COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/0000

BETWEEN

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

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Murrio Ducille and Ms. Latia Williams for the Contemnor
Mrs. Kayla Green-Smith, Assistant Director of Legal Affairs, Attorney General's Chambers, appearing as Amicus Curiae on behalf of the Attorney General, at the invitation of the Court

Hearing Date: 8 December 2021

Contempt of Court arising out of civil proceedings- Contemnor found guilty - Sentencing of contemnor – Aggravating factors – Mitigating factors – Principles of sentencing - Order 52 of the Rules of the Supreme Court, 1978

The Contemnor is an Attorney-at-Law. On 23 November 2021, she was found guilty of contempt of court. The Court was satisfied, beyond reasonable doubt, that the Contemnor knowingly and intentionally fabricated the contents of her affidavit with the objective of demeaning the judge and bringing the Court into disrepute and prejudice the due administration of justice. In other words, the Contemnor deliberately set out to scandalize the Court. She is now before the Court for sentencing.

HELD: The Contemnor is ordered to pay a fine of $35,000 and costs of $20,000 by 31 January 2022.

1. The power of the Court to punish for contempt of court is nothing new: Order 52 Rule 1 of the Rules of the Supreme Court, Ch. 53.

2. The Contemnor fabricated the contents of her sworn affidavit in her mission to scandalize the court and bring the administration of justice into disrepute.

3. Sentencing involves a two-stage process which requires consideration of both the aggravating and mitigating factors. The Court must seek to determine the appropriate sentence in light of all the surrounding facts and circumstances.

4. The Court also bears in mind the classical principles of sentencing which could be summed up in four words "retribution, deterrence, prevention and rehabilitation:" per Lawton L.J. in **R. v. Sargeant** (1974) 60 Cr. App. R. 74.

5. The Contemnor has an unblemished criminal record which is a factor mitigating the contempt.

6. An aggravating factor is the Contemnor's persistence to justify the contents of her fabricated affidavit notwithstanding the fact that truth is not a defence to contempt. This was also followed by the repeated delays caused by the Contemnor when she filed a Constitutional Motion in the Supreme Court and even an application to stay these proceedings in the Court of Appeal without even seeking leave of this Court. All of this contributed to a waste of precious judicial time in a relatively straightforward contempt proceeding.

JUDGMENT ON SENTENCING

Charles J:
Introduction

[1] In a Written Ruling delivered on 23 November 2021 ("the Ruling"), the Court found the Contemnor, Donna Dorsett-Major ("Mrs. Major") guilty of contempt of court. The Court was satisfied, beyond reasonable doubt, that she knowingly and intentionally fabricated the contents of her affidavit with the objective of demeaning me and bringing the Court into disrepute and prejudice the due administration of justice. In other words, Mrs. Major deliberately set out to scandalize the Court. She is now before me for sentencing.

Background facts

[2] I need not recite all of the background facts which led to this Court citing Mrs. Major for contempt of court as this has already been detailed in the Ruling. Suffice it to say, it has its genesis in Civil Action No. 2015/CLE/gen/00765 in the case of **Alan R. Crawford et al v Christopher Stubbs et al** [2015/CLE/gen/00765] ("the Civil Action"). In the Civil Action, Mrs. Major was the Third Defendant and she was sued by the Plaintiffs for professional negligence. She was found guilty of professional

negligence. Unhappy with the Judgment, in addition to appealing it, she set out to scandalize the Court by seeking my recusal in dealing with the assessment of damages and costs in the professional negligence claim. Instead of this Court proceeding to deal with the contempt of court expeditiously and fairly as the law requires, Mrs. Major promptly instituted a Constitutional Motion in the Supreme Court in Action No. 2020/CRIM/Con/0005 against the Director of Public Prosecutions and the Attorney General seeking, among other things, an Order transferring the contempt proceedings to other judge of the Supreme Court. She also filed an application in the Court of Appeal to stay these contempt proceedings without seeking leave of this Court, as is required by the law. In other words, she was saddling other judges, and even the Court of Appeal, with matters which were before this Court.

