

COMMONWEALTH OF THE BAHAMAS

2021/PUB/con/00001

IN THE SUPREME COURT

Public Law Side

IN THE MATTER OF ARTICLE 17, 20(8), 21 & 25

OF THE CONSITUTION OF THE BAHAMAS

**AND IN THE MATTER OF SECTIONS 29,3(1),3(2), 3(3) a, b, c, d, e & f ; 4(a) & 4(c)
9(1), 9(3) and 14(1) & 14(2) of the Child Protection Act Chapter 132**

AND IN THE MATTER OF Section 74 Matrimonial Causes Act

BETWEEN

ANISHKA A. MISSICK "AKA" ANISHKA HANCHELL

Applicant

AND

THE HON. MRS JUSTICE RUTH BOWE-DARVILLE

(In her capacity as presiding Justice of the Supreme Court)

First Respondent

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Respondent

Appearances:

Mrs. Anishka A. Missick, Pro se

**Mr. Owen Wells with Ms. Lilnique P. Grant on
behalf of the Respondents**

Hearing dates:

13th May 2022, 25th May 2022 & 14th July 2022

DECISION

Introduction

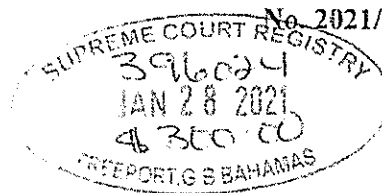
1. The parties to this action appeared before the Court on divers occasions in an attempt to have the Applicant's Constitutional Motion heard. During the last hearing on the 14th July, 2022 the Court advised the parties that it would consider the submissions before it in reference to the substantive application and the parties applications for strike out and provide a written Judgment which it does so now.
2. The Court sets out below the relevant documents filed in the action by the parties for ease of reference.
3. The Applicant filed the following documents:-
 - a. Notice of Motion filed on the 28th January, 2021;
 - b. Affidavit in Support of Constitutional Motion filed on the 28th January, 2021;
 - c. Amended Notice of Motion filed on the 22nd March, 2022;
 - d. Supplemental Affidavit in Support of Motion filed on the 22nd March, 2022,;
 - e. Summons to Strike Out filed on the 16th May, 2022;
 - f. Affidavit of Anishka Missick filed on the 16th May, 2022;
 - g. Amended Summons filed the 28th June, 2022;
 - h. Affidavit of Anishka Missick in Support of Amended Summons filed the 28th June, 2022;
 - i. Affidavit of Anishka Missick in Response to Affidavit of Lilnique Grant filed on the 28th June, 2022;
 - j. Summons to Strike Out Affidavit of Lilnique Grant filed the 28th June, 2022.
4. The Respondent filed the following documents:-
 - a. Notice and Memorandum of Appearance filed on the 27th April, 2022;
 - b. Summons for Strike Out on the 13th May, 2022;
 - c. Affidavit of Lilnique Grant in Support of Strike Out Application filed on the 25th May, 2022.
5. The Court requested the parties to lay over their written submissions prior to any scheduled hearing in an effort to effectively manage the Court's time. While this is not the Court's usual style of Judgment writing, the Court thought it best to set out the relevant documents filed in the substantive application below.

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COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division



No. 2021/PUB/con/FP/0000/

IN THE MATTER OF ARTICLE 17, 20(8), 21 AND 25 OF THE CONSTITUTION OF THE BAHAMAS

AND IN THE MATTER of sections 29; 3(1); 3(2); 3(3)(a)(b)(c)(d)(e)(f); 4(a) and 4(c); 9(1) and 9(3); and 14(1) and 14(2) of the Child Protection Act, Chapter 132

AND IN THE MATTER of section 64 of the Matrimonial Causes Act

BETWEEN:

ANISHKA A. MISSICK A.K.A ANISHKA HANCHELL

Applicant

AND

THE HON. MRS. JUSTICE RUTH BOWE DARVILLE

(In her capacity as Presiding Justice)

First Respondent

THE ATTORNEY GENERAL

Second Respondent

NOTICE OF MOTION

TAKE NOTICE that a Judge of the Supreme Court will be moved so soon as Counsel can be heard on behalf of the above-named Applicant at the Supreme Court, Garnet Levarity Justice Centre in the city of Freeport on the Island of Grand Bahama on the _____ day of _____ A.D., 2021 at _____ o'clock in the forenoon for the hearing of an application pursuant to Articles 17, 20(8), 21 and 25 of The Constitution of The Bahama for the determination of the following issues:-

1. Does section 74 of the Matrimonial Causes Act confer jurisdiction to a Court within The Bahamas the power to vary an Order for custody and or access to minor children in the

absence of considerations to the United Nations Convention on the Rights of the Child (“the Child Rights Convention”) and the Child Protection Act, Chapter 132? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?;

2. Can a Court within The Bahamas make a declaration that a Parent with Primary care and control is *unfit* to have custody and or access to her minor children in the *absence* of considerations to the Parent’s Human Rights, the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?
3. Can a Court within The Bahamas, adjudicate on matters where there are determinations to be made relative to children under the age of 18 years without proper adherence or considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?
4. Can a Court within The Bahamas grant an Order for the immediate full custody of minor children by way of *Ex Parte* Proceedings (without notice) from a Parent declared to have Primary care and control, in the *absence* of considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?;
5. Can a Court within The Bahamas grant an Order for the immediate full custody of minor children in an *Inter Partes* hearing from a Parent declared to have Primary care and control in the *absence* of considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? If not, is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?;

6. Can a Court within The Bahamas grant an Order for the immediate full custody of minor children by way of Ex Parte Proceedings (without notice) from a Parent declared to have Primary care and control in the *absence* of an application for the same? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?:
7. Can a Court within The Bahamas grant an Order for the immediate full custody of minor children by way of Ex Parte Proceedings (without notice) from a Parent declared to have Primary care and control in the *absence* of evidence whether in affidavit (draft or otherwise) and or orally? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?:
8. Can a Court within The Bahamas grant an Order for the immediate full custody of minor children by way of Ex Parte Proceedings (without notice) from a Parent declared to have Primary care and control in the *absence* of evidence of immediate or any threat of harm to their safety and or considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?:
9. Can a Court within The Bahamas grant an Order by way of Ex Parte proceedings (without notice) hindering a Parent from travelling (*within The Bahamas*) with their minor children in the *absence* of immediate or any threat of harm to their safety and or considerations to the Child Rights Convention and the Child Protection Act, Chapter 132?; and or non restrictions on travel hitherto? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?
10. Can a Court within The Bahamas order a Parent to undergo a Social Services investigation in the absence of any evidence of neglect and or abuse of her minor children or in the *absence* of considerations to the Child Rights Convention and the Child

Protection Act, Chapter 132? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 of the Constitution of The Bahamas?

11. Can a Court within The Bahamas subject a Parent to attend *family counselling* with her former spouse with whom she was separated since 2012 and divorced (Decree Absolute) since 2014 and particularly without regard to the fact that she is remarried; and or in the *absence* of considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 of the Constitution of The Bahamas?
12. Can a Court within The Bahamas compel a Parent to produce medical records and or undergo a psychological assessment in the absence of any mental abuse or abuse of any kind in respect of her minor children; and or in the absence of considerations to the Mental Health Act; The Medical Act; The Data Protection Act; and the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 and or 25 of the Constitution of The Bahamas?
13. Can a Court within The Bahamas grant an Order removing custody and access to a Parent in the absence of evidence and or a declaration that the Parent is "unfit" and in the absence of considerations to the Child Rights Convention and the Child Protection Act, Chapter 132? Is this lawful and is it in contravention of Articles 17 and or 20(8) and or 21 of the Constitution of The Bahamas?;
14. Can a Court within the Bahamas predetermine and or prejudge matters related to minor children in the *absence* of considerations to the Child Rights Convention and the Child Protection Act or at all? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) and or 21 of the Constitution of The Bahamas?;

15. Can a Court within The Bahamas adjourn the hearing sine die in the absence of a final determination? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) of the Constitution of The Bahamas?;

16. Where there has not been a final determination with regard to considerations related to minor children; Can a Court within The Bahamas adjourn the hearing sine die? Is this lawful? If not, is it in contravention of Articles 17 and or 20(8) of the Constitution of The Bahamas?;

AND TAKE NOTICE that upon the determination thereof the Applicant seeks the following Declarations and or reliefs:-

17. That a declaration be made that the immediate removal of custody by way of Ex Parte proceedings and in the absence of considerations to the Child Rights Convention and the Child Protection Act is or was unconstitutional and therefore must be quashed;


18. That a declaration be made that the Ex Parte proceedings without notice to the Applicant removing custody and access to her minor children is or was unconstitutional and must therefore be quashed;

19. That a declaration be made that the predetermination/prejudgment of this matter by way of Ex Parte proceedings without notice to the Applicant is or was unconstitutional; and must therefore be quashed;

20. That a declaration be made that the Interim Order, which emanates from and continues the Ex Parte Order is or was unconstitutional and must therefore be quashed;

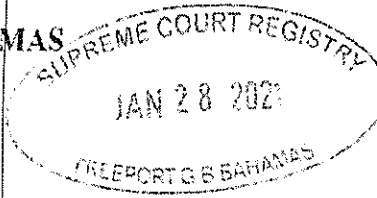
21. That a declaration be made that the Interim Order on the basis of predetermination/prejudgment of this matter is or was unconstitutional and must therefore be quashed;

22. That a declaration be made that the Ex Parte Order restraining and or hindering the Applicant from travelling with her minor children is or was unconstitutional and must therefore be quashed;
23. That Primary Care and Control be returned to the Applicant;
24. That reasonable access in light of the current circumstances be granted to the Children's Father;
25. That a declaration be made that to adjourn a matter sine die where a final determination has not been made is or was unconstitutional;
26. That Articles 17, 20(8), 21 and 25 of The Constitution of The Bahamas have been breached in respect of the Applicant due to the aforesaid matters complained of;
27. General Damages: and or Aggravated Damages;
28. Vindictory Damages;
29. Costs to be taxed if not agreed;

DATED this  th day of January, A.D., 2021

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COMMONWEALTH OF THE BAHAMAS



No. 2021/PUB/con/FP/00001

IN THE SUPREME COURT

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IN THE MATTER OF ARTICLE 17, 20(8), 21 AND 25 OF THE CONSTITUTION OF THE BAHAMAS

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BETWEEN:

ANISHKA A. MISSICK A.K.A ANISHKA HANCHELL
Applicant

AND

THE HON. MRS. JUSTICE RUTH BOWE DARVILLE
(In her capacity as Presiding Justice of the Supreme Court)
First Respondent

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS
Second Respondent

AFFIDAVIT IN SUPPORT OF CONSTITUTIONAL MOTION

I, ANISHKA A. MISSICK, a counsel and attorney-at-law, of Freeport, Grand Bahama, one of the Islands of the Commonwealth of The Bahamas, the above-named Applicant in this action, make oath and say as follows:

1. Save where otherwise expressly stated I depose to the truth of all the matters referred to herein, of my own knowledge.

Introduction:

2. That the Applicant is the Mother of three (3) minor children, namely: Laural Hanchell, a female whose date of birth is the 14th October, 2006 (aged 14 years); Larell R.L. Hanchell II, a male whose date of birth is the 28th July, 2010 (aged 10 years); and Jamiyah Missick, a female,

whose date of birth is the 14th July, 2018 (aged 2 years); and the wife of James Missick, a native of Grand Bahama.

3. That the older children (the subject minor children) are the issues of the Applicant's former marital union between Larell Hanchell (Mr. Hanchell), Counsel and Attorney at Law. A *decree absolute* was granted since 2014; The Applicant's last child is the product of her current marital union with James Missick.
4. That the Applicant was the Petitioner in her divorce proceedings which was granted on the ground of desertion; and after the Ancillary hearing therein, an Order (2014 Ancillary Order) was granted whereas the Applicant and her former spouse were granted joint custody with Primary care and control being granted to the Applicant. (**A copy of the 2014 Ancillary Order is marked and exhibited as A.A.M.1**).
5. That after enjoying Parental rights without any actual abuse or any allegation of abuse (perceived or real) or without any reasons for which the Applicant's Parenting rights of her minor children could be questioned and or legally disturbed; the Applicant lost custody and access to the subject minor children as a result of Ex Parte orders granted by the Hon. Mr. Justice Keith Thompson (His Lordship) on the 29th July, 2019. As a result, the Applicant had no physical access to the subject minor children for a continuous period of six (6) months. The Hearings before His Lordship were *without* due process.
6. That but for the decision of the Court of Appeal on the 15th January, 2020; the separation was meant to continue beyond that time. (**A copy of the ruling of the Court of Appeal dated the 15th January, 2020 is marked and exhibited as A.A.M.2**).
7. That to date, the Applicant is unaware of the judicial reasoning and or considerations made in respect of the grant of the *Ex Parte* Orders; and or the decision to take away both custody and access from the Applicant in breach and in violation of the Applicant's Constitutional rights.
8. That the Applicant has filed in July of 2020, a writ of summons with respect to His Lordship's Orders in July, 2019.

