COMMONWEALTH OF THE BAHAMAS **2018**
IN THE SUPREME COURT **PUB/jrv/27**
Public Law Division

B E T W E E N

THE QUEEN
And
Dr. The Hon. HUBERT ALEXANDER MINNIS
(Prime Minister of the Commonwealth of The Bahamas)
First Respondent
And
Senator The Hon. DION ALEXANDER FOULKES
(Minister of Labour) **Second Respondent**
And
The Hon. DESMOND THOMAS BANNISTER
(Minister of Public Works) **Third Respondent**
And
Senator The Hon. CARL WILSHIRE BETHEL, K.C.
(Attorney General of the Commonwealth of The Bahamas)
Fourth Respondent
And
BAHAMAS POWER AND LIGHT COMPANY LTD
Fifth Respondent
And
THE WATER AND SEWERAGE CORPORATION
Sixth Respondent

EX PARTE

RESPECT OUR HOMES LIMITED

AND

LUMANE NONORD *ET AL* BEING 177 RESIDENTS AND/OR OCCUPANTS OF SHANTY TOWNS IN THE BAHAMAS

Applicants

BEFORE: **The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**

APPEARANCES: **Mr. Frederick Smith KC, along with Mr. Martin Lundy II and Ms. Raven Rolle, and Mr. Ian Cargill III Counsel for the Applicants**

Mrs. Kayla Green-Smith, Assistant Director of Legal Affairs, along with Mr. Franklyn Williams KC, Deputy Director of Public Prosecutions (as he then was), Mr. David Higgins, Deputy Director of Legal Affairs, Mr. Basil Cumberbatch, Chief Counsel, and Mr. Rasheed Edgecombe, all for the Respondents

Mr. James R. Thompson for the Intended Applicants

HEARING DATES: **28th April, 2021, 30thApril, 2021, 21st May, 2021, 23rd November, 2021, 3rd March, 2022, 7th February, 2023, 10th February, 2023**

RULING

JUDICIAL REVIEW APPLICATION AND CONSTITUTIONAL MOTION

Judicial Review-Leave granted to bring Judicial Review Proceedings-Constitutional Relief Sought- Is an alternative remedy available-Review of government Policy Decisions relative to "Shanty Towns".

The Applicants comprised a non-profit organisation entitled "Respect Our Homes Limited", an apt title which encapsulated the valiant fight to protect the interest of 177 residents and/or occupants of alleged "Shanty Towns" in New Providence, Abaco and the entire Bahamas.

The Applicants denounced the impropriety of government decisions to take "apparent" possession of land on which "Shanty Towns" stood ("the Possession Decision"); the decision to disconnect the utilities on the aforesaid

land without due and proper consultation ("the Utilities Decision"); and the decision to issue general blanket Notices to individuals living on the aforesaid land under section 4(3) of the Buildings Regulation Act 1971 ("the Notices Decision"). A Judicial Review Application was filed along with a Constitutional Motion.

An Injunction was sought and granted to the Applicants to preserve the status quo until a decision on these issues of general public importance was made. The terms of the Injunction restrained the Respondents from interfering with the enjoyment of the land of the 177 Applicants or disconnecting their utilities.

Held- The Judicial Review Application and the Constitutional Motion filed by the Applicants has failed. This was a crucial matter of national importance, accordingly I make no Order as to Costs.

1. "The Possession Decision"- The evidence submitted by the Applicants did not prove the government had formulated the intention to possess the land. The primary piece of evidence relied on to show actual interference was the governments' interaction with the relevant land in Abaco, subsequent to the horrific impact of Category Five Hurricane Dorian, one of the worst natural disasters in the history of The Bahamas. This Court is mindful of the duty of the Government of the Commonwealth of The Bahamas to remove and even in some instances destroy buildings which the government may view as hazardous to the citizens, inhabitants, or to good public health and safety or otherwise in breach of law. There was no evidence to show acts of factual possession of the aforesaid land on the part of the Government.
2. "The Utilities Decision"-The relevant utility corporations are statutorily empowered to disconnect utilities for non-payment of outstanding bills, to conserve supply during periods where it is limited, for the purposes of upgrading their systems, or any other reasonable circumstance that

may require a disconnection. The Court found this allegation of the Applicants to be unfounded.

3. "The Notices Decision"- The Court was satisfied that the decision to issue Notices to the inhabitants of the Shanty Towns pursuant to section 4(3) of the Building Regulations Act Chapter 200 was in compliance with the legislation. These Notices were duly signed by Building Control Officer Mr. Craig Delancy (appropriately delegated duties) acting in accordance with the said Building Regulations Act.
4. Constitutional Application- Constitutional Applications should not be commingled with Judicial Review Proceedings. In the circumstances the Constitutional Application is dismissed.
5. The result of this Judgment is that the original Injunction (3.8.2018) covering the "Shanty Towns" is hereby discharged. The Respondents are no longer restrained directly or through their agents, appointees or employees. They may take possession of, demolish any building on, or otherwise lawfully interfere with the 177 Applicants' and other residents' and occupiers' enjoyment of land in "Shanty Towns" in New Providence or elsewhere in The Bahamas. This includes the disconnection of any utilities in accordance with the relevant enabling legislation, in full conformity with the laws and usages of The Bahamas. Their actions should be humane and sensitive to the needs of this potentially vulnerable community and full compliance with International Conventions such as the United Nations Convention on Human Rights, Inter-American Convention on Human Rights ("IACHR") which recognizes the inherent dignity of equal and unalienable rights of all members of the human family.