[3] These proceedings dragged on for over a year. The law is clear that, given the nature of contempt proceedings, it is critical that the Court moves expeditiously to hear these matters and ensure that there is a fair hearing as noted by the Court of Appeal in the case of **James Fleck v Pittstown Point Landings Limited** SCCiv App No. 131 of 2019. The Court of Appeal stated:

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

[4] As I mentioned earlier, instead of an expeditious hearing of the contempt proceedings, this one dragged on for over a year and it was principally due to Mrs.

Major's various applications in the Supreme Court as well as the Court of Appeal and her own delaying tactics.

Plea in mitigation

[5] Learned Counsel Mr. Ducille who appeared for Mrs. Major called three character witnesses to attest to Mrs. Major's unblemished character. The first witness was Mr. Franklin Carter who has known Mrs. Major since 1995. He hired her as the office administrator for the Airport Airline and Allied Workers Union. He found her to be trustworthy and efficient. He even toasted at her wedding.

[6] The next witness was Mr. Lincoln Bain who has known Mrs. Major for about a year. According to him, she is always positive, re-assuring and honest. He personally met her when she wanted to run as a political candidate in the General Election. He said that she has nothing negative to say about the judge. She is apologetic and appears remorseful.

[7] The final witness to testify on Mrs. Major's behalf was Attorney-at-Law, Lillith Smith-Mackey. She has known Mrs. Major for over 15 years. She knows her to be a very straightforward and honest person. Like the other witnesses, she implored the Court to be lenient to Mrs. Major.

[8] The Court had the opportunity to observe and assess the demeanour of these character witnesses and concluded that, if Mrs. Major was indeed remorseful and apologetic, she could have done so herself. She remained adamant to do so and always maintained that the contents of her Affidavit are true and correct. It is therefore on that basis that the Court must reject all evidence coming from her character witnesses relative to her contrition. In addition, I did not find Mrs. Major to be an honest person.

[9] Learned Counsel Mr. Ducille, in his concise and persuasive submissions, implored the Court to be remorseful and stated that Mrs. Major has accepted the conviction of guilt. He also submitted that Mrs. Major has an unblemished criminal record.

[10] Mrs. Green-Smith was also terse in her submissions. She expressed the view that this is a serious matter which impacts the administration of justice.

Aggravating vs mitigating factors

[11] Sentencing involves a two-stage process which requires consideration of both the aggravating and mitigating factors. The Court must seek to determine the appropriate sentence which the offence itself merits. Evidently, this is based on all of the surrounding facts and circumstances as well as the legal principles.

[12] The Court also bears in mind the classical principles of sentencing which could be summed up in four words "retribution, deterrence, prevention and rehabilitation." In **R. v. Sargeant** (1974) 60 Cr. App. R. 74, Lawton L.J. said:

> **"Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing."**

[13] Learned Counsel Mr. Ducille identified one mitigating factor namely Mrs. Major's unblemished criminal record. He also submitted that Mrs. Major was remorseful, which I did not accept, since she could have done so herself if indeed she were.

[14] The Court has identified an aggravating factor namely Mrs. Major' persistence to justify the contents of her fabricated affidavit despite contemporaneous documentary evidence from the Court Administration Department which was provided to all parties even before these contempt proceedings had begun in an effort to demonstrate to Mrs. Major that her account that no police officer accompanied me to Cat Island was indeed fabricated. However, that was not enough. So, the contempt proceedings dragged on for over a year. She also had another opportunity to bring these unpleasant proceedings to an end when one of her subpoenaed witnesses, Mr. Rex Wilson, Manager of Western Air, testified. Mr. Wilson produced the Western Air Flight Manifest for 22 February 2019. He confirmed that the name Rueben Stuart appears on it. He was asked by Mr. Ducille whether another police officer could have flown even though Reuben Stuart

appears on the Manifest. Mr. Wilson categorically stated that only passengers whose names appear on the Manifest could fly and it did not matter whether or not they are police officers. The Manifest was tendered as an exhibit in these proceedings.