9. That shortly after the Ex Parte Orders of Justice Keith Thompson was quashed by the Court of Appeal in January, 2020; on the 21st January, 2020, the Applicant's former spouse, Mr. Hanchell filed a *fresh* application by way of summons and affidavit to be heard before the Hon. Mrs. Justice Ruth Bowe Darville (Her Ladyship) which was scheduled to be heard on Monday the 10th February, 2020.
10. The Applicant was served with the said summons and affidavit on or about the 5th February, 2020. On the 10th February, 2020 the parties appeared for an inter partes hearing for the first time before Her Ladyship. The Applicant's former spouse, Mr. Hanchell abandoned his *remitted* applications that were before His Lordship, which were the subject of the Court of Appeal's decision.
11. That an affidavit in response was filed on behalf of the Applicant in preparation of the said matter which was scheduled to be heard before Her Ladyship on the 10th February, 2020. In the affidavit the Applicant gave her formal Notice to the Court that she would be relocating to the island of Grand Bahama, an island within the jurisdiction of the Commonwealth of The Bahamas along with other relevant information. **(A draft copy of the Affidavit of Anishka Missick which is filed is marked and exhibited as A.A.M.3)**;
12. That at some point during the Applicant's appearance before Her Ladyship; the Applicant's *then* Counsel of record, Mr. Murrion Ducille, sought to engage Mr. Khalil Parker, Counsel for the Applicant's former spouse on matters involving her relocation in an effort to deal with all issues at hand. The Applicant's former spouse was not interested in having said discussions. Further, it is recalled that Her Ladyship stated that to have such discussions were *premature* , without more.
13. What is most apparent are that the issues of these proceedings are *identical* to those brought before his Lordship in 2019. As such, it can be surmised that this is a *second bite of the Apple* which are again without due process;

Ex Parte Order; Execution of the Ex Parte Order; and Interim Order :

14. On Wednesday the 26th August, 2020, at around 8:30 PM, about four (4) uniformed Police Officers attached to the Cable Beach Police station; an unidentified male in plain clothes; the Applicant's former spouse and his Counsel Mr. K. Miles Parker appeared at the Applicant's home to execute the Ex Parte Order granted by Her Ladyship. (A copy of the Ex Parte Order is now marked and exhibited as **A.A.M. 4**);
15. That the particular circumstances by which the Ex Parte Order was executed have been complained of by the Applicant to the Commissioner of Police. (A copy of the Letter of complaint to Mr. Paul Rolle, Commissioner of Police dated the 15th September, 2020 is now marked and exhibited as **A.A.M.5**).
16. That upon service of the Ex Parte Order upon the Applicant, the Police read aloud its contents and penal notice; at which time the Applicant asked how could there be an Order where she was not a party to the proceedings? At that point, Attorney K. Miles Parker, also Counsel for the Applicant's former husband *very proudly* stated that he had a hearing with her Ladyship earlier that day and another male's voice in the background chimed in that he himself had just spoken to Her Ladyship *by telephone* as to the authenticity of the Ex Parte Order.
17. That the said Ex Parte Proceedings were conducted without there even being a courtesy of a Notice extended to the Applicant along with its execution were incomprehensible, and without due process of the law.
18. That the Ex Parte Order when served stood alone without more; and sought to give *legal* validity for the immediate removal and grant of *full* custody of the subject minor children to the Applicant's former spouse, Mr. Hanchell.
19. That the Applicant watched in utter anguish as the subject minor children were *forcibly* removed from her home. The subject minor children were also in great emotional distress as they cried and *protested* being taken away; and that was extremely painful as a Mother to witness. That video footage was captured by the Applicant of the latter part of the execution of the said Ex Parte Order, which depicts the traumatizing event on the Applicant and *all* of her

minor children on the 26th August, 2020. (I wish to exhibit a video footage of the execution of the Ex Parte order of Her Ladyship and give notice of my intention to do so.)

20. That the Applicant firmly believes that this was not being done in consideration to the welfare of the subject minor children.
21. That the circumstances of the Ex Parte Order leading up to its execution was *gestapo* styled and wholly unwarranted.
22. That after all was said and done, the Applicant and the children's two (2) year old sibling were left to pick up the emotional pieces *alone*, particularly as her husband was in Grand Bahama.
23. That since these Orders were granted, the Applicant has suffered physically, emotionally, financially, mentally, personally and professionally. That the Applicant's minor children are suffering also.
24. That the Applicant has audio recordings of the children sharing their views in opposition to the decision of the court. That the Applicant gives notice to have said recordings entered into these proceedings as evidence of this fact. (See also paragraph 69 of this Affidavit);
25. That the decision to grant an Ex Parte Order without notice disregarded the fact that we are in a global pandemic and serious health concerns and restrictions exist; it was a disregard to the Applicant's human rights and Constitutional rights and those of her minor children; in particular, the most vulnerable of them all, the Applicant's two (2) year old child who remains in her care.
26. That the Applicant also highlights that most of her personal belongings and those of her minor children, particularly the toddler, were transported by mail boat earlier that day and great expenses were incurred in preparation for her travel to the island of Grand Bahama as her vehicle, apparel and shoes; groceries, medication and more was shipped.
27. That the Applicant's costs also extended to staying overtime in an apartment in New Providence when she had already given Notice to vacate the same; along with paying for a car rental to get around well beyond the expected time; Having to pay for a babysitter as a result of

her husband not being present; and the costs; and the very short time to prepare to litigate as she represented herself.

28. That in respect of the time and effort taken in preparation to litigate these matters, the Applicant also took videos which she believed would *chronicle* the circumstances she was left in after the execution of the said Ex Parte Order. The applicant wishes to rely upon said video footages as evidence in these proceedings and therefore gives notice of her intention.
29. That separate and apart from the Applicant's decision to relocate; under the 2014 Ancillary Order in respect of custody, the entire month of August saved for one weekend was the Applicant's time of *Summer* access; and Mr. Hanchell had already had his weekend's access. Further, the Applicant had already made plans for a surprise vacation while on the island which would begin with them travelling via private charter. That the children were particularly excited at travelling by Private Charter which they exclaimed was a dream of theirs. That the Applicant being hindered from her travels to another island *within* The Bahamas is again unfathomable.
30. Further, what is particularly egregious is the Court's determination that the rights of custody and access to the subject minor children to the Applicant's former spouse outweighs the Applicant's rights of custody and access along with the Applicant's right of primary care and control.
31. To date, the Courts have excluded the Applicant from having any and all custody and access rights to the subject minor children save and except for zoom calls on Sundays from 11:00 am. This is *inter alia*, degrading and inhumane.
32. That the only exception Her Ladyship made regarding access was an invitation during Christmas 2020. This invitation was made after an application for Her Ladyship's recusal was made and as such the Applicant believed that an acquiescence to that invitation would now be in conflict of her recusal application; and The Applicant and her children needs a final resolve to these proceedings as to acquiesce to this invitation would not bring finality and or closure of this repeated circumstance to both the Applicant and her minor children.

Emergency Interlocutory Appeal:

33. That on Friday the 28th August, 2020; the Applicant electronically filed an Emergency Notice of Appeal against the grant of the Ex Parte Order which was accepted by the Registrar of the Court of Appeal as that Court was physically closed due to Covid.
34. At the time of the electronic filing, directions were given to the Applicant that the Registry would be opened that following Monday and at that time; the *physical* filing and payment of fees would be made.
35. That the Applicant upon her initial electronic filings included Her Ladyship, the Applicant's former spouse and his Attorneys in all email communication related to her appealing the Ex Parte Order.
36. That of the various grounds of Appeal, of particular importance *inter alia* was ground 2 which was also enunciated in the recent decision of the Court of Appeal's ruling dated the 25th September, 2020 in respect of the subject minor children. That ground states: *That the learned Judge erred in law and or in fact in not considering or determining whether her decision was in the best interest of the children*";
37. That the following observations were taken from the ruling by the Court of Appeal cited above, in respect of Her Ladyship's decision in granting the Ex Parte Order. That the Court of Appeal demonstrates the absence of due process of the law, which consequently is a violation of the Applicant's rights:
- (i) *There is no evidence that there was any attempt by the respondent to notify the appellant or a requirement of the court that the appellant be advised orally of the intended application and given the opportunity to be heard*" (Para. 7 of the Ruling).
 - (ii) *It is difficult to see how such an Order, removing the children from the appellant's custody and transferring them to the custody of the respondent immediately, could possibly have been made on an ex parte application.*" (Para. 7 of the Ruling).
 - (iii) *Firstly, the Order does not record what application was made to the court by the respondent which moved the court to make the Order.*" (Para. 8 of the Ruling).

- (iv) *It does not record what evidence was before the Court either in affidavit (draft or otherwise) or what oral evidence was received by the court to warrant the making of the Order without any form of notice to the appellant.*" (Para. 8 of the Ruling).
- (v) *The Order took away custody from the appellant immediately, without hearing her at all. It purported to be permanent in form not just for a few days or until the inter partes hearing.*" (Para. 8 of the Ruling).
- (vi) *It is difficult to fathom what caused the court to take custody of the children from their mother without any notice to her.*" (Para. 8 of the Ruling).
- (vii) *Ex parte applications are too frequently made and heard in the Supreme Court. It is difficult to fathom what caused the court to take custody of the children from their mother without any notice to her. As I apprehend, the fear was that the appellant was taking the children to be with her and her husband on the island of Grand Bahama which would have prevented the respondent from having access as per the terms of the prevailing 2014 Order. Even if that were so (and we do not have the material that was before the court on 26 August 2020 as it is not recited in the Order), at best that would have given rise to an injunction restraining the appellant from moving the children from New Providence. It could not warrant taking the children from the appellant "IMMEDIATELY" causing them to be removed from her custody that night.*" (Para. 9 of the Ruling).
- (viii) *Unless there was an immediate threat of harm to the safety and welfare of the children it is difficult to apprehend the basis for making the Order without any notice to the mother.*" (Para. 10 of the Ruling).
- (ix) *It has been stated time and again that ex parte relief of this nature must be very much the exception rather than the rule because it offends a fundamental principle of natural justice which is that judicial decisions should be made after having heard both sides. Lord Hoffmann has described the principle of Audi Alteram Partem as "salutary and important" but I would go further and say that it is a virtually indispensable*

ingredient of the administration of justice which can only be departed from in circumstances of grave risk of harm, and then when it is departed from should be mediated by the earliest possible inter partes hearing.” (Para. 10 of the Ruling).

(x) “This Court well understands the trauma that must have occurred when her children were removed from her custody at night without any notice to her.” (Para. 10 of the Ruling).

(xi) “It is to be noted that the Order referred to an inter partes hearing on 31 August 2020 some five days after the order of 26 August 2020. It may well be that the custody order was only intended to last 5 days but that is not what the Order said. It was not limited in any manner.”

Other Important Court of Appeal Pronouncement/Judgment:

38. That the Applicant recalls when she herself appeared as a Crown’s Prosecutor on behalf of the Office of the Attorney General, that the following was pronounced by the Court of Appeal in the case of *R.B. (a Juvenile) Vs. Attorney General - Appeal No.205 of 2015* (at paragraphs 92 and 93); the Hon. Ms. Justice Crane-Scott, JA states:

“ 92. By signing, ratifying and incorporating the Child Rights Convention, the Government of the Bahamas has demonstrated a commitment to the four main principles expounded therein; namely that all the rights guaranteed by the Convention must be available to all children without discrimination of any kind (Article 2); that the best interests of the child must be a primary consideration in all actions concerning children (Article 3); that every child has the right to life, survival and development (Article 6); and that the child’s views must be considered and taken into account in all matters affecting him or her (Article 12).

93. In light of these principles and the facts in the present case I take the opportunity to remind the relevant authorities of their respective duties and obligations under the

Convention and the Child Protection Act and further urge that more attention be paid to the rights afforded Bahamian children therein.

39. That *no* attention was paid to the rights of the subject minor children as they were never engaged before the courts prior to the Orders for removal from the Applicant; and the welfare of the subject minor children have been injured.

Transcripts of the 31st August, 2020 and the 3rd September, 2020.

40. That by hearing the matter by way of Ex Parte Proceedings; Her Ladyship *predetermined* the case for custody of the subject minor children in favor of the Applicant's former spouse; and in the absence of *any* consideration or regard to the Human Rights convention on children and the Child Protection Act.

41. During the *inter partes* proceedings, Her Ladyship made an Interim Ruling dated the 7th September, 2020 which is an extension to the Ex Parte Order; and a continuation of her predetermination without due process. Her ladyship also predetermined that the subject minor children would immediately be enrolled at St. Anne's School and also predetermined that they ought to remain in New Providence, despite the Applicant having formally advised the Court of her intention to relocate since February, 2020.

42. That upon such enrollment of the subject minor children in St. Anne School Mr. Hanchell attempted to place the obligation of payment of school fees upon the Applicant by sending the school's invoice with my name on it, contrary to Her Ladyship's Order. That the Applicant is now in fear that Her Ladyship will place that obligation on me.

43. That the transcripts beginning from February to now would show that Her Ladyship predetermined the case even in relation to the children remaining in New Providence despite being aware of the Applicant's intention to relocate to the island of Grand Bahama.

44. That of the many requests for transcripts; the Applicant is now in receipt of those from the hearing of the 31st August, 2020 and the 3rd September, 2020 which not only evidences that Her Ladyship had predetermine the case of custody; schooling and island placement; but that

there are no considerations made to the Human Rights Convention of Children nor the Child Protection Act.

45. That from the outset, there appears to be consideration *only* in regard to the Applicant's former spouse and his Counsel in that they are able to easily and readily access Her Ladyship and secure any Order applied for at their whim and fancy.
46. Further, the transcripts are evidence that Her Ladyship was also *intent* on acceding to the Orders made on behalf of the Applicant's former spouse. (A copy of the transcript dated the 31st August, 2020; and the transcript dated the 3rd September, 2020 are now marked and exhibited as A.A.M. 6 and A.A.M. 7);
47. That the following are just some examples which have been extracted from the transcript of the 31st August, 2020 which confirms Her Ladyship's intent:

- Example 1 (In the absence of the Mrs. Missick):

" **THE COURT:** Mr. Parker...We're dealing with Hanchell and Hanchell number 193 of 2014. And, I have before me a summons filed on 24th of August, 2020, brought by Mr. Hanchell and he's asking that the children of the marriage be *immediately* enrolled in St. Anne's School, Laurell being enrolled in grade eight and Lorell in grade six for the 20/21 school year.