The following Statutes and Regulations are referred to in the judgment: **Rules of the Supreme Court, Chapter 53, Building Regulations Act, Chapter 200, Water Sewerage Act, Chapter 196, The Electricity Act, 2015, The Bahamas Electricity Corporation Regulations, Chapter 194, Town Planning, Chapter 255.**

The following cases are referred to in the judgment: ***Kemper Reinsurance Company v Minister of Finance and others (Bermuda) Privy Council App. No. 67 of 1997, The Queen v The Most Hon. Hubert A. Minnis Et al Ex Parte Dwight Armbrister***

2020/PUB/jrv/00024, J A Pye (Oxford) Ltd. and another v Graham and another [2003] 1 AC 419, Powell v McFarlane [1977] LS Gaz R 417, Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd [1994] 1 WLR 521, Galloway v The Mayor and Commonalty of London (1866) LR 1 HL 34, R (Friends of the Earth Ltd) v Heathrow Airport Ltd [2020] UKSC 52, R v Somerset County Council, Ex p Fewings [1995] 1 WLR 1037, Carltona v Commissioners of Works [1943] 2 All ER 560, H Lavender & Son Ltd v Minister of Housing and Local Government [1970] 1 WLR 1231, Attorney General (NSW) v Quin (1990) 170 CLR 1, Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, Paponnette and Others v Attorney General of Trinidad and Tobago [2010] UKPC 32, United Policyholders Group and Others v Attorney General of Trinidad and Tobago [2016] UKPC 17, Haoucher v Minister of State for Immigration and Ethnic Affairs (1990) 93 ALR 51, Laker Airways Ltd v Department of Trade [1997] QB 643, R v. Inland Revenue Commissioners, ex parte Preston [1985] AC 835, Regina (Moseley) v Haringey London Borough Council [2014] 1 WLR 3947 (UKSC), R v The Minister of Public Works Ex Parte Arnold Heastie et al SCCIvApp 3 of 2011, In Responsible Development of Abaco (RDA) Ltd. and another v Ingraham and others [2012] 3 BHS J. No. 35, Lever Finance v Westminster London Borough Council [1971] 1 QB 222, Jeffs v New Zealand Dairy Productions and Marketing Board [1967]1 AC 551, Pretty v United Kingdom (2002) 35 EHRR 533, Dwight Armbrister and The Queen and Others 2020/PUB/jrv/00024, Brian R. Christie v The Civil Aviation Authority 2017/PUB/jrv/00010

Grant-Thompson, J

Ruling

Introduction

1. This Ruling concerns the Application for Judicial Review of, and constitutional challenge to, the Respondents' alleged polices (**"the Policies"**) which the Applicants concluded was geared towards the eradication of "Shanty Towns" in The Bahamas. The Applicants challenged three (3) decisions taken in pursuance of the Policy, namely:
    i. the "apparent" decision to take possession of the land on which the "Shanty Towns" occupied by the individual Applicants stand **("the Possession Decision")**;
    ii. the "apparent" decision by the 1st -4th Respondents to authorize the 5th and 6th Respondents to disconnect power, water and utilities from the land **("the Utilities Decision")**; and
    iii. the decision to issue notices under s.4(3) of the Buildings Regulation Act 1971 hereafter referred to as ("BRA")

requiring the demolition of buildings in the "Shanty Towns" **("the Notices Decision")**.

2. The First Applicant is a non-profit organisation whose objects and reasons include representation and advocacy on behalf of the occupiers in unregulated communities throughout The Bahamas (commonly referred to by the government and people of The Bahamas as "Shanty Towns"). The other Applicants are 177 residents and/or occupants of the "Shanty Towns" in New Providence and Abaco, who would be aggrieved by the maintenance of the alleged Policy Decisions.

