THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. ANUHCV 2017/0004

IN THE MATTER of a warrant dated 30th March 2012 extraditing the Applicant to the United States of America to face trial on an indictment filed on 18th June 2009 which indictment has been superseded by an indictment filed on 4th May 2011 which does not name the Applicant as a defendant

IN THE MATTER of an application for a writ of Habeas Corpus pursuant to CPR 57.2

BETWEEN:

LEROY KING

Applicant

And

THE MINISTER OF FOREIGN AFFAIRS

Respondent

Before: The Hon. Mde. Justice Rosalyn E. Wilkinson

Appearances:
Dr. David Dorsett for the Applicant.
Ms. Bridget Nelson for the Respondent.

2018: January 29

ORAL JUDGMENT

[1] **WILKINSON, J.:** The primary facts in this matter are not in contention. The matter of Mr. King's extradition to answer an indictment filed in a federal court in the United States of America has had a long legal history in the courts of Antigua and Barbuda. Much of it at this juncture is not relevant to the present claim and application for a writ of habeas corpus and application of the Minister to strike out Mr. King's claim and application.

[2] Mr. King was the former administrator and chief executive officer of the Financial Services Regulatory Commission. In 2009, a grand jury sitting in the criminal court of the United States District Court, Southern District of Texas, Houston Division, indicted Mr. King on a 21 count indictment.

[3] On 18th June 2009, the United States Government filed in the federal courts of the United States of America a 21 count indictment ("the 2009 indictment"). The indictment was intituled United States of America v. Robert Allen Stanford, Laura Pendegest-Holt, Gilberto Lopez, Mark Kuhrt and Leroy King – Defendants.

[4] Following the filing of the 2009 indictment, on 24th June 2009, the process of extradition of Mr. King to the United States of America to appear before a federal court started with a formal request to the Government of Antigua for extradition of Mr. King. On 29th June 2009, a provisional arrest warrant was issued and Mr. King surrendered to law enforcement at Antigua and Barbuda. He was arrested. He applied for bail and was granted bail.

[5] On 23rd September 2009, the Minister pursuant to section 9 of **The Extradition Act 1993** issued an 'authority to proceed' for the commencement of the extradition proceedings for Mr. King.

[6] A number of legal challenges followed the Minister's action of 23rd September 2009.

[7] On 4th May 2011, the United States of America Government filed another indictment which was headed "SUPERSEDING INDICTMENT" in the United States District Court Southern District of Texas Houston Division ("the 2011 indictment"). The 2011 indictment was intituled United States of America v. Robert Allen Stanford. A copy of the indictment was exhibited to Mr. King's affidavit in support of his application for a writ of habeas corpus. An issue arose as to the copy meeting disclosure requirements pursuant to **The Extradition Act 1993.** For the moment the Court leaves that issue aside.

[8] A review of the 2011 indictment finds that to commence under its introduction titled "Relevant Entities and Individuals" Mr. King is described as a co-conspirator and so too are other persons named in the 2009 indictment. There are several paragraphs which speak of co-conspirators as a whole and as individuals. In relation to Mr. King, in addition to being captured under the general description of "co-conspirator", Mr. King is further described as a co-conspirator in for example the following paragraphs:-

> "11. Leroy King, a co-conspirator not named as a defendant herein, was the Administrator and Chief Executive Officer for the Antigua Regulatory Commission. Among other things, King was responsible for Antigua's regulatory oversight of SIB's investment portfolio, which involved reviewing SIB's financial reports for the Antiguan Government and responding to request by foreign regulators, including the SEC, for information and documents about SIB's operations.
>
> 28. In addition to ensuring that Antiguan regulators whom he supervised did not effectively scrutinize SIB, King also assisted STANFORD in obstructing an investigation by the SEC. In or about 2005, the SEC initiated an investigation of Stanford Financial and began making official inquires with the Antiguan Regulatory Commission headed by King regarding the value and content of SIB's purported investments. As part of that investigation, the SEC confidentially requested the assistance of King in determining whether SIB and Stanford Financial had perpetrated a fraud upon investors.
>
> 29. In or about September 2006, the SEC submitted a letter to the Antiguan Regulatory Commission confidentially requesting, among other things, copies of the Antigua Regulatory Commission's exam reports regarding SIB. King provided the SEC's confidential requests for information to STANFORD and his co-conspirators. King then made false representation in response to official inquiries from the SEC and allowed employees of Stanford Financial to assist in preparing the Antiguan Regulatory Commission's response to the SEC's confidential inquiry.
>
> 36. It was further a part of the conspiracy that STANFORD would make regular corrupt payment of thousands of dollars in cash and other items of value, including Super Bowl tickets, to King, the Administrator and CEO of the Antiguan Regulatory Commission."