- Example 2 (In the absence of Mrs. Missick):

" **THE COURT:** You are hoping in receipt of the -- her intention to file an appeal.

MR. PARKER: I have seen the e-mails, yes, my Lady. And I have just printed those documents off that's how I confused my paperwork. I see on Friday afternoon I received those e-mails. And I believe around four o'clock or so.

THE COURT: Now she sent drafts of those documents to the court today.

MR. PARKER: Pardon, did she?

THE COURT: I saw an e-mail that I got a copy of an e-mail. She sent her notice of motion, the affidavit and other things.

MR. PARKER: Yes, my Lady, I say that also. I have seen those documents. I am not sure of the procedure she's adopting. But as far as I am -- as I understand, she should have or should be present for this hearing with respect to the application on the 24th at the very least.

THE COURT: She should be present.

MR. PARKER: Yes, my Lady. I don't see how the counsel and the petitioner being one and the same can unilaterally determine to absent themselves from the court in terms of its jurisdiction for a matter that's ongoing. I find her procedure to be correct and I don't know that her absencing herself from the hearing would prevent the court from taking any steps. Because one the things in the Order, paragraph three of the Order that was served on her, specifically state for the party shall appear before your Ladyship at 11 o'clock this morning for the inter parte hearings. That is spell out in the Order that was served on her. The petitioner has chosen instead to forward numerous unfiled documents. To serve various unfiled documents. Before the Court of Appeal, but I don't know if that's properly before this court. I don't know. I won't say it's not.

THE COURT: Mr. Parker, I need to see your face.

MR. PARKER: My Lady.

THE COURT: I don't see your face.

MR. PARKER: I see my camera. I am looking at me. I'll turn the camera off and on again. My Lady, am I back.

THE COURT: Yes.

MR. PARKER: I don't know that those proceedings, the application is probably before court and nor do I know that it stays the action, the application. In the circumstances, there are two issues that the petitioner would seek to have address at this time. The first one would be an Order for the education of the children for the immediate future. And in the circumstances, I would say that considering the conduct of the Respondent, the petitioner an interim custody

order or an interim variation existing custody order is appropriate in the circumstances. And, we would ask -- seek beyond that seek a return date for the hearing of the summons or a summons filed by the Respondent as alluded to in his summons of the 27th, which is summons seeking full custody. So ultimately a permanent variation or a major variation of the current custody order granting him full or primary custody of the children of the marriage.

THE COURT: Mr. Parker, did anybody ever perfect my order of the 5th of March?

MR. PARKER: No.

THE COURT: Or of the 1st of April?

MR. PARKER: My Lady, which order is that? My Lady, my instruction is that the 5th of March Order wasn't perfected as there was some delay in the getting both parties to sign, namely the petitioner. That's the Order of the 5th of March. I am instructed that there was no court hearing the April court hearing did not happened due to COVID.

THE COURT: Right, I see that.

MR. PARKER: So it was just the 5th of March, I am instructed sort of got caught in a delay attempt to get the signature of the petitioner to finalize for filing.

THE COURT: Can I please get the Order, a copy of it please.

MR. PARKER: Yes, my Lady. Now -- My Lady, the petitioner has just logged in.

THE COURT: Ms. Missick, you're just now logging in.

MS. MISSICK: Sorry for what appears to be my tardiness. I was actually logged in from the beginning. I am not familiar with the zoom act and for some reason it just keep logging me back out.

THE COURT: Ms. Missick, do you continue to represent yourself?

MS. MISSICK: Indeed. Yes.

- Example 3 (Mrs. Missick is present):

“ THE COURT: Ms. Missick...as the disposition of the matter is solely within my hands, its my intention to maintain my Order of the 26th .

- Example 4 (In the absence of the Mrs. Missick):

“ THE COURT: I still can't see Ms. Missick and she has two openings.

MR. PARKER: Yes, she does. She has communicated through the SEXYEP form With respect to the forward movement the time now he would submit its rather tight on this with respect to school opening. So, if court has any time this week to hear the parties.

THE COURT: Thank you. Matter is adjourned to Thursday 3rd of September at 2:30 p.m. for an in-person hearing. Giving leave to file and serve all her affidavits and motions by Wednesday the 2nd of September. Such affidavit or submissions should address the ex parte summons of the 27th of August and a summons of the 24th of August. The court will also receive the necessary applications or objections at that time.

MR. PARKER: Yes, my Lady.

THE COURT: We will have the whole afternoon for that just to make sure that I have it.

MR. PARKER: Yes, 2:30, yes, my Lady.

THE COURT: Yes.

MR. PARKER: Will the order of the 26th remain in place?

THE COURT: Yes, until the then. Nobody asked me to discharged.

MR. PARKER: Yes.

THE COURT: Should I perfect this order, my Lady?

THE COURT: Yes, sir.

MR. PARKER: Yes, my Lady. I will perfect it and lay over electronically to the court.

THE COURT: Thank you.

48. That the Applicant notes from the 4th example cited right above, which was extracted from the transcripts, that the Court made considerations to an Ex Parte Summons of the 27th August, 2020 which was filed *after* the grant of the Ex Parte Order; and not served upon the Applicant. That the Court would have become aware of the fact that the Applicant was neither aware nor served with said documents. The following are two examples which have been extracted from the transcript of the 31st August, 2020 which confirms this:

- Example 1 (In the absence of the Mrs. Missick):

“ **THE COURT:** Mr. Parker... And can you tell me about your service of documents in this matter.

MR. PARKER: Yes, my Lady. The summons filed on the 24th was served on Ms. Hanchell on the 26th -- on the petitioner, sorry.

THE COURT: Yes.

MR. PARKER: The 26th of August. And we have - an affidavit of service --

THE COURT: Who serve your document for you again?

MR. PARKER: One second, my Lady. The two services -- Mr. Hanchell you have the affidavit of the first service?

MR. HANCHELL: Sharika Clarke.

MR. PARKER: Bring it to me, please. We have to affidavit of services.

THE COURT: Yes, dealing with the summons for today and the affidavit those documents were served by Sherika Pratt. That's Corporal police officer 3357, on Wednesday the 26th of August, at 4:22 personally on the petitioner at her residence at Legacy West Apartments Prospect Ridge. About the summons and affidavit filed on the 24th was served. We have an

affidavit of service confirming such service. And we undertake to send that out to file and and over to the court today. That was a matter of timing, but the affidavit itself has been prepared and executed and I have it present.

THE COURT: And the second?

MR. PARKER: And on the just for confirmation on the first service affidavit, the petitioner signed the delivery slip, acknowledging receipt of her time. Now, my Lady, the second service was with respect to the order granted by this court on the 26th August 2020. On that occasion we -- does the court want to know -- the Order granted by the court and filed herein on the 26th of August was served on the petitioner at 8:30 at her residence at Legacy West Apartment, Prospect Drive. And it was served by Sergeant 2320 Eric Burrows. Who on that occasion both served the documents and carried out the provisions of the order with the assistance of officers from the Cable Beach Police Station. Namely, reservist inspector Armbrister, woman corporal Pratt, number 3357 along with other officers. He attest that the petitioner identified herself to him. He is also familiar with her and there's a photograph attached to the affidavit of service, which has been filed today and we will undertake to lay it over to the court electronically at the conclusion of this hearing. With that being said, the petitioner was served with both the summons for today, the affidavit in support and the order pronounced on the 26th.

Now, I note --

THE COURT: She has been served with the affidavit, the summons that undertook to serve subsequent to the injunction.

MR. PARKER: My Lady, she was served with -- I know she got the affidavit. She had counsel intercede. I don't confirm that she was served with the summons and affidavit of the 27. I know she was served with the summons and affidavit of the 24th.

THE COURT: But the 27th you can't confirm?

MR. PARKER: No, my Lady. I think those -- I've had a flurry of e-mail communications with

her and I undertake to send them out this morning.

THE COURT: When you say you had a flurry of e-mail with her or with her attorney?

MR. PARKER: Communication she had on Friday she had attorney. And I don't know if it should go on the record because counsel who spoke to me made it clear that she was speaking amicus.

THE COURT: Thank you.

- Example 2 (Mrs. Missick is Present):

THE COURT: Mr. Parker, may I refer you to your summons of the 26th of August which you filed on the 27th.

MR. PARKER: Yes, my Lady.

THE COURT: Together with the affidavit.

MR. PARKER: Yes, my Lady. The summons and the affidavit of the 27th, my Lady.

THE COURT: Ms. Missick, do you have the summons and the affidavit?

MS. MISSICK: The summons and affidavit if I stand to be corrected. I have a summons and affidavit that are both dated and filed on the 24th of August. Is that the one which you refer? Which summons and affidavit are you referring to?

MR. PARKER: No, my Lady.

THE COURT: In respect of the order of the 26th.

MS. MISSICK: You talking about the ex parte order?

THE COURT: Yes.

MS. MISSICK: I have the order of 26th, but I do not have summons with respect to the order of the 26th.

MR. PARKER: My Lady, those are the documents we undertook to serve on the respondent. The petitioner sorry.

THE COURT: She doesn't have it.

MR. PARKER: She wasn't served with them, my Lady.

49. That while the Applicant was off of the remote feed and attempting to return; Her Ladyship continued with the hearing then gave directions in respect of them. That upon her return to the remote feed, the Applicant was advised by Her Ladyship's Clerk that the hearing was adjourned to the 3rd September, 2020 and given the directions of the Court (*See paragraph 42 of this affidavit and Example 4 (In the absence of Mrs. Missick) for the Directions given by the Court which was extracted from the transcripts of the 31st August, 2020*);
50. That the Applicant was confused amongst other things at the direction given in light of the fact that Her Ladyship was granting the Applicant *leave* to respond to certain affidavits described above, when the applicant did not apply for any leave; nor was she aware of any further application filed on the 27th August, 2020 that required an affidavit in response. In fact, there were no summons and affidavit in support of the Ex Parte Order which was granted.
51. That during this time, the Applicant was also appearing before both the Court of Appeal and exchanging communication with that Court while also appearing before Her Ladyship.
52. That the Applicant while aware that an Appeal does not act as an automatic stay in Civil proceedings and the Applicant did not initially apply for a stay; that Her Ladyship of her own motion could have stayed the proceedings in accordance with the rules of the Supreme Court or within her inherent jurisdiction, knowing that the matter was before the Court of Appeal.
53. That notwithstanding the matters complained of at paragraph 52 above, the Applicant subsequently applied for a stay of proceedings and or a stay of execution of the Order of Her Ladyship which have yet to be addressed.
54. On Wednesday the 2nd December, 2020, the Applicant received communication from the Deputy Registrar of the Court of Appeal stating the following (**A copy of this email from the Court of Appeal is marked and exhibited as A.A.M.8**);

“ Further to the above, I am directed to advise that your application for an urgent hearing has been considered by the Court, however, it has been determined that your appeal should not be heard until after the inter-parties hearing is concluded in the Supreme Court and a decision is rendered.

Continuation of Inter Partes Hearing - 3rd September, 2020

55. That in preparation for the hearing on Thursday the 3rd September, 2020; the Applicant worked very hard and spent sleepless nights trying to prepare for both matters which were running almost simultaneously. The Applicant was losing financially and being drained, emotionally, mentally and physically all the while having to care for her toddler particularly in the absence of her husband. (An email sent to Her Ladyship is now marked and exhibited as *A.A.M.9*)

56. That this entire ordeal has been extraordinarily stressful and taxing; and in hindsight, the Applicant and those who are aware of these circumstances believe this to be the intent amidst other sinister things.

57. That the Applicant gave submissions both in writing and orally; and provided legal authorities with extensive factual documentation in support.

58. That nearing the end of those submissions the Court concluded the hearing amongst other things by stating the following which has been extracted from the transcripts of the 3rd September, 2020:

“ THE COURT: I am terminating this application. I will make my full ruling and I will give it to you tomorrow at 12...

Friday 4th September, 2020 - Full Ruling

59. That on the following day, Friday the 4th September, 2020; the Applicant in eager anticipation to the *full ruling* particularly in light of the Court of Appeals determination sent by email was very hopeful that things would soon come to an end. The Applicant requested of the Court the remote link and also sought clarification on what she said about the Application being

terminated (A copy of the email sent to Her Ladyship is marked and exhibited as

“ A.A.M.19);

“ Good Morning Justice Bowe Darville, It appears there is a discrepancy on my part as a result of what I heard yesterday at the hearing; and would humbly if the same can be confirmed or not. 1. Is the Application of Mr. Hanchell terminated? And 2. Are you able to send the web link for today's ruling?”

60. That after there was no acknowledgement to the Applicant's email and the noon time appeared to be approaching and then went; the Applicant sought the assistance of the Deputy Registrar of the Court of Appeal to assist in obtaining said copy of the ruling by email at around 1:20 PM: (An email sent to the Deputy Registrar which confirms this is marked

“ A.A.M.14);

“ Good Afternoon Deputy Registrar Cooper Brookes, On yesterday's date, all parties appeared for an inter partes hearing before Justice Bowe Darville. I heard Justice Bowe Darville determined that the "Application was terminated". Nonetheless, we were scheduled for a hearing on today's date at 12 noon for her ruling. However, I was unsuccessful in my attempts to join in remotely. As I am most desirous in the ruling handed down. I humbly request of you if you assistance in obtaining confirmation of said determination; and or ruling. The ruling can be sent to my email at anishkamissick@gmail.com .”

