

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2018/CLE/gen/01312

IN THE MATTER of Sections 12 & 14 of the Birth and Death Registration Act, Ch. 188

B E T W E E N

DARREN LESTER

Plaintiff

AND

THE REGISTRAR GENERAL OF THE BAHAMAS

First Defendant

AND

THE MINISTER RESPONSIBLE FOR THE REGISTRY OF RECORDS

Second Defendant

AND

THE PUBLIC HOSPITALS AUTHORITY

Third Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Wayne Munroe QC with Bridgette Ward for the Plaintiff

**Kayla Green-Smith with Audirio Sears and Sandra Moncur for
the Defendants**

16 April 2021 and 16 June 2021

JUDGMENT

WINDER, J

This is the application of the Plaintiff (Lester) for a declaration that he is entitled to be issued a certified copy of his birth certificate.

1. The action was commenced by Writ of Summons dated 5 November 2018. The Statement of Claim filed on 25 January 2019 is settled in the following terms:

1. The Plaintiff is and was at all material times born in The Bahamas on the 4th day of June, A.D., 1986 to Vida Lester ('the Mother'), a Haitian National.
2. The First Defendant is and was at all material times responsible for recording births in the Commonwealth of The Bahamas.
3. The Second Defendant is and was at all material times responsible for the Registry of Records.
4. The Third Defendant is and was at all material times responsible for keeping proper records of births occurring at Princess Margaret Hospital.
5. That the birth certificate states that the Plaintiff was born at Princess Margaret Hospital.
6. That the birth was recorded in the Registry of Records on the 20th day of July, A.D., 1986.
7. The birth certificate shows the occupation of the mother as 'Maid'.
8. The birth certificate shows the age of the mother to be '27'.
9. The birth certificate shows the mother had 3 live births including the Plaintiff.
10. The birth certificate shows the permanent residence of the mother at the time of the birth of the Plaintiff to be Fox Hill Road.
11. The birth certificate shows the informant to be 'Vida Lester' the mother of the Plaintiff.
12. The birth certificate reflects that the Registrar, Dorothea A. Roberts was satisfied as to the correctness and sufficiency of the statement to register the birth on 20th day of July, A.D, 1986.
13. That the Plaintiff was able to obtain a certified copy of his birth certificate to present to the Department of Immigration for the purposes of applying for Citizenship.
14. That since that date the Plaintiff has not been able to obtain a certified copy of his birth certificate.

THE PLAINTIFF THEREFORE CLAIMS:

1. A Declaration that the Plaintiff is entitled to be issued a certified copy of his birth certificate;

2. Such further or other relief that the Court deems just and fit; and
3. Costs.

2. The Defendants have defended the claim in a defence filed on 27 February 2019.

The Defence was settled in part as follows:

2. The defendants make no admission to the contents of Paragraph 1 of the Statement of Claim insofar as the Defendants cannot positively verify whether the Plaintiff is the individual named Darren Lester who was born in The Bahamas on 4th June, 1986 to a Haitian national named Vida Lester. The Defendants have conducted searches of their respective databases and cannot locate any registration records of the aforementioned birth. Due to the fact that no supporting documents were located to substantiate and validate birth certificate #14706 which was provided to the Department of Immigration, the Defendants assert that the birth certificate provided was not valid registration.

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6. The Defendants deny the contents of Paragraphs 5 of the Statement of Claim and in reply thereto say that Paragraph 2 of the Defence is repeated. Further the Third Defendant have conducted a thorough search of their records for any files which indicate that Vida Lester gave birth to a live baby boy on the Maternity Ward of the Princess Margaret Hospital on 4th June 1986; no records were found to substantiate the same.

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8. The Defendants admit paragraph 7 of the Statement of Claim insofar as the birth certificate submitted to the Department of Immigration states the occupation of the mother of the child listed on the birth certificate as "Maid". The Defendants say further that:

- a. Paragraph 2 of the Defence is repeated;
- b. The Defendants cannot verify whether the individual listed as the mother is the mother of the Plaintiff; and
- c. the Defendants cannot verify whether the mother was a "Maid".

9. The Defendants admit Paragraph 8 of the Statement of Claim insofar as the birth certificate submitted to the Department of Immigration states the age of the mother as "27". The Defendants say further that:

- a. Paragraph 2 of the Defence is repeated;
- b. Paragraph 8(b) of the Defence is repeated; and
- c. The Defendants cannot verify whether the mother was 27.

