

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/0000

BETWEEN

**IN THE MATTER OF THE CONTEMPT OF COURT OF MRS. DONNA
DORSETT-MAJOR ON 3 JUNE 2020**

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Murrio Ducille and Ms. Latia Williams for the alleged Contemnor
Mrs. Kayla Green-Smith, Senior Counsel, appearing as Amicus
Curiae on behalf of the Attorney General, at the invitation of the
Court

Hearing Dates: 23 July, 4 August, 19 August, 14 October 2020, 5 November 2020,
12 November 2020, 27 November 2020, 18 January 2021, 24
February 2021, 21 April 2021, 17 May 2021, 22 July 2021, 23
September 2021

Contempt of Court arising out of civil proceedings- Application for judge to recuse herself from hearing on grounds of lack of impartiality – Defendant is an Attorney of Supreme Court - Knowingly making false and misleading statements in recusal application – Scandalizing the Court - Attorney being issued with show cause summons for contempt - Scope and nature of contempt – Burden of proof – Defences in contempt proceedings - Whether truth of contemptuous allegations made against a judge is a defence – Duty of Counsel – Officer of Court

The alleged Contemnor is an Attorney at Law and a defendant in a civil action before the Court. Following a visit to the locus in quo, the Court reconvened to hear closing submissions. The alleged Contemnor was present with her attorney and participated in the trial. No complaint was made of any partiality or favoritism of the Plaintiffs and/or the law firm representing the Plaintiffs. Subsequently, the Court delivered its ruling and found the alleged Contemnor guilty of professional negligence. The Court ordered that damages be assessed with costs to be taxed on a fixed date. Following the delivery of that ruling, the alleged Contemnor made an application seeking my recusal from the matter alleging that there had been “*the presence of bias or the appearance of bias*” against the Defendants. In a written Ruling delivered on 6 July 2020, I dismissed that recusal application. I accordingly cited the alleged Contemnor for contempt of court for knowingly

making false and fabricated statements against me. In essence, the charge is one of scandalizing the court. The evidence given on behalf of the Contemnor was aimed at proving the truthfulness of her Affidavit.

HELD: finding the alleged Contemnor to be guilty of contempt of court:

1. Judges must be impartial and it is critical that they should be known by all people to be impartial. If they are libeled by traducers so that people lose faith in them then the entire administration of justice would suffer: **Peter John Nygard v. Frederick Smith, QC Et al** SCCiv App No. 184 of 2019; **The Queen v. The Rt. Hon. Perry G. Christie et al** BHS J No. 127 [2017] and **In the Matter of Caves Company Limited and in the Matter of a Contempt of Court committed by Kenneth McKinney Higgs and James M. Thompson** [1988] BHS J. No.122 applied.
2. The Summons issued required the alleged Contemnor to show cause why she should not be committed for contempt of court. There is no presumed guilt in the Summons because it is asking the alleged contemnor to show cause: **Major and another v. The Government of the United States of America and others** [2008] 2 BHS J. No. 45 applied.
3. Contempt proceedings are criminal in nature; the standard of proof being proof beyond a reasonable doubt. **The Queen v. The Rt Hon. Perry G. Christie et al** applied.
4. Truth is no defence in contempt proceedings and any attempt at justifying the contempt would be inadmissible. Moreover, contempt proceedings does not involve an inquiry into the conduct of the Judge: **Higgs** applied.
5. In contempt proceedings, as an officer of the Court, Counsel is under a special duty to uphold the authority of the court and show it appropriate respect: **Higgs**. Further, pursuant to the Bahamas Bar (Code of Professional Conduct) Regulations, every attorney shall in the pursuit of practice of his profession comply with, and be subjected to, the rules of Professional Conduct as set out in the Schedule to the Regulations. Rule XII of the Regulations provide that an attorney should encourage public respect for and strive to improve the administration of justice.

JUDGMENT

Introduction

- [1] This contempt proceeding has its genesis in Civil Action No. 2015/CLE/gen/00765 in the case of **Alan R. Crawford et al v Christopher Stubbs et al** [2015/CLE/gen/00765] (“the Civil Action”) when the Court visited the locus in quo (“the site visit”) in Cat Island on 22 February 2019. The alleged Contemnor, Donna Dorsett-Major (“Mrs. Major”) is an Attorney at Law and the Third Defendant in the Civil Action. She was present when the Court visited the land in question. Also present were Mr. and Mrs. Crawford (“the Plaintiffs”), an elderly couple from Texas, United States of America, their Counsel, the late Mr. Roy Sweeting, the First Defendant, Mr. Christopher Stubbs, Counsel for the Defendants, Mr. Anthony Newbold (“Mr. Newbold”), Derek Gardiner (“Mr. Gardiner”) (who was temporarily assigned to the Judiciary on a 52-week program and who, from time to time, assisted the substantive Clerk of Court in the execution of his duties), Reserve Sergeant Reuben Stuart, (“Sergeant Reuben Stuart”), dressed in police uniform and who accompanied me to Cat Island and Superintendent Dencil Barr, then the Officer in Charge of Cat Island (present at the Cat Island Airport to meet the Judge in accordance with protocol). A handful of uniformed as well as plain clothes police officers from the Cat Island Police Station including Woman Sergeant Theresa Stuart (Sergeant Theresa Stuart) (who was dressed in uniform) was also at the airport. They accompanied and remained with me throughout the site visit and until my departure to Nassau that same afternoon.
- [2] On 1 May 2019, that is about 2 ½ months after the site visit, the Civil Action resumed for the parties to make closing submissions. All parties including Mrs. Major and her then Counsel, Mr. Newbold were present and participated in the trial. No complaint was made of any partiality or favoritism of the Plaintiffs and/or the law firm representing the Plaintiffs.
- [3] On 1 May 2020, the Court delivered a written judgment and found in favour of the Plaintiffs. The Court found, among other things, that the First and Second Defendants had unlawfully done some acts and consequently, they were to pay to