[15] Further, notwithstanding the law that truth is no defence in contempt proceedings and any evidence to justify the contempt is inadmissible, Mrs. Major persisted in her attempt to scandalize the Court. She fought to the very end although the evidence was glaringly against her. This was followed by the repeated delays which she caused when she filed a Constitutional Motion and an application to stay these proceedings in the Court of Appeal without even seeking leave of this Court. Precious judicial time was wasted in a relatively straightforward contempt proceeding.

[16] Pursuant to Order 52 of the Rules of the Supreme Court, 1978 ("the RSC"), the Court has the power to commit a contemnor for contempt of court. RSC O. 52 r. 4 gives the Supreme Court the power to make an order for committal of its own motion against a person guilty of contempt. O. 52 r. 8 is also important. It expressly provides that:

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

[17] The Court considers fabrication of allegations and scandalizing the court, particularly when it is committed by a practising attorney-at-law against a judicial officer, to be an affront to the administration of justice. The Court must therefore rise to protect itself and send out a strong message that such behaviour cannot be tolerated. "Scandalizing the court", otherwise referred to as "murmuring against

judges," has been defined as "conduct which denigrates judges of the court so as to undermine public confidence in the administration of justice."

[18] In determining an appropriate sentence, I have to take into account all the surrounding facts and circumstances including the fact that Mrs. Major has a clean criminal record.

The sentence

[19] Having done so, my order is that the Contemnor, Donna Dorsett Major shall pay a fine of $35,000 not later than 31 January 2022. In default of such payment, she is sentenced to ninety (90) days imprisonment at the Bahamas Department of Corrections.

Costs

[20] Mrs. Green-Smith left the issue of costs in the hands of the Court but emphasized that cases of contempt are serious. I am guided by the general principle in the Bahamian courts, that, at the conclusion of a trial or application; a hearing of costs follows the event.

[21] I shall therefore start with the principle that costs are entirely discretionary. Section 30(1) of the Supreme Court Act provides:

> "**Subject to this or any other Act and to rules of court, the costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent the costs are to be paid.**"[Emphasis added]

[22] A parallel discretion is provided for in Order 59, rule 2(2) of the Rules of the Supreme Court ("RSC") which reads:

> "**The costs of and incidental to proceedings in the Supreme Court shall be in the discretion of the Court and that Court shall have full power to determine by whom and to what extent the costs are to be paid, and such powers and discretion shall be exercised subject to and in accordance with this order.**"[Emphasis added]

[23] Costs must be reasonable and there are certain factors that the Court must consider in determining what are reasonable costs. These factors are not exhaustive. In **McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart** [2018] 1 BHS J. No. 18 [unreported] at [8], this Court enumerated the factors as:

> **"In deciding what would be reasonable the Court must take into account all the circumstances, including but not limited to:**
>
> **a) any order that has already been made;**
>
> **b) the care, speed and economy with which the case was prepared;**
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> **c) the conduct of the parties before as well as during the proceedings;**
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> **d) the degree of responsibility accepted by the legal practitioner;**
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> **e) the importance of the matter to the parties;**
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> **f) the novelty, weight and complexity of the case; and**
>
> **g) the time reasonably spent on the case."**

[24] In considering all of these factors, Mrs. Major is ordered to pay the costs in the sum of $20,000 by 31 January 2022. This sum represents reasonable costs for at least thirteen hearings stretching for over a year. In addition, Mrs. Green-Smith, is a senior attorney. In fact, she is the Assistant Director of Legal Affairs in the Attorney General's Chambers and she was amicus curiae at the invitation of the Court; not of her own volition. She provided invaluable assistance to the Court for over a year in a timely fashion. For this, I am indeed grateful.

[25] The Court is also guided by its recent decision in **In the Matter of the Contempt of Mr. Carlton Martin on 3 June 2020** (unreported). That contempt of court arose out of these very facts. Mr. Martin was very apologetic from day one. The Court did not consider the apology to be sincere but throughout the contempt proceedings, Mr. Martin openly and unequivocally apologized to the Court at every opportunity. Finally, the Court accepted his apology. In addition, the hearing of the

contempt proceedings did not drag on, as in the present case. At the end of the day, Mr. Martin agreed to pay costs of $15,000 to the Amicus Curiae.

Dated this 20th day of December 2021

Indra H. Charles
Justice