10. The Defendants deny Paragraph 9 of the Statement of Claim and in reply thereto, say that:

- a. Paragraph 2 of the Defence is repeated;
- b. Paragraph 8(b) of the Defence is repeated; and
- c. The Defendants cannot verify whether the alleged mother had three live births.

11. The Defendants deny Paragraph 10 of the Statement of Claim and in reply thereto say that:
 - a. Paragraph 2 of the Defence is repeated;
 - b. Paragraph 8(b) of the Defence is repeated; and
 - c. The Defendants cannot verify whether the alleged mother lived on Fox Hill Road at the time of the alleged birth.
12. The Defendants deny Paragraph 11 of the Statement of Claim and in reply thereto say that:
 - a. Paragraph 2 of the Defence is repeated; and
 - b. Paragraph 8(b) of the Defence is repeated.
13. The Defendants admit Paragraph 12 of the Statement of Claim insofar as the birth certificate does state that Dorothea A. Roberts was satisfied as to the correctness and sufficiency of the statement to register the birth on 20th July, 1986. The Defendants say further that Paragraph 2 of the Defence is repeated.

3. At trial Lester gave evidence in his case and called Charmaine Stuart as a witness in his case. The Defendants called Vivette Moss, Thelma Rolle and Sharlene Bain as witnesses in their case.

4. Lester's evidence was contained in his witness statement which was subject to cross examination. In the witness statement Lester stated:

1. That I am 34 years of age.
2. That I was about 7 years old when my mother told me that I was born in The Bahamas.
3. That I came to The Bahamas in 2004 for the first time following the death of my mother – who passed away in a flood.
4. I was living in the Fox Hill area. While living in the area I met Renal Joseph and we became friends. I explained my situation to him, I had no family and he offered to assist me in getting my documents since I told him that I was born in The Bahamas.
5. That Mr. Joseph took me to the Registry. I gave the lady my mother's name, when I was born and my name. I paid \$10 and they gave me a copy of my birth certificate.
6. After that Mr. Joseph took me to the Clinic on Baillou Hill Road to get a copy of my immunization card.
7. From Fox Hill I moved to Andros Avenue to live with another friend, Gilbert Omar.
8. That I got a job working for Mosko and would pay Mr. Omar rent for living with him.
9. I met Leonardo Stuart while working for Mosko and we became friends. Leonardo took me to his house and his mother told me I look like

someone she know. Leonardo's mother told me she knew a lady by the name of Vida and she knew my mother had gone back to Haiti.

10. That I worked for Mosko United for 9 years. When they discovered I had no identification I was let go.
11. That before the flood in Haiti my mother showed me my birth certificate (it was a long sheet of white paper).
12. When I went to apply for citizenship I was told to take the birth certificate to Foreign Affairs to be stamped. I took it and it was stamped (sic)
13. Latonia Thurston gave me a letter at Immigration and told me that the documents were being processed and that I should apply for a Haitian Passport in the meantime. I did and got a Haitian Passport which was good for 5 years.
14. I got arrested in 16th January 2015 and was at the Detention Centre for 6 months before being deported to Haiti.
15. That I used my birth certificate and Haitian Passport to return to The Bahamas.
16. That when I went to the Registry to obtain another copy of my birth certificate in 2016 I was told that Immigration had put a hold on it.

5. Charmaine Stuart's (Stuart's) evidence was contained in her witness statement which was subject to cross examination. In the witness statement Stuart stated:

1. That I am 52 years of age.
2. That I knew the mother of the Plaintiff as we both lived in the Montell Heights. Vida (called 'mammy') lived in the back house and we lived in the front house. We lived in Montell Heights two (2) years before mammy came to live there.
3. That we rented houses on the same property from Mr. Roberts who owned Roberts Car Lot. We went to his office which is now where the Credit Union is to pay rent.
4. That at that time I had a son who was born in 1983 and mammy use to help me out with him. She was in with a Bahamian man.
5. That we moved to Andros Avenue.
6. That the Plaintiff was not born when mammy first came to live in Montell Heights.
7. That when we moved to Andros Avenue I still kept in touch with mammy.
8. I knew when mammy got pregnant and I knew that mammy gave birth to a baby boy.
9. That when we left Montell Heights to live at Andros Avenue I would ask Eugene Cartwright (who was also living in the yard in Montell Heights) how mammy was doing. Mr. Cartwright told me that mammy gone back to Haiti. That would have been 4 years after we moved to Andros Avenue.
10. That one day my son came home and had this young man with him. He said they both worked at Mosko. I told the young man that I knew

him from somewhere but he told me I could not know him because he just come from Haiti.