3. This Honourable Court granted the Applicants leave to apply for Judicial Review (3.8.2018).

4. Further on the 3rd August, 2018 this Honourable Court granted the Applicants an Injunction in the following terms:

> **"Pending the determination of this action or until further order the Respondents be and are hereby restrained directly or through their agents, appointees or employees from taking possession of, demolishing any building on, or otherwise interfering with the 177 Applicants' and other residents' and occupiers' enjoyment of land in "Shanty Towns" in New Providence including by disconnecting any utilities other than pursuant to the relevant enabling legislation…"**

5. The Applicants filed their Originating Notice of Motion for Judicial Review (16.8.2018). The decisions that the Applicants' requested this Honourable Court to review are outlined as follows:

> **(1) "The decision by or on behalf of the 3rd Respondent (the Minister of Public Works) to issue notice ("the Notices") to the Individual Applicants purportedly pursuant to s.4(3) of the Buildings Regulation Act 1971 ("the Notices Decision").**

(2) The (apparent) decision of the 1st to 4th Respondents and/or each of any of them to take possession of land in Shanty Towns ("the Land") occupied by, inter alia, the Individual Applicants ("the Possession Decision").

(3) The (apparent) decision of the 1st to 4th Respondents and/or each or any of them to authorize the 5th and 6th Respondents to disconnect power, water and other utilities for which they are variously responsible from the Land ("the Utilities Decision"). Together ("the Decisions" or "the three Decisions").

(4) The government's (apparent) policy to eradicate or irretrievably eliminate Shanty Towns in The Bahamas ("the Policy").

AND TAKE NOTICE that upon the hearing of this Motion, the Applicants shall:

a) In the <u>alternative</u> and pursuant to paragraph 1.2 of the Leave and Constitutional Application, seek an order for Constitutional Relief in respect of the Decisions ("The Alternative Application for Constitutional Relief' and;

b) <u>In any event</u> and pursuant to paragraph 1.3 of the Leave and Constitutional Application, seek an order for Constitutional Relief in respect of the Policy ("the Freestanding Application for Constitutional Relief"). ……..."

(See Originating Notice of Motion For Judicial Review Filed on the 16th August, 2018)

6. The Affidavits filed by the Applicants in support of these applications are as follows:

a) Affidavit of Stephanie St Fleur filed 3rd August, 2018;

b) Affidavit of Wislande Geffrard filed 10th August, 2018;

c) Second Affidavit of Stephanie St. Fleur filed 25th November, 2019;

d) Affidavit of Timothy Rolle filed 24th January, 2020;

e) Third Affidavit of Stephanie St. Fleur filed 10th March, 2021; and

f) Affidavit of Desmond Bain filed on 12th March, 2021.

7. The Affidavits filed by the Respondents in response are as follows:

a) Affidavit of Craig Delancy filed 3rd of October, 2018;

b) Affidavit of Dion Alexander Foulkes filed 2nd May, 2019;

c) Affidavit of Craig Delancy filed 2nd May, 2019;

d) Second Affidavit of Dion Alexander Foulkes filed 14th January, 2020;

e) Affidavit of Roland Joshua Smith filed 29th January, 2020;

f) Affidavit of Stacey Johnson filed on the 30th January, 2020;

g) Affidavit of Kingsley Smith filed 19th November, 2020;

h) Third Affidavit of Dion Alexander Foulkes filed on 24 September, 2020;

i) Affidavit of Warren L.D. Johnson filed on the 16th March, 2021; and

j) Affidavit of Richard Ernest Bruneau filed on the 17th March, 2021.

8. The Interlocutory Injunction granted on the 3rd August, 2018 was varied by Consent Order (17.12.2018) in the following terms:

> **"Further, pending the determination of this action or until such further order, the 177 Applicants and or other residents and occupiers of the Land in Shanty Towns in New Providence or elsewhere in The Bahamas shall take no action to construct, erect and or alter any further buildings or structures otherwise than in accordance with the Building Regulation Act."**

9. This Honourable Court granted the Applicants leave to amend their Application for Leave to Apply for Judicial Review (3.5.2019), further leave to re-amend their Application for Leave to Apply for Judicial Review

(30.1.2020). A major factor in the delay of this case of national importance was the "COVID-19" pandemic .On the 20th March, 2020 the then Prime Minister of the Commonwealth of The Bahamas, who was dubbed as the "Competent Authority" in the legislation, enacted the EMERGENCY POWERS (COVID-19) (NO. 1) ORDER ("the Order"), 2020 which had the effect of suspending the operations of most commercial and general services inclusive of Judicial hearings. The Judicial Review and Constitutional Application case commenced 23rd February, 2021. The Applicants' case opened and they submitted. The matter was adjourned for the Response and Submissions of the Respondents on the 28th April, 2021. The reply of the Applicants occurred on the 30th April, 2021. Additional submissions occurred on 21st May, 2021 and 23rd November, 2021. There was an additional hearing on 18th January, 2022 and a transcript inventory on 3rd March, 2022. There were still transcripts outstanding up to the date of Judgment. The Court sought to rule on the basis of the transcripts and hand written notes on 7 February, 2023. However Mr. Frederick Smith KC et al were all before His Majesty's Privy Council in London. The matter was adjourned for final Ruling to the 10th February 2023.