61. That Her Ladyship then responded to that email as follows: (A copy of Her Ladyship's email is marked and exhibited as A.A.M.12);

“ To all counsel, For the record, Yesterday, 3rd September, 2020, I ended the remote hearing. I did not terminate the Respondent's application. When I rose I indicated that I would deliver a ruling. I did not deliver the same today and as such no invitation was sent for a remote appearance I shall attempt to deliver said ruling on

Monday, 7th September, 2020 at 1 pm I shall send out the remote invite .

Monday 7th September, 2020

62. That on Monday the 7th September, 2020, Her Ladyship gave an Interim Order which inter alia continued the terms of the Ex Parte Order and acceded to the application of the Applicant's former spouse in respect of the immediate enrollment to attend St. Anne's School . The orders which are contained therein infringes on the Human Rights and Constitutional rights of both the Applicant and Her husband and are not supported in law, amongst other things. (A copy of the Interim Order is marked and exhibited as " A.A.M.13);

63. That soon after this time, the Applicant was hospitalized and detained in Sandilands. That the Applicant challenges the *lawfulness* of said detention. (See also Exhibit A.A.M.5).

Court of Appeal's Notice of Hearing:

64. That on the 18th September, 2020; the Applicant sent an email seeking leave to appeal the Interim Order and it stated:(A copy of the email dated the 18th September, 2020 seeking leave to appeal is marked and exhibited as A.A.M.14);

" Good Morning Deputy Registrar Cooper Brookes; I am seeking leave to appeal the Interim Order of Justice Ruth Bowe Darville. As that order emanates from the current facts of this appeal; I am seeking to have both matters consolidated and dealt with at the time of hearing of the initial appeal. I am also seeking a stay of the continuation of that matter until such time as the appeal is heard and determined. As such, can you please advise in said circumstances what if anything am I required to do?

65. That later that morning, an email was sent to the Applicant on the 18th September, 2020; wherein the Deputy Registrar of the Court of Appeal advised her that her date for hearing would be Wednesday the 23rd September, 2020. (A copy of the Deputy Registrar advising

of the date to appear before the Court of Appeal is marked and exhibited as
“ A.A.M.15):

“ Good morning Mrs. Missick, Please be advised that your urgent application is listed to be heard on Wednesday, 23rd September, 2020. The hearing will proceed via videoconferencing using ZOOM. Kindly note that prior to the said date Mr. Dames, the Court Clerk, will forward you the link indicating the time. Regards,

Wednesday 23rd September, 2020 - Hearing Before Court of Appeal:

66. That the Applicant continued to appear as a Pro se Litigant.

67. That on the 25th September, 2020 the Court of Appeal gave its ruling and the following was held:

“ *Ex parte relief* offends a fundamental principle of natural justice which is that decisions should be made after having heard both sides. Unless there was an immediate threat of harm to the safety and welfare of the children it is difficult to apprehend the basis for the making of the 26 August 2020 Order removing the children from the appellant's custody and transferring them to the custody of the respondent immediately, without notice to the appellant. The respondent's fear that the appellant was taking the children to Grand Bahama, thereby preventing his access to them, could, at best, have given rise to an injunction restraining the appellant from so removing the children.

Even though the 26 August 2020 Order should not have been made without notice to the appellant the issues raised by that Order were subsequently dealt with by the trial judge after giving the appellant the opportunity to put in evidence and make submissions at the hearings on 31 August 2020 and 3 September 2020. The 7 September 2020 Order provides for the exchange of affidavit evidence with a timetable intended to achieve a timely adjudication of the matter. If the appellant is dissatisfied with any Order made after the hearing on 22 October 2020, she is still at liberty to

appeal that Order to this Court.

The challenge to jurisdiction is devoid of merit as section 74 of the Matrimonial Causes Act gives jurisdiction to a judge of the Supreme Court to vary an Order made by another judge of the Supreme Court with respect to custody of children under the age of 18 years.

Re W (minors) [2016] EWHC 2226 (Fam) applied

68. That the Applicant was very shocked and disappointed with the said ruling. As far as she saw, Justice did not prevail. The Applicant was confused as she felt that only a few months before, on the very same set of circumstances, (though not ventilated); that the Ex Parte Order was quashed and the 2014 Ancillary Order reinstated.

The Welfare of the Minor Children:

69. To date, some five (5) months and counting, there remains no final Order or determination in relation to custody and or physical access to the Applicant. That the Applicant and her children remain in a state of physical and emotional separation and no reasons are given as to why.

70. That time is a commodity when gone cannot be returned. Yet the Applicant and her minor children are separated without an end in sight; and at a high cost for access to justice.

71. That the subject minor children are *unhappy* with the determinations of the Court and have expressed their desire and willingness to speak to the Judge and convey their true feelings for themselves.

72. That the Applicant's eldest daughter shared by way of a zoom call two photos of great sadness that she says depicts how this matter has been affecting her. (A Copy of the drawings of Laura are marked and exhibited as **A.A.M.16**).

73. That the Applicant has requested of the Court a copy of the Social Services report and to date have not received an acknowledgement or a copy of the same;

74. That the Applicant has made a formal application for Her Ladyship's recusal, and the matter has since been adjourned *sine die*.
75. That the Applicant has suffered, emotionally, financially, physically and mentally due to the *continuing* anguish which results from the separation of her minor children.
76. That the Applicant believes that Her Ladyship's decisions are meant to *punish* her.
77. That the following circumstances are a history of interactions and exchanges between Her Ladyship and the Applicant which makes the Applicant believe that Her Ladyship takes an adverse view of her:
- (i) In 2017, the Applicant ran for the position of Vice President of the Bar Association. The team that the Applicant was apart of was in opposition to the team which Her Ladyship supported. The Applicant vividly recalls Her Ladyship's presence that night and therefore believes her challenge to the authenticity of the Bar elections of 2017 and her subsequent filing of a Judicial Review application (which to date has not been set for hearing). Her Ladyship was not appointed as a Supreme Court Judge at this time. **(A copy of the first page of the Judicial review application to which the Applicant refers is marked and exhibited as " A.A.M.17 ; and the pictures of the teams in their respective posters are marked and exhibited as A.A.M.18)**
- (ii) In 2018, the Applicant was assigned carriage of a matter to Prosecute. Again, this was prior to Her Ladyship's appointment to the bench, Her Ladyship was visibly in support of the *then* Defendant whose conviction and sentence was upheld on Appeal. Her Ladyship would be present at almost all hearings during the Magistrates' Bail Hearing; the Magistrate's Trial; and the Court of Appeal. At all times the Applicant was either sole or lead Prosecutor in the matter; and during those proceedings, Her Ladyship would make audible prejudicial remarks against the Applicant while carrying out her duties. The remarks at times became such a distraction that the Applicant brought the same to the attention of the presiding court. That despite the hurt that was felt, the Applicant, pressed forward in her duties. **(A copy of the**

first few pages of the Court of Appeal's judgement to which the Applicant refers is marked and exhibited as A.A.M.19);

(iii) That the Applicant recalls when she first appeared before Her Ladyship in February of 2020; that Counsel appearing for the Applicant at the time made a recusal application to which the issues of Her Ladyship's remarks during her Prosecution of the Barrett matter ; that Her Ladyship's response was that her remarks against the Applicant was in respect of how *poorly* she spoke and that she being a former grammar teacher saw it as a major distraction for her. The manner in which Her Ladyship said what she did was both insulting and demeaning.

(iv) That also during the proceedings brought before Her Ladyship in February, she suggested that the Court of Appeal was *incorrect* in their determination of the matter on the 15th January, 2020 and stated words which suggested that the Court of Appeal was not fair to the Applicant's former spouse.

(v) That again during the proceedings, Her Ladyship referred to Justice Keith Thompson's adverse Judge's notes in respect of the Applicant; and suggested that His Lordship's notes were correct in respect of the Applicant;

Other matters of concerns:

(vi) That on the 23rd July, 2020 an article in a *gossip* column recited certain things about the Applicant having filed her lawsuit against his Lordship in July, 2020 amongst other things. In light of these current matters, the Applicant believes also that these proceedings are in retaliation to the Applicant's determination to assert her legal right as she did in 2017 in respect of the Bar elections. (A copy of the PUNCH Grapevine is now marked and exhibited as A.A.M.20).

78. That on the 31st August, 2020, the Applicant was extremely traumatized by Her Ladyship's Order and wrote a letter to the Chief Justice pleading to have her matter transferred from Her

Ladyship's court. (A copy of the letter which was sent to the Chief Justice is now marked and exhibited as A.A.M.21).

79. That to date, the Applicant has made a formal application for Her Ladyship's recusal and Her Ladyship in giving a final determination of the matter has adjourned the matter in the absence of a new date.

Effects of the Orders and Constitutional Breaches:

80. That due to the foregoing the Applicant, her husband and the minor children have all been victims of abuse by the system. That the Applicant now fears for her life, family life, career and livelihood and even those of her husband who has become the target of penal Orders.

81. That the Ex Parte Order and the Interim Order granted by Her Ladyship are a blatant disregard to the Applicant's Human Rights; Constitutional Rights as well as the rights of her husband and the subject minor children.

82. That the Applicant is also unwavering in her belief that Her Ladyship's Orders raises very fundamental issues which ought to be regarded as matters of Public Importance, and they are: (1) The doctrine of Hierarchical Precedent and or *stare decisis*; (2) Respect for the Rule of Law; (3) The Human Rights Convention for Children and the Child Protection Act in Civil proceedings; (4) Respect for individual Human Rights and Constitutional Rights; and (5) When does Matrimonial issues as they relate to the Matrimonial Causes Act come to an end?

83. That the Applicant is a loving Mother to her children and as such, any perceived *disdain* or *dislike* for her should not be at the cost of her children's wellbeing.

84. That Her Ladyship's ongoing disregard for the Applicant, her husband and her minor children are draconian measures which the Applicant feels are meant to *intimidate* and *strip* her.

85. That the subject minor children are very intelligent and are both at an age where they can speak for themselves and should be allowed;

86. That the Applicant humbly prays that the determinations contained in the summons be granted to the extent that the rights and welfare of the Applicant, her husband and her minor children are restored;

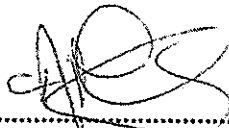
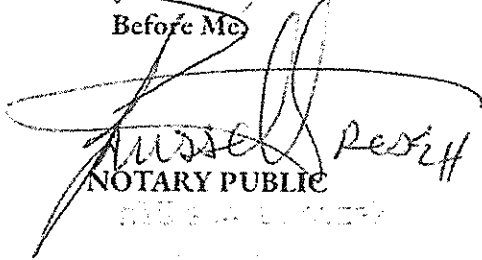
- 87. That the Applicant's breaches are found in Articles 17, 20(8), 21 and 25 of The Constitution of The Bahamas.
- 88. That there are no alternative remedies to what is occurring as amongst other things, time is precious and our continuous separation is not in the welfare of the subject minor children.
- 89. That the Applicant humbly prays that she be compensated by way of General damages; and or vindicatory damages and or aggravated damages for any and all breaches determined as a result of the aforesaid;
- 90. That the Applicant humbly prays for Costs; and that they be taxed if not agreed;
- 91. That the matters contained herein are to the best of my knowledge, information and belief, true and correct.

SWORN at

Freeport Grand Bahama, The Bahamas

This 28th day of January, A.D., 2021

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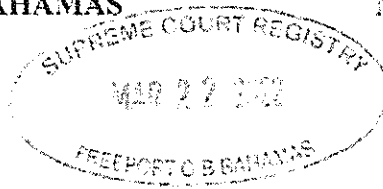

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Before Me

NOTARY PUBLIC
RUSSELL RESIFF
NOTARY PUBLIC

COMMONWEALTH OF THE BAHAMAS

No. 2021/PUB/con/FP/00001

IN THE SUPREME COURT

Public Law Division



IN THE MATTER OF ARTICLES 17, 20(8), 21, AND 25 OF THE CONSTITUTION OF THE BAHAMAS

AND IN THE MATTER of sections 29; 3(1); 3(2); 3(3)(a)(b)(c)(d)(e)(f); 4(a) and 4(c); 5(1); 6(1); 9(1) and 9(3); and 14(1) and 14(2) of the Child Protection Act, Chapter 132

AND IN THE MATTER of section 74 Matrimonial Causes Act

BETWEEN:

ANISHKA A. MISSICK A.K.A ANISHKA HANCHELL

Applicant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Respondent

AMENDED NOTICE OF MOTION

TAKE NOTICE that a Judge of the Supreme Court will be moved so soon as the Applicant. Pro se can be heard at the Supreme Court, Garnet Levarity Justice Centre in the city of Freeport on the Island of Grand Bahama on the _____ day of _____ A.D., 2022 at _____ o'clock in the fore/after-noon for the hearing of an application pursuant to Articles 17, 20(8), 21 and 25 of The Constitution of The Bahama for the determination of the following issues:-

1. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person remove children from the custody and care of a Parent who possesses such an entitlement *in law*, by way of Ex Parte Proceedings *without* notice to that Parent; *and* in

the absence of there being any evidence of an immediate threat of harm to the safety and welfare of the child or children concerned?

2. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person remove children from the custody and care of a Parent who possesses such an entitlement in law, in the absence of *Natural Justice*, and or *Procedural Fairness*, and or *Due Process*?
3. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person make a determination that relates to children in the absence of considerations to the welfare of the children concerned?
4. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person make a determination which relates to children in the absence of considerations to the U.N. Convention on rights of children ("U.N. Convention")?
5. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person adjourn or suspend the determination of matters involving the welfare of children sine die or such as to have an effect of *sine die*?
6. Can a Court of Law; or any other Governmental Agency, its Officers or Agents; or any other person remove the entitlement of any child to live with their parents in the absence of *just* reasons?
7. Can a Court of Law; or any other Governmental Agency, its Officers or Agents; or any other person remove the entitlement of Parental Responsibility from a Parent in the absence of *just* reasons?
8. Can a Court of Law; or any other Governmental Agency, its Officers or Agents; or any other person cause a Parent or Guardian to be subjected to an Investigation of

circumstances and the production of a Social Inquiry report or anything which touches and concerns any adverse outcome regarding the welfare or best interests of the child or children concerned, in the absence of a complaint or *just* grounds?

9. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person cause a Parent or Guardian to be subjected to the entry of their home premises and invasion of privacy in the absence of just or lawful grounds for doing so?
10. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person cause a Parent or Guardian to be hindered from freedom of movement within The Commonwealth of The Bahamas or any other Country, with their children, in the absence of just grounds for doing so?
11. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person determine or make a finding that matters related to the welfare of children are not matters of Urgency and or Priority?
12. Should an interlocutory determination that remains extant on the issues regarding custody, access, and the overall welfare of children be considered a matter of Urgency and or priority?
13. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person *vary* a Custody Order in the absence of Natural Justice, and or Procedural Fairness, and or Due Process; and or common law and equity?
14. Can a Court of Law; any other Governmental Agency, its Officers or Agents; or any other person cause a Parent or Guardian to be subjected to inhuman and degrading treatment?
15. Can a Court of Law; or any other Governmental Agency, its Officers or Agents; or any other person who hears, considers, determines, and makes a finding related to the welfare

of children, do so in the absence of having a fair hearing and not within a reasonable time?

16. Have Articles 17, 20(8), 21, and 25 of the Constitution been, likely to be, or are currently being infringed, when considering the allegations contained in the Applicants supporting Affidavits?

AND TAKE NOTICE that upon the determination thereof the Applicant seeks the following reliefs:-

17. That a declaration be made that Articles 17, 20(8), 21, and 25 has been, are being, or are likely to be contravened in relation to the respective Constitutional breaches committed against the Applicant and or her family;
18. That a declaration be made to have my *Urgent* Application which was filed on the 1st March, 2022 be listed for hearing before the duty rostered Judge who was in place at the time of the filing of the said matter;
19. Vindictory Damages;
20. Interest on the above pursuant to the Civil Procedures (Award of Interest) Act commencing the 26th August, 2020 or on such date as the Court deems fit;
21. Costs; and
22. Such further or other relief as the Court deems just;

DATED this 21st day of March, A.D., 2022

REGISTRAR

COMMONWEALTH OF THE BAHAMAS

No. 2021/PUB/con/FP/00001

IN THE SUPREME COURT

Public Law Division



IN THE MATTER OF ARTICLES 17, 20(8), 21, AND 25 OF THE CONSTITUTION OF THE BAHAMAS

AND IN THE MATTER of sections 29; 3(1); 3(2); 3(3)(a)(b)(c)(d)(e)(f); 4(a) and 4(c); 5(1); 6(1); 9(1) and 9(3); and 14(1) and 14(2) of the Child Protection Act, Chapter 132

AND IN THE MATTER of section 74 Matrimonial Causes Act

BETWEEN:

ANISHKA A. MISSICK A.K.A ANISHKA HANCHELL

Applicant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Respondent

SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF MOTION

I, ANISHKA A. MISSICK, a counsel and attorney-at-law, of Freeport, Grand Bahama, one of the Islands of the Commonwealth of The Bahamas, the above-named Applicant in this action, make oath and say as follows:

1. Save where otherwise expressly stated I depose to the truth of all the matters referred to herein, of my own knowledge.

Introduction:

2. That on Tuesday the 1st March, 2022, the Applicant filed a Certificate of Urgency along with her application to set aside the interlocutory Orders of the 26th August, 2020 and the 7th September, 2020 ("the legal documents") respectively. The legal documents were all

hand-delivered to the Listing Office in New Providence where the action originally commenced.

3. Despite a repeated request for an update regarding the legal documents and date for the hearing; I remain without confirmation of the rostered Judge being in possession of my file and neither have I obtained a date for the hearing of my urgent application as of Friday the 18th March, 2022 and counting. **(Please see two (2) letters sent to the Listing Office and the reply of the Listing Office which are now marked and exhibited as "A.A.M.22A", "A.A.M.22B" and "A.A.M.22C")**.
4. That in the Applicant's Legal and Administrative experience, along with information received regarding her Urgent Application, she is of the firm belief that the documents filed were deliberately withheld from being placed before the duty rostered Judge at the time, and further, that the legal documents have strategically been forwarded on to another Judge with whom the probability of bias is paramount.
5. That the Applicant has received information that she understands is meant to impede her matter from being heard within a reasonable time and before a *fair* Judge.
6. That as a result of these things complained of, the Applicant's rights and those of her minor children continue to be infringed and contravened.
7. The Applicant is of the belief that matters which concern minor children are matters which are matters of priority and urgency; how much more when a Certificate of Urgency has been filed outlining the grounds upon which the Applicant relies. **(Please see a copy of the Certificate of Urgency which is now marked and exhibited as "A.A.M.23")**.
8. That to date, I have also not received any Social Inquiry reports, no judgments which contain any reasons for any decisions made regarding the welfare of my children and other related applications.
9. That the Applicant believes that the acts and omissions regarding her matter are meant to prolong and frustrate her efforts to be *reunited* with her minor children and they with her.

10. That there continues to be no alternative remedy to what is occurring as amongst other things, time is precious and our continuous separation is not in the welfare of the subject minor children and in the absence of lawful reasons.
11. That the Applicant adopts the paragraphs within her original Affidavit to this Supplemental Affidavit where relevant;
12. That the matters contained herein are to the best of my knowledge, information, and belief, true and correct.

SWORN at

Freeport Grand Bahama, The Bahamas

This 21st day of March, A.D., 2022

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)

)

Quinn Hissick
.....

Before Me,

[Signature]

NOTARY PUBLIC



COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

No. 2021/PUB/con/00001

Public Law Division

IN THE MATTER OF ARTICLE 17, 20(8), 21 AND 25 OF THE CONSTITUTION
OF THE BAHAMAS

AND IN THE MATTER of sections 29; 3(1); 3(2); 3(3)(a)(b)(c)(d)(e)(f); 4(a) and
4(c); 9(1) and 9(3); and 14(1) and 14(2) of the Child Protection Act, Chapter
132

AND IN THE MATTER of section 74 Matrimonial Causes Act

BETWEEN

ANISHKA A. MISSICK A.K.A ANISHKA HANCHELL

Applicant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Respondent

AFFIDAVIT

I, LILNIQUE GRANT of the Southern District of the Island of New Providence, one of
the Islands of the Commonwealth of The Bahamas, Attorney-at- Law, make oath and say
as follows:

1. I am enabled to make this Affidavit from the facts within my personal knowledge
as an Associate of the firm of Messrs. McKinney, Turner & Co. and from information
derived by me from a perusal and examination of the litigation file, documents, and papers
of the Respondent.

2. Except where otherwise stated, I depose to the facts and matters contained herein
from my own knowledge, information, and belief.

3. I make this Affidavit in support of the relief prayed for in the Respondents Summons pursuant to which the Respondent seeks to have the instant action struck out against it.

4. That by Notice of Motion filed herein on the 22nd March A.D., 2022 the Applicant seeks certain constitutional relief emanating from the "conduct" of Judicial Officers in Divorce and Matrimonial Proceedings Action # FAM/div/193/2014, herein after referred to as the "Divorce Proceedings". In support of the said Motion the Applicant has filed three Affidavits to form the evidentiary basis for her claim: -

- (i) The Affidavit sworn and filed by the Applicant on the 28th January A.D., 2021;
- (ii) The Supplemental Affidavit sworn by the Applicant on the 21st day of March A.D., 2022 and filed herein the 22nd March A.D., 2022;
- (iii) The 2nd Supplemental affidavit sworn and filed herein by the Applicant on the 9th day of May A.D., 2022.

5. The Applicant is a party in both the divorce proceedings and in the instant proceedings. Also, the Applicant is an Attorney- at-Law and has opted to act Pro Se in the prosecution in a claim for redress.

6. The Respondent opposed the application outlined in the Notice of Motion and based on its review of the contents thereof and the supporting Affidavits filed in relation thereto finds that that the Applicants claim is scandalous, vexation and an Abuse of the Court's process. In particular the said Affidavits are replete with scandalous content geared towards imputing dishonesty, and bias actions on the part of Judicial Officers to subvert her rights in the divorce proceedings.

7. The said Affidavits contain the Applicant's assertions of bad faith against each and every Judge who has adjudicated in the divorce proceedings without providing any or any sufficient proof to support the claims of bias or misconduct by the said judges

The Applicant's Notice of Motion

8. In reviewing the Notice of Motion, we have noted that questions 1- 15 inclusive are not framed in a specific way to address a sustainable claim by the Applicant for redress. Instead, they appear to be mere aphorisms of a generic nature which of necessity call for a positive answer. Further, whether such questions are answered by the court in a positive or otherwise does not assist in the proof or support of an identifiable complaint or claim for address by the applicant.

9. That paragraph 16 of the Motion is the only question which touches upon the complaint asserted by the applicant in her Affidavits.

The Applicants Principal Affidavit filed on the 28th January A.D., 2021

10. The Respondent does not dispute the Applicant's recital of the background facts as stipulated in paragraphs 1 - 4 inclusive of the principal Affidavit.

11. The matters raised in paragraphs 5 - 30 inclusive were effectively addressed by the Court of Appeal in its ruling following the Applicant's appeal of an Inter- Parties Order issued by Justice Ruth Bowe- Darville (as she was then) on the 26th August A.D., 2020. This Order of remains in force and is the subject to a pending application for variation by the Applicant. The Court of Appeal allowed the 26th August A.D., 2020 Order to remain in place and admonished that the option is available to the Applicant at any time to seek a variation thereof.

The following portion of the ruling of the Court of Appeal is pertinent: -

14. Whether or not the Order of 26 August 2020 should have been made on an ex parte basis or at all, the appellant was now afforded the opportunity to make representations to change it. She now had an opportunity to ask the court to vary the Order to enable her to relocate to Grand Bahama and impose new terms for access by the respondent.
15. When the matter came for hearing on 3 September 2020 the appellant again attended and acted in person.

16. The Court began the proceedings as follows:

"THE COURT: I have before me the ex parte summons of the 26th of August, as well as I have the summons of the 24th of August. I made the Order on the 26th of August making it returnable inter partes for the 31st of August. Because of the difficulties we were experiencing on the 31st of August, I gave directions for certain things to be done so that we can have the inter partes hearing today.

I have before me the ex parte summons, together with the affidavit filed in support of that summons. I also have the substantive summons of the 24th, the summons and the affidavit in support."

17. Counsel for the respondent then proceeded to make his applications. After that was completed the appellant made her submissions. I set out her submissions as contained in the transcript of that hearing:

"MS. MISSICK: ... I'd like first and foremost to give a brief history of the relevant facts that brought us here today's date.

Sometime beginning July of last year, on Saturday the -- pardon me? Could you hear me?

THE COURT: Is it 2019?

MS. MISSICK: Yes, I will expound if you give me an opportunity.

THE COURT: May I ask you a question, please and this is coming from the court directly.

MS. MISSICK: Yes, my Lady.

THE COURT: Why is it that you haven't prepared and given an affidavit in response to this application; and made an application first of all to discharge the Order and or to vary the Order. All I have before me are just your submissions with no real factual sworn evidence before me.

MS. MISSICK: Yes, my Lady.

THE COURT: And that is why I made those directions on Monday to afford you an opportunity to put everything before the court. Not in submissions as you have done and I have read them. And I've noted the concise legal list that you have done.

The other thing I wanted to say is considering all that's gone down, and what I have gathered from the submissions that you send the letter and all the documents that wish to present.

MS. MISSICK: Yes, my Lady.

THE COURT: The court would strongly suggest to you that you get counsel to present. The reason why I would like to --

MS. MISSICK: My Lady, can you please give me an opportunity, my Lady. My Lady, can you please give me an opportunity. My Lady --

THE COURT: I know you have to speak --

MS. MISSICK: You indicated that after Mr. Parker -- my Lady, you indicated after Mr. Parker would have spoken that it will be my turn.

THE COURT: Ma'am, are you listening to where I am coming from?

MS. MISSICK: No, I'm not. Because I don't understand where the court is coming from, my Lady. Respectfully.

THE COURT: What the court is trying to say, that if you were represented by counsel and this is just the court's feelings. All the emotion that has come out, especially in the last rant and rave with Mr. Parker could be avoided and we could conduct this as a civil trial. And you would have an advocate who will be able to put what the court needs necessary to consider before it. I read all your arguments and P and P and what is the welfare of the child and all the requirements under the Child Abduction Act and --

MS. MISSICK: You are making submissions on my behalf -- its quite prejudicial what you're doing, my Lady. And I wish to place that on the record. It's quite prejudicial. And you are showing a bias, yet again, which is part and parcel of my submissions with regard to this court. And yet you're doing the very same thing. My Lady, I submit humbly so its unethical, my Lady. You are to show impartiality to proceedings.