[9] According to Mr. King, it was during the last week of December 2016, that he became aware through his new Counsel at the United States of America that the 2009 indictment upon which the extradition request was premised was superseded by the 2011 indictment and further, he was not named as a co-defendant therein. This was the basis for his claim and application for a writ of habeas corpus.

[10] On 4th January 2017, Mr. King filed a notice of application pursuant to **CPR 2000** rule 57.2. It was supported by affidavit filed on even date. Therein he sought the following orders:

i. That the Minister do produce to the High Court on a date to be fixed in January 2017, the body of Mr. King and be prepared the state the day and cause of Mr. King being taken and detained so that the Court may then (and) there examine whether such cause is legal.

ii. A writ of habeas corpus in form 22 be issued forthwith.

iii. Costs of the application to be costs in the cause.

iv. Liberty to apply.

The grounds of the application were:

i. Mr. King was detained pursuant to a warrant issued for his extradition to the United States of America. He was subsequently granted bail. The order for Mr. King's extradition was based on a request of the Government of the United States of America that Mr. King be extradited to face trial on an indictment filed on 18th June 2009, in which Mr. King was named as a defendant.

ii. On 4th May 2011, the Government of the United States of America filed a superseding indictment which indictment does not name Mr. King as a defendant.

iii. To the best of Mr. King's knowledge, there is no extradition request with respect to Mr. King and in which Mr. King is named as a defendant in a subsisting indictment.

iv. The Minister has no jurisdiction to detain or order the detention of Mr. King if he is not the subject of an extradition request for a subsisting indictment.

v. The warrant issued by the Minister is the outcome of an abuse of process of the Court.

vi. In the circumstances the detention of Mr. King for extradition to the United States of America is wholly invalid and unlawful.

[11] The Court on being given sight of the application on 11th January 2017, directed that the Minister be served and fixed the hearing of the application for 26th January, 2017.

[12] On 26th January 2017, the Court being of the view that an application could not stand on its own to commence any proceedings made the following order:

i. Mr. King to file his fixed date claim form within seven (7) days.

ii. The Minister to file his reply by affidavit within 14 days thereafter.

iii. Hearing of the matter is adjourned to 23rd February 2017, at 11.00a.m.

iv. Mr. King is to draw, file and serve this order.

[13] On 27th January 2017, Mr. King filed his fixed date claim form. Therein he sought the following relief:

i. The issuance of a writ of habeas corpus pursuant to **CPR 2000** rule 57.

ii. Damages.

iii. Costs.

iv. Interest pursuant to section 27 of the **Eastern Caribbean Supreme Court Act**.

v. Any other relief that the Court deems fit pursuant to section 20 of the **Eastern Caribbean Supreme Court Act.**

[14] On 15th February 2017, the Minister filed an acknowledgment of service and therein he indicated an intention to defend the claim and filed an application seeking an order striking out the statement of case pursuant to **CPR 2000** rule 26.3(1) (b) and (c). The grounds of the application were:

i. The statement of case does not disclose any reasonable ground for bringing the claim against the Minister.

ii. The case is not fit for trial since Mr. King has no real prospect of succeeding on the claim[1].

iii. the application is an abuse of process of the Court.

iv. Mr. King failed to follow the appropriate procedure under section 28 of **The Extradition Act No. 12 of 1993**.