11. That whenever the young man came home with my son I continued to ask him questions because he looked like someone I know.

12. That I told him I knew a Haitian who we called mammy but her name was Vida. He said that was his mother.

6. Moss' evidence was contained in her witness statement which was subject to cross examination. In the witness statement Moss stated:

1. My name is Vivette Moss and I reside in the southern district of New Providence, The Bahamas.

2. I have been employed at the Registrar General's Department for the past twenty-two (22) years (sic)

3. I presently hold the position of Senior Executive Officer.

4. My duties include among other things are Supervision of Birth Registration Section, processing applications for Marriage Officers Supervision of the Data Management Section, which included, birth, deaths, marriage and adoption searches, preparation of Search Cards, birth verifications, handling queries relative to births, deaths, marriage and adoptions.

5. I am duly authorized to make this Affidavit on behalf of the Respondents herein and I do so from information within my personal knowledge and from information obtained by me in my capacity as Senior Executive Officer in the Registrar General's Department and from sources with whom I work and I verily believe to be credible and reliable, unless otherwise expressly stated herein.

6. A Memorandum IMM/NAT/HTI/6099 dated 9th December, 2013 was received from the Department of Immigration by the Registrar General's Department requesting verification of a Birth Certificate in the name of Darren Lester.

7. The Memorandum and copy of Birth certificate was forwarded to me by the Acting Registrar General, Deirdre Maycock for verification.

8. During the process of verification my first step was to review the birth in question checking the date of birth and registration date. This information would direct me where to search.

9. My next step was search and locate the original Birth Registration Card for the birth of Darren Lester in the cabinet that stored the 1986 Birth Registration Cards.

10. I searched the Cards with the surnames starting with the letter "L". I did not find a Registration Card in the name of Darren Lester. I then proceeded to check all the Birth registration Cards that was filed under

"L".

11. After this search was fruitless, I proceeded to complete a three (3) years search; i.e. searching the year given, the year before and the year after. So I checked 1985 and 1987 Birth registration cards following the same process above.
12. After I did not find any record of the birth for Darren Lester my next step was to search for the Birth Registration Book in which the Birth would have been initially registered.
13. According to the registration date (20th July 1986) of the birth for Lester I searched our storage facility to see if the 1986 Registration Books could be found. This search was not successful.
14. After completing the search and finding no supporting documentation of the birth, a "Do not issue without the authorization of the Registrar General" notification was tagged to the computer record #14706 for Darren Lester.
15. I prepared and forwarded a response Memorandum dated 5th February 2014 addressed to the Department of Immigration, stating that the Birth could not positively be verified for Darren Lester.
16. Upon the request of the Registrar General, Lockhart-Pratt, on 21st July 2020 I conducted a follow up search covering the period 1985-1987, going through all of the Registration Cards in the surname "L" to locate the birth for Lester. However, no record was found.

7. Rolle's evidence was contained in her witness statement which was subject to cross examination. In the witness statement Rolle stated:

1. My name is Thelma J. Rolle and I reside in the Southern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas.
2. I have been employed at the Princess Margaret Hospital, The Public Hospitals Authority, Medical Records Department for the past 36 years.
3. I have been a Senior Medical Records Officer in the Medical Records Department from 2017.
4. My duties include among other things the research and release of documentation regarding births and deaths at the Princes (sic) Margaret Hospital. My daily duties include that I sign documentation that has been researched and the release of information on behalf of Ms. Antoinette Bowe, Chief Medical Records Officer, Princess Margaret Hospital.
5. I make this Witness Statement to provide information on the birth of the Plaintiff at the Princess Margaret Hospital. I am duly authorized to make

this Witness Statement on behalf of the Public Hospitals Authority, and I do so from information within my personal knowledge and from information obtained by me in my aforesaid capacity, as Senior Medical Records Officer. I also make this Witness Statement from personnel with whom I work, and I verily believe to be credible and reliable, unless otherwise expressly stated herein.