THE COURT: Forgive me for trying to help you in your matter .

MS. MISSICK: You could not help me, my Lady. I will not receive or accept your help. I will not receive your help. So far you have done nothing but made any circumstances worse, okay. Thank you. Obligated.

First and foremost, as an attorney of 15 years call to the bar. Having sight and being well acquainted at this point. Even though my area of speciality as criminal prosecutor. I've had to learn for these proceedings the laws relating to the Civil Procedure Rules and the Supreme Court. And, first and foremost there are several issues. First and foremost relative to jurisdiction of this court hearing such matters. That's the first thing. But what I wish to do before I even go into the submissions of the gravamen of those, I wish to first set out the chronology to place on the record why it is I intend to say what I have to say and what the authorities are that govern such area. And in particular the welfare, well-being, custody and access of my two minor children who was removed by my court at 8:30 p.m. by an ex parte order made without notice to me. I will just wish to give a backdrop however

to how we arrive here, because I have been here from the inception. The Respondent has been here from the inception. The only persons and parties who have not been here is my Lady and counsel who now represents the Respondent. And its a bit confusing the terminologies that are used because these proceedings somewhat feel as if we are still married and just pursuing ancillary matters. When in fact we are divorced. A decree absolute has been granted since 2014. I see no reason why on the numerous applications that Mr. Hanchell is being made, giving the opportunity to make before these courts that he's still not referred to as the Applicant. Even if he wishes to be referred to as the Respondent, the terminology place according to the Matrimonial Causes Act, that he still for the sake of avoiding confusion, place himself on the record as the applicant and I being the respondent to him wishing to vary the 2014 ancillary court orders. And that's where we begin.

We begin with the 2014 ancillary court orders. That Order says, that I am the parent with primary care and control. The application was made. The application was made by hearing and seeing affidavits by both the respondent then -- well, he was the respondent as he was then. Is a bunch of confusion. I will say Mr. Hanchell and myself we were both represented by counsel at that time. Counsel made representations. And pretty much the open proceedings, the transparent proceeding yielded the confirmation of the order which my children and the expectation of those are of the terms in that Order since 2013, but confirmed in my divorce proceedings since 2014. Confirmed since 2014, but was made in the lower court since 2012 when the learned -- when Mr. Hanchell went before the Magistrate's Court seeking to obtain -- what's it call? The application where -- for legal separation. That's what it is called.

Now, the starting point for us, despite the fact that just last year 2019, the court your brother, your learned senior Justice Keith Thompson granted several ex parte orders to Mr. Hanchell relative to the very same issues that this court now seeks to do the same in.

Now, my Lady, its quite trite that a lower court cannot overturn a higher court decision. So if that be the case, there were a number of ex parte hearings done that were egregiously done because they did not comport with the legal authorities relative to them. When we appeared on my appeal before the Court of Appeal just in January of this year. January 15, 2020, of this year. The court made a decision to quash the said ex parte orders. All of them. Made by Justice Keith Thompson that caused me to be without access to my children without more for some six months.

Now, in no way shape or form, when the legislation had cover such an area, particularly, the Child Protection Act, could a court of law understanding and appreciating the overarching principle with regards to such issues, which is in the best interest of the children. Where my children are ages 10 and 13 respectively and not only are in a position

to speak for themselves, but this very court has giving them or purported to have the authority to interview my children in the absence of independent an independent observer. Okay. But I will go back to the Court of Appeal. The Court of Appeal reinstated the Order and quashed all of the ex parte orders. And I won the appeal. That's the layman term of it. I won the appeal.

The court then made a direction that the matter is remitted to the Supreme Court and that the matter is heard by urgency on an urgent bases. But that being said, not urgency with regard to the applicant who is Mr. Hanchell appearing for these court and producing to the court without going through the requisite listing office and protocol established by the practice direction to obtain an audience before this court.

If you recall, the Court of Appeal made its decision on the 15th, I was able to have immediate access to my children. The Order was reinstated. I was deemed or reconfirmed to the parent of primary care and control. I fail to understand how the matter becomes before a civil jurisdiction -- not the family court, but the civil court. And --

My Lady, you are mute.

THE COURT: I wish to stop you there. Because there has been since Chief Justice Moree had come in. And there is practice direction setting up out that he had constituted a family court and there are four sitting judges on the family side of the court.

MS. MISSICK: I am glad that you would say that, my Lady. Only that this particular court of the four that could have been chosen, why did it come before you?

Number two, I have specifically asked this court to be recuse because in as much as you have allow and permitted counsel to speak about some purported mental illness that I have, it must be a great thing to know that a court would actually entertain information that a layperson unable to actually prove or substantiate. I mean that's illegal -- that's trite. But before I get taken of the course I wish to go on, I wish to give the proper chronology to this matter. And then I will arrive back to that same point, that of the four courts, the fact that I have asked for a recusal, it should have been sent to another court. And for good reason that I attempted to do so, yet again on Monday to ask that this court recuse itself because this court has failed to show and to exercise good judgement in respect of my two young children. Number one.

Number two, this court has failed to show that it adheres to the laws of the Commonwealth of the Bahamas; that it adheres to the Constitution of the Bahamas; that it adheres to the practice direction enforced as a result of COVID and the protocols in place. And that it fail to adhere to protocols and practice direction generally, even previous to this COVID error.

When we appeared before your court, the Court of Appeal made a determination that the only matter at that time to be considered was the one brought last year over in from -- last year from the matter heard before Justice Keith Thompson. That is what the court was referring to.

This court asked a question upon the probing of myself whether or not this particular applicant intended to proceed upon that application. And the answer to that was no. So, if that be the case, it is my interpretation having been again present, having made the submissions as it were my appeal that I would have a lot more knowledge and particulars as it relates to why the Court of Appeal made the decision that they did, and also what in fact the particulars of said decision was. And the reason why I am constrained to wonder whether this court in fact -- despite the fact that you have had the files since January, early January -- I am constrained to understand, how it is that you are requiring me, when I should not have to be compelled to do so. But the court is trying to direct me, and it was your direction that I do certain things pursuant to permission or leave being granted. There was no need for leave to be granted to me because I never asked for an application or anything to be done. As a matter of fact when I was removed from the proceedings, which was pretty much tantamount to an ex parte proceeding -- yet again, because I was not present. By the time I return to the feed the court was completed and I was told what the Court's direction was. That's not transparency, my Lady.

Now, to go back to what it is the Court of Appeal intention was, as it was me who made the appeal and won it. Okay.

So on behalf of all mental illness parent, I say kudos to us. If this court wishes to accept some uncontroverted allegation of mental illness to prove that I'm an unfit parent, but yet social service did not have to drag my children out of my home. Yet, during the COVID lockdown my children got all As on their report cards. Yet, Dr. John Dillet had indicated after doing an assessment in recent time in light of what the Court did in having me involuntarily committed at Sandilands. All the while this loving father uses said information to his benefit, so that he could obtain custody. Now, if this court can't see the intent of this applicant. If this court can't see it, when my ten-year old and my 13-year old having been rejoin with me have made certain things and have said certain things about the decisions made by the judge and saying how they beg their father to take them to the court. How could a judge make such a decision. I am loving mother to my children. And no court of law, with all your so call perceived powers can change that fact.

As a matter of fact, you are so well without on the outside of your jurisdiction for several reasons. Number one, the matter as directed by the Court of Appeal has already come to an end. By the very fact that the applicant abandoned the course, it therefore meant that there was no other proceedings before this court. But yet, this court made me to answer, which I did. Which I did. Made me to answer to an already large

amount of evidence already giving. And to be honest with you the circumstances or the legal principles in these matters are very simple.

First and foremost, the Court is without power unless you can establish it either within the Supreme Court Rules, the Supreme Court Act or the relevant authority that gives it to you. You are not able to make decisions simply because you wish. You are not able to make directions simply because you wish. You are not able to in the face of having authority from the Hague Convention, the international body by which we are assigned." [Emphasis added]

18. The Court then terminated the hearing after it felt that Mrs. Missick had exhausted her "goodwill" and set the matter down for ruling. On 7 September 2020 Justice Bowe-Darville made an Interim Order in the following terms.....

19. As the judge pointed out, the appellant did not file any affidavit evidence nor did she make any applications by way of summonses to vary any earlier Order made, including the Order of 2014. This was so notwithstanding the opportunity to do so and the wise advice of the court.

20. She simply challenged the jurisdiction of the court to make any further Order with respect to the custody and education of children in proceedings under the Matrimonial Causes Act.

21. Of course, this challenge to jurisdiction is wholly devoid of merit....."

12. In paragraph 40 of the Principal Affidavit the applicant stated that the judge "predetermined the case for custody of the subject minor children in favor of the Applicant's former spouse; and in the absence of any consideration or regard to the Human Rights convention on children and the Child Protection Act."

13. Thereafter in paragraphs 41 and 43 of the Principal Affidavit the Applicant repeated her assertion that the judge has predetermined issues in favor of the Applicant's ex-husband.

14. The Applicant then in paragraph 45 of the Principal Affidavit stated "... There appears to be consideration *only* in regard to the Applicant's former spouse and his Counsel in that they are able to easily and readily access Her Ladyship and secure any Orders applied for at their whim and fancy."

15. The Applicant as counsel and an officer of the Court should be aware that her allegations above raised against the said Judge, if true, would be a serious breach of the Judge's Judicial Oath of Office.

16. The Applicant continues with her reckless statements in paragraph 46 of the principal Affidavit where she states, "... The transcripts are evidence that Her Ladyship was also *intent* on acceding to the Orders made on behalf of the Applicant's former spouse."

17. The Applicant made additional improper statements regarding the Judge in the principal Affidavit as follows:

- a. The Applicant asserts in paragraph 76 of the principal Affidavit that the Judge's decision was not based fairly on the issues but instead was meant to punish her.
- b. In paragraph 77 (vi) the Applicant states without any foundation that the said Judge retaliated against her due to their opposing positions regarding the 2017 Bahamas Bar Association elections.

18. The Applicant made a recusal application before Justice Ruth Bowe- Darville as she perceived Justice Ruth Bowe- Darville was bias and had predetermined her matter in a detailed ruling of Justice Ruth Bowe Darville indicated "*I have made no predetermination in this matter, as I am duty bound to be an independent adjudicator of the facts and law*". There is now produced and shown to me as Exhibit "LG-1" a copy of Justice Ruth Bowe - Darville ruling.

19. The Applicant has directed contemptuous and offensive statements to Justice Ruth Bowe-Darville. The contemptuous behavior of the Applicant can be seen by the threatening email she sent to the Judge at 9:45pm on the 8th September A.D., 2020 where the Applicant indicated "bring the children back to NOW or you will WISH YOU FUCKING

DID". There is now produced and shown to me as Exhibit "LG-2" a copy of the email dated 8th September 2020.

The Supplemental Affidavit & The 2nd Supplemental Affidavit

20. That upon the retirement of Madam Justice Ruth Bowe - Darville, the file in the divorce proceedings were transferred to another Judge.

21. That in reading the Supplemental Affidavit and the 2nd Supplemental Affidavit that the Applicant has now undertaken to assail the existing judge (Madam Justice Denise Lewis- Johnson) who has been assigned to adjudicate in the divorce proceedings.

22. Without any proper basis for doing so the Applicant has made serious allegations against this Judge by attacking her integrity and impartiality. These statements from her Affidavits a sampling of which follows are clearly scandalous and an abuse of the process of the Court. They are also entirely anathema to the role and behavior of counsel and an officer of the Court.

23. In paragraph 4 of the Supplemental Affidavit the Applicant insinuates that the learned Judge is a part of some conspiracy to prevent her from obtaining Justice. She stated in the said paragraph that "*..... she is of the firm belief that the documents filed were deliberately withheld from being placed before the duty rostered Judge at the time and further, that the legal documents have strategically been forwarded on to another judge with whom the probability of bias is paramount.*"

24. That in paragraph 5 of the Supplemental Affidavit the Applicant continues to maline the judge by stating that she, ".... Has received information that she understands is meant to impede her matter from being heard within a reasonable time and before a fair judge

25. That in the 2nd Supplemental Affidavit filed by the Applicant re-enforces her unwarranted and open attack on the integrity of Madam Justice Lewis- Johnson.

26. The Applicant made the following offensive statements in the 2nd Supplemental affidavit:

- a. "... the Applicant without referencing the Judge with whom she believed her matter would be placed before, nevertheless forecasted to others that Justice Lewis- Johnson would be that Judge with whom she believed her matter would be placed before."
- b. ".... that Justice Lewis- Johnson is not at all concerned about the paramount consideration which is the best interest of my minor children and how cruel and inhumane this process has been to date to all of us."
- c. ".... That the scheduled date of hearing to the 31st October A.D., 2022, is deliberately meant to delay and frustrate the Applicant from being reunited with her minor children."
- d. ".... the Applicant believes that Justice Lewis- Johnson has gone outside of the parameters of her oath which is to do right to all manner of people after the laws and usages of The Bahamas without fear or favor, affection or ill will."

26. It is noteworthy that at all material times the Applicant has had options (within the article 28 proviso of the Constitution) available to her to obtain redress without having to resort to the instant claim for constitutional relief. These options included:

- a. Following the Ex Parte Order issued by Justice Keith Thompson on the 29th July A.D., 2019. The Applicant availed herself of her right to appeal and relief was granted to her in full. SEE: Exhibit A.A.M2 Principal Affidavit filed on 28th January A.D., 2021.