[15] The Minister's application was supported by the affidavit of the Director of Public Prosecutions, Mr. Anthony Armstrong filed on even date. Therein Mr. Armstrong deposed that pursuant to section 13 of **The Extradition Act No.13 of 1993**, Mr. King had previously made an application to the High Court for a writ of habeas corpus following his committal and his application was refused. He had appealed that decision, and the Court of Appeal had dismissed his appeal. In 2012, Mr. King filed applications for administrative orders and they came on for hearing October 2016. Mr. King's application for relief under **The Constitution** and his application for leave to file an application for judicial review of the decision the Minister having been fully heard, the decision of the Court was pending. The issue now raised by Mr. King in the present application, that is, the lawfulness of the order to extradite Mr. King, was also the same issue that he has raised in his application for leave to apply for judicial review. It was an abuse of process of the court to manipulate the judicial process in a manner that may lead to two (2) courts of coordinate jurisdiction giving overlapping decisions with possible conflicting outcomes. Further, the statement of case did not disclose any facts or law capable of proving the allegation made by Mr. King that he is not the subject of any criminal indictment in any court in the United States of America. Mr. King had not adduced any evidence that impugns the decision of the Minister to order his extradition to the United States of America. In 2009, a grand jury sitting in the criminal court of the Southern District of Texas, Houston Division, indicted Mr. King on a 21 count indictment. As the Director of Public Prosecutions, Mr. Anthony was advised by Mr. John P. Pearson, Deputy Criminal Chief, Major Fraud Section of the United States Department of Justice, in the United States Attorney's Office, Southern District of Texas, whom he believed, that at no time did Mr. King make an application to the United States District judge for the Southern District of Texas, Houston District for the 21 count indictment against him to be dismissed. Further, as advised by Mr. Pearson, whom he believed,

[1] CPR 2000 rule 15.2 (a)- This is a summary judgment test and not an option in consideration on an application to strike out a claim under rule 26.3 (1) (b) and (c) – see Territory of the Virgin Islands HCVAP 2008/022 Citco Global Custody v. Y2K Finance Inc.

the United States Government Department of Justice had not withdrawn the 21 count indictment against Mr. King. The 2011 indictment against Mr. Allen Stanford did not nullify the 2009, grand jury indictment against Mr. King and had no bearing on the 21 count indictment against Mr. King. The 2009, indictment against Mr. King for the offences therein specified had not been withdrawn, dismissed or discontinued. Criminal proceedings on the indictment against Mr. King were still pending in the United States of America. Subject to the outcome of the decisions pending before the high court in Mr. King's application for administrative orders, the United States of America still expected the State of Antigua and Barbuda to extradite Mr. King in accordance with its obligations under the bilateral Treaty between the 2 Countries. Finally, Mr. King had failed to follow the procedure prescribed by section 28 of **The Extradition Act 1993**, for the authentication of foreign documents to be used in his proceedings.

[16] On 6th April 2017, the matter came on for hearing. The matter was listed for hearing at 11:00 a.m. Neither Counsel nor the Parties appeared before the Court. The Court stood the matter down for 15 minutes and resumed the hearing at 11:17 a.m. At 11:17 a.m. only Counsel for Mr. King and Mr. King were present. The Court heard submissions from Mr. King's Counsel on his claim and application.

[17] At the conclusion of hearing Counsel, the Court put to Counsel if it could summarize the position to say that at this time before the Court Mr. King's application for the writ of habeas corpus rest solely on the matter of the 2009 indictment being superseded by the 2011 indictment. Counsel responded: "Yes. Very narrow issue. Not going to any other issue."

[18] The decision on his claim and application was reserved and it was ordered that Mr. King draw, file and serve the order.

[19] On 26th April 2017, the Minister filed an application seeking leave to file submissions after the hearing supported by an affidavit from the Director of Public Prosecutions, Mr. Anthony Armstrong. The Minister's application was fixed for hearing on 18th May 2017. The order sought was:

> i. an order pursuant to **CPR 2000** rule 26.1(2) (w) for the Minister to file submissions in support of his application for Mr. King's statement of case to be struck out.

The grounds of the application were:

i. The application to strike out Mr. King's statement of case was filed on 15th February 2017, and the Registry had given a hearing date of 23rd February 2017, at 11.00a.m.

ii. The court dates for the week commencing 20th February 2017, and ending 24th February 2017, were vacated.

iii. On 10th March 2017, the rescheduled court list from February 2017, was emailed to attorneys-at-law on the list of the Bar Association. The notice stated that committal applications fixed from 23rd February 2017, were rescheduled to 27th April 2017.

iv. Counsel for the Minister inquired of the Registry of the hearing date of the matter. No date other than that appearing on the rescheduled court list was provided to the Bar Association.

v. Counsel for the Minister was expecting communication from the Registry by method employed in February 2017, and March 2017, but it never arrived. As a result, Counsel for the Minister was unaware that the matter had been rescheduled for 6th April 2017.

vi. The Minister wished for an opportunity to file written submissions in support of its application to strike out the claim.

vii. Alternatively, the submissions filed and served with the application to strike out the statement of claim be deemed properly filed and served notwithstanding that there had been no appearance of the Minister at the hearing.

