knowing that the declaration, statement, oath, certificate, or testimonial is false in any material particular, be liable to imprisonment for two years and is guilty of a misdemeanour”

47. In relation to the offence of Conspiracy to Commit Bribery **Section 89(1) of the Penal Code, Chapter 84** states that:

“(1) If two or more persons agree or act together with a common purpose in committing or abetting an offence whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that offence as the case may be”

48. In addition to this **Section 4(2) (A) of the Prevention of Bribery Act, Chapter 88** also states that:

“(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantages as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in —

*(a) the promotion, execution or procuring of; or
(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,*

any such contract or subcontract as is referred to in subsection (1) shall be guilty of an offence.”

49. Regarding the offence of Receiving **section 358 of the Penal Code, Chapter 84** states that:

“Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence punishable under this Title shall, if the offence was a felony, be guilty of felony, or shall, if the offence was a misdemeanour, be liable to the same punishment as if he had committed the offence”

50. Concerning the offence of Money Laundering **Sections 9(1)(A) and 9(1)(C) of the Proceeds of Crime Act, 2018** states that:

“(1) A person commits an offence of money laundering if acting with knowledge or reasonable suspicion he-

(a) Conceals the proceeds of any crime ;

(b)

(c) Converts the proceeds of any crime”

51. As previously stated, one of the arguments asserted by the Applicants in their Original Motion, is that the matters for which they are charged are not justiciable in this Court. When it comes to determining the jurisdiction that a Court possess regarding criminal matters **Section 4(a) of the Criminal Procedure Code Act (CPC)** states that:

“Subject to the express provisions of this Code and of any other law — (a) the Supreme Court may try any offence;”

52. Furthermore, Section 7(1)(a) of the Supreme Court Act states that:

“(1) Subject to this or any other law, the Court shall have — (a) unlimited original jurisdiction in civil and criminal causes and matters”

53. The Applicants are charged with several indictable offences under the laws of The Bahamas. **Section 4 of the Penal Code** also defines an indictable offence as *“any offence punishable under Book III of this Code, or punishable on indictment under any other law”*

54. An internal aide to the meaning which Parliament intended to be ascribed to the expression “indictable offence” as employed in section 258(1) and elsewhere in the CPC, is also located in **Section 2 of the CPC** (amended in 2017) and reads as follows:

“In this Code unless the context otherwise requires –

...

‘indictable offence’ means any offence which is triable on information before the Supreme Court”

55. **Section 258 (1) of the Criminal Procedure Code (CPC)** states that:

“(1) Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a voluntary bill of indictment in the Supreme Court against a person who is charged before a magistrate’s court with an

indictable offence whether before or after the coming into operation of this section, in the manner provided in this section”

56. In addition to this, Section 35 (1) of the Criminal Procedure Code Act also states that:

“35. (1) The Supreme Court and every magistrates’ court shall have authority to cause to be brought before it any person who is within The Bahamas and who is charged with an offence —

(a) committed within the limits of its jurisdiction; or

(b) which according to law may be inquired into or tried as if it had been committed within its jurisdiction,

and to deal with the accused person according to law and subject to the jurisdiction of the court concerned”

57. Section 256 (1) of the Criminal Procedure Code Act also states that:

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

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

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

Making a False Declaration, contrary to section 452 of the Penal Code,
Chapter 84

58.Regarding this offence the Applicants avers that this offence is not a charge that may be lawfully brought before this Honourable Court by way of the Voluntary Bill of Indictment process.

59. In response to this the Respondent submitted that as it relates to the offence of Making a False Declaration the same is a Third Schedule offence which is an indictable offence triable summarily. That the Respondent elected to proceed by way of Information pursuant to section 258 (1) of the Criminal Procedure Code, Chapter 91.

60.Also having regard to the fact that the Applicants are charged with a number of indictable offences all arising out of the same facts I find that it is in the interest of the administration of justice that they be tried once for the said offences. Therefore, these Applicants are properly before this Honourable Court for the present charge of Making a False Declaration.

61. The Court has reviewed the arguments of both parties. The Court finds that it does in fact possess the necessary jurisdiction to hear and try these offences. **Section 4 of the Penal Code and Section 35 (1) of the Criminal Procedure Code Act**, confers unto the Courts express jurisdiction to hear any offence which are contrary with the laws of The Bahamas. Section 258(1) of the Criminal Procedure Code provides that the Director of Public Prosecutions can proffer a Voluntary Bill of Indictment for any individual charged with an indictable offence, that is on trial by information. This includes the provisions of Section 214 of the CPC. The Third Schedule Offences of Receiving, Making a False Declaration, Fraud by False Pretences and also those where there is no right of election such as Bribery, Money Laundering, Conspiracy to Commit Bribery- are all collectively indictable offences. The clear wording of Section 58 of the CPC justifies the prosecutions election in relation to the latter. Section 258 applies to the former charges. The concerns in Chevaneese Hall (at page 20) were cured by the amendment to Section 2 and Section 58 (8) of the Criminal Procedure Code.