6. An examination of the Princess Margaret Hospital, Maternity Ward Delivery Room Register, was undertaken to ascertain whether the Applicant was born at the said hospital on 4th June 1986 (sic)
7. From the research conducted on the applicant in the Princess Margaret Hospital Keane Patient Information System, the following information was also obtained:
 - a. Demographic information
 - b. Visits on encounters at the Princess Margaret Hospital:
 - Outpatient Pharmacy on 8th May 2012. The medical record number, 404-48-56 issued to the Applicant is consistent with medical record numbers that were issued to new patients presenting at the Princess Margaret Hospital for the year 2012; also encounters to the:
 - Medical Records Department on 3rd June 2013.
 - The Community Health Clinic, Department of Public Health, Ministry of Health on 28th January 2019.
8. On two separate occasions, I prepared two (2) letters signed on behalf of the Chief Medical Records Officer relevant to the birth of the Plaintiff at the Princess Margaret Hospital. Authorization was given to me by Ms. Antoinette Bowe, Chief Medical Records Officer to sign the said letters.
9. The dates of the said two (2) letters I prepared were dated 3rd June 2013 and 8th November 2014 and stated that the Princess Margaret Hospital could not positively certify that the Plaintiff was born on the Maternity Ward to Vida Lester on 4th June 1986.
10. With regard to the proof of birth of the Plaintiff in the letter dated 8th November 2014, this option is no longer available in the Princess Margaret Hospital, Medical Records Keane Information System because this option was moved by the Finance Department Princess Margaret Hospital to "Miscellaneous."
11. In response to the Princess Margaret Hospital undated letter which bears my "printed name" I advise on the following including:
 - a. This letter was not prepared by me.
 - b. In 2012, when I first started signing documents, I would print my full name on outgoing letters. Eventually I began printing

my signature on Princess Margaret Hospital Medical Records documentation issued to requesting customers.

- c. The Princess Margaret Hospital, Birth Search documentation has been totally computer generated from January 2011. The said document is irregular in that it is not computer generated regarding the Plaintiff's gender and date of birth; in addition, the document is light/dark in print, the department stamp is illegible, and "Passport Office" has been typed (by the use of a typewriter) on the document.

8. Bain's evidence was contained in her witness statement which was subject to cross examination. In the witness statement Bain stated:

1. My name is Charlene Bain and I reside in the Eastern district of New Providence, The Bahamas.
2. I have been employed with the Ministry of Health for the past 43 years.
3. I presently hold the position of Administrator, Community Health Services.
4. My duties include among other things, management of community health services, ensuring the registration of clients attending clinic in coordination with the Clinic Administrator and Medical Records Supervisor.
5. I am duly authorized to make this Affidavit on behalf of the Respondents herein and I do so from information within my personal knowledge as a Registered Nurse, Registered Midwife, Community Health Nurse and Family Nurse Practitioner and from information obtained by me in my capacity as Administrator, Community Health Services in the Ministry of Health, Department of Public Health and from sources with whom I work and I verily believe to be credible and reliable, unless otherwise expressly stated herein.
6. I am advised by Mrs. Elaine Lightfoot, the Medical Records Supervisor for the Ministry of Health, Department of Public Health, that on 24th July, 2020, a thorough search was conducted of the Master Patient Index filing system at the South Beach Health Centre, Elizabeth Estates, Fleming Street and Flamingo Gardens Poly Clinics as well as the Fox Hill and Ann's Town Clinics, to determine whether medical records were available for Ms. Vida Lester, mother of the Plaintiff. This search proved unsuccessful.
7. Further, a thorough search was also carried out at the Princess Margaret Hospital to ascertain whether antenatal records were available to verify that Ms. Vida Lester attended clinic and/or gave birth to an infant on the 4th June, 1986. This search also proved unsuccessful.
8. Despite our best efforts, Mrs. Elaine Lightfoot was not able to locate any medical records for Ms. Vida Lester and will require her date of birth and other appropriate identification documents.

9. Please note that a thorough search of the Medical Records Master Patient Index files was carried out at South Beach Health Centre, Elizabeth Estates, Fleming Street and Flamingo Gardens Poly Clinics as well as the Fox Hill and Ann's Town clinics, however, no medical records were found for Darren Lester.