the Plaintiffs damages to be assessed and costs to be taxed if not agreed. Further, the Court found that Mrs. Major, who was sued by the Plaintiffs for professional negligence, was guilty (of professional negligence) and liable in damages to the Plaintiffs. The Court then ordered the assessment of damages and taxation of costs to take place on 17 June 2020 at 11:00 a.m.

[4] Consequent upon that Ruling, the First and Second Defendants filed a Notice of Motion seeking my recusal from the hearing of the aforementioned outstanding matters. The application was supported by the affidavit of the First Defendant, Christopher Stubbs sworn to on 26 May 2020 and the affidavit of Mrs. Major sworn to on 3 June 2020. I shall focus on the affidavit of Mrs. Major which alleged, in a nutshell, that there had been “*the presence of bias or the appearance of bias*” against the Defendants. Generally, the Defendants alleged that I had a relationship/association with the Plaintiffs and/or the law firm representing the Plaintiffs which gave rise to the presence or appearance of bias and which should have been disclosed to them.

[5] On 6 July 2020, I dismissed the recusal application. I found that:

“[37] For all of the reasons stated above, I hold that the recusal application is unfounded and without merit and is aimed at bringing the Court into disrepute. I would therefore dismiss the recusal application with costs to the Plaintiffs. If costs are not agreed, I will summarily assess on Monday 24 August 2020 at 10:30 a.m.

[38] Having found that Mrs. Major has fabricated the contents of her Affidavit, I will cite her for Contempt of Court. The appropriate charge is being prepared and will formally be read to her on 23 July 2020 at 12.00 noon or shortly thereafter in Open Court. Mrs. Major will have an opportunity to be heard and be represented by Counsel”.

[6] On 23 July 2020, Mrs. Major was served with a properly signed Summons issued by the Court to show cause why she should not be committed for contempt. The parties appeared before me but nothing of significance took place on that day. The contempt proceedings commenced on 4 August 2020. At that hearing, the motion to show cause and the particulars therein were read to Mrs. Major who stated that

she stood by her affidavit. She was represented by learned Counsel, Mr. Ducille. Since that date, there has been several adjournments and delays, most of them were at the behest of Mrs. Major. Firstly, on 10 August 2020, she instituted a Constitutional Motion in the Supreme Court: Action No. 2020/CRIM/Con/0005 **Donna Dorsett-Major and The Director of Public Prosecutions and The Attorney General**, wherein she sought the following relief namely:

- a) A Declaration that the rights afforded to the Applicant pursuant to Articles 19, 20, 23 and/or 28 of the Constitution of The Bahamas (“the Constitution”) have been or are about to be infringed;
- b) An Order that the contempt proceedings in relation to the Applicant be permanently stayed and therefore discontinued;
- c) In the alternative, an Order transferring the contempt proceedings from the carriage of the Honourable Madam Justice Charles to another judge of the Supreme Court.

[7] In response to the Constitutional Motion, on 19 August 2020, the Respondents filed a Summons pursuant to Order 18 Rule 19 (1) (a) (b) (c) and (d) of the Rules of the Supreme Court (“RSC”) or alternatively under the inherent jurisdiction of the Court to strike out the Originating Summons on the grounds that it discloses no reasonable cause of action. Further that it is scandalous, frivolous and vexatious and it may prejudice, embarrass, delay the fair trial of the action and is an abuse of the process of the Court.

[8] On 13 October 2020, Klein J delivered a comprehensive Ruling in the Constitutional Motion dismissing it with costs to the Respondents to be taxed if not agreed. Mrs. Major has since appealed the decision of Klein J.

[9] Secondly, Mrs. Major filed an application in the Court of Appeal seeking a stay of the contempt proceedings before me without formally seeking leave of this Court.

The Court of Appeal dismissed the application and awarded costs to the Respondent to be taxed if not agreed.

[10] After the Court of Appeal dismissed her application for a stay, she turned around and filed a formal application to this Court seeking a stay of the contempt proceedings. On 8 December 2020, I dismissed the application and awarded costs to the Amicus.

The legislative framework

[11] The principal law governing contempt proceedings is outlined at RSC Order 52. It provides, in part, the following:

“1 (1) The power of the Supreme Court to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court —

(a) is committed in connection with —

**(i) any proceedings before the Supreme Court;
or**

(ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or

(b) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (4), an order of committal may be made by the Supreme Court.

(3) Where contempt of court is committed in connection with any proceedings in the Supreme Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the Supreme Court.