Conspiracy to Commit Bribery, contrary to section 89(1) of the Penal Code, Chapter 84 and 4(2)(A) of the Prevention of Bribery Act, Chapter 88;

62. In relation to this offence the Applicants submits that these offences are not justiciable before this Honourable Court.

63. For the offence of Conspiracy to Commit Bribery the Applicants can be tried on information. They were so charged under that provision by the Respondent as the Applicants have no real right of election in respect to this offence. Therefore, the Applicants are properly before this Honourable Court for the present charges of Conspiracy to Commit Bribery. The offence of Conspiracy to Commit Bribery is in fact justiciable before this

Court. Furthermore, the position is also adopted by this Honourable Court as **Section 35 (1) of the Criminal Procedure Code Act** provides this Court with the jurisdiction to oversee matters of this nature.

Bribery, contrary to section 4(2)(A) of the Prevention of Bribery Act, Chapter 88

64. The Applicant submits that in relation to these offences that they are not justiciable before this Honourable Court;

65. The offence of Bribery is an offence punishable under Section 10(a) of the Prevention of Bribery Act, Chapter 88. The Applicants can be tried on information, as they have no right of election in respect to this offence. Therefore, the Applicant is properly before this Honourable Court for the present charges of Bribery.

Receiving, contrary to section 358 of the Penal Code, Chapter 84

66. The Applicants submitted that these offences were not justiciable by this Honourable Court in accordance with section 258 of the Criminal Procedure Code. Receiving is an offence similar to a Third Schedule offence which is an indictable offence triable summarily upon which the Respondent elected to proceed by way of Information pursuant to section 258(1) of the Criminal Procedure Code, Chapter 91. The Applicants were charged with a number of indictable offences all arising out of the same facts, the Court finds that it is in the interest of the administration of justice that they be tried once for the said offences. Therefore, these Applicants are properly before this Honourable Court for the present charge of Receiving.

67. **Section 4 and 35 (1) of the Criminal Procedure Code Act** are clear in regard to the jurisdiction of the Court to hear this matter. Further, **Section 258 of the CPC** allows the Attorney General/Director of Public Prosecution or its officers to file a Voluntary Bill of Indictment in the Supreme Court against a person who is charged before a Magistrates Court with an indictable offence.

Money Laundering, contrary to section 9(1)(A) and 9(1)(C) of the Proceeds of Crime Act, 2018

68. Lastly, the Applicants also avers that the above offences are not justiciable by this Honourable Court in accordance with section 258 of the Criminal Procedure Code. For the offence of the Money Laundering, the Applicants can be tried on information. Therefore, I find that these Applicants are properly before this Honourable Court for the present charges of Money Laundering contrary Sections 9(1)(A) and 9(1)(C) of the Proceeds of Crimes Act, 2018.

Conclusion

69. As previously stated, justice must be fair between all the parties. This Honourable Court has a duty to ensure that both the Applicants and the Respondents receive a fair trial. With this being said the Court notes the Applicants had many opportunities to object to the offences they have been charged with, however the Applicants elected to bring their application once again on the eve of the commencement of the trial. However, despite the further delay this Court has in no way penalized the Applicants for their actions. It is understandable for those individuals charged with serious offences for which there can be severe penalties, that they will exercise and exhaust every avenue available to them. The Court finds that the Voluntary Bill of Indictment referred in

this matter is not flawed therefore the Constitutional relief sought in this regard is denied. The Court finds that the Defendants can have a fair trial so that Constitutional relief also fails. The Court finds further that even if the Indictment had been flawed, relief was available as was redress from Section 151 of the CPC, therefore the Constitution was prematurely invoked. This Court will not prematurely stay the prosecution, nor does the Court find the process unconstitutional.

70. This Court in my opinion has gone far and beyond to ensure that the Applicants receive a fair, impartial, and timely trial. The Applicants could have taken these objections to the charged offences, from the inception of this matter.

71. The Court has heard and carefully examined the arguments made by both parties, this Honourable Court is of the view that the aforementioned offences for which these Applicants are charged are rightfully before this Court and thus triable. The Court looks forward to the trial commencing on the 24th of July, 2023 and remind the Applicants that there are six (6) Defendants before the Court and they are all equally entitled to a fair trial within a reasonable time.

72. I promised to put my reasons in writing this I now do.

Dated this 6th day of July A.D., 2023

The Honourable Madam Justice Mrs. Cheryl Grant Thompson