

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

CRI/vbi/136/9/2020

CANES VILLUS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

RULING

Before: The Honorable Madam Justice Deborah Fraser

Appearances: Mr. David Cash for the Applicant

Mr. Vernal Collie for the Respondent

Hearing Date: 2nd July, 2021

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*Section 258 (2) of the Criminal Procedure Code – Article 78A of the Constitution – Article 117
of the Constitution - Constitution Amendment Act 2017–remission to magistrate’s court –
contravention to the constitution – legal practitioner – public officer – VBI – invalid VBI –
Section 18(1) and (2) of the Legal Profession Act – Judicial and Service Prescribed Public
Officers Act – Section 36(1) and Section 40 of the Interpretation and General Clauses Act–
First Schedule of the Legal Profession Act*

Introduction

1. The facts of this matter are undisputed. The Applicant, Canes Vilus, is charged with four counts of Unlawful Sexual Intercourse contrary to s. 10(1)(a) of the Sexual Offences Act, Chapter 99. The Director of Public Prosecutions (the 'DPP') elected to proceed to the Supreme Court by way of a Voluntary Bill of Indictment (the 'VBI') filed herein on 4 February 2021. The Applicant pleaded not guilty upon arraignment herein and on 8 June 2021, an application was made by Counsel for the Applicant to remit the matter to the Magistrate's Court.
2. Counsel for the Applicant, Mr. Cash contended on 2 July 2021 that this Court has no jurisdiction to hear this matter as the VBI and statement pursuant to section 258 of the Criminal Procedure Code Act Chapter 91 (the 'CPC') is signed by a Mr. David Bakibinga who is not a legal practitioner within the meaning of the CPC.
3. Counsel for the Respondent, Mr. Collie argued that Mr. Cash's Application must fail as the provision in section 258 (2) of the CPC is inconsistent with the Constitution as amended by the Constitution Amendment Act 2017.

Issues

The issues on this application are:

- a. Whether section 258 of the CPC is in contravention to the Constitution of The Bahamas?
- b. Whether VBI 136/9/2020 has been signed in accordance with the laws of The Bahamas?

Case of the Applicant

4. Counsel for the Applicant submits that this matter is not properly before the Supreme Court and should be remitted to the Magistrates Court as there has not been strict compliance with section 258 (2) of the CPC, since Mr. Bakibinga's signature is on the relevant VBI and section 258 of the CPC states that the VBI must be signed by a legal practitioner admitted to the Bar of The Bahamas. Further, that Mr. David Bakibinga who signed the relevant VBI in

this matter is not a legal practitioner within the meaning of the CPC which defines 'legal practitioner in section 2 as "any person admitted and enrolled as counsel and attorney under the provisions of the Legal Profession Act".

5. Further to this Counsel referred the court to the relevant definition and sections of the Legal Profession Act ,Chapter 64 (the 'Legal Profession Act') as the following:

"admit to practice" means admit to practice as counsel and attorney in the Courts of The Bahamas

"Bar" means the Bar of The Bahamas;

"counsel and attorney" means a counsel and attorney admitted to practice under this Act".

Counsel also referenced section 18(1) and (2) of the Legal Profession Act which states:

(1) Any person admitted to practice under this Act shall be deemed to be an officer of the Court and, subject to section 19, shall be entitled to practice as counsel and attorney in all courts in The Bahamas.

(2) Notwithstanding subsection (1), a person who is specially admitted is only entitled to practice for the purpose of the particular proceedings in respect of which he was specially admitted."

6. Counsel for the Applicant further relied on the case of Chevaneese Sasha Gayre Hall and the Attorney General SCCrApp& CAIS No. 179 of 2014 wherethe Court stated that:

"31.Subsection 258(1) operates notwithstanding any rule of practice or anything to the contrary in the CPC or any other written law. Where the discretion is exercised by the Attorney-General in accordance with subsection 258(1), the filing of a voluntary bill of indictment by the Attorney-General effectively operates to oust the jurisdiction of a magistrate to investigate in accordance with the CPC, a charge brought against any person who is before the court charged with an "indictable offence." [See section 3(2)(a) of the Magistrate's Act.]