(4) Where by virtue of any enactment the Supreme Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the Supreme Court, have been a contempt of that

Court, an order of committal may be made by a single judge of the Court.

.....
.....

5. (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say —

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;**
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act;**
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;**
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,**

but, except as aforesaid, the application shall be heard in open court.

.....
.....

8. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Supreme Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.” [Emphasis added]

[12] These rules clearly outline the conditions for contempt proceedings and guarantee due process and the principles of natural justice in that provisions are made for the hearing of these matters in Open Court except in certain circumstances.

[13] Further, if during the hearing the alleged contemnor expresses a wish to give oral evidence on his own behalf that person shall be entitled to do so.

Applicable legal principles governing contempt

Whether judges can commence contempt proceedings on their own motion?

[14] There was an earlier attempt before this Court as well as before Klein J for this Court not to hear the contempt proceedings and although this issue did not surface again, it is important for us to remind ourselves of the law.

[15] RSC Order 52 Rule 4 preserves the common law right of a judge to make an Order of Committal of his own motion against a person guilty of contempt. See also **In the Matter of Caves Company Limited and in the Matter of a Contempt of Court committed by Kenneth McKinney Higgs and James M. Thompson** [1988] BHS J. No.122 (“Higgs”).

[16] Further, in **The Matter of the Contempt of Maurice Ginton Q.C., In the Face of the Court on 28th September, 2015 and In the Matter of the Contempt of Court of Maurice Ginton QC on 9th October, 2015**, No. 1 and 2 of 2015, the Court of Appeal affirmed the decision of Gonsalves-Sabola J (as he then was) in **Higgs** and noted the following in relation to the jurisdiction of the Court to hear its own motion. At para 17, the learned President said:

“The second assertion made by Counsel under the head of Recusal was that the panel ought not to be a judge in its own cause, in as much as the alleged acts of contempt occurred in proceedings before the panel. In this regard, the decision of Gonsalves-Sabola, J in Caves Co. v. Higgs Estate [1988] BHS J. No. 122, is illuminating. Gonsalves-Sabola, J. at paragraph 8 of his decision stated:-

“8. Where a Court must rise to the protection of its own authority and integrity, it is wholly inappropriate for the judge contemned to abdicate his responsibility by saddling another judge of the Court with the duty of

dealing with the contempt committed. The historical development of the common law power of a judge to punish for contempt has proceeded independently of any consideration of the nemo iudex rule of natural justice. Conceptually, the judge is not a “party” to a cause nor is the contempt he deals with his cause. It is the highest attestation to the character expected in a judge that the law as developed has never encouraged question of his capacity and inclination to balance with objectivity the multiple roles he plays where a contempt is committed within his cognizance.”

- [17] As emphasised by the Court of Appeal in **The Contempt of Maurice Ginton**, the judge is not a “party” to a cause nor is the contempt he deals with his cause. Further, the law as developed has never encouraged question of his capacity and inclination to balance with objectivity the multiple roles a judge plays where a contempt is committed within his cognizance.

The scope and nature of contempt

- [18] In **Peter John Nygard v. Frederick Smith, QC et al** SCCiv App No. 184 of 2019, at para 45, Isaacs JA noted the following in relation to the scope and nature of contempt:

“45. In the textbook *“The Law of Contempt”* by Anthony Arlidge and David Eady published in 1982, the authors state at page 30:

“The common law definition of contempt of court is an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is acts which so threaten the administering of justice that they require punishment) and civil contempt (disobedience to an order made in a civil cause).”

46. Borrie & Lowe, *“The Law of Contempt”* 3rd ed., reiterates that contempt can be divided into two broad categories, contempt by interference and contempt by disobedience. They write:

“The former category, comprises a wide range of matters such as disrupting the court process itself (contempt in the court), publications or other acts which interfere with the course of justice as a continuing process (for example, publication which “scandalize” the court and retaliation against witnesses for having given evidence in proceedings

which are concluded). The second category comprises disobeying court orders and breaking undertakings given to the court.” [Emphasis added]

[19] In addition in **The Queen v. The Rt. Hon. Perry G. Christie et al** BHS J No. 127 [2017], Bain J reiterated the law regarding the nature and scope of contempt. At para 75 to 79, the learned judge stated:

“75 In Halsbury Laws of England Fourth Edition Volume 9 at page 21 paragraph 27

"27. Scandalizing the Court

Any act or writing published which is calculated to bring a court or a judge into contempt or to lower its authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. This scurrilous abuse of a judge or court, are attacks on the personal character of a judge are punishable contempts."

76 The authors of Halsbury Law gave examples of scandalizing the court. In *R v Gray 1900 2 QB 36* Lord Russell CJ of Killowen described the offence of scandalizing the court as --

"Any act done or writing published calculated to bring a court or judge of the court into contempt; or to lower his authority, is a contempt of court."

77 In *Ambard v Attorney General for Trinidad and Tobago 1936 AC 322* Lord Atkins stressed the limitation of the offence as scandalizing the court –

"But whether the authority and position of an individual judge or the due administration of justice is concerned, no wrong is committed by a member of the public who exercises the ordinary right of criticizing in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper notice to those taking part in the administration of justice and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer

the scrutiny and respectful, even though outspoken comments of ordinary men."