10. A review of the Control Card at the Blue Hill Road Clinic revealed the following:

(a) Socio-demographic information

Name: Darren Lester

Address Fox Hill

Date of Birth: 4th June, 1986

Mother's Name: Viola Lester

(b) Immunization given

It should be noted that during the period of the 1970's and 1980's the immunization scheduled for infants and children 0-4 years of age were as follows:

3 months – 1st dose of DPT and Polio

5 months – 2nd dose of DPT and Polio

7 months – 3rd dose of DPT and Polio

1 year – MMR – vaccine

18 months 1st booster doses of DPT and Polio

4 years – 2nd booster dose of DPT and Polio

5 years and older D/T and Polio.

11. As the global, regional and local trends for vaccines preventable disease changes, the World Health Organization and Pan American Organization recommends to Member States, the inclusion of new vaccines – the age of commencement, dosage and intervals of vaccines.

12. The Ministry of Health, Department of Public Health was unable to find the schedule given during the 1970's and 1980's. However, we have provided a copy of the immunization schedule of vaccines given for the period January 2004 and the existing schedule. The purpose of these documents is to show the age in which the first dose is given and the intervals between the doses. At times, there are delays when a child might be ill; however, even if a child is in hospital, unless the illness or diagnosis prohibits vaccination, the immunization is given.

13. As stated previously, the policy of the Ministry of Health, Department of Public Health requires that a Control Card be implemented for all persons, regardless of age at the attending clinic in New Providence and the Family Islands.

14. While the Control Card is kept at the clinics in the Family Islands, all Control Cards for adults and children over the age of five (5) years are sent to the Blue Hill Road Clinic. This Immunization Control Card is different from the Master Patient Index – Medical Records Control Card. The General Master Index Card, has demographic information only. The Immunization Control Card should have demographic: Type of Immunization, Lot Number of the Vaccine and Date Given.

15. While the Control Card for persons over the age of 5 years goes to the Blue Hill Road Clinic, the General Medical Records is forwarded to the designated Poly Clinic, hence the search at the mentioned Poly Clinics for the Medical Record of Darren Lester which was not located.
16. The analysis of the front of the Immunization Control Card revealed the following:
 - Name of Infant – Darren Lester
 - DOB – 4/06/86
 - Sex – Male
 - Address – Fox Hill
17. The information on the front and back of the Control Card was reviewed.
18. The information on the back of the Control Card is not questionable for the Hepatitis B vaccine as it is still given to children and adults. However, concern is being noted as to why there is another documentation of DPT and Polio 1st and 2nd doses to the back of the Control Card. When one looks at the front of the Immunization Card this was already recorded:
19. Secondly on the front of the Control Card the vaccine Diphtheria, Pertussis Tetanus (DPT), the Pertussis was marked out on the Control Card. The significance of this Pertussis Vaccine, is that if the child had attended the clinic at the age of three (3) months in 1986, the vaccine scheduled would have included Pertussis, unless there was some medical indication to the adjustment of the vaccine, or the child would have been over 5 years of age which would be noted on the Control Card, and in the Medical Records.
20. Thirdly, the recording of the vaccines on the card revealed that the 1st dose of D/T instead of DPT and Polio were recorded as being given on the 28/12/11 when Darren Lester was 25 years old.
21. The 2nd dose of D/T instead of DPT and Polio were recorded as being given on the 8/2/12, when Darren Lester was 25 years old.
22. The 3rd dose of D/T instead of DPT and Polio was given on the 2/10/86 when Darren Lester was four (4) months.
23. The Booster dose of D/T instead of DPT and Polio which is normally given around 15 months of age, was given on the 27/11/86 when Darren Lester was almost seven (7) months.
24. Of serious concern is that the Measles, Mumps, Rubella (MMR) Vaccine was given on the 28/12/11 and 8/2/12. This vaccine is normally given at age 1 year, with a second dose between 4-5 years.
25. The Ministry of Health, Department of Public Health, conducted a thorough search of its Medical Records systems especially the Master Patient File Index to assist in the location of a medical records for Darren Lester DOB 4/06/86 and Vida Lester date of Birth unknown.
26. The Medical Records Supervisor also carried out a file search at the Princess Margaret Hospital to determine whether Antenatal records were available without results.
27. The review of the documentation of vaccines given on the Control Immunization Card was extremely inconsistent with the Immunization