10. The result of this Judgment is that the original Injunction which was in place covering the "Shanty Towns" is hereby discharged. The Respondents are no longer restrained directly or through their agents, appointees or employees from taking possession of, demolishing any building on, or otherwise interfering with the 177 Applicants' and other residents' and occupiers' enjoyment of land in "Shanty Towns" in New Providence or elsewhere in The Bahamas including by disconnecting any utilities in accordance with the relevant enabling legislation.

The Haitian Diaspora in The Bahamas and Background

11. The Bahamas is a country of over 700 Islands and Cays which stretch from the United States in the North to Cuba and the island of Hispaniola (Haiti and the Dominican Republic) in the South. The Bahamas comprises a beautiful archipelago of islands, with porous borders which provide many entry points into the country. This hinders immigration control, making it

an extremely difficult task for Immigration officials and The Royal Bahamas Defense Force Officers who are tasked with the responsibility to police our borders. The Respondents complain of a dense concentration of alleged Haitian nationals in unregulated, poorly constructed areas of The Bahamas.

12. Haiti is considered the poorest country in the Western Hemisphere with about 80% of the Haitian population living in abject poverty.[1] Many factors contribute to the economic status of Haiti including: overpopulation, environmental problems, and subsequent lack of jobs. All of these factors must be pointed out in order for one to fully understand the reasons for the mass migration taking place from Haiti into other countries of the world and more specifically into The Bahamas. Haitians, desperate to escape economic hardship in Haiti set out in treacherous, shark-infested waters to obtain "a better life."[2]

13. Sean McQueeny reported in his journal "The Haitian Problem at the end of the Eighteenth Century" that most persons fleeing Haiti were captured at sea and brought into New Providence as a result of Bahamian privateers. Privateers realized the high profits their business yielded, so they continued for years even after the government had declared an immigration problem in the House of Assembly from as far back as 1793.[3]

14. The 2010 census noted that of the 351,461 people living in The Bahamas, 39,144 were Haitians. Experts, however, noted that it can be difficult to account for undocumented people during a census. The Court takes judicial notice of the perceived tension between citizens of The Bahamas and individuals who occupy these "Shanty Towns."

15. It was observed by The Department of Environmental Health Services in 2013 that many of the long term residents of "Shanty Towns" have

[1] 2000 Human Development Report: Demographic Report produced by United Nations Development Programme.

[2] "The Haitian Diaspora in The Bahamas": Florida International University Department of International Relations. Ria R. M. Treco 17 April 2002

[33] The Journal Report "The Haitian Problem at the end of the Eighteenth Century" Mr. Sean McQueeny KC

assimilated into the society and are recognized as productive, law abiding citizens who contribute to the growth and development of our country.[4] Historically, many of the older occupants in these areas were farm labourers who were hired by diverse persons from throughout The Bahamas. These labourers in some instances were allowed to occupy the land after the owners had ceased farming operations. In return, these occupants are expected to share a percentage of their crop and pay the landowner a varying small fee.[5]

16. It was further observed and submitted to this Court that most, if not all "Shanty Towns" are on Government crown land issued to Bahamians families for the purpose of agriculture. As noted in the first Survey (conducted two (2) years ago), these "communities" are informally organized, overcrowded with mostly illegal/poorly constructed dwellings, improper or no sewage disposal systems, compounded with derelict vehicles and garbage accumulation which give rise to the breeding of rodents, mosquitoes and other disease carrying vectors. The Court was informed that an emerging trend according to the Applicants, is the increasing number of Bahamians (or persons, who claim to be Bahamian) who live in or frequent these towns.

17. The Government of The Bahamas commenced the execution of a Cabinet policy decision (Executive Branch of Government) on the long-standing vexing issue of "Shanty Towns" in The Bahamas (policy decision dated 3.1.2018). According to the Applicants the overarching purpose of this endeavour was to eliminate "Shanty Towns" in The Bahamas, to ensure that all residents of The Bahamas occupy housing in approved sub-divisions, by approved constructions, as per the terms governed by the regulatory agencies. No appropriate legislation was implemented to support the "Policy" they contended. Instead, the "Shanty Towns" Action Task Force ("SATF") was officially launched (established at a meeting on 3.1.2018). The "SATF" comprised representatives of government ministries and departments, private and public utility providers, non-

[4] D.E.H.S Shanty Town Project and Survey 2013
[5] Ibid

governmental organisations including the Ministries of Social Services, Public Works, Environment and Housing, Health, Agriculture, Foreign Affairs, Departments of Land and Survey, Immigration, The Royal Bahamas Police Force, The Royal Bahamas Defence Force, Cable Bahamas Ltd, Bahamas Power and Light, Water and Sewerage Corporation, Office of the Attorney General, The Red Cross and the Bahamas Humane Society.