78 In *Barrie and Lowe in the Law of Contempt* the author stated --

"It is a well established principle that publications that are considered to be scurrilously abusive of a judge amount to contempt by scandalizing the court. As a number of decisions emphasise, the rule of contempt do not exist to protect a judge personally but operate to protect the public interest in the administration of justice. Bowen LJ said in *Helmores v Smith No. 2 1886 36 Ch D 449.*

"The object of discipline enforced by the court is not to vindicate the dignity or the person of the judge, but to prevent undue influence with the administration of justice."

79 Dodds CJ in *R v Fowler 1905 1 Tos LR 53*, a case from Tasmania, stated –

"These powers [to commit for contempt] are given to judges in order to keep the course of justice free. [They] are of great importance to society, for by their exercise of them law and order prevail. They have nothing to do with the personal feeling of the judge, and no judge would allow his personal feelings to have any part of the matter; the powers are exercised simply for the good of the people and wherever judge have exercised these powers they have done so from a sense of duty and under pressure of some grave public necessity."[Emphasis added]

[20] Further, in **Higgs**, Gonsalves-Sabola J noted the following in relation to the nature of contempt and historically the approach of the Courts in addressing this issue:

"11. Persons who lose cases can always appeal to a higher court. Bringing an appeal is the remedy for any grievance felt at the hands of the tribunal of first instance. Scurrilous abuse of the judge in reprisal is not a remedy. The former is lawful, the latter criminal. A quick study of some of the cases down the years would show the consistent attitude of the courts in upholding respect for their authority."

12. In *R v Almon*, [1765] 97 E.R. 94, 100, Wilmot, J., in the quaint diction of his generation, expounded the societal need to maintain public respect for the impartiality of judges. He said:

"The arraignment of the justice of the Judges, is arraiging the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction ... whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open, and uninterrupted current, which it has, for many ages, found all over this kingdom, and which so eminently distinguishes and exalts it above all nations upon the earth."

13. In modern times an echo of that exposition was sounded by Lord Denning in *The Road to Justice*, 1955, when he said at p 73:

"The judges must of course be impartial: but it is equally important that they should be known by all people to be impartial. If they should be libeled by traducers, so that people lost faith in them, the whole administration of justice would suffer. It is for this reason that scandalizing a judge is held to be a great contempt and punishable by fine and imprisonment."

14. I adopt these words of experience and wisdom and can think of no reason why their substance should not apply in *The Bahamas*".
[Emphasis added]

[21] I also adopt and echo these judicious words that persons who lose cases can always appeal to a higher court. Bringing an appeal is the remedy for any grievance felt at the hands of the tribunal. Scurrilous abuse of the judge in reprisal is not a remedy. The former is lawful; the latter is criminal.

[22] In addition, Judges must be impartial and it is critical that they should be known by all people to be impartial. If they are libeled by traducers so that people lose faith in them then the entire administration of justice would suffer.

Summons for contempt generally

[23] The Summons issued should require the alleged contemnor to show cause why he/she should not be committed for contempt. There is no presumed guilt in the Summons because it is asking the alleged contemnor to show cause. After service of the Summons, the alleged contemnor is given an opportunity to respond to the allegations.

[24] In **Major and another v. The Government of the United States and others** [2008] 2 BHS J. No. 45 (“**Major**”) Hall CJ noted the following at para 9 of that Judgment:

“9. On these preliminary objections, I was satisfied, adopting in their entirety the reasoning in *Higgs* that I had both the jurisdiction and the duty to cause this matter to be begun by the court of its own motion and any suggestion that the form of notice presumed guilt in the alleged contemnor was, in my view, cured by reading the notice as a whole which invited the alleged contemnor (sic) "show cause" and by the fact that he was offered a period of seven days to do so”.

[25] In **Major**, the learned Chief Justice issued a show cause summons to Keod Smith to appear before him on Friday 2 May 2008 to show cause why he should not be committed to prison for contempt of court. Mr. Smith appeared on 2 May 2008 with his counsel. Mr. Smith was given various recordings by the Court. The matter was adjourned for seven days to allow a response. Mr. Smith filed an affidavit in response and appeared on the adjourned date for the hearing of the matter.

Burden of proof in contempt proceedings

[26] Since the proceedings are criminal in nature, the standard of proof is beyond a reasonable doubt. Put differently, the Court must feel sure of the guilt of the alleged contemnor.

[27] In **The Rt. Hon. Perry G. Christie**, Bain J noted the following regarding the burden of proof in contempt proceedings.

“81 It is accepted that in contempt proceedings the standard of proof is beyond reasonable doubt.

82 In Dean v Dean 1987 1 FLR 517, the court of appeal held –

"(1) Contempt of court, whether civil or criminal, was a common law misdemeanor and it had long been recognized that proceeding for contempt of court were criminal or quasi criminal in nature and that the case against the alleged contemnor must be proved to the criminal standard of proof, namely proof beyond reasonable doubt..."