- schedule and documentation to substantiate that the vaccines were given at a Primary/Public Health Clinic in The Bahamas.
28. The back of the Control Card also reveal the administration of HiB vaccine on the 28/12/11 and 8/2/12. However, HiB Vaccine was not a part of the schedule in the 1980s. It was added in the 1990s in the Public Sector.
 29. Note is again being made to the guidance of the World Health and Pan American Health Organizations, that as new vaccines are added, the age of commencement can change; so in the 1970's – 1980's the commencement of vaccine was at age 3 months. We now see that 2004, the commencement of vaccines was at age 2 months. What is also important to note is that the Diphtheria and Tetanus (D/T) Vaccine is normally administered at age 4-5 years and older and not before this age. However, the Control Card for Darren Lester had the Pertussis Vaccine marked out – one can only assume that:
 - (a) either Darren Lester's childhood vaccines were given elsewhere and transcribed to the Control Card when he received his vaccine in 2011 or
 - (b) the skill competency and/or category of the staff giving the vaccine or recording the information is questionable.
 30. Based on the above, and in the absence of a date of birth for the mother to assist in locating a Medical Record as well as the inconsistencies of the recording of vaccines on the Control Card makes it difficult to verify that Darren Lester was born in The Bahamas. It should also be noted that the Immunization Record is not the primary document used to verify birth. To verify that a birth had occurred in The Bahamas, the information would have to be recorded and located in the clients (mother) medical and antenatal records, the Maternity Ward Admission and Discharge Registry or in the Register of Cases II (personal deliveries) noting the name of the Midwife who delivered the baby, place of birth, date and time of the birth, gender of the infant and whether the infant was born alive or dead.

Issues

9. The issues identified by the parties were:
 - a) Whether Lester was born at the Princess Margaret Hospital on the Island of New Providence, one of the Islands of The Commonwealth of The Bahamas on the 4th June 1986 to Haitian National Vida Lester.
 - b) Whether the questioned documents were submitted by Lester and whether they are authentic.
 - c) Whether Lester is the person referred to in the copy of the birth certificate.
 - d) Whether the Defendants can rebut the presumption of regularity.

Law, Analysis and Disposition

10. The Plaintiff outlines his case at paragraphs 16-19 of his submissions:

16. The Defendants dispute that the Plaintiff is the person born to Vida Lester on June 4, 1986 or that he was born at Princess Margaret Hospital. When we consider Section 90 of the Evidence Act, Chapter 65 which state *"Where a person is proved to have done any act in any official or judicial capacity, the court shall presume, until the contrary is shown, that all circumstances had happened and all conditions were fulfilled which were necessary to give validity to such act."* We are satisfied that the then Registrar General at the date of entry of the birth was satisfied that Vida Lester gave birth to a male child whom she named Darren Lester on the date that she said she gave birth. The Defendants have not rebutted this presumption nor have their witnesses.

17. The Plaintiff obtained a certified copy of his birth certificate from the Registrar General's Department and relying on Section 98 of the Evidence Act, Chapter 65 which states *"When any document is produced before a court purporting to be a document which by any statute at the time in force is admissible in evidence provided that it is signed or stamped or sealed, or otherwise authenticated as required by the statute, the court shall presume until the contrary is shown – (a) that the signature, stamp, seal or other authentication of the document is genuine; (b) that the person signing, stamping, sealing or otherwise authenticating it had at the time when he so signed, stamped, sealed or authenticated it the official or other character which he claims: Provided that the document is substantially in the form, and purports to be executed in the manner directed by the law in that behalf."* We say that the birth certificate exhibited in this action is presumed to be a document issued out of the Registrar General's Department and the presumption has not been rebutted by the Defendants.

18. Whether Plaintiff is the person shown to have been born at Princess Margaret Hospital on 4th June, 1986?

The Plaintiff under oath states that he is the person born in The Bahamas on the 4th June, 1986 to Vida Lester a Haitian National and Counsel for the Defendants in her cross examination did not discredit or prove otherwise.

19. Whether the Defendants should issue a certified copy of the birth certificate to the Plaintiff?

The fact that the Plaintiff was able to obtain a certified copy of his birth certificate from the Registrar General's Department is proof that the birth was recorded. The Defendants cannot now say that because they are unable to satisfy themselves that all requirements were met at the time the birth was recorded that the requirements were not met. It is the Defendants evidence that the records cannot be found.