- b. Following the Interim Order of Madam Justice Ruth Bowe Darville, the Applicant availed her right to appeal to the Court of Appeal and they addressed the complaints raised by the applicant regarding due process. There in now produced and shown to me as Exhibit LG – 3 the ruling of the Court of Appeal.
- c. In the aforementioned interim order of Madam Justice Ruth Bowe- Darville the Applicant was given the benefit of an “undertaken as to damages” in the event that she have been wronged by the issue of the said order (SEE: Exhibit A.A.M-4) where it is stated that, *“If the Court later finds this Order has caused loss to the Petitioner and decides that the Petitioner should be compensated for such loss, the Respondent undertakes to comply with any Order the Court may make so as to compensate the Petitioner for any reasonable damage which the Petitioner may prove has resulted from the granting of this Order”*.
- d. The court of Appeal was at pains to remind the applicant that the option was available to her to apply for a variation of any order in the divorce proceedings touching on the custody issues. Notwithstanding the apparent urgency of the issue to the Applicant, she failed for a period of 18 months to make an application for variation of the existing custody order in the divorce proceedings.

27. The Applicant as a counsel and attorney at law has put herself in the invidious position of acting Pro Se in the divorce proceedings. While it is understandable that the outstanding matters in the divorce proceedings reasonably induces a strong level of passion and possibly grief over results in the process there is no excuse for the Applicant as counsel to raise unsupported and egregious allegations of misconduct on the part of the Judges who have adjudicated in the divorce proceedings.

28. It is without doubt that her statements impute to the Judges in question, the Courts, and the Administration of Justice misconduct and bad faith. This is the very essence of a scandalous claim and cannot be tolerated by this court.

29. It should be noted that the Applicant does not limit her complaint to about the Justices to Judicial error, but she goes so far to indicate that the said Justices have been proactive in engineering a result in Judicial Proceedings that have been adverse to the Applicants claims.

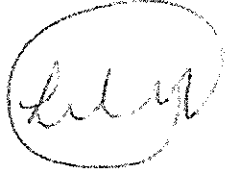
30. The Applicant has telegraphed in her Affidavits that the only Judge who could fairly deal with her matter is Justice Indra Charles and that any other Judge that the divorce proceedings are assigned would not be able to address the issues therein in a fair and impartial manner.

31. That in the premises the Respondent humbly request that the Motion and each of the affidavits filed in support thereof be struck out for the reasons outlined herein. I verily believe this Application is frivolous and vexatious and for it to be allowed to continue would be an abuse of the Court

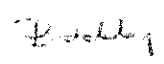
32. That the contents of this Affidavit are true and correct to the best of my information, knowledge and belief.

SWORN TO in the City of Nassau
New Providence this 23rd day of
May, 2022

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)
)



Before me:



NOTARY PUBLIC

6. The Applicant has made her application to the Court for what she alleges are breaches of her constitutional rights, stemming from a series of custody orders rendered by the Court.

Background/History

7. In an effort to appreciate how this matter has now come before the Court, in summary, the Applicant is the mother of two (2) minor children from her previous marriage who are now in the custody, care and control of her ex-husband by an Order made by the Court.

As the Applicant and her ex-husband have been before the Court on divers occasions relating to the custody of the minor children, a history of the litigation can be found in **SSCivApp. No. 87 of 2020** delivered on the 25th September, 2020.

The Court for ease of reference highlights the headnote of the Court of Appeal Ruling:-

“The appellant and the respondent are the parents of two minor children. They were divorced in 2014 and by Order made on 15 July 2014 were granted joint custody of the children, with primary care and control to the appellant with reasonable access, during the week, to the respondent. Beginning in 2019 through to 2020 a number of ex parte applications were made by the respondent to obtain custody of the children.

On 26 August 2020 at 6:25 p.m., the learned judge in the court below, on an ex parte application by the respondent, made an Order preventing the appellant from removing the children from New Providence until further Order and granting full custody of the children to the respondent immediately. The parties were to appear before the learned judge on 31 August 2020 for an inter partes hearing.

On 31 August 2020 both parties appeared, and the matter was adjourned to 3 September 2020 to allow the appellant to file and serve any affidavits and motions. On the adjourned date, the respondent moved his applications and the appellant responded orally thereto.

The appellant did not file an affidavit in response, nor did she make an application to discharge and/or vary the ex parte Order. After the termination of the hearing on 3 September 2020, the matter was set down for ruling on 7 September 2020.

The 7 September 2020 ruling, inter alia, continued the 26 August 2020 Order until further Order and adjourned the matter to 22 October 2020.

The appellant challenged the learned judge's jurisdiction to make any further Order with respect to custody of children under the Matrimonial Causes Act.

The appellant now appeals the 26 August 2020 Order.

Held: appeal dismissed. No order as to costs.

Ex parte relief "offends a fundamental principle of natural justice which is that decisions should be made after having heard both sides."

Unless there was an immediate threat of harm to the safety and welfare of the children, it is difficult to apprehend the basis for the making of the 26 August 2020 Order removing the children from the appellant's custody and transferring them to the custody of the respondent immediately, without notice to the appellant.

The respondent's fear that the appellant was taking the children to Grand Bahama, thereby preventing his access to them, could, at best, have given rise to an injunction restraining the appellant from so removing the children.

Even though the 26 August 2020 Order should not have been made without notice to the appellant the issues raised by that Order were subsequently dealt with by the trial judge after giving the appellant the opportunity to put in evidence and make submissions at the hearings on 31 August 2020 and 3 September 2020.

The 7 September 2020 Order provides for the exchange of affidavit evidence with a timetable intended to achieve a timely adjudication of the matter. If the appellant is dissatisfied with any Order made after the hearing on 22 October 2020, she is still at liberty to appeal that Order to this Court.

The challenge to jurisdiction is devoid of merit as section 74 of the Matrimonial Causes Act gives jurisdiction to a judge of the Supreme Court to vary an Order made by another judge of the Supreme Court with respect to custody of children under the age of 18 years."

The Constitutional Motion

8. In light of the history of the on-going litigation, the Court during the hearing on the 14th July, 2022 advised the parties that it would only hear arguments on the substantive application and reserve its Judgment on the extant Summonses to strike out as both parties laid over written submissions for the same.

Additionally, in an effort to effectively manage the Court's time, the following exchange between the Applicant and the Court occurred:-

"6. But let us deal with the application itself.

7. Question is this, having stripped away all of the

8. collateral information, as I said, the singular issue

9. which I believe is being asked for this Court to

10. determine is whether the decision of then Madam Justice

11. Ruth Bowe-Darville was unconstitutional.

12. Is that as I understand it, Ms. Missick?

13. MS. MISSICK: My Lord, you are indeed correct.

14. However, not only Madam Justice Ruth

15. Bowe-Darville's actions or conduct are --

16. THE COURT: We are dealing with the decision.

17. MS. MISSICK: Her decision specifically. Yes,

18. I'm guided.

19. THE COURT: As I understand your application in

20. the realm, the decision that your constitutional motion

21. is centered on is whether Madam Justice Ruth

22. Bowe-Darville's decision was unconstitutional and

23. whether it violated Article 17; Article 20 paragraph 8;

24. Article 21 and Article 25, correct?

25. MS. MISSICK: Yes, my Lord.

26. THE COURT: Was that decision of Madam Justice

27. Ruth Bowe-Darville appealed?

28. MS. MISSICK: No.

29. Before I would just seek clarity on the

30. question. Are you in asking the question only placing

31. as a sole issue on these proceedings?

32. THE COURT: Well, that is the principle issue,
(Transcript page 3, lines 6-32)

1. Ms. Missick, because all of the other issues which have

2. been raised are all substantially collateral to the

3. principle issue.

4. MS. MISSICK: I understand what you are

5. thinking.

6. THE COURT: If you are saying --

7. MS. MISSICK: I understand what you are

8. thinking, my Lord.

9. In essence, if it's somewhat of a foundation --

10. if her judgement was somewhat of a foundation everything

11. else which follows will institute because of the active

12. application.

13. THE COURT: Exactly.

14. MS. MISSICK: Therefore, however, there is one

15. particular judgment, however, that did not flow Madam

16. Justice Ruth Bowe-Darville.

17. THE COURT: And which judgment would that be?

18. MS. MISSICK: Justice Keith Thompson.

19. THE COURT: That judgement was set aside,

20. wasn't?

21. MS. MISSICK: It was set aside.

22. However, the determination regarding

23. constitutionality of the decision was not made.

24. THE COURT: No, no, listen. The judgement,

25. once the judgment has been set aside, the judgement is

26. annulled; it no longer exist. So then the question of

27. its constitutionality no longer arises.

28. MS. MISSICK: I disagree, my Lord.

29. THE COURT: It's within your right to disagree

30. but that is the law."

(Transcript page 4, lines 1-30)

9. What is gleaned from the above exchange between the Court and the Applicant is that the instant action is an attempt to challenge the constitutionality of the ex-parte proceedings and subsequent order made on the 26th August, 2020 and the inter partes

proceedings on the 3rd September, 2020 and the subsequent interim order made on the 7th September, 2020 by then Justice Ruth Bowe Darville.

10. However, before any determination can be made in regards to the substantive action, in light of the Court of Appeal's Ruling in relation to the ex parte proceedings and order and the inter partes proceeding and interim order made by then Justice Ruth Bowe Darville, can this Court make a determination on the constitutionality of the same and if it can, whether the allegations made by the Applicant in her Notice of Motion and/or Amended Notice of Motion amounted to the alleged breaches of her constitutional rights.

Preliminary Issue-The Jurisdiction of the Court

11. During the hearing on the 14th July, 2022, the Court asked the parties in light of the Court of Appeal's decision in relation to the ex parte proceedings and order and the subsequent inter partes proceedings made by then Justice Ruth Bowe Darville, whether this Court has the jurisdiction to review a decision that was adjudicated and determined by a higher court, i.e. the Court of Appeal.

Counsel for the Respondent, Mr. Owen Wells, submitted in summary that the Court does not have the power as it is a lower court and cannot make a decision over the higher court.

Further, he submitted that any attempt by the lower court would be a parallel or collateral action and referred the Court to Article 28 of the Constitution and stated that the Applicant has a pending application before another Judge whereby she can vary the same Order she now challenges.

The Applicant submitted that the Constitutional Court which is the Supreme Court has original jurisdiction and does have the power to review a constitutional application brought before it.

The Applicant also submitted that the issue of the constitutionality of the ex parte proceedings and order was advanced before the Court of Appeal when she had appeared.

12. Considering the submissions of the parties in this matter, the Court must consider whether it has the jurisdiction to grant the relief sought by the Applicant in respect of the judicial acts of a court of co-ordinate jurisdiction and by extension a higher court.

13. A similar issue was considered by Justice Klein in **Donna Dorsett-Major v The Director of Public Prosecution and another 2020/CRIM/con/0005**. In that case, the Applicant, sought constitutional relief from the Court alleging that her fundamental rights under Articles 19, 20 and 23 of the Constitution were or were about to be infringed as a result of her citation for contempt and the pending hearing of that contempt charge before another judge whom the alleged contempt was committed.

The Applicant also sought a permanent stay of the contempt proceedings and in the alternative an order that the contempt proceedings be transferred to another Judge for trial.

Justice Klein at paragraph 4 of his Ruling while setting out the issues he believed must be addressed on the disposal of the Applicant's claim stated "...But these issues must be considered against the backdrop of a more fundamental question:

Is a judge of the Supreme Court able to declare that the orders or actions of a fellow judge of equal jurisdiction contravene or threaten to contravene an applicant's fundamental rights in circumstances where that other judge is seized of the proceedings the applicant seeks to arrest?

Or must the applicant simply invoke the appellate process to correct any perceived errors of law, fact or procedure?" At paragraphs 28 to 41 Justice Klein set out the Supreme Court's jurisdiction in respect of the court's constitutional jurisdiction to grant relief

generally and specifically in respect of the judicial acts of another judge with equal and co-ordinate jurisdiction. Justice Klein ultimately went on to consider the Applicant's constitutional claims along with several other applications made by the Respondent.

14. The stark contrast with the above case and the instant case is that, while the Applicant has framed her constitutional motion as against the Orders and the judicial acts of then Justice Ruth Bowe Darville, it may potentially be framed as a challenge to the Ruling rendered by the Court of Appeal.

At paragraph 29, Justice Klein in **Donna Dorsett-Major (supra)** on considering the Supreme Court's jurisdiction stated:-

"29 The Supreme Court is declared by section 7 of the Supreme Court Act (Ch. 58) to have "unlimited original jurisdiction in civil and criminal causes and matters" and such appellate jurisdiction as is conferred on it by law. It has the power to judicially review the proceedings of inferior courts, but as a court of unlimited jurisdiction, it itself is not subject to judicial review. Except for a limited category of orders" e.g., ex parte or interlocutory orders, default judgments, etc., which can be reviewed equally by judges of coordinate jurisdiction because they are either provisional in nature, non-dispositive or lack the benefit of a hearing on the merits" the decisions or orders of the Supreme Court can only be challenged on appeal (Strachan v. The Gleaner Company [2005] UKPC 33 [32])." (the Court's emphasis)

15. The Court has not been persuaded by the Applicant that it has the jurisdiction in the instant action to review the judicial acts of then Justice Ruth Bowe Darville while adjudicating the custody hearings between the Applicant and her ex-husband.

To review the judicial acts and make a determination as to whether such acts were unconstitutional would require the Court to look and determine the merits of that substantive action, which is still before another judge of co-ordinate jurisdiction. Moreover, the said judicial acts and subsequent orders were challenged on appeal by the Applicant and in considering the merits of the Applicant's appeal, that Court rendered its ruling.