[20] In his affidavit Mr. Anthony deposed that he was directly involved as Counsel at all stages of the proceedings to extradite Mr. King to the United States of America and starting with the extradition hearing in the magistrate's court, the habeas corpus application in the high court, the appeal before the court of appeal and most recently Mr. King's application for administrative orders in the high court before Justice Ramdhani. In regard to the Minister's application filed 15th February 2017, seeking an order to strike out Mr. King's statement of case, the Registry had given a hearing date of 23rd February 2017, at 11:00 a.m. A copy of the application with hearing date was exhibited. On 2nd February 2017, the Court's hearing list for 23rd February 2017, was emailed to all attorneys on the list of the Bar Association. This suit did not appear on the hearing list even though the date was on the application. A copy of the cover letter from the court administrator annexing the hearing list

was exhibited. During the week of February 20th -24th 2017, the Registry notified Counsel of the Attorney General's Chambers that matters for the week were to be rescheduled due to the unavailability of the Judge. On 10th March 2017, the rescheduled lists for the Court was emailed to all attorneys on the Bar Association's list. Further a notice stated that committal applications which were previously fixed for 23rd February 2017, were rescheduled for 27th April 2017. A copy of the letter was exhibited. Mr. Anthony was informed by Counsel for the Minister, that when she made inquiries of the court administrator about a new date for the Minister's application, she was informed that Thursdays were days set aside for committal proceedings. Inquiry was made of the court clerk to find out about the new hearing date. Further communication from the court administrator was that the hearing date had not yet been set and Counsel would be informed. Counsel thereafter expected to be informed of the new hearing date for the Minister's application by the usual means of a telephone call or email from the Registry thru the Bar Association. According to Mr. Anthony, it was not until 20th April 2017, at 10:00 a.m. when Counsel for the Minister was at the Registry and made inquiry about the new hearing date of the matter that the Court's clerk presented her with a copy of a hearing list for 6th April 2017, together with a copy of the Court' draft order made on 6th April 2017. The hearing list of 6th April 2017, had not been listed on the Eastern Caribbean Supreme Court's website, nor had it been sent to the secretary of the Bar Association for publication to the attorneys as was normal practice and as was followed at 2nd February 2017, and 10th March 2017. Therefore due to no fault of his own, the Minister was deprived of an opportunity of having his day in court and Counsel missed an opportunity to present his case on the application to strike out Mr. King's claim and application for a writ of habeas corpus on the ground of abuse of process of the court. Further, on 6th April 2017, the Court had ordered Mr. King to draw, file and serve its order of that date. Up to 26th April 2017, the order of 6th April 2017, had not been served on the Minister, nor had the professional courtesy of apprising Counsel for the Minister that the matter had been heard in the absence of the Minister been granted. Service of the order would have alerted Counsel and the Minister that the hearing had proceeded in their absence and the application would have been made promptly thereafter. The Minister had a good and arguable case and prayed that the Court would permit the filing and service of the written submissions.

[21] On 18th May 2017, when the Minister's application for leave to file submissions after the 6th April 2017, hearing came on, Counsel Mr. Warren Cassell holding papers for Mr. King's Counsel, Dr.

David Dorsett, informed the Court that Mr. King opposed the application and his Counsel Dr. Dorsett was presently at England before the Privy Council in another matter. The Court made the following order:

i. The hearing of the Minister's application filed 26th April 2017, was adjourned to 5th October 2017.

ii. Mr. King was to file his affidavit in reply to Minister's application on or before 6th June 2017, and the Minister is to file any further affidavit in reply within 14 days.

ii. The Minister is to draw, file and serve this order.

[22] As scheduled, the Minister's application filed 26th April 2017, came on for hearing on 5th October 2017. At the hearing the Court was informed that neither Party had been notified in writing by the Registry of the rescheduled date from the 23rd February 2017 to the 6th April 2017. Further, on 6th April 2017, during the 15 minutes that the Court stood the matter down for the possible late appearance of Counsel and the Parties, someone within the Registry had telephoned Counsel Dr. Dorsett and inquired of him if he was not attending court. Counsel for Mr. King confirmed same. No similar courtesy of a telephone inquiry was extended to the Minister or the Minister's Counsel.

[23] At that juncture, the Court remarks that such telephone call was highly improper. Secondly, if a decision was made by an officer in the Registry to make a telephone call, then both Parties ought to have been granted the courtesy. Making a telephone call to only one side without good excuse to the Court's mind simply smacks of bias.