Defences in contempt proceedings

[28] It is significant to note that the truth is not a defence in contempt proceedings and any attempt at justifying the contempt would be inadmissible. Moreover, contempt proceedings do not involve an inquiry into the conduct of the Judge. In **Higgs**, Gonsalves-Sabola J stated at paras 16-18:

“16. At page 234, Blackburn, J., dealt with whether truth of the contemptuous allegations made against a judge can be a defence. In his words:

"The truth of it has nothing to do with the question ... We make no inquiry whether the statements are true or false."

17. The New Zealand case of Attorney General v Blomfield, [1914] 33 N Z L R 545 was cited in The Law of Contempt by Borrie and Lowe at page 165, to show that any attempt at justifying a contempt would be inadmissible.

18. Williams, J, was quoted as saying:

"That has never been done, and cannot be done in summary proceedings for contempt. The court does not sit to try the conduct of the judge."[Emphasis added]

[29] In other words, whether the statement is true or false is of no moment.

Duty of Counsel

[30] In **Higgs**, the Court noted the following in relation to the duty of counsel:

“9. On his admission to practise a counsel and attorney is deemed by statute an officer of the court and, therefore, is under a special duty to uphold the authority of the court and show it appropriate respect. When acting on behalf of his client counsel is limited and should adhere to the instructions given by the client except that no counsel may take a subordinate position in the conduct of the case or share it with the client: Halsbury, 4th Edn. Vol. 3 paragraph 1180.”

[31] Further, pursuant to the Bahamas Bar (Code of Professional Conduct) Regulations, every attorney shall in the pursuit of practice of his profession comply with, and be subjected to, the rules of Professional Conduct as set out in the schedule to the Regulations. *Rule XII of the Regulations provide that an attorney should encourage public respect for and strive to improve the administration of justice.*

[32] Further, Rule XII of the Regulations outline inter alia that:-

“1. The admission to and continuance in the practice of law implies on the part of the attorney a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby maintain public respect for it.

....

4. Although proceedings and decisions of tribunals are properly subject to scrutiny and criticism by all members of the public, including attorneys, members of tribunals are often prohibited by custom or by law from defending themselves. Their inability to do so imposes special responsibilities upon attorneys.”

The hearing of contempt proceedings

[33] Given the nature of contempt proceedings it is critical that the Court moves expeditiously to hear these matters and ensure that there is a fair hearing. In **James Fleck v Pittstown Point Landings Limited** SCCiv App No. 131 of 2019, the Court of Appeal noted the following:

“We recognise that at common law, particularly in the case of a contempt committed in the face of the court, a superior court of record has power to proceed in an almost peremptory fashion to cite, hear and punish a contemnor for contempt thereby demonstrating the court’s authority and vindicating the administration of justice. However, in the light of the Privy Council’s decision in *Dhoocharika v. Director of Public Prosecutions* [2014] 5 LRC 211, it is now clear that the constitutional guarantee of the right to a fair trial applies where the court is proceeding to sentence a contemnor having first found him in contempt of court on the merits. Procedurally, a court will always need to hear and consider submissions that go to mitigation of the sentence before sentence is pronounced; and this is so whether the contempt is criminal or civil. See paragraph [60] *Dhoocharika* per Lord Clarke.”

[34] As I mentioned earlier, instead of an expeditious hearing of the contempt proceedings, this one dragged on for nearly a year and it was principally due to Mrs. Major’s various applications in the Supreme Court as well as the Court of Appeal.

[35] Earlier I remarked that the truth is no defence in contempt proceedings and any attempt at justifying the contempt would be inadmissible as contempt proceedings do not involve an inquiry into the conduct of the judge.

[36] So, in order to determine whether Mrs. Major is guilty of contempt of court, it is important for the Court to consider whether the contents of the affidavit sworn to by Mrs. Major was calculated to bring the Court into contempt by imputing bias or lack of impartiality of the Judge. In other words, the Court must determine whether the Affidavit was intended to demean a Judge of the Supreme Court and bring the court into disrepute and prejudice the due administration of justice. This is the issue for consideration as the Court assesses the evidence that was presented in this case. That Affidavit must be read as a whole and not in part.

The Summons to Show Cause (The “Show-Cause Summons”)

[37] The Summons issued to Mrs. Major required her to show cause why she should not be committed for contempt. There is no presumed guilt in the Summons which reads as follows:

“TO: DONNA DORSETT-MAJOR:

YOU ARE HEREBY SUMMONED by the Honourable Madam Justice Indra H. Charles, a Justice of the Supreme Court of the Commonwealth of The Bahamas, Nassau, N.P., The Bahamas to attend the Court on Tuesday, 4th day of August, A.D.2020 at 1:30 pm in the afternoon or soon thereafter *to show cause why you should not be committed for contempt for swearing to the Affidavit of Donna Dorsett-Major filed on the 3rd June 2020 in Common Law and Equity Division 2015/CLE/gen/00765 in support of the recusal application of the First and Second Defendants which contained untruths and fabricated statements.*

THE CHARGES/PARTICULARS OF CONTEMPT ARE:

1. That you intentionally swore an Affidavit in the said action which contains the following false and malicious allegations:
 - a. On 22 February 2019, the Judge travelled with her then clerk, Mr. Gardiner, attorneys Anthony Newbold, the late Mr. Roy Sweeting and yourself to Cat Island. She (the Judge) was not accompanied by an aide.
 - b. Upon our arrival at the Airport in Cat Island, it became apparent to you that *the Crawfords were there waiting for the Judge* since there were no police officers at the airport in Cat Island to greet the Judge. You also alleged that the Judge and her clerk were driven by Mr. Crawford in Mr. Crawford’s vehicle. The late Mr. Sweeting also rode with the Judge and her clerk.
 - c. Shortly after the locus visit, the Judge walked with you and the Crawfords followed behind. You said

that the Judge asked you if you could convince Mr. Stubbs to sell his property to the Crawfords for a reduced price of \$100,000.00; in exchange for them discontinuing the matter against you and Mr. Stubbs.

d. We were invited to lunch at Shanna's Cove.

e. **After lunch, and on your urging, Attorney Newbold, the Judge, Mr. Sweeting and the Crawfords rode in the same vehicle and the Crawfords took them to the airport.**

2. That the allegations are not only intentional, wounding and fabricated but were intended to demean a Judge of the Supreme Court of the Bahamas, bring the Court into disrepute and prejudice the due administration of Justice.”
[Emphasis added]

[38] Attached to the Summons was a copy of the travel itinerary obtained from the Judiciary for Indra Charles, Rueben Stuart and Derek Gardiner for travel on 22 February 2019 on Western Air from Nassau to The New Bight, Cat Island and returning to Nassau the same day. The ticket also included a vehicle to be collected from Gold Car and to be returned the same day.

[39] Learned Counsel Mr. Ducille who appeared for Mrs. Major stated that Mrs. Major was served with an unsigned Summons dated 23 July 2020. This is inaccurate as the Summons was issued by the Registrar although Mrs. Major in her affidavit in support of her notice of constitutional motion stated that a signed version was not issued until 29 July 2020: see para [8] of Ruling of Klein J delivered on 13 October 2020. That being said, nothing really turns on this as the contempt proceedings commenced on 4 August 2020 when the Summons was formally read to Mrs. Major in the presence of Mr. Ducille. Mrs. Major was given an opportunity to respond to the allegations. She stated that she stood by her affidavit.

[40] The hearing on 4 August 2020 took place in the midst of the deadly Covid-19 pandemic. At that time, the Court was using a virtual platform which was fairly new.

The Court (and the Court Reporter) had difficulty in hearing Mr. Ducille. There came a point when Mr. Ducille indicated that Mrs. Major wished to call witnesses to address the issue of guilt or lack thereof. The Court had indicated that it had passed that stage based on the fact that Mrs. Major was given an opportunity to respond to the allegations when they were read to her and she stated that she stood by her affidavit. Realizing that Mrs. Major should be given an opportunity to present a proper case and call witnesses, the Court altered its initial position and afforded her the liberty of calling as many witnesses as she desired and for her Counsel to make submissions on her behalf. However learned Counsel Mr. Ducille insisted that the Court proceeds to the sentencing phase. One would expect an attorney of Mr. Ducille's ilk to assist the Court. Thereafter, the Court proceeded to give directions for the hearing of the contempt proceedings.

[41] On 24 February 2021, the contempt proceedings finally got off the ground.

[42] Even though contempt proceedings do not involve an inquiry into the conduct of the judge, the Amicus Curiae called 2 witnesses:

- a) Sergeant Rueben Stuart who escorted the Judge to Cat Island on 22 February 2019 and who, under cross-examination, stated that for him to go with the Judge, he had to seek the approval of the Commissioner of Police. In other words, there is a procedure in place to accompany a judicial officer. Under cross-examination, he maintained that he accompanied the Judge to Cat Island.
- b) Corporal Thaddeus Woodside, the substantive Aide who drove the Judge to the Lynden Pindling Airport in Nassau on the morning of 22 February 2019. He stated that, on the way to the airport, he picked up Mr. Gardiner from his residence. The Judge was already seated in the car. He then drove to the airport, checked in the Judge and Mr. Gardiner and escorted them to the waiting area until their departure on Western Air.

[43] The hearing continued for a number of days to allow Mrs. Major to call all of her witnesses including those whom she had subpoenaed. Mrs. Major also gave evidence. She stated that, on 22 February 2019, she saw Sergeant Theresa Stuart at the airport and that she (Mrs. Major) spoke with her. At no time did she see Sergeant Reuben Stuart. When Sergeant Theresa Stuart got to the airport in Cat Island, she jumped into a police vehicle and left. The Judge came off the flight and wandered around. She then got into the vehicle with Mr. Crawford, Mr. Sweeting and Mr. Gardiner. Mr. Crawford was the driver. The first time she saw police officers was when Mr. Gardiner suffered a seizure. She said that during a hearing, the Judge admitted that she rode with the Crawfords. She insisted that audio recordings of the court hearings should have been produced. She opined that the Transcripts of Proceedings were “doctored” and unreliable. She said that there is an omission in the Transcript or Proceedings because the Judge said she travelled with Sergeant Theresa Stuart and not Sergeant Reuben Stuart. Under cross-examination, she stated that she did not see any police vehicle. She saw only two vehicles: a truck and a jeep. With respect to lunch, she was unclear as to who invited “us” to lunch and she does not know if everyone paid for their lunch but she paid for hers. She said that she is a Christian and does not tell untruths. She admitted that she is displeased with the Judge’s Ruling in the Civil Action.