16. Therefore, the Court recognizes that it does not have the jurisdiction to hear the matter. Further, the Court is not persuaded that it has the jurisdiction to grant the relief sought by the Applicant for what she alleges are breaches of her constitutional rights as a result of the judicial acts of another judge of co-ordinate jurisdiction.

17. However, assuming but not deciding that this Court has the jurisdiction to make such a determination, the Court goes on to consider the Respondents' application to strike out and dismiss the action.

Strike Out Application

18. The Respondents filed a Summons on the 13th May, 2022 for

- (i) an Order pursuant to Order 18, Rule 19(1)(a), (b) and (d) of the RSC to strike out the instant action as it discloses no reasonable cause of action against the Respondent, it is frivolous, vexatious and is otherwise an abuse of the court process;
- (ii) an Order pursuant to Order 15, Rule 6(2)(a) of the RSC that the Second Respondent be disjoined from the action on the grounds of judicial immunity and/or is not a fit and proper party to the proceedings;
- (iii) an Order pursuant to Order 31A, Rule 18(2)(d) of the RSC that these proceedings be stayed pending the determination of the instant application and
- (iv) an Order pursuant to Order 33, Rule 6 of the RSC, that the issue as to whether there are causes of action against the Respondent be determined as preliminary issues. The Respondents rely on the Affidavit of Lilinque Grant filed on the 25th May, 2022 and their Submissions dated the 24th May, 2022 in support of their application.

19. The Applicant has responded to the Respondents Strike Out Summons by filing a Summons to Strike out their Summons and by providing the Court written submissions in full.

20. The Court is appreciative to both parties for providing it with very full submissions as it relates to the Respondents' application to strike out.

Analysis/Discussion

21. Lindley M.R. in **Hubbuck v Wilkinson [1899] 1 Q.B. 86 at 91** stated that, it is only in plain and obvious cases that recourse should be had to the summary process under this rule. The power to strike out is a Draconian remedy which should be employed only in clear and obvious cases where it is possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof (per Allen, J in **Bettas Limited v Hong Kong and Shanghai Banking Corporation Limited and HSBC Bank Plc SCCiv App No. 312 of 2013**).
22. Auld, LJ in **Electra Private Equity Partners v KPMG Peat Marwick (a firm) & Ors [2001] 1 BCLC 589 at 613** stated that:
- "It is trite law that the power to strike out a claim under RSC Ord.18, r.19 or in the inherent jurisdiction of the Court should only be exercised in "plain and obvious" cases. That is particularly so where there are issues as to material primary facts and the inferences to be drawn from them, and when there has been no discovery or oral evidence...the court should proceed with great caution in exercising its power of strike-out on such a factual basis when all the facts are not known to it, when they and the legal principle(s) turning on them are complex and the law, as here, is in a state of development. It should only strike out a claim in a clear and obvious case."*
23. Lord Pearson in **Drummond-Jackson v British Medical Association [1970] 1 W.L.R.** stated that a reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.

Additionally, so long as the statement of claim or the particulars raise some question fit to be decided by a judge or jury the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out. See **Wenlock v Moloney [1965] 1 W.L.R. 1238**.

24. The Applicant has stated above that the basis of her application is to challenge the ex-parte proceeding and subsequent order and inter partes proceeding and subsequent interim order that were made by then Justice Ruth Bowe Darville on the 26th August and 7th September, 2020.

25. In a series of events and subsequent filings before the Court in this action between the last hearing date on the 14th July, 2022 and the 19th August, 2022, the Applicant by way of an Ex-parte Summons appeared before Justice Klein seeking to have the Court,

- (i) interview the minor children to determine whether the children would like to spend the remainder of the summer break with her;
- (ii) for the court to make such an order should it determine that to be in the best interest of the children; and
- (iii) that the children be permitted to travel to Florida with her as she was attending a conference from the 23rd August to 31st August, 2022.

Justice Klein in his Ruling dated the 2nd September, 2022 dismissed the Applicant's Ex Parte Summons and laid out his reasons for doing so.

In setting out his Ruling, Justice Klein commented on these same proceedings that is now before this Court and said at paragraph 10:-

"The Constitutional proceedings

[10] An amended Constitutional Motion ("the Constitutional Motion") was filed 22 March 2022, naming the Attorney General as Respondent and seeking various constitutional relief against the Attorney-General in respect of alleged breaches of the applicant's rights emanating from the custody proceedings, which were attributed to various judges. Curiously, the constitutional complaints are pleaded not as breaches but as a series of 16 interrogatories..."

26. Similar to the observation made by Justice Klein in his Ruling, the Court also has noted that the Applicant has framed her Constitutional Motion as a series of questions and at

the sixteenth (16th) question and in her prayer for her relief she identifies the articles of the Constitution she alleges has been breached.

27. The Court notes that the Applicant filed a Notice of Motion and subsequent to that filing she also filed an Amended Notice of Motion removing Justice Bowe Darville as a party to the proceedings and deleting the declaratory relief that the ex parte and interim orders be quashed. However, she still seeks a declaration that her fundamental rights under Articles 17, 20(8), 21 and 25 have been contravened; a declaration to have her urgent application filed on the 1st March, 2022 be listed before the duty roster judge who was in place at the time of the filing of her matter; vindictory damages; interest and costs.

The Respondents entered their Appearance and entitled their documents with both named Respondents.

Further, the Respondents Summons for Strike Out also seeks an Order to have the second named Respondent be disjoined from the action. Therefore, the Court can conclude that the Notice of Motion was served on the Respondents by the Applicant and as such her Amended Notice of Motion was amended without the leave of the Court.

However, while the Respondents have sought an Order to disjoin the Second Respondent, Justice Ruth Bowe Darville as a party to the proceedings, the Respondents have not/did not object to the Amended Notice of Motion and proceeded with the hearing of the same. Therefore, the Court in its consideration of the Strike Out Application refers only to the Amended Notice of Motion.

28. The difficulty with the Applicant's Amended Notice of Motion is that whether the Court answers any of the questions as framed by her in the affirmative or negative the relief sought in her prayer cannot be granted by this Court.

The Affidavit in support is essentially an attempt to rehash the numerous proceedings that have been before the Court. What proves fatal to the Applicant's Affidavit in support of her motion is the failure to identify the Articles of the Constitution which she alleges have been breached and the manner in which they have been breached.

Additionally, the Applicant fails to identify how the Respondent, i.e. the Attorney General of the Bahamas was and/or is responsible for the alleged breaches of her fundamental rights.

29. The Court on an application pursuant to Order 18, Rule 19(1)(a) of the RSC is to look at whether this is a cause of action with some chance of success, whether it raises some question fit to be decided by a judge. In the circumstances, however, the Court finds that the claims by the Applicant does not disclose a reasonable cause of action with any chance of success and as such her claims are bound to fail. The Court hereby strikes out the Applicant's Amended Notice of Motion and dismisses the action.

Redress

30. However, even if the Applicant's Amended Notice of Motion raised SOME question fit to be decided by a judge on what she alleges are breaches of her constitutional rights, the Court is satisfied that pursuant to the proviso found at Article 28 of the Constitution she has adequate means of redress available.

31. Article 28 of the Constitution provides:-

"28. (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction —

(a) to hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the

provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law."

32. This Applicant, as shown in the above paragraphs is no stranger to the appeals process as the Court of Appeal has rendered several rulings relating to the on-going custody matter.

Further, the on-going custody matter still remains before another Judge to be heard on the 31st October, 2022. As stated by the Justices of Appeal to the Applicant in their respective rulings, if she is not satisfied as to the outcome of those hearings she still has the right to appeal the same.

33. While the Court sympathizes with the Applicant, the filing of numerous unmeritorious applications is an abuse of the court process and the court process should not be used as a means of vexation and oppression in the process of litigation.

Extant Summonses

34. The Applicant filed three Summonses following the Respondents' application to Strike Out the instant action. The Applicant's first Summons filed on the 16th May, 2022 in essence seeks to strike out the Respondents' application to strike out her action.

The Applicant makes her application to strike pursuant to

- (i) various Articles of the Constitution, namely Articles 2, 15(a), 15(c), 17, 20(8), 21, 25, 28(1) and 28(2)(a);
- (ii) The Child Rights Convention;
- (iii) Sections 29, 3(1), 3(2), 3(3)(a-f), 4(a), 4(c), 5(1), 6(1), 9(1), 9(3), 14(1) and 14(2) of The Child Protection Act and under the Court's inherent jurisdiction and seeks numerous orders to be made by the Court to strike out the Respondents Summons.

35. The Applicant's second Summons and third Summons (which is titled Amended) filed on the 28th June, 2022 seeks to strike out the Affidavit of Lilnique Grant, which was filed in support of the Respondents application to strike in its entirety pursuant to Order 41, Rule 5 and Rule 6 of the Rules of the Supreme Court and the Court's inherent jurisdiction.

Further, that the grounds of the application are based on what she alleges are the deponent swearing to matters not from her own knowledge, making statements without stating her sources or the grounds of her own belief, that the Affidavit should not discuss legal propositions or comment on documents she is not readily able to be cross-examined, that the sworn evidence is irrelevant and/or is inadmissible as hearsay.

The Applicant also seeks-

- (i) an Order for the deponent to attend the hearing to be cross-examined by the Applicant;
- (ii) an Order that the Applicant's minor children attend Court to give oral evidence;
- (iii) an Order requiring the attendance of Dr. John Dillet to give expert testimony of his findings in respect of his meeting with the minor children, his assessment of the Applicant and the custody proceedings;
- (iv) an Order that upon the determination of the constitutional application in her favor that the Court directs the Applicant's Affidavit evidence in support of her Amended Notice of Motion be admitted as unchallenged or consented to by the Respondents; and
- (v) an Order that upon the determination of the constitutional application in her favor, the Court orders the immediate production of the minor children.

36. The Applicant filed Affidavits in Support of her Summonses on the 16th May, 2022 and the 28th June, 2022 respectively.

37. As it relates to the Applicant's first Summons to strike the Respondents application to strike, the Court is of the view that it has no merit.

Further, the Applicant in her rather fulsome submissions in relation to the substantive application responded to the Respondents application to strike. Moreover, the Summons fails to identify the provisions under the Rules of the Supreme Court that gives the Court the power to strike out a pleading or dismiss an action.

Therefore, the Court dismisses the Applicant's Summons filed on the 16th May, 2022.

38. As it relates to the Applicant's two remaining Summonses to strike out the Affidavit of Lilnique Grant, which was filed in support of the Respondents application to strike out and dismiss the substantive action.

The Court also does not find that the said application has any merit.

The Court has reviewed the Affidavit of Lilnique Grant and also considered the Affidavit filed by the Applicant in support of the substantive action and the Affidavit filed by the Applicant in support of the two remaining Summonses and can conclude the following:

- a. That the Affidavit of Lilnique Grant was sworn for the purpose of being used in interlocutory proceedings, i.e. the application to strike out (Order 41, Rule 5(2) of the RSC);
- b. That the deponent stated the sources of her information and belief and the grounds thereof in paragraph 1 (Order 41, Rule 5(2) of the RSC);
- c. That the Affidavit recounts the history of the ongoing litigation regarding the custody of the Applicant's minor children;
- d. That the Applicant asserts that the Affidavit should be struck, however in her own Affidavits in response (which reads as a Defence or answer to pleadings) she states that various paragraphs of the contested Affidavit are admitted by her.

39. The Court's power to strike out an affidavit as being scandalous, irrelevant or oppressive is discretionary and in the circumstances the Court is of the view that the said Affidavit of

Linique Grant is not scandalous, irrelevant or oppressive and will not strike out the same for the reasons cited above.

40. The Applicant in her remaining two Summonses seeks orders of this Court to require the attendance of the minor children during the hearing, the attendance of Dr. John Dillet during the hearing, the admission of the Affidavit evidence filed in respect of the Amended Notice of Motion as unchallenged and the immediate production of the minor children should she be successful on her substantive action.

The remaining relief sought by the Applicant in these Summonses has either fallen away such as the attendance of the minor children and Dr. John Dillet during the last hearing to give evidence or are items of relief that this Court cannot grant on the substantive action that is before it. The items of relief pursuant to the remaining two Summonses relate to the ongoing custody litigation that is currently before another judge of co-ordinate jurisdiction.

41. Therefore, the Summons and Amended Summons filed on the 28th June, 2022 is hereby dismissed.

Disposition

42. Therefore, having considered the substantive application, the summons to strike out, the submissions of Counsel and the Affidavit evidence before it, the Court hereby strikes out the notice of motion and the Amended Notice of Motion and dismisses the Applicant's action.

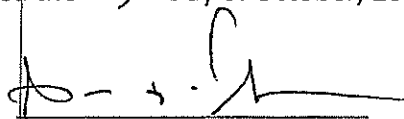
The Court also dismisses the Applicant's Summonses filed on the 16th May and 28th June, 2022.

43. The Court repeats the sentiments of the Justices of Appeal in their respective rulings related to the parties to this action and in particular the Applicant.

The Applicant has acted pro se during these proceedings and while she may be a proficient attorney due to the nature and her connection to the matter before the Court, in the circumstances, perhaps the engagement of separate Counsel may help her reach some resolution to this matter.

The Court awards cost to the Respondent to be taxed, if not agreed.

Dated the 31st Day of October, 2022

A handwritten signature in black ink, appearing to read "A. Forbes", written over a horizontal line.

Justice Andrew Forbes