[24] The Court in light of the circumstances which unfolded on 6th April 2017, and in the interest of justice, proceeded to hear both Parties on the Minister's application to strike out the claim. This approach in any event covered Mr. King's submissions of 6th April 2017.

Law

[25] There is no contest as to Mr. King's fundamental rights and freedoms under sections 3, 5, and 8 of **The Constitution of Antigua and Barbuda** and so the Court need not set out those sections here. **CPR 2000** rule 57 provides for the procedure on an application for a writ of habeas corpus.

[26] The Minister's application is pursuant to **CPR 2000** rules 26.3(1) (b) and (c) and those rules provide:

> "26.3(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
>
> (a)…
>
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
>
> (c) the statement of case or the part to be struck out is an abuse of process of the court or is likely to obstruct the just disposal of the proceedings;" ….

[27] As to how the Court ought to proceed on an application to strike out a claim pursuant to rule 26.3(1), the Court is guided by Rawlins JA in **Caribe (Realties) Canada Limited/Immeubles Caribe Ltee et al v. Wycliffe Baird.**[2] There His Lordship said:

> "[12] …rule 26.3(1) (b) of CPR 2000 provides a summary procedure under which striking out should only be done in cases in which there is a total absence of a proper cause of action.
>
> [13] The learned Master correctly stated the principle on which a court would dismiss a claim against a defendant because it discloses no or no reasonable cause of action against them. She extracted it from the statement of Sir Denis Byron, CJ, in the case of **Baldwin Spencer v. The Attorney General of Antigua and Barbuda et al**[3] where it was stated that this summary procedure should only be used in clear and obvious cases, when it can be clearly seen on the facts of the statement of claim that it is obviously unsustainable or is in some other way an abuse of the process of the court.

[2] St. Christopher & Nevis Civil Appeal No.10/2005.
[3] Antigua & Barbuda Civil Appeal No.20A of 1997.

[14] The Master rationalized and explained the principle. She stated that the court has to caution itself against conducting a preliminary trial of a case without discovery, oral examination, or cross-examination. This, she stated, the court must balance against giving effect to the overriding objective of the Rules which is to deal with cases justly by ensuring the most efficient use of the resources of the court and to save the parties unnecessary expense, through the case management process, by preventing a claimant who does not have a reasonable sustainable case from proceeding to trial."

[28] In the later case of **Citco Global Custody NV v. Y2K Finance Inc.**[4] Edwards JA once again set out the principles governing an application made pursuant to rule 26.3 (1) (b). She said:

"[12] Striking out under the English CPR, r 3.4 (2) (a) which is the equivalent of our CPR 26.3(1) (b), is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about or if it is incoherent and makes no sense, or if the facts its states, even if true, do not disclose a legally recognizable claim against the defendant.

[13] On hearing an application made pursuant to CPR 26.3(1) (b) the trial judge should assume that the facts alleged in the statement of case are true. "Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inference from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny."

[14] Among the governing principles stated in **Blackstone's Civil Practice 2009** the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisprudence to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as request for information, and the examination and cross-examination of witnesses often change the

[4] Territory of the Virgin Islands HCVAP 2008/022.

complexion of a case. Also, before using CPR 26.3 (1) to dispose of "side issues", care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly."

[29] As to the matter of the Court interpreting foreign authority and thus law, and making a finding on the state of the 2011 indictment, both Counsel provided the Court with authorities.

[30] At the hearing of 6th April 2017, on the issue of a superseding indictment, Counsel for Mr. King relied heavily on the cases **Opara v. NEOCC Warden Case No. 4:14 CV 0827 (N.D. Ohio, 2014), United States v. Miner No. 3:11-cr-25 (E.D.Tenn., 2012)** and **Untied States of America v. David Broecker (W.D.Ky., 2012)**. Counsel said that he had not served copies of the cases on Counsel for the Minister because he had only become aware when he checked the website on 5th April 2017, that the matter was coming on for hearing on 6th April 2017.