18. "SATF" is an advisory committee which oversaw the implementation of the Shanty Town project. The executive would direct and advise these entities and bodies. At a meeting of the "SATF" (5.1.2018), Minutes of the said Meeting recorded the following:

    i. *"The Minister asked if there was any progress in finding alternative homes so far there were a few prospects that were located and the search continued. Copies of their reports were provided."* These reports have not been disclosed, the "SATF" was cognizant of the requirement for alternative housing upon Policy implementation; and

    ii. The "integration" process was discussed, and the Minutes of the meeting revealed: *"...by no means the government would be subsidizing living spaces for the residents, as it would cause unrest among Bahamian communities, who were still awaiting assistance from the Government"*. (This illustrates some of the tension to which the Court averred)

19. The Ministry of Labour wrote a number of organizations inviting representatives of churches and other groupings to discuss **"unregulated housing developments commonly referred to as Shanty Towns" (14.2. 2018)**. There was a "SATF" meeting with Mr. Ron Darville (Movement Bahamas- 19.2.2018). The minutes of the "SATF" Meeting revealed:

    "the meeting began with Minister giving an overview on the Government's mandate to eliminate the Shanty Towns and

relocate the residents to more civilized and healthier communities. The reasons for this decision were that the Shanty Towns had become health hazards to the surrounding neighbourhoods and they were havens for criminal activities."

20. The Honourable Court was asked to take note of the fact that there were consistent inter policy decisions relative to "Shanty Towns". Further the constant civil society collaboration encouraged the expression of concerns for the occupants of "Shanty Towns". The League of Haitian Pastors hosted a meeting to discuss government policy. Meetings with the Bahamas Christian Council were also held (20.2.2018) along with the Catholic Archdiocese of Nassau. The input of other religious groupings were invited. The Minutes of that Meeting reveal that the *"Government would not be subsidizing lodging in this venture; which was why "UHAB" and "LHP" were invited to support the cause and assist any way they possibly could"*.

21. According to the Applicants, the government was silent and unclear on its Policy. They referred the Court to the alleged commentary then Minister Bannister, who was not reticent in making public, government policy comments on this vexing issue. An Article attributed to Minister Bannister in the national daily, published under the title **"Shanty Towns Have to Go"** (6.3.2018) read in part as follows:

"Works Minister Desmond Bannister said the government is working to fully 'eradicate' Shanty Towns focusing on clean up and removal as opposed to regulating these areas…the Carmichael MP, who spoke to reporters outside of Cabinet yesterday morning, said despite calls for true regulation, the government has not relented on its mandate to 'get rid' of Shanty Towns. Mr Bannister said: 'So there is no question of regulations. We are looking to get rid of them as the Prime Minister has indicated'…referring specifically to The Mudd, Mr Bannister also said: 'That area was burnt, the Ministry of Public Works will fence that off, clear that up and create a green space and

we will continue to get rid of Shanty Towns'. Mr Bannister said officials have presented a 'full plan' to the Cabinet. Asked to expound on that plan, he added: 'I am sure that plan will be shared with the public by the Ministers responsible, but there is a complete plan to eradicate the country of Shanty Towns; starting with some in New Providence and going straight through the country."(The Respondents did not refute these unfortunate statements).

22. Further meetings with church leaders took place. From one such meeting (12.3.2018), it was noted that:

> *"The Minister (allegedly Minister Dion Foulkes) indicated that the government was seeking to regularize the system which would result in the elimination of Shanty Towns in the country. He indicated that the Prime Minister was compassionate about this matter and requested that it be addressed with sincerity and humility; however, no one would be kicked out."* This appears to indicate a more tempered humane approach.

23. The Applicants claims these were false assertions. They allege that during this process, no real consultation was taking place with the actual residents of the "Shanty Towns". They were strongly of the view that the Policy was merely an exercise in enforcing the standards imposed by "the Building Code."

24. The "SATF" wrote to the Bahamas Water and Sewerage Corporation stating as follows:

> **"as you are aware the Government of The Bahamas has mandated the elimination of all unregulated housing developments (commonly known as Shanty Towns) throughout The Bahamas; the integration of Haitian citizens and Bahamians of Haitian Descent into the mainstream of Bahamian society and the deportation of immigrants and migrants without legal status."**

25. Further, it was noted that the "SATF" established various subcommittees and regional committees, including the Abaco District Committee. The Abaco Regional Committee noted several policy deficiencies which were acknowledged and documented *inter alia*, as follows:

(a) The need to operate under *"proper legal guidelines in order to safeguard against National and International backlash"* (Paragraph 6.2.1);

(b) The absence of enabling legislation to deal with the question of occupiers who did not cooperate with the survey exercise (Paragraph 6.2.2);

(c) Questions were allegedly raised concerning legal ramifications for persons currently *"squatting"* (which the Applicants interpreted as an admission that some occupants may have acquired title by adverse possession)(Paragraph 6.2.3); and

(d) A potential relocation strategy was allegedly discussed. The Applicants noted in particular the comments advising that the only way for the "Shanty Town" issue to be addressed, for the SATF to be successful is by the relocation of its residents to a suitable location. (Paragraph 8.0).