32.Again, as is expressly provided in subsection 258(5), provided that the voluntary bill is filed in accordance with subsection 258(1), it has the effect, by operation of law, of committing an accused person who is before the magistrate charged with an indictable offence for trial before the Supreme Court as if the accused were a person who had been committed for trial by a magistrate.

33. More importantly, where a voluntary bill of indictment is issued in strict compliance with the procedural requirements set out in subsection 258(1), it operates to commit an accused person to the Supreme Court for trial and gives the Supreme Court jurisdiction to exercise its original criminal jurisdiction."

7. Counsel submitted that even though the Respondent relies on the amendment to the Constitution of 2017, that the powers granted by the Constitution to the Attorney General were only transferred to the Director of Public Prosecutions, therefore no new powers were given to the Respondent. Counsel compared the Article 78 powers granted by the Constitution along with the 2017 Constitutional amendment to show that the powers conferred on the Respondent in 2017 are same which the Attorney General always possessed since 1970. Article 78 of the Constitution as repealed states:

“78. (1) The Attorney-General shall have power in any case in which he considers it desirable so to do —
(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.”

Whilst the Constitutional amendment Article 78A states:

“(1) There shall be a Director of Public Prosecutions whose office shall be a public office.
(2) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Justice of the Supreme Court.
(3) The Director of Public Prosecutions shall have power in any case which he considers it desirable so to do-
a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;
(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.”

8. Counsel concluded in this regard that the **CPC**, having been passed in 1968, the **VBI** provisions coming some time later, would have necessarily contemplated that the Attorney General can give instruction for other persons to act under his general or specific authority in regards to these powers. These are those contained in the **CPCa** special Act to deal with the procedure for criminal matters.

9. Counsel also relied on the presumption of constitutionality and relied on the case of *Grant v The Queen (Jamaica) [2006] UKPC 2* which dealt with the constitutionality of s. 31D, which is essentially our section 66 Evidence Act and the ability to admit unsworn written statements of absent witnesses. In this case, the Court found that the procedure of entering dispositions into evidence was not inconsistent with the Jamaican Constitution.

In addressing the presumption of constitutionality, the court stated:

“It is, first of all, clear that the constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional, and the burden on a party seeking to prove invalidity is a heavy one”

10. Additionally, Counsel relied on the Bahamian case of *Donna Vasyli v Attorney General SCCrimApp & CAIS No. 82 of 2016* where the court provided that:

“Effectively, a statute is valid unless and until it has been declared invalid by a court of competent jurisdiction. A fortiori, we are bound to interpret and apply the law; and in the absence of a declaration of nullity, the 2014 Amendment validly exists as part of the law of this country”.

Counsel concluded that the Respondent will have to clear a very high threshold in order to prove some invalidity or inconsistency in the statute; and that the Respondent had accepted section 258 as being constitutional up until the hiring of Mr. Bakibinga.

11. The crux of the Respondent’s case presented by Counsel for the Respondent, is that section 258(2)(b) of the Criminal Procedure Code has been superseded by the Constitution (Amendment) Act 2017, mainly through Article 78A. He submitted to the Court that when Mr. Bakibinga, the Assistant Director of Public Prosecutions signed the indictment, he was acting in accordance with the instructions of the Director of Public Prosecutions that is provided for in Article 78A,(3)(a),(b) and (4). Further, that the Constitution is the supreme law and any law that is inconsistent with it, shall be void to the extent of its consistency. He submitted that it is evident that section 258 of the CPC as it relates to the definition of legal practitioner is inconsistent with the Constitution as amended in Article 78A (4) which states that: **“The powers of the Director of Public Prosecutions under paragraph (3) of this Article may be exercised by him in person or through any other person acting under and in accordance with his general or**

specific instructions” and that there is no such requirement for the person through whom the Respondent exercises his powers under Article 78A to be a legal practitioner.