[31] **Opara** concerned a single defendant against whom an indictment was issued on 15th April 1998, and a superseding indictment was issued against him in August 1998. On 3rd September 1998, a jury convicted Mr. Opara on all 6 counts of the superseding indictment. Mr. Opara challenged his conviction based on the later indictment. Justice Polster is dismissing Mr. Opara's complaint at page 5 of his decision said:

> "A 'superseding indictment' refers to an indictment issued in the absence of a dismissal of the first. An indictment is only 'classified as 'superseding' when it supplants a valid, pending indictment'….. By definition, the term supplant means 'to take the place of (someone or something that is old or no longer used or accepted; to supersede)…. The underlying premise is that the superseding indictment is considered a separate and distinct charging instrument…. There is an expectation that the original indictment will be or is effectively dismissed when the superseding indictment is filed."

[32] **Miner** a suit concerning a single defendant, was concerned the issuance of multiple indictments. There Justice Phillips said:

"In addition, the Government made a concerted effort to remedy any confusion that may have resulted from the issuance of four varying versions of the Original Indictment. On September 2, 2011, the Court held a lengthy hearing with respect to the indictments. [Doc. 29.] And on September 20, 2011, the grand jury returned a Superseding Indictment against the Defendant. [Doc.30] Though Defendant argues that the Superseding Indictment creates further confusion and merely puts a fifth document into 'play' in this case, the Court finds it well established that, 'just as an *7 amended complaint supplants the original complaint and becomes the only live complaint in a civil case, a superseding indictment supplants the earlier indictment and becomes the only indictment in force…. The Superseding Indictment is the only indictment currently 'in play' and has remedied any prior discrepancies in this case."

[33] In **Broecker,** once again a suit concerning a single defendant, Mr. Broecker filed a motion seeking an order to dismiss a superseding indictment on the ground that it violated his constitutional right. Justice Coffman said:

"Broecker moved in the alternative that, should the court not dismiss the superseding indictment, it hold the superseding indictment in abeyance pending trial on the original indictment. The court cannot do so because a superseding indictment supplants a preceding indictment to become the only indictment in force…. While a district court may dismiss a superseding indictment where sufficient grounds exist to do so and thereby reinstate a preceding indictment … it does not have the discretion to choose to proceed on a civil complaint that is amended by a subsequent complaint.

The same reasoning applies to Broecker's renewed motion to dismiss the original indictment; because that indictment has been supplanted by the superseding indictment, Broecker's motion is technically moot."

[34] Counsel for the Minister on the matter of considering and applying foreign law referred the Court to **DOMHCVAP 2012/0001 Ronald Green v. Petter Saint Jean and Maynard Joseph v. Roosevelt Skerrit.** There Pereira CJ said:

"[37] Dicey and Morris in considering the mode of proof which is required for proving foreign law states:

'It is now well settled that foreign law must, in general, be proved by expert evidence. Foreign law cannot be proved merely by putting the text of a foreign enactment before the court, nor merely by citing foreign decisions or books of authority. *[Nelson v. Bridport (1865) 8 Beav. 527, 542; Buerger v. New York Life Assurance Co. (1927) 96 L.J.K.B. 930, 940, 942 (CA); Bumper Development Corp v. Commissioner of Police of the Metropolis [1991] 1 W.L.R. 1362, 1371 (CA); cf Callwood v. Callwood [1960] A.C 659 (PC.)]* Such materials can only be brought before the court as part of the evidence of an expert witness. *[Bumper Development Corp v. Commissioner of Police of the Metropolis, ibid., Glenmore International AG v. Metro Trading International Inc. [2001] 1 Lloyd's Rep. 284; Dymocks Franchise Systems (NSW) Pty Ltd. v. Todd [2002] UKPC 50. [2004] 1 N.Z.L.R 289, [2002] 2 All ER (Comm.) 849 (PC)]* since without his assistance the court cannot evaluate or interpret them.

[38] In support of this statement are the authorities in this region which show not only the necessity of proving foreign law but also the manner in which foreign law must be proved. In **Dabdoub v. Vaz** the parties pleaded and presented expert evidence to the court to establish what "by virtue of his own act" and "any acknowledgement of allegiance, obedience or adherence to a foreign power or state" encompassed. The Jamaica Court of Appeal relied on the evidence which was before it to make the determination as to whether Mr. Vaz was disqualified under the similar section 40(2)(a) of the Constitution of Jamaica.

….

[42] For the same reasons, quite apart from the fact that the respondents proffered no pleadings or evidence and therefore ought not to have been allowed to raise the issue of efficacy of their renunciations of French citizenship only by way of their skeletal arguments, the respondents will have similarly failed on this issue given the absence of evidence of French law to prove the assertion of renunciation sought to be relied on by the respondents.