26. Members of the Abaco District Committee were sensitive to the needs of the Applicants, aware of the problems in a way which the ultimate decision makers were not, the Applicants contend.

27. The "SATF" discussed the ***"enumeration exercise"*** (4.4.2018) which was dependent on the consent and cooperation of those the subject of the exercise, not supported by relevant legislation.

28. The Applicants invited the Court to note yet another press release of the Ministry of Labour which sought to announce the pending survey and allegedly stated the following:

"The Government will be conducting a survey in all Shanty Towns in Nassau beginning this Sunday, from 2 pm to 5 pm.

The purpose of the survey is to find out, among other things, the population size, names and ages of all residents in the Shanty Towns.

This effort by the Government is part of the initiative to regulate all unregulated communities.

The Government urges all residents to cooperate with the survey takers. Persons will be able to easily identify enumerators by their Government identification badges and vest." (12.4.2018).

29. In this regard, the "SATF" (including Minister Foulkes) met twice with the League of Haitian Pastors and the United Haitian Bahamian Association according to the Applicants. The Applicants raised the concern that the occupiers were worried **"that the organizations were collaborating with the government to kick them out of their home without any warning."** The "SATF" consulted with church groups but not actual occupiers. They claimed:

i. The government indicated that it would not accommodate an application for the grant of Crown land to any of the residents *"nor would it subsidize any of this venture because it would be regarded as a national conflict of interest that could result in civil unrest among Bahamian citizens."* Applicants viewed the exercise as a consultation designed to have the church fill the void left by the Policy;

ii. Minister Foulkes was chided to ensure that low-cost homes would be available to the residents. Government's concern appeared to be that accommodations must first be provided to the waiting list of Bahamians who had already applied for low-cost homes; and

iii. "UHAB" sought to confirm when demolition would commence; when residents would have to relocate; whether the completion date was still 31st of July, 2018 for the New Providence mandate. Minister Foulkes advised that the Residents would be given a ninety day (90) day notice. The project would be completed in New Providence on 31st July, 2018. The Crown has never claimed its title against the Residents. The Applicants' position is that the Respondents simply had no right to demand that the Residents vacate the land after 90 days.

THE APPLICANTS' CASE

30. The Applicants alleged impropriety on government's decision to take "apparent" possession of land on which "Shanty Towns" stood ("the Possession Decision"); the alleged decision to disconnect the utilities on the aforesaid land ("the Utilities Decision"); and the decision to issue Notices to individuals living on the aforesaid land under section 4(3) of the Buildings Regulation Act 1971 ("the Notices Decision").

31. The issues concerning "the Possession Decision" according to the Applicants, *inter alia*, were as follows:

i. There was clear evidence that a decision had been taken and was not merely speculative or in the pipeline;

ii. Such evidence was contained in the January Preliminary Report, which referred to the "official Notice to vacate" and "follow up visits to all cleared sites and constant surveillance to ensure that no new Shanty Towns are formed- every three months";

iii. Evidence from the Affidavit of Timothy Rolle that after Hurricane Dorian he sought to return to his house in the "Mudd" in Abaco but *"the community was fenced off with chain link metal fencing and guarded by Defence Force Officers armed with guns who told me*

*that I could not return to my home and stated that The Mudd was off limits"***;** and

iv. The lack of any other explanation for the public statements of the then Prime Minister Dr. Hubert Minnis and then Minister Mr. Dion Foulkes that **"***once the Shanty Towns are cleared the government will take possession of the land" and "The Prime Minister Dr. Hubert Minnis said it will all be used to develop subdivisions for Bahamians or purchased at a reduced price."*

32. The Respondents have denied that the government made a decision to possess these lands. The Court has been asked to rule on this issue.

33. The issues relative to "the Utilities Decision" according to the Applicants, *inter alia*, were as follows:

i. The "SATF" Minutes of 14 May, 2018 that *"if the building had power source from Bahamas Power and Light then it could be considered sound; BPL would not provide electricity unless an official building permit was presented"* suggest that a connection sanctioned by BPL was considered a proxy for a building permit, or compliance with building regulations;

ii. The "SATF" Minutes of 28 May, 2018 record the *"importance of BPL and BHS involvement in the demolition of the Shanty Towns as it would be necessary to disconnect <u>any</u> electrical connections and collect abandoned animals";*

iii. Accordingly the "SATF" in fact envisaged that BPL would be requested to conduct wholesale disconnections (rather than simply act of its own accord to exercise the right to disconnect where it existed); and

iv. Similar to "the Possession Decision", the Respondents denied that the government made a decision to disconnect the Applicants utilities. The Court is to rule on this matter.