12. Counsel further argued that “it is now common knowledge and common practice that a new constitutional legal regime has duly emerged as the old Director of Public Prosecutions merged offices into an independent constitutional agency from that of the office of the Attorney- General, meaning that sections 258 (1) and (2) of the CPC must be read with such necessary modifications in order to fulfill the requirements of Article 2 and Article 78A (Article 78A (4) in particular) of the Constitution.
13. Counsel further submitted that section 258 must not be construed to defeat the expressed words of the Constitution, as accordingly, due to the 2017 Amendment of the Constitution, VBIs are no longer signed by the Attorney General who no longer has jurisdiction to sign them. He cited and relied on the case of *Attorney General (Appellant) v Dumas (Respondent) (Trinidad and Tobago) [2017] UKPC 12/Privy Council Appeal No. 0069 of 2015* to submit that it is the duty of the judiciary to uphold the supremacy of the Constitution and the rule of law. Counsel further relied on the case of *Commissioner of Police and another (Appellants) v Steadroy C.O Benjamin (Respondent) [2014]UKPC 8* to make the point that the Constitution requires a generous interpretation and that a change in social circumstances can “ *remove aspects the meaning of which were previously less obvious*”.
14. Counsel for the Respondent also submitted that section 36(1) and section 40 of the Interpretation and General Clauses Act, Chapter 2 also supports the position that the Director of Public Prosecutions has the power (given to him by the Constitution) to delegate whom he chooses to carry out the functions in his power; accordingly, the Director of Public Prosecutions can reasonably assign anyone to sign a VBI on his behalf. This is in addition to the various officers who are appointed under the Judicial and Service Prescribed Public Officers Act, Chapter 42 to work under the Office of the Director of Public Prosecutions.

15. Finally, counsel for the Respondent concluded that there is no evidence that Mr. Bakibinga, the Assistant Director of Public Prosecutions has acted ultra vires in his dealings through his actions relative to this matter and the Respondent has acted within the ambit of his powers under the Constitution which gives him the authority to exercise his power.

Statutory History/Legal Analysis

16. Before I discuss the issues in this matter I think it is necessary to set out the relevant legislation for consideration in this matter. It is also essential to give a brief overview of the legislative history through analyzing the time periods in which these various pieces of legislation were enacted relative to each other in order to ascertain the intention of Parliament and the Framers of the Constitution. This is a common method of interpretation and in using this method; a court considers the words in context and also the surrounding circumstances in which the Constitution was made to make a “*sober and objective appraisal of the general canvas upon which the details of the constitutional picture are painted*” (AG v Grenada Bar Association GD 2000 CA 2 (CARILAW)). Also in analyzing the legislative history, the Court also had regard to the principle of “*Statutes in parimateria*” which dictates that pieces of statutes which relate to each other can be used to help interpret each other.

17. The **CPC** was first passed in 1969. With the enactment of the Constitution in 1973 there would have been consequential amendments made to the **CPC** as well as other statutes to accord with the Constitution. One such amendment would have been to the definition of *legal practitioner* in the definition section of the **CPC** to bring it into conformity with The Bahamas Bar Act, 1973(now repealed) which prescribed the qualifications which such persons must have in order to be admitted to practice in The Bahamas. This Act was subsequently repealed and replaced by the Legal Profession Act, Ch.64 which makes provisions with respect to the practice of law by persons in The Bahamas and for the admission of persons to practice etc. In 1996 when section 258 of the **CPC** was introduced the Attorney General was given the power to bring proceedings by VBI in the

event of an indictable offence and sign the VBI either by himself, or by any legal practitioner acting on his instructions. Further consequential amendments in the CPC were also made at that time to give effect to the Legal Profession Act, Ch.64.

