GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2009/0423

IN THE MATTER OF AN APPLICATION BY THE APPLICANT JOEL HORSFORD PURSUANT TO PART 56 OF THE CIVIL PROCEDURE RULES 2000

AND

IN THE MATTER OF THE APPLICANT MAKING AN APPLICATION FOR AN ADMINISTRATIVE ORDER FOR JUDICIAL REVIEW FOR CERTIORARI AND A DECLARATION ON THE CHIEF MAGISTRATE OF GRENADA COMMITTING THE APPLICANT TO STAND TRIAL IN THE HIGH COURT IN ITS CRIMINAL JURISDICTION AFTER FOLLOWING A CERTAIN PROCEDURE AT THE PRELIMINARY INQUIRY BASED ON A CERTAIN CONSTRUCTION OF SECTIONS 102-106 OF THE CRIMINAL PROCEDURE CODE, CAP. 2 OF THE 1994 REVISED LAWS OF GRENADA, AND SECTION 45 OF THE MAGISTRATES ACT, CAP. 177 OF THE 1990 REVISED LAWS OF GRENADA

BETWEEN:

JOEL HORSFORD

Applicant

and

THE ATTORNEY-GENERAL OF GRENADA

Respondent

Appearances:

Dr. F. Alexis, Q.C, with him Mr. A. Clouden for Applicant
Mr. A. Olowu for Respondent

2011: June 2, August 29
September 22

RULING

[1] This is an application, seeking the following relief:

1. An order of certiorari to remove into this Honourable Court and quash as being ultra vires, null and void, and of no effect in law, the decision made by the Chief Magistrate of Grenada on 20 July 2009 committing the Applicant Joel Horsford to stand trial in the High Court in its Criminal Jurisdiction on charges of several offences of stealing by reason of employment, allegedly committed between 2001 and 2005, when he worked at the Finance Department of the Royal Grenada Police Force; the Chief Magistrate, in committing the Applicant, misconstruing sections 102 – 106 of the Criminal Procedure Code, Cap. 2 of the 1994 Revised Laws of Grenada, and section 45 of the Magistrates Act, Cap. 177 of the 1990 Revised Laws of Grenada.

2. A declaration that the decision made by the Chief Magistrate of Grenada on 20 July 2009 committing the Applicant Joel Horsford to stand trial in the High Court in its Criminal Jurisdiction on charges of several offences of stealing by reason of employment, allegedly committed between 2001 and 2005, when he worked at the Finance Department of the Royal Grenada Police Force, was based on a misconstruction of the said provisions; so that the said committal was ultra vires, null and void, and of no effect in law.

3. Damages or compensation for humiliation, embarrassment, psychological stress and emotional pain suffered by the Applicant as a result of him being committed by the Magistrate to stand trial aforesaid.

4. Interest pursuant to section 27 of the West Indies Associated States Supreme Court Grenada Act, Cap. 336 of the 1990 Revised Laws of Grenada.

5. Further or other orders.

6. Cost.

[2] The Claimant challenges the procedure which the Chief Magistrate, Her Worship Tamara Gill, adopted to deal with the preliminary inquiry in which the Applicant was the Defendant.

[3] The Applicant was charged with six indictable offences relating to accusations that he had stolen money by reason of his employment in the Royal Grenada Police Force.

[4] That procedure surrounded the calling of witnesses who had given evidence in an earlier inquiry into the same charges held before a previous Magistrate between 3rd February 2006 and April 2008. The inquiry was not concluded before the previous Magistrate.

[5] The Chief Magistrate outlined the procedure she was going to adopt prior to the continuation of the preliminary inquiry.

[6] She indicated that she would call the witnesses individually, have them sworn, read their earlier depositions to them, and show them the exhibits.

[7] She would then have the witnesses confirm whether the evidence in the depositions was true and correct, and they would be asked to sign additional certificates, to which the Magistrate would also affix her signature.

[8] She would then invite the Prosecution and the Defendant to ask further questions of the witnesses in examination-in-chief and cross-examination respectively.

[9] This procedure was set out in the presence of the Applicant and Counsel Mr. A. Clouden. When the Magistrate outlined the procedure she intended to follow, Counsel for the Applicant immediately objected.

[10] The Magistrate overruled Counsel's objection and Counsel for the Defendant took no further part in the proceedings.

[11] The Magistrate proceeded to complete the preliminary inquiry and in July 2009 committed the Applicant to stand trial at the Criminal Assizes.

[12] The Applicant being dissatisfied with the procedure adopted by the Chief Magistrate applied for and was granted leave to apply for judicial review, hence the claim before the Court at this time.

[13] The Applicant states that the procedure adopted by the Magistrate was contrary to the statutory provisions.

[14] He asserts that a Magistrate would not hear the whole of the evidence in accordance with section 106 of the Criminal Procedure Code unless she herself receives the evidence, assessing the credibility of the witnesses. They assert that merely reading what another Magistrate has written down in a deposition is not good enough.

[15] Assessing credibility entails not just what is said, but observing the demeanour of the witnesses, which cannot be done by reading a deposition.

[16] The Applicant's position is that section 45 means that a Magistrate who continues the matter and carries it to conclusion needs to hear the matter to the extent appropriate, herself taking evidence and assessing the credibility of those giving that evidence.

[17] As the Magistrate in this case did neither, they assert she failed to comply with the statutory provisions. She relied on depositions taken by her predecessor.

[18] What she did was tantamount to telling the witnesses what to say. The witness hearing something read to him by the Magistrate and whether what he signed to was true and correct, is most likely to agree.

[19] This procedure adopted by Magistrate Gill contravenes section 58 of the Evidence Act of Grenada. In other words, the rule against hearsay was breached.

[20] The Applicant further contends that the Magistrate was without authority to follow the challenged procedure. No statue conferred on her the power to adopt the procedure which she did.

[21] In their submissions, the Respondent submits that sections 101-109 of the Criminal Procedure Code govern the practice and procedure for preliminary inquiries in Grenada.

[22] They involve sections 102 & 103 of the Criminal Procedure Code and state that these demonstrate the function of a preliminary inquiry which is for the Defendant to know what the case he or she has to meet.

[23] They argue that the essence of section 45 of the Magistrates Act is that it authorizes a Magistrate to continue and hear and make a judicial determination of a matter commenced by another Magistrate.

[24] Section 45 of the Magistrates Act ought to be read along with sections 102 – 106 of the Criminal Procedure Code in order to deal with this matter.

[25] The Respondent contends that the course adopted by the Court in the case at Bar, although not expressly authorized by the Criminal Procedure Code in the form of express statutory provisions, is in keeping with the demands of justice.

[26] They contend that though a Magistrate is a creature of statute, he/she still has a discretion in the exercise of those statutory powers, in the interest of promoting a fair trial of the issues.

[27] Sections 101 - 106 of the Criminal Procedure Code state as follows:

> "101. The Magistrate holding a preliminary inquiry may, in his discretion -
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> (i) give or refuse permission to the prosecutor, or his counsel, to address him in support of the charge, either by way of

opening or summing up the case, or by way of reply upon any evidence which may be produced by the accused;

(ii) receive further evidence on the part of the prosecutor, after hearing any evidence given on behalf of the accused;

(iii) adjourn the hearing on the inquiry from time to time and change the place of hearing, if, from the absence of a witness, the inability of a witness who is ill to attend at the place where the Magistrate usually sits, or any other reasonable cause, it appears desirable so to do, and may, from time to time, remand the accused if required:

Provided that no remand shall be for more than twenty-one days, the day following that on which the remand is made being counted as the first day;

(iv) order that no person, other than the officers of the Court, the persons engaged in the prosecution, and the accused and his counsel, if any, shall have access to or remain in the room or building in which the inquiry is held, if it appears to him that the ends of justice will be best answered by so doing; and

(v) regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Code or of any other statute for the time being in force.

102. (1) When the accused is before a Magistrate at a preliminary inquiry, the Magistrate shall take the evidence of the witnesses called on the part of the prosecution.

(2) The evidence of every witness shall be given in the presence of the accused; and the accused, or his counsel, shall be entitled to cross-examine each witness.

(3) The evidence of every witness shall be taken down in writing by the Magistrate in a legible hand, and on one side only of the paper, in the form of a deposition, and as nearly as possible in the witness' own words.

(4) The deposition shall, at some time before the accused is called on for his defence, be read over to and signed by the witness and the Magistrate; the accused, the witness and the Magistrate being all present together at the time of the reading and signing.

(5) Any witness who refuses, without reasonable excuse, to sign his deposition, may be committed by the Magistrate holding the inquiry by a warrant to prison, there to be kept until after the trial, or until the witness signs his deposition before a Magistrate:

Provided that, if the accused person is afterwards discharged, any Magistrate may order any such witness to be discharged.

(6) The signature of the Magistrate may be either at the end of the deposition of each witness, or at the end of several or of all the depositions, in such a form as to show that the signature is meant to authenticate each separate deposition.

103. (1) After the examination of the witnesses on the part of the prosecution has been completed, and the depositions have been signed as aforesaid, the Magistrate shall, unless he

discharges the accused, address him in these words, or to the like effect: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing, and may be given in evidence against you at your trial."

(2) Whatever the accused then says in answer thereto shall be taken down in writing, as nearly as possible in the accused person's own words, and shall be signed by him, if he will, and by the Magistrate, and kept with the depositions of the witnesses, and may, without further proof, be given in evidence at the trial.

104. The Magistrate shall then ask the accused if he wishes to call any witnesses. Every witness called by him who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken, signed and given in evidence in the same manner as the deposition of a witness for the prosecution.

If the accused calls no witnesses the Magistrate shall state that fact on the depositions.

105. When all the witnesses on the part of the prosecutor and of the accused, if any, have been examined, the Magistrate shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in such case any recognizance taken in respect of the charge shall become void.

In every case in which a Magistrate shall discharge a person accused before him as aforesaid, it shall be lawful for the Attorney General to require the Magistrate to transmit to him the

information and all the evidence taken in the case and it shall be the duty of the Magistrate forthwith to comply with such requisition; if the Attorney General, on perusing and considering the evidence, shall be of opinion that the accused ought not to have been discharged, it shall be lawful for him to apply to a Judge for a warrant for the arrest and committal for trial of the accused person; and if the Judge shall be of opinion that the evidence, as given before the Magistrate, was sufficient to place the accused person on his trial, it shall be lawful for him to issue a warrant for the arrest of the accused person and for his committal to prison, there to be kept until discharged in due course of law, and every person so proceeded against shall be further prosecuted in the same and the like manner as if he had been committed for trial by the Magistrate by whom he was discharged.

COMMITTAL FOR TRIAL

106. If, upon the whole of the evidence, the Magistrate thinks that a sufficient case is made out to put the accused on his trial, he shall commit him for trial to the next sitting of the Court:

Provided always that if the Court be then sitting, the Magistrate may, with the consent of the accused, commit him for trial forthwith."

[28] Section 45 of the Magistrates Act states as follows:

"Where a Magistrate has issued any summons or warrant, taken any evidence, commenced any hearing, or otherwise taken or commenced any proceeding or matter, whether civil, criminal or quasi-criminal or any other matter under any authority however conferred, and subsequently ceases to act as such Magistrate, it shall be lawful for the person in whose hands such summons or warrant may be to execute or serve the same in

> the manner as if the Magistrate who issued such summons or warrant had not ceased to act as such Magistrate; and any successor of such Magistrate or any person acting for or assisting such Magistrate, may hear, determine, execute, enforce, continue and carry to completion any proceeding or matter so commenced as aforesaid."

[29] This section on its ordinary meaning clearly gives the Magistrate the authority to continue and carry to completion any proceeding or matter commenced by another Magistrate who subsequently ceases to act in that capacity.

[30] Sections 101 – 104 of the Criminal Procedure Code govern the manner in which evidence to be taken by the Magistrate during the course of a preliminary inquiry. Particularly section 101 (v) clearly gives the Magistrate a discretion to regulate the conduct of the preliminary inquiry once the procedure adopted is not contrary to any statute in force.

[31] In Ex parte Bottomley and Others [1909] 2 KB:-

> "Several persons having been charged with conspiracy to defraud, a summons was issued, and the hearing commenced before a magistrate. When the inquiry had lasted a considerable time and the evidence of a large number of witnesses had been taken, the magistrate fell ill and was unable to continue the hearing, which had to be recommenced before another magistrate. At the commencement of the rehearing counsel for the prosecution proposed to take the following course: - To recall some of the witnesses called at the first hearing; to reswear them; to read to them their depositions taken at that hearing, directing them to correct the evidence if and where it was inaccurate; to ask them any additional questions that might be thought advisable; then to tender these witnesses for cross-examination, with liberty for the prosecution to re-examine where necessary; and then to proceed with the oral examination of those witnesses whom the prosecution intended to call but had not called on the first hearing:-
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> *Held*, that there was nothing illegal in the course proposed, and that to accede to the proposal if he thought it expedient in the interests of justice so to do was within the discretion of the magistrate, with which the Court would not interfere."

[32] Phillimore J stated:

> "We can find no authority and counsel in the time at their disposal for inquiry - … have found no authority to show that if a Magistrate elects to take the course which the applicant seeks to prevent, he will be doing anything wrong."

[33] He later on in his judgment states:

> "There is therefore no authority that the course proposed to be taken is contrary to law. To read over to a jury on a second trial the evidence taken at a former trial is a course to which we are well accustomed and the practice is well established in this sense, that it is a matter within the general discretion of the presiding judge to be exercised according to the demands of justice."

[34] He further goes on to say:

> "The practice in the case of rehearing before another Magistrate is to reswear the witnesses and read over their evidence. In Reg. v Jeffers the Court held that this was the proper course."

[35] I adopt the words of Benjamin J in Peter Duncan v DPP and Commissioner of Police GDAHCV2003/0174 where he stated:

> "In order to bring section 45 [of the Magistrates Act] into conformity with the Constitution, there must be read into it the limitation that the succeeding Magistrate must adopt a procedure that meets the common law demands of justice. The proper course would have been to follow the course which came under scrutiny with approval in Bottomley. Such a course is commended to Magistrates faced with taking over preliminary inquiries or other proceedings already commenced."

[36] The learned Magistrate had to carry on the proceedings in a manner which allowed for fairness and justice not only for the prosecution but for the accused.

[37] I can find no fault in the method adopted by the Learned Magistrate, as she, by the course she adopted, allowed both prosecution and defence the opportunity to examine and cross-examine the witnesses, as well as giving them the opportunity

to reaffirm their earlier testimony and to correct, add or alter anything which had been previously testified to.

[38] The procedure adopted was fair and in keeping with the interests of justice. She exercised her discretionary powers correctly and she was not telling the witnesses what to say, neither do I find that the procedure adopted breached the hearsay rule.

[39] In the circumstances, the committal of the Applicant to stand trial was not ultra vires, the proceedings are not rendered null and void and of no effect. I will not discharge the Applicant.

[40] I cannot grant the Applicant the Orders prayed for in the Fixed Date Claim form filed on the 29th October 2009.

[41] I would dismiss the application with costs to the Respondent in the sum of $3,500.00.

[42] I wish to thank Counsel for their insightful and helpful submissions in this matter.

Margaret Price Findlay
High Court Judge