34. The issues concerning "the Notices Decision" were as follows:

i. "The Notices Decision" was taken for extraneous purposes namely to obtain possession of the Land, to further the government's policy of cracking down on undocumented immigrants; and/or to further an apparent policy of breaking up Haitian communities perceived to be 'ghettoes';

ii. The Respondents decision was unlawful;

iii. The decision was not taken by the authorised individual in accordance with the Act;

iv. The Respondents acted under dictation;

v. The "Notices Decision" was invalid as it was taken pursuant to a rigid policy, with no exceptions as to how the discretion would be exercised which resulted in a fettering of discretion;

vi. The Applicants' claim a substantive legitimate expectation to be offered alternative accommodation. In the alternative, a procedural legitimate expectation of being consulted, before being issued with "the Notices";

vii. There was a failure to consult of behalf of the Respondents;

viii. The Respondents took into account irrelevant considerations in issuing Notices; and

ix. The Notices were invalid on their face.

35. In addition to the Judicial Review Application, the Applicants also sought a Declaration that the said Policy was unconstitutional, illegal, of no effect.

RELEVANT STATUTORY ACTS AND REGULATIONS

Building Regulations Act, Ch. 200

36. The main legislative framework governing the regulations of buildings in The Bahamas is contained in the Buildings Regulations Act, Ch. 200 hereafter referred to as ("BRA"). The long title of the Act provides for an Act to regulate the construction, alteration and repair of buildings for the re-instatement or removal of dangerous or dilapidated buildings, to authorise the publication of a building and for purposes connected.

37. Section 4 provides the following in relation to the prohibition of building operation except under a building permit;

> ***Section 4. (1) Subject to the provisions of this Act, no person shall commence or carry on, or cause or procure to be commenced or carried on, any building operation save under and in accordance with the conditions of a valid building permit and in accordance with the provisions of this Act and any rules and the Building Code. (2) Any person who acts in contravention of the provisions of subsection (1) of this section shall be guilty of an offence and liable upon summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment. (3) If any work is undertaken in contravention of the provisions of this section, the Minister, without prejudice to his right to take proceedings under subsection (2) of this section in respect of the contravention, may, by notice, require the owner to pull down or remove the work, and if a person to whom such a notice has been given fails to comply with the provisions thereof before the expiration of twenty-eight days or such further period, not in any case exceeding fifty-six days, as a magistrate may on his application allow, the Minister may pull down or remove such work, and may recover from him the expenses reasonably incurred by the Minister in so doing.***

Water Sewerage Act

38. The long title of this Act outlines that it is an Act to establish a Water and Sewerage Corporation for the grant and control of water rights, the protection of water resources, regulating the extraction, use and supply of water, the disposal of sewage and for connected purposes.

39. Further Section 3 provides the following relative to the statement as to water-rights and administration of water

> ***"3 (1) Water is a national resource of the Commonwealth of the Bahamas.***
>
> ***(2) All private rights in water shall be subject to the superior right of the Government to control and administer the marketing, production and extraction and use of water in the public interest.***
>
> ***(3) The control and administration of water shall, in the islands or parts thereof specified in the First Schedule, be exercised by the Corporation on behalf of the Government, and in the islands not so specified by the Minister"***

40. Further Section 5 provides the following in relation to the mandatory function of the Corporation:

> **"The functions of the Corporation shall be**
>
> **(a) to control and ensure the optimum development and use of the water resources of the Commonwealth of The Bahamas;**
>
> **(b) to ensure the co-ordination of all activities which may influence the quality, quantity, distribution or use of water;**
>
> **(c) to ensure the application of appropriate standards and techniques for the investigation, use control, protection management and administration of water;**

(d) to provide adequate supplies of suitable water for domestic use, for livestock, for irrigation and agricultural purposes, for urban and industrial use;

(e) to provide adequate facilities for drainage the safe disposal of sewage and industrial effluents.

41. The Corporation's powers are provided for in Section 6 as follows:

"6.(1) The Corporation shall have all the powers necessary for the carrying out of its functions and, in particular, without limiting the generality of the foregoing, may —

(a) direct or empower, subject to such qualifications or restriction as it may determine, any person or any public authority to undertake any action which it deems necessary to the satisfactory execution of its functions;

(b) determine the allocation of available water between different users or types of use in any area within its jurisdiction;

(c) enter any land for any of the following purposes —

(i) carrying out water and sewerage surveys and investigations;

(ii) carrying out trial drilling and inspection for ground water and sewerage;

(iii) executing any works, laying and connecting pipes for water and sewers;

(iv) inspecting existing water uses and structure and monitoring waste discharge;

(v) demolishing any unauthorised water or sewerage works;

(vi) effecting repairs to the water-supply and sewerage systems.

42. Section 19 provides that the Corporation shall continue to maintain and extend the water-supply and sewerage systems in the area within its administrative control.