18. There is also the Judicial and Legal Service (Prescribed Legal Offices) Ch. 42 which is an **“An Act to prescribe the public offices to which Article 117 of The Constitution applies”**. These include the various legal public officers who support the Office of the Attorney General as well as the office of the Director of Public Prosecutions. Under the Legal Profession Act, ‘the legal public officer’ employed by the Government and to which Article 117 of the Constitution applies must also meet the requirements of the aforementioned Act prior to admission to practice. Non- Bahamians who wish to be specially admitted to practice must also meet the requirements of that Act. These would include the legal officers employed in the Office of the Attorney General and the Office of the Director of Public Prosecutions. Article 117(1) of the Constitution makes provision for the appointments, removal and discipline of public officers to which this Article applies. It states:

“117. (1) Subject to the provisions of this Constitution, power to make appointments to public offices to which this Article applies and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) This Article applies to such public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.”
(emphasis mine)

19. Sub paragraph 2 of this Article requires that such persons possess legal qualifications as may be prescribed by Parliament. Hence in the enactment of the 1973 Bahamas Bar Act now repealed and replaced by the Legal Profession Act Ch 64. Legal qualifications for all persons wishing to practice law in the Commonwealth of The Bahamas must satisfy the requirement of this Act. Parliament has to date not legislated any exceptions to that law.
20. In 2017 there was an amendment made to Article 74 of the Constitution hereinafter referred to the Constitution Amendment 2017. This established the Office of the Director of Public Prosecutions. The relevant sections of Article 78A of the Constitution states:

“(1) There shall be a Director of Public Prosecutions of The Bahamas whose office shall be a public office.

(2) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Justice of the Supreme Court.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do —

(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of The Bahamas;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under paragraph (3) of this Article may be exercised by him in person or through any other person acting under and in accordance with his general or specific instructions.” (emphasis mine)

21. The relationship between section 258 of the **CPC**, Article 78A and Article 117 of the Constitution are the focal points of this Application. The Constitution Amendment 2017 mandated a transfer of criminal prosecution powers from the Attorney General to the Director of Public Prosecutions. Naturally, Parliament would have considered Article 117 of the Constitution as well as the qualifications which Parliament would have mandated for legal public officers employed firstly in the Office of the Attorney General and secondly now in the independent office of the Director of Public Prosecutions when it enacted the **CPC** Amendment.

22. At the time of the 2017 Constitution Amendment, the definition of a “legal practitioner” was already included in the **CPC**; the specific statute which provides for the procedure to be followed in criminal cases in The Bahamas. Under the **CPC**, “legal practitioner” means any person admitted and enrolled as counsel and attorney under the provisions of the Legal Profession Act. The qualifications are provided for in the schedule to the Act.

23. Section 258 of the **CPC** reads as follows:

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

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

(2) Every voluntary bill shall be signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions, and shall be filed with the Registrar of the Supreme Court, together with ...(emphasis mine)

24. Under section 3(3) of the Interpretation and General Clauses Act Chapter 2, there is some direction on the use of the word “shall” used in legislation. It reads as follows: “(3) In every written law, the word “may” is to be construed as being directory or empowering and the word “shall” or “must” is to be construed as being mandatory or imperative” hence, the argument that the Director of Public Prosecutions can delegate to anyone is without merit. Such person must be a legal practitioner as defined under the CPC and possessing the qualifications contained in the first schedule of the Legal Profession Act which are as follows-

QUALIFICATIONS FOR ADMISSION

PART A

A person is qualified for admission to practice under this Part of this Schedule if —

- (a) he has been called to the Bar of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed; or
- (b) he has been admitted to practice as a solicitor in the Supreme Court of England, Scotland, Northern Ireland or Eire, or of such other country, whether within the Commonwealth or not, as may be prescribed.