For this reason we rely on the presumption of regularity and the presumption not having been rebutted the Plaintiff should be issued a certified copy of his birth certificate.

- (i) It is submitted that the Plaintiff is the person born to Vida Lester at Princess Margaret Hospital on the 4th day of June, A.D, 1986;
- (ii) It is further submitted that the Plaintiff should be issued a certified copy of his birth certificate; and
- (iii) Costs should be awarded to the Plaintiff to be taxed if not agreed.

11. The Defendant's case, as outlined in paragraphs 12-15 of its closing submissions was as follows:

12. Defendants contend that they cannot positively verify the Plaintiff is the individual named Darren Lester who was born on the 4th June, 1986 to a Haitian National named Vida Lester.

13. Further that they have conducted searches of their respective databases and cannot locate any registration records of the birth. Due to the fact that no supporting documents were located to substantiate and validate birth certificate #14706 which was provided to the Department of Immigration.

14. The Defendants further contend that the birth certificate was not a valid registration.

15. The Defendants further contend that a thorough search was conducted of the Princess Margaret Hospital record for any files which indicate that Vida Lester gave birth to a live baby boy on the Maternity Ward of the Princess Margaret Hospital on the 4th June, 1986 and no records were found to substantiate the same.

12. According to the relevant provisions of the Births and Deaths Registration Act:

6. The Registrar General shall cause to be provided a sufficient number of registers for entries of births and deaths in the prescribed forms and shall furnish to every Registrar such registers as are required for the purposes of this Act.

7. Every registrar shall be responsible for ensuring the registration of every birth or death occurring in his district which is reported to him or comes to his knowledge and shall make such enquiries as he may consider necessary for ascertaining if there are any births or deaths which have not been reported to him.

8. Every assistant registrar shall —

(a) inform himself carefully of every birth and death occurring within the district or subdivision of the district for which he is appointed and shall forthwith enter the same, together with all the particulars relating to such birth or death as required in the prescribed forms;

(b) as soon as possible after the registration of any birth or death forward to the registrar the prescribed forms completed in triplicate containing the particulars thereof and, in case no birth or death has been registered

in any month, shall so inform the registrar in writing at the end of such month;

(c) forthwith inform the registrar that any person required to give information as to any birth or death has made default.

9. (1) A registrar, upon receipt from an assistant registrar of the registers sent to him in accordance with the provisions of section 8 of this Act shall examine them to ensure that they comply with the requirements of this Act and upon being so satisfied shall seal all three copies with an official seal bearing such device as may be prescribed for the purpose and shall return one sealed copy to the assistant registrar concerned for transmission to the person making the registration.

(2) As soon as possible after the last day of each month a registrar shall transmit to the Registrar General one sealed copy of each register received by him during the previous month. The third sealed copy of each register shall be retained by him in safe custody as part of his official records.

10. The Registrar General, upon receipt of completed registers for each month of the year, shall cause the same to be filed and retained as records in his office.

...

Registration of Births

12. In the case of every child born alive it shall be the duty of the midwife or other person who delivered the child and, in default of such midwife or other person, the following persons, that is to say —

(a) each person present at the birth of the child;

(b) the father and mother of the child;

(c) the person having charge of the child;

(d) any occupier of the house in which to his knowledge the child was born

within twenty-one days next after such birth, to give to the registrar or assistant registrar information of the particulars required to be registered concerning such birth.

...

14. In the case of the birth of a child born out of wedlock —

(a) no person shall as father of such child be required to give information under this Act concerning such birth;

(b) a registrar or assistant registrar shall not enter in any register the name of any person as father of such child unless at the joint request of the mother and the person acknowledging himself to be the father, such request taking the form of a written declaration witnessed by the registrar, or an assistant registrar, or justice of the peace or a notary public.

13. In respect to the Section 90 of the Evidence Act argument, raised by the Plaintiff, the Defendants say in its submissions that:

26. Section 90 creates a presumption of regularity of official and judicial acts that all circumstances had happened and all conditions were fulfilled which were necessary to give validity to such acts until the contrary is shown. In other words this section creates a rebuttable presumption where evidence to the contrary can be shown to refute the regularity of the act done by an official.