43. Section 20 makes the following provisions in relation to the Corporation's discretion to supply water:

> ***"20 (1) The Corporation may agree to supply or to continue to supply water to any person upon such terms and conditions and for such period as the Corporation may think fit, which terms and conditions may, in particular, include provision for the furnishing of such security as the Corporation may require for the payment of water supplied or to be supplied.***
> ***(2) Notwithstanding any agreement of the Corporation to supply water, the Corporation may diminish, withhold or suspend, stop, turn off or divert the supply of water whenever the Corporation may think fit and without compensation for any loss or damage which may result —***
> ***(a) whenever the available supply of water shall, in the opinion of the Corporation, be insufficient;***
> ***(b) whenever it may be expedient or necessary for the purpose of connecting, extending, altering or repairing the water-supply system.***
> ***(3) Notwithstanding subsection (1), the Corporation may restrict the purposes to which the water supplied is to be applied.***
> ***(4) Any person who uses water for a restricted purpose shall be guilty of an offence and liable to a fine of one thousand dollars or to imprisonment for a term of six months or both such fine and imprisonment.***
> ***FIRST SCHEDULE (Section 3)***
> ***All islands of The Bahamas.***

The Electricity Act 2015 (Act No. 4 of 2015)

44. The long title of this Act provides for inter alia to overhaul the energy sector and establish a sector policy governing the supply of electricity consistent with the goals of the national energy policy; to create an electricity supply regime that promotes diversification and competition in the generation, supply and distribution of electricity.

45. Further section 3 outlines the purpose of the Act and it provides as follows:

"The purposes of this Act are to

a) Create an electricity supply regime which recognises that safe , least cost, reliably and environmentally sustainable electricity is vital to the economic and social welfare of The Bahamas and encourages and promotes –

i) Diversification in the generation, transmission, distribution and supply of electricity;

ii) Energy efficiency, energy conservation and the development and use of renewable energy resources and technologies;

b) secure the long-term energy security of The Bahamas through the establishment of a legal and regulatory framework that ensures the provision of a safe, least costs reliable and environmentally sustainable supply of electricity; and

c) establish an electricity sector policy for the supply of electricity throughout The Bahamas consistent and in accordance with the goals of the national energy policy."

46. Further, pursuant to section 78 of the Electricity Act 2015, the Electricity Act (Ch. 194) and the Out Islands Electricity Act (Ch. 195) were repealed. Section 79 outlines, *inter alia*, the following:

"(1) Nothing in this Act Shall affect –

…….

(2) All subordinate legislation made under any of the enactments repealed by this Act and in force immediately before the coming into operation of this Act, so far as it is not inconsistent with the provisions of this Act continues in force as if made under this Act until such time as expressly or impliedly repealed by-

a) regulations issued by the Minister inconsistent with such subordinate legislation; or

b) regulatory and other measures issued by URCA inconsistent with such subordinate legislation."

The Bahamas Electricity Corporation Regulations

47. Regulation 3 provides the following in relation to the supply of electricity

> ***"3. Electricity shall be supplied within the area of supply to all applicants for the same who agree to pay prescribed rates and charges and who agree to comply with the terms and conditions fixed by the Corporation."***

48. Regulations 4(6) provides that a consumer shall not interfere with the main fuses or meter and shall be responsible for any damage resulting from unauthorized interference with the equipment.

49. Further Regulation 9 provides the following in relation to access to premises:

> ***" 9. A consumer shall give to duly appointed employees of the Corporation access to his premises between 8:00 am and 9:00 pm when necessary and in emergency at all times for the purpose of inspecting and/or reading the meter or for any other purpose connected with the supply of electricity."***

50. Regulation 11 provides the following in relation to disconnection of supply

> ***"11. The Corporation may discontinue the supply of electricity at any time for the purposes of repairs, tests or any other essential work and when possible will advise consumers in the area or areas affected by the publication of a notice"***

Relevant Law for Judicial Review Applications

51. Order 53 of the Rules of Supreme Court outlines in detail the procedure for applying for Judicial Review:

"(1) An application for

(a) *an order of mandamus, prohibition or certiorari or*

(b) *an injunction under section 18 of the Act restraining a person from acting in any office in which he is entitled to Act,*

shall be made by way of an application for judicial review in accordance with the provision of this order. ....."

52. In **Kemper Reinsurance Company v Minister of Finance and others (Bermuda)** Privy Council App. No. 67 of 1997 at para 18, Lord Hoffman described the judicial review process as follows:

> ***"In principle, however, judicial review is quite different from an appeal. It is concerned with the legality rather than the merits of the decision, with the jurisdiction of the decision-maker and the fairness of the decision-making process rather than whether the decision was correct. In the case of a restriction on the right of appeal, the policy is to limit the number of times which a litigant may require the same question to be decided. The court is specifically given power to decide that a decision on a particular question should be final."***

53. In ***The Queen v The Most Hon. Hubert A. Minnis Et al Ex Parte Dwight Armbrister 2020/PUB/jrv/00024*** my sister the Honourable Madam Senior Justice Indra Charles (as she then was) noted the following in relation to the purpose and scope of Judicial Review Proceedings at paragraph 14 of her decision, I cite with approval:

> ***[14] Judicial review is only available against decisions of public bodies exercising public functions. Purchas L.J. in Regina v East Berkshire Health