PART B

A person is qualified for admission to practice under this Part of this Schedule if he has been awarded a Legal Education Certificate by the Council of Legal Education of the West Indies.

PART C

A person is qualified for admission to practice under this Part of this Schedule if he —

- (a) holds a degree in law from a university or institution approved by the Bar Council and the Council of Legal Education of the West Indies as being academically equivalent to a Bachelor of Laws degree from the University of The West Indies;
- (b) is a person who completed the period of articleship required by subsection (2) of section 43 with a counsel and

attorney in actual practice in The Bahamas and such articles began on or before the expiration of two years from the appointed day or on such later date as the Attorney General may by order designate;

(c) has passed the examinations approved by the Bar Council and the Council of Legal Education of the West Indies for the purposes of this Part.”

Under section 57 of that above mentioned Act the Governor General may by order amend the First Schedule of that Act. The last such amendment took place in 1997.

25. Article 117(2) of the Constitution mandates that persons in public office must have certain legal qualifications as may be prescribed by Parliament now contained in the First Schedule of the Legal Profession Act. It gives the criteria which need to be met for admission to The Bahamas Bar as Counsel and Attorneys inclusive of persons seeking special admission such as non- Bahamian attorneys employed by the Office of the Attorney General and the Department of Legal Affairs. The facts are that Mr. Bakibinga has not been specially admitted to the Bar of The Bahamas nor does he meet the qualifications mentioned above.

First Issue

26. In order to determine whether the VBI was signed in accordance with laws of this jurisdiction (the second issue), the Court must firstly determine whether there is an existing inconsistency between section 258 of the CPC and Article 78A of the Constitution as has been submitted by the Respondent.

Methods of Interpretation

27. The Court relied on the concept of the Presumption of Constitutionality which means that “*legislation should so far as possible be ‘read down’ so as to comply with constitutional requirements*” (Observer Publications Ltd. v Matthews (2001) 58 WIR 188), para. 49); and (ii) that the “*constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional*” (Public Service Board v Omar Maraj [2010] UKPC 29). A statute is valid until a Court declares the same to be invalid. (Donna Vasyli v. Attorney General SCCrim App &CAIS No. 82 of 2016)

28. In conjunction with the Presumption of Constitutionality, the Court further considered and relied upon the principle of “*Ut res magis valeat quam pereat*” which is based on the presumption that Parliament will not legislate in vain. In the case of *Noakes v Doncaster Amalgamated Collieries, Ltd. [1940] s All E.R 549 at p.554*, Viscount Simon L.C stated that “...*if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.* This Court then also took into consideration the traditional rule that penal legislation such as the CPC must be construed strictly (see *Quincy McEwan and others v. Attorney General of Guyana [2018] CCJ 30 (AJ), para.80*, and *Chevanese Sasha Gayre Hall and The Attorney General SCCrApp & CAIS No. 179 of 2014*). This means then that the requirement and practice of a legal practitioner signing a VBI should not be derogated from.
29. Consideration was also given to the principal of “*generalis specialibus non derogant*” which dictates that where there is a contravention with a provision that specifically relates to a matter and a provision that is more general, the specific provision is applied. In this case the specific provisions as to the qualifications for who can sign a VBI is set out in the CPC and reflected in the Legal Profession Act. The court in *Effort Shipping Co Ltd v Linden Management SA and Another; The Giannis NK - [1998] 4 LRC 97*, in relation to this maxim stated: “*In our daily lives we do not necessarily regard general instructions as impinging on specific instructions. Similarly, in the construction of documents we may proceed on a initial premise that a general provision does not necessarily qualify a specific provision in the same document. That commonsense consideration also applies to international Conventions.*”(also see: *Fun World Co Ltd v Municipal Council of Quatre Bornes - [2009] 5 LRC 224*).
30. In coming to a decision on this issue, the Court can also take account of what Parliament intended in the enactment of the 2017 Constitution Amendment. In this regard the Court considered the Official Hansard of the Commonwealth of The Bahamas and the

introduction of the Bill in Parliament which confirmed the objects and reasons contained in the 2017 Constitution Amendment Bill, which relevant parts are as follows:

“This Bill seeks to amend Article 78 of the Constitution to provide for the creation of the Office of the Director of Public Prosecutions. By virtue of the creation of the Office of Director of Public Prosecutions, this Bill seeks to confer all powers relating to criminal prosecutions previously vested in the Attorney-General to the Director of Public Prosecutions.