[44] Mrs. Major called the following witnesses:

- a) Mr. Gardiner who accompanied the Judge to Cat Island and who suffered a seizure on the visit. He was taken to the Clinic and flew back to Nassau via air ambulance. Mrs. Major stayed back and accompanied him in the air ambulance. He testified that he and the Judge travelled to Cat Island without any aide. He did not see any police at the airport in Cat Island. Mr. Crawford was present. Then, a plain clothes police officer arrived. He recalled that the Judge, Mr. Crawford and Mr. Sweeting sat in the back seat of the police vehicle. He sat in the passenger’s seat and a plain clothes police drove the vehicle. The drive to the locus was about

an hour. Under cross-examination, he said that there were other officers at the airport to greet the Judge.

- b) Beatrice Bain, Office Assistant in the Chambers of Donna Dorsett Major and Co. said that, during a virtual hearing between the Judge and Mrs. Major, she heard the Judge admitting to riding with the Plaintiffs. On 6 July 2020, during another virtual hearing, she heard the Judge say that a female officer accompanied her.
- c) Christopher Stubbs, the First Defendant in the Civil Action, was also present during the site visit in Cat Island. According to him, during a virtual hearing, he heard the Judge say that a female police officer travelled with her.
- d) Mr. Larell Hanchell became Counsel of record for Mrs. Major on 17 June 2020 after the Judgment was delivered. His engagement was short-lived. Shortly after, he ceased to be Mrs. Major's Counsel in the Civil Action. Like Ms. Bain and Mr. Stubbs, he too heard the Judge say that Sergeant Theresa Stuart accompanied her to Cat Island. Under cross-examination, he said that he was unaware that the Transcript of Proceedings existed. When various transcripts were shown to him with the name "Reuben Stuart, he remarked that Court Reporters do not always record everything that is said in Court.

[45] Mrs. Major also subpoenaed the following witnesses:

- a) Anthony Newbold, Counsel and Attorney at Law, who represented the Defendants including Mrs. Major in the Civil Action. He travelled on the same flight with the Court to Cat Island. He recalled that he, Mrs. Major and the Judge were on the flight. He did not recall seeing a uniformed officer on the flight but he recalled seeing Mr. Crawford at the airport in Cat Island. He did not recall who the Judge drove with to the locus. Under cross-examination, Mr. Newbold said that he saw police officers

at the airport but he maintained that he did not recall seeing any uniformed officer on the flight. He said that, after lunch, he was in the same car with the Judge. There were police officers in the car. Mr. Crawford was not in the car. He could not recall whether he got a ride to the airport or down the hill to collect his vehicle. It was clear that Mr. Newbold was not being wholly frank during his testimony with respect to what took place. He appeared to be in a state of amnesia during cross-examination.

- b) Superintendent Dencil Barr of the Royal Bahamas Police Force was the Officer in Charge of Cat Island on 22 February 2019. He stated that he was in charge of Cat Island up to October 2019. He was at the airport on 22 February 2019 to meet the Judge and her party. Having given this testimony, Mr. Ducille appeared displeased and began interrogating Superintendent Barr about a conversation that the two (Ducille/Barr) had earlier on 19 April 2021 (the day that Superintendent Barr testified) where it appeared that Superintendent Barr may have told Mr. Ducille that he was not at the airport. Superintendent Barr refuted that suggestion and emphatically stated that he was at the airport. What he said was that he did not go to the locus with the Court. He further testified that he was aware that Sergeant Reuben Stuart was on the island as he (Barr) gave him some documents to bring back to Nassau. He said that Sergeant Theresa Stuart, attached to Cat Island was also there. Under cross-examination by Senior Crown Counsel Mrs. Green Smith, Superintendent Barr intimated that he knows Sergeant Reuben Stuart. They were both trained together. He was in his junior squad.
- c) Rex Wilson, the Manager of Western Air, was also subpoenaed by Mrs. Major. He produced the Western Air Ltd Flight Manifest for 22 February 2019. He confirmed that the name Rueben Stuart appears on it. He was asked by Mr. Ducille whether another police officer could have flown even though Reuben Stuart appears on the Manifest. Mr. Wilson said

that only passengers whose names appear on the Manifest could fly. It matters not whether or not they are police officers. The Manifest was tendered as Exhibit RW-1.

d) Another subpoenaed witness, Ezra Russell never showed up.

[46] As can be seen, a substantial amount of the evidence presented by Mrs. Major and on her behalf concentrated on establishing the truth and justifying the contempt: see her evidence and that of Mr. Gardiner, Mr. Stubbs, Mr. Hanchell and Ms. Bain.

[47] Assessing the evidence of the witnesses who testified, Mrs. Major's own witnesses (including her subpoenaed witnesses) contradicted her evidence that (1) No aide/police officer travelled with the Judge to Cat Island; (2) there were no police officers at the airport in Cat Island and the Judge travelled with Mr. Crawford in Mr. Crawford's vehicle. Mrs. Major's testimony became even more dramatic when she asserted that there was a police officer but she was a female, Sergeant Theresa Stuart and as soon as she (Theresa Stuart) got to Cat Island, she rushed out of the airport and was driven away in a police vehicle. The Judge was then left wandering around the airport but it was clear that Mr. Crawford was there to collect her.

[48] With respect to the evidence of Mr. Stubbs, Mr. Hanchell and Ms. Bain, there is no doubt in my mind that they had/have axes to grind, insisting that the Judge said that a female police officer was present. In any event, it is the assertion of Mrs. Major that no police officer travelled with the Judge to Cat Island and no police officer met the Judge at the airport in Cat Island. Even Mr. Gardiner stated that there was a police vehicle and a plain clothes police officer drove the Judge, himself, Mr. Crawford and Mr. Sweeting to the locus.

[49] In the case of Mr. Hanchell, he ought to know that making a false statement knowingly, under oath, amounts to contempt. It plainly impedes and interferes with

the proper administration of justice: **Louis Bacon v Sherman Brown and Steve McKinney** [2012/CLE/gen/0503] [unreported] - Judgment delivered on 17 December 2015, para. 24.

[50] Although contempt proceedings do not involve an inquiry into the conduct of the Judge, when one considers the evidence adduced by Mrs. Major and her witnesses, I am reminded of the beautifully expressed aphorism coined by the early 19th century Scottish author, Sir Walter Scott, who, in Shakespearean style said: *Oh, what a tangled web we weave, when first we practise to deceive*".

[51] Mrs. Major continued with the tangled web which she weaved because she was/is unhappy that I found her guilty of professional negligence. Any person who is aggrieved by a decision of a Supreme Court judge has a right to appeal. Any attempt to denigrate or launch scurrilous abuse at the judge amount to contempt by scandalizing the court.

[52] Even though I have gone into this factual discourse, I remind myself that the truth is no defence in contempt proceedings and any attempt at justifying the contempt is inadmissible.

Freedom of speech

[53] I shall end this discourse with the issue of the constitutional right of freedom of speech.

[54] In **Higgs**, Gonsalves-Sabola noted the following regarding freedom of speech:

"20 The law of contempt coexists with the recognition by law of the freedom to criticize the conduct of a judge or of a court. Such criticism may be proper even if strongly worded, provided it is fair, temperate and made in good faith, and not directed to the personal character of a judge or to the impartiality of a judge or court: See Halsbury Laws of England, Fourth Edition, Vol. 9, paragraph 27, referring to the well-known cases of R v Gray, [1900] 2 Q B 36, and Ambard v Attorney General for Trinidad and Tobago, [1936] 1 All E R 704, inter alia. In Regina v Commissioner of Police of the Metropolis, Ex parte Blackburn, (No. 2) [1968] 2 Q.B. 150, the English Court of Appeal had occasion to address this aspect of the subject in the case of an alleged contempt of court committed by Mr. Quintin Hogg, Q C, in an

article in the weekly newspaper Punch. The article was critical of what were claimed to be erroneous decisions of the courts including the Court of Appeal. Mr. Hogg's article was stigmatised as being rumbustious and wide of the mark, but there was no holding up of the courts to contempt. There was no insinuation against the impartiality of the courts or the integrity of the judges. Quoting Lord Russell in *R v Gray*, [1900] 2 Q B 36, 40, Edmund Davies, L J, said:

"Judges and courts are alike open to criticism, and if reasonable arguments or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court."

21 Lord Denning, MR, was dealing with the jurisdiction of the court in a case of contempt when, at page 155, he said:

"Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done." [Emphasis added]

[55] The learned Judge went further to note the following regarding the true character of Judicial Office at paras 22-23:

"22 What Lord Denning said in the last paragraph of the quotation reflects the true character of the judicial office. A judge decides a case

as he must and is not deflected from his duty by pandering to the wishes of the litigants or fear of criticism.

23 In the instant case, offensive remarks have been made in apparent reprisal against judges of the Supreme Court whose decisions were unfavourable to the cause of the contemnor Higgs. The average judge, secure in his awareness of the integrity of the courts and his own, is apt to be inclined, personally, to dismiss contemptible criticism of his judgments as being unworthy of serious attention. As Salmon, L J said at page 155 of the Blackburn case, supra:

"The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism."

Conclusion

[56] In my judgment, I am satisfied beyond reasonable doubt that Mrs. Major is guilty of contempt of court. I feel sure that she knowingly and intentionally fabricated the contents of her affidavit with the objective of demeaning me and to bring the Court into disrepute and prejudice the due administration of justice. She had every opportunity at the resumed hearing of the trial on 1 May 2019 to raise the issue of partiality or favoritism to the Plaintiffs and/or the law firm representing the Plaintiffs. She failed to do so. Her allegation that my logistical arrangements for the visit to Cat Island were mainly provided for by the Plaintiffs is contemptuous and was deliberately calculated to scandalize the Court.

[57] Having adjudged Mrs. Major guilty of contempt of court, I shall proceed to the second stage of my task. The sentencing hearing shall take place on 8 December 2021 at 3: 00 p.m.

[58] Last but not least, I owe a great depth of gratitude to Mrs. Green-Smith for her immeasurable assistance and her helpful submissions. For that, I am indeed grateful.

Dated this 23rd day of November 2021

Indra H. Charles
Justice