27. In this particular case where there the Plaintiff is asking this Honourable Court to grant a Declaration that the Plaintiff is the person referred to in the entry certified by Dorothea A Roberts and for an Order issuing the Plaintiff with a certified copy of his birth certificate, the Court has the jurisdiction to examine the evidence to determined whether the birth certificate was in fact properly issued by the Registrar General. Further, the Court has the jurisdiction to examine the evidence to determine whether all the conditions were fulfilled which was necessary to give validity to the act allegedly done by the official.

14. Whilst there may be a presumption of regularity it is accepted by both Lester and the Defendants that any such presumption is nonetheless rebuttable.

15. Having observed the witnesses as they gave their evidence I did not find Lester or his witness to be truthful and I have no hesitation in indicating that I prefer the evidence of the witnesses for the Defendants.

16. Perhaps the most compelling matter which questions the authenticity of the birth certificate is that it is purported to have been recorded on 20 July 1986, which indeed was a Sunday. I take judicial notice of the fact that the Registry of Births has not ordinarily opened for business on a Sunday.

17. Lester's evidence did not accord with particulars of the very birth certificate that he was advancing as genuine and accurate:

(1) Lester's evidence was that he had no family yet the questioned birth certificate stated that at the time of Lester's birth his mother Vida Lester had 3 children.

(2) I accept that any number of reasons could account for the absence of a reference to a father on the birth certificate. The evidence of Stuart was that at the time of his birth the person she says was his mother was with a Bahamian man whom she says was Lester's father. There was no mention of a Bahamian father (or any

father) in Stuart's witness statement. Stuart's revelation came under cross examination and was not contained in her witness statement.

(3) Lester's evidence (through Stuart) was that his mother Vida lived in Montell Heights up to the birth of the child and thereafter, yet the permanent residence of the mother on the questioned birth certificate was Fox Hill Road.

18. I found portions of the evidence of Stuart to be incredible. She says that she identified Lester when she saw him 18 years later. She accepts that he was only a year-old baby when she would have last seen him in 1987 when he and his mother purportedly left The Bahamas.

19. I am also satisfied that the documents said to have been placed on Lester's file with the Immigration Department were provided to the Immigration Department by Lester. I did not accept his evidence that he did not provide them. I accept that a letter dated August 20th, 2012 from Mrs. Ladonna Thurston on behalf of the Director of Immigration was sent to Lester, which acknowledged receipt of an application dated August 13th, 2012 and requested a number of documents from him including a letter from Public Hospital Authority verifying his birth. I find, on balance, that these documents, namely the undated letter allegedly from the Princess Margaret Hospital and the immunization record of one Darren Lester were fraudulent.

20. Rolle's evidence, which I accept, was that the undated letter, purportedly authored by her, was not in fact authored by her. Additionally she identifies numerous irregularities with the document. Bain likewise also identifies numerous issues, inconsistencies and anomalies with the purported immunization records.

21. I accept the evidence of Moss that the birth of Lester, as reflected in the copy of the document produced by him, could not be verified. According to her there are three entries in a given birth, the original birth registration card, The Registration Book for 1986 and copy given to the customer, the mother. Specifically, her evidence was:

So, it's three copies. one pink - - one given to the customer. The hard card, what you call the Registration Card. And then one copy, the yellow copy that stays in the Registration Booklet."

Moss outlined how she sought to verify the birth but could find no record of the birth. Lester did not produce the pink customer's copy and the 1986 Registration Book is lost. There is no original birth Registration Card (the hard card) for the birth alleged to have been recorded for a Vida Lester and reflected in the copy document produced by Lester.

22. I am satisfied that, on balance, the presumption of regularity, if applicable in this case (of an unverified copy of a document) has been rebutted on the evidence.

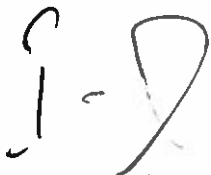
23. In all the circumstances therefore:

(a) I am not satisfied on the evidence that Lester was born at the Princess Margaret Hospital on the Island of New Providence, one of the Islands of The Commonwealth of The Bahamas on the 4th June 1986 to Haitian National Vida Lester.

(b) I find that the copy of the birth certificate is not genuine and that any presumption of regularity which applies by virtue of Section 90 of the Evidence Act has been rebutted

24. The application for a declaration is therefore refused with costs to the Defendants.

Dated this 28th day of January 2022



Ian R. Winder

Justice