.....

Clause 4 of this Bill seeks to provide for transitional provisions. This clause provides for criminal proceedings to which the Attorney-General is a party and that are ongoing on the day on which the Act comes into force to be continued by the Director of Public Prosecutions without formality. ...”

31. It would seem, in accordance with clause 4 specifically, that the exact powers in which the Attorney General had to institute criminal proceedings in Article 78 of the Constitution were transferred to the Director of Public Prosecutions through the Constitution Amendment 2017. In the same way, the guidance is given to the Attorney General in section 258 of the CPC (made before the Amendment) the same was also transferred from the Attorney General to the Director of Public Prosecutions notwithstanding the fact that section 258 still refers to the Attorney General.
32. Likewise certain legal public officers existing in the office of the Attorney General were and can at any time be transferred to the Office of the DPP in assisting him to carry out his constitutional duties. Such officers however must be qualified to practice law under the Legal Profession Act.
33. Parliament is seen to perform every action with thoughtful intent. In this regard and with the law already discussed, this Court has no basis to declare a consequential inconsistency in law.
34. The Court has however taken account of the Respondent’s submission in which it was stated that “sections 258 (1) and (2) of the CPC must be read with such necessary modification in order to fulfill the requirements of Article 2 and Article 78A (Article 78A (4) in particular) of the Constitution” and is respectfully of the view that the only necessary modification to section 258(2) is the deletion of the words” Attorney General” and the substitution of the words “Director of Public Prosecutions”. The Law Reform and Revision Act, Chapter 3 can assist in this regard. Section 7 of that Act states:

“In the preparation of a revised edition of the statute law the Commission shall have the following powers, that is to say —

....

(m) to correct grammatical and typographical errors in the existing copies of Acts, and for that purpose to make verbal additions or alterations not affecting the meaning of any Act;

(n) to make such adaptations of or amendments to any Act as appear to be necessary or proper as a consequence of any change in the constitution of any Commonwealth country or the composition of the Commonwealth;

(o) to make such formal alterations as to names, localities, offices, titles and ranks and otherwise as may be necessary to bring any Act into conformity with the circumstances of The Bahamas;

(p) to do all things relating to form and method which may be necessary for the perfecting of a revised edition.”

35. Accordingly, the Law Reform and Revision Commission has the power to make the necessary amendment in that case.
36. An amendment should also be made to the Schedule to the Judicial and Legal Service (Prescribed Public Offices) Act Ch.42 to prescribe the position of ‘Assistant Director of Public Prosecutions.’
37. The Applicant has not proven that section 258 is inconsistent with the Constitution.

Second Issue

38. This Court has already found that there is no inconsistency within the legislation presented to it. Therefore, in order for the **VBI** to have been signed in accordance with the laws of this Jurisdiction, the person who signed the same ought to have been the Director of Public Prosecutions or a person designated by the Director of Public Prosecutions who is a legal public officer or legal practitioner in accordance with the **CPC** and the Legal Profession Act Ch. 64. The Court accepts the argument of Counsel for the Applicant in this regard. A legal practitioner is a person who in accordance with the **CPC** and the Legal Profession Act has been admitted as Counsel and Attorney to The Bahamas Bar. The issue here is not whether Mr. Bakibinga is a qualified attorney but rather whether he holds the requisite qualifications prescribed by Parliament to practice in The Bahamas.
39. In this regard, the Judicial and Legal Service (Prescribed Public Offices) Act, Chapter 42 outlines the positions which are considered as Legal Public officers. Under that Act, the Governor-General may by order amend the schedule by inserting thereto or deleting there

from any public office. Various positions have been created and assigned to the Legal Department over the years. One such position was the position of ‘Deputy Director of Public Prosecutions’, however, no position of ‘Assistant Director of Public Prosecutions’ appears to have been prescribed or gazetted to date, the position which is now the subject of dispute in these proceedings.