[43] Accordingly, I would dismiss the appeals on this ground alone. I do however agree that the appeals ought to be dismissed for other reasons proffered by Mitchell JA (Ag).

I would allow the respondents' counter-notice only in respect of the foreign law point …."

[35] As to the matter of proof of documents to be used in legal proceedings concerning an extradition, **The Extradition Act 1993** provides:

> "28. (1) In extradition proceedings in relation to a person whose return has been requested by a foreign state, foreign documents may be authenticated by the oath of a witness, but shall in any case be deemed duly authenticated –
>
> (a) if they purport to be signed by a judge, magistrate or officer of the foreign state where they were issued;
>
> and
>
> (b) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of the foreign state.
>
> (2) Judicial notice shall be taken of such certification as is mentioned in subsection (1) (b), and all documents authenticated by such certification shall be received in evidence without further proof."

Analysis and findings.

[36] As admitted by Counsel for Mr. King on 6th April 2017, the crux of this matter is the 2011 indictment and whether Mr. King is no longer a co-defendant.

[37] According to Mr. King, all proceedings that followed the filing of the 2011 indictment were in summary an abuse of process since he was no longer under indictment.

[38] On an application pursuant to **CPR 2000** rule 26.3 (1**)** rules (b) and (c), the authorities say that the Court must be slow to strike out a claim for the reasons cited in **Caribe (Realties) Canada Limited/Immeubles Caribe Ltee** and **Citgo Global Custody NV**.

[39] The Court's first observation is that the authorities cited for Mr. King on superseding indictments relate to situations where there was a single defendant. By the 2009 indictment, Mr. King was described as a co-defendant with 21 counts against him. Secondly, Mr. King by all descriptions within the 2011 indictment is considered a co-conspirator with Mr. Stanford. That combination makes the issue before the Court not on all fours with the authorities cited for Mr. King.

[40] Important for the Court's consideration is when is an indictment considered to have been one that supersedes another where there are multiple co-defendants. While the Court might be inclined to accept the authorities cited if the 2009 indictment only had a single defendant, the Court finds that without an expert to explain the matter of an indictment bearing multiple defendants being superseded by an indictment which only cites a single defendant but yet describes the other defendants at co-conspirators, that it must be cautious about drawing the conclusion that Mr. King is no longer under indictment. A question to the Court's mind is whether because Mr. Stanford was available at 2011, that the Attorney General decided to pursue Mr. Stanford's prosecution and perhaps await the availability of the other co-defendants. The caution of Edwards JA in **Citco Global Custody NV** paragraph 13 about while assuming facts pleaded are true, care should be taken between primary facts and conclusions or inferences from those fact is recalled.

[41] The Court not being learned in the laws of any State in the United States of America, it must be hesitant in drawing any conclusions from American authorities laid before it as to whether or not Mr. King is still under indictment without the assistance of an independent expert.

[42] The Court feels supported in its position about expert evidence being required to assist the Court by the principles distilled by Pereira CJ in **DOMHCVAP 2012/0001 Ronald Green v. Petter Saint Jean and Maynard v. Roosevelt Skerritt** at paragraphs 37 and 38.

[43] The other challenge to the claim is procedural, it being that the copy of the 2011 indictment as disclosed fails to comply with section 28 of **The Extradition Act, 1993**. Matters of foreign documentary evidence in extradition proceedings have been singled out and covered under section 28 of **The Extradition Act** instead of **The Evidence Act Cap.155** and **The Evidence (Special Provisions) Act 2009**. The Court therefore has no choice but to examine the 2011 indictment for compliance with section 28.

[44] On examination of the 2011 indictment, the Court finds that the 2011 indictment does not comply with the mandatory requirements and as such fails to bear any of the requirements of (a) oath of a witness, (b) being signed by a judge, magistrate or officer of the United States of America, (c) sealed with the official seal of the Minister of Justice or other Minister of State of the United States of America.

[45] The requirements being mandatory, the Court has no choice but to reject the copy of the 2011 indictment as exhibited in support of the claim and application.

[46] For the reason that the Court is unable to say without the assistance of an expert on United States of America law whether the 2011 indictment means that Mr. King is no longer under indictment, the claim and application will not be allowed to proceed.

[47] There is also the matter of the evidential value of the copy of the 2011 indictment.

[48] Court's order:

1. The claim is struck out as an abuse of process.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar