EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

(CIVIL)

BRITISH VIRGIN ISLANDS
CLAIM NO. BVIHCV2014/0142

BETWEEN:

HERBERT POTTER

Claimant

and

AYANNA BAPTISTE DABREO

Defendant

Appearances:

Mr Sydney Bennett QC and Corrine George for the Appellant
Mr. Paul Webster QC and Akila Anderson the Respondent

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2014: November 20th

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JUDGMENT

[1] The contempt of court jurisdiction has been described as the "most extreme means of dealing with those who disrupt court proceedings". It is a course of last resort only to be exercised in the most serious of cases where the behaviour can clearly be proved and when less drastic remedies such as ejecting an offender or adjourning the proceedings may be inappropriate. Having said this, there can be no doubt that it is a necessary attribute of a court that it has the power to deal with acts that are a challenge to its authority, an insult to integrity and which are disruptive to its processes or otherwise disrespectful.

[2] During the case management conference conducted in this matter, the Respondent in this Appeal conceded that decision as regards sentence should be set aside on the basis that she had exceeded her jurisdiction under the statute. As a result, this aspect of the appeal is not in dispute and this Court is not required to address it.

[3] It is also common ground that the relevant jurisdiction is that prescribed at section 7 of the Contempt of Court Act Cap 14 of the Laws of the Virgin Islands which provides:

> "If any person shall wilfully insult a Judge of the Court of Summary Jurisdiction during his sitting in Court, the Judge of such Court shall order such person to pay a fine not exceeding forty-eight dollars and in default of payment within fourteen days after the making of such order, may by warrant under his hand commit the person to prison for any term not exceeding fourteen days without labour."

[4] In construing this statute, this Court is satisfied that a purposive approach should be adopted which points to a broad construction of the statutory provisions. However, it is clear to this Court that in construing the expression "wilfully insult," the word "wilfully" means "intentionally" and "deliberately" in the sense that what is said or done is intended as an insult and it imports a notion of purpose[1].

[5] The Court is also satisfied that it is now settled that mere discourtesy falls well short of insulting conduct let alone wilfully insulting conduct which is the hall mark of this class of contempt.

[6] The case before this Court has proceeded on the footing that the contempt consisted of wilfully insulting the Magistrate during her sitting in Court. Having reviewed the learned Magistrate's reasons and her Notes of Proceedings and having reviewed the relevant law, this Court is satisfied that if viewed in isolation, each individual complaints would not be serious enough to warrant contempt proceedings. In that regard, the Court applied the ratio in the Izuora v R [1953] AC 327 at page 336 and Lewis v Judge Ogden at page 689.

[7] What is apparent however is that in formulating her conclusions in regard to the *actus reus* and the *mens rea* of the charge, the Magistrate relied on an amalgam of the complaints as well as her personal knowledge of the historical interaction between the Appellant and the Court. It may well be that when so viewed, the totality of the evidence could have properly grounded the conclusions drawn; but in so doing, the Magistrate could not have lost sight of the fact that she had embarked on an exceptional jurisdiction within the realm of criminal proceedings.

[8] The election to exercise the power to punish for contempt should not be undertaken hastily and without first advising oneself not only as to the relevant law but as to the applicable procedures to be adopted. This cautionary approach is warranted because by their very nature, contempt proceedings are apt to place a "judicial officer in difficult position of framer of the charge; prosecutor of the charge; repository of knowledge of the relevant

[1] Lewis v Judge Ogden [1984] CLR 682

events…"[2] and ultimately adjudicator and sentencer A magistrate may be at once a witness, possibly a victim of the contempt, he or she is certainly an initiator of the proceedings, he or she must decide issues of fact and determine the charge and then make a determination as to whether the charge has been made out beyond a reasonable doubt. Thereafter, he or she may then make an order for the punishment or discharge of the alleged contemnor.

[9] This can be a significant burden for any judicial officer and this no doubt explains why courts have repeatedly emphasised that a summary trial for contempt by the same judge should be sparingly undertaken and then with great caution. In Balogh v St. Alban's Crown Court [1975] QB 73, the Court described the contempt power as "salutary and dangerous," to be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. Wisdom and restraint clearly must be applied.

[10] The criminal and summary nature of these proceedings demands that there be scrupulous adherence to the principles of fairness. This requires compliance with procedural safeguards which are designed to protect the interests of the contemnor and to mitigate the risk of unfairness. They include granting adjournments, affording a contemnor an opportunity to take legal advice, providing the contemnor with a clear articulation of the charge, providing the contemnor with full particulars of the case which is alleged against him, and giving him every chance to meet the allegations (by giving and calling evidence and making submissions).

[11] Given the factual matrix which is recounted in the Respondent's *ex post facto* reasons and the apparent contemporaneous Notes of Proceedings, the Court is satisfied that the determination of these proceedings would have demanded that the Respondent:

i. Set out the charge including the full particulars of the conduct complained of. This could have been done orally or in writing. What was essential was that the Appellant be made aware of the fact that he had been charged. The Respondent should also satisfy herself that the Appellant understood the charge which was being laid including the full scope of the conduct complained of.

ii. Afford the Appellant the opportunity to consider the charge and if necessary to seek further legal advice, or an adjournment or perhaps further particulars of the charge. Fairness may demand that the Appellant be given some time to consider the charge and determine what course he should take.

iii. Give the Appellant the opportunity to state whether he pleaded guilty or not guilty to the charge.

[2] Clampett v Attorney General (*Cth*) [2009] 260 ALR 462

iv. In the event that the Appellant pleaded not guilty to the charge, give him the opportunity to present evidence and to make submissions relevant to the determination of the charge. This is fundamental to due process and it imposes on the Respondent an obligation to ensure that she has not made up her mind until everything that can reasonably be weighed in the balance has been brought to the fore.

[12] Having adopted this procedure, the Magistrate was then required to be satisfied beyond reasonable doubt that the Appellant was guilty of the charge. In so doing, she was required to consider carefully all of the evidence and keep at the forefront of her mind the unusual role she was undertaking in this process. Additionally, in the Court's view, where the alleged contemnor is barrister/ officer of the court, it is especially critical that he be given an opportunity to provide an apology to the court prior to being found guilty and certainly prior to the imposition of sentence.

[13] Counsel for the Appellant submitted that the Respondent in this case observed none of these essential aspects of procedural fairness. This position is not totally refuted by Respondent. Counsel for the Respondent submitted that in this summary context all that was required was that the Appellant be aware of the gist of the complaint against him. This Court is persuaded by the submissions of Counsel for the Appellant that this would have been wholly inadequate in this context. In that regard, the Court has applied the ratio in MacGroarty v Clauson [1989] 167 CLR 251 at page 255 – 256. It is also patently clear from the evidence and materials before the Court that the Magistrate failed to adhere to the long settled procedural safeguards.

[14] In the premises, the Court is satisfied that the conviction is unsafe and should be set aside.

[15] However, nothing in what has been said should be taken to condone the actions of the Appellant. There can be no doubt that counsel has "an overriding duty to the court, to the standards of his profession and to the public".[3] This duty requires him to "contribute to the orderly, proper and expeditious trial of causes in our courts"[4]. This Court is satisfied on the untraversed evidence in this case that the Appellant's conduct was discourteous, possibly offensive and certainly inconsistent with the standards of conduct expected of an officer of the court, and moreover one charged with public office. There are serious lessons which Counsel should take away from this entire episode and this Court hopes that they will not be lost on him. In any event, it seems to the Court that his conduct warrants some words of advice/caution from his seniors and it is hoped that this will be undertaken.

[3] Rondel v. Worsley (1969) 1 AC 191, at p 227 per Lord Reid

[4] Saif Ali v. Sydney Mitchell & Co. (1980) AC 198, at page 233

[16] In the event that he does not properly counsel himself, it is almost inevitable that this scenario will be repeated, no doubt without the errors which happened here and possibly with more dire consequences.

[17] **In the premises, the Court's Order is as follows:**

1. **Appeal allowed.**
2. **Conviction and sentence is set aside.**
3. **No order as to costs.**

**Vicki Ann Ellis**
**High Court Judge**