40. It is clear that the “Assistant Director of Public Prosecutions” did not hold such qualifications as he was not approved for admission to The Bahamas Bar.
41. Counsel for the Respondent also relied on The Interpretation and General Clauses Act, Chapter 2 section 36(1) and section 40 in support the argument that the Director of Public Prosecutions can delegate whom he chooses to carry out the functions under his power. sections 36 and 40 are as follows-

“Where any written law confers upon any person power to do or enforce the doing of any act or thing, all such powers shall be deemed to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing....

40. (1) Where any written law confers power upon any person to delegate the exercise on his behalf of any of the powers or the performance of any duties conferred or imposed upon him under any written law —

(a) Such delegation shall not preclude the person so delegating from exercising or performing at any time any of the powers or duties so delegated;

(b) Such delegation may be conditional, qualified or limited in such manner as the person so delegating may think fit;

(c) Where the delegation may be made only with approval of some person, such delegation may be conditional, qualified or limited in such manner as the person whose approval is required may think fit;

(d) The delegation may be to a named person or to the person for the time being holding any office designated by the person so delegating; and

(e) Any delegation may be amended by the person so delegating.

42. There is nothing to preclude the DPP from hiring persons to assist him in the exercise of his functions including persons who are non-Bahamians, however persons assisting him in the functions assigned to him under the CPC must hold the qualifications prescribed by law. Section 2 of the Interpretation and General Clauses Act Ch.2 states:

“(1) Save where the contrary intention appears either from the context of this Act or any other written law or instrument, the provisions of this Act shall apply to this Act and to any other written law in force whether such other written law came or comes

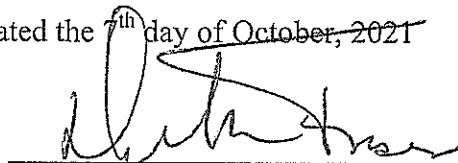
into operation before or after the commencement of this Act, and to any instrument made or issued under or by virtue of any such Act.” (emphasis mine)

43. Article 117 of the Constitution and the Judicial and Legal Service (Prescribed Legal Offices) Chapter 42, the **CPC** and the Legal Profession Act Chapter 64 clearly prescribe the persons and the qualifications of such persons to whom the DPP may delegate his legal functions inclusive of the signing of a VBI under section 258 of the **CPC**.
44. The Court notes that the Respondent has submitted to this Court that it is of the view there is an inconsistency in the legislation and also that the Director of Public Prosecutions has not acted ultra vires in allowing the Assistant Director of Public Prosecutions to sign on his behalf. When the Respondent would have discovered this ‘inconsistency’ by allowing the Assistant DPP to sign VBI on behalf of the Director of Public Prosecutions, the proper cause would have been to move the necessary amendments.

Conclusion

45. The first matter for the Court to decide was whether or not there was an inconsistency between section 258 of the **CPC** and Article 78A of the Constitution. The Court holds that section 258 of the **CPC** is not inconsistent with the Constitution.
46. The second matter for the Court to decide was whether **VBI 136/9/2020** was correctly signed in accordance with the abovementioned law. The Court finds that Mr. Bakibinga, the person who signed **VBI 136/9/2020**, pursuant to section 258 of the **CPC** could not validly sign the same.
47. This matter is therefore remitted to the Magistrates Court.

Dated the 7th day of October, 2021



DEBORAH FRASER
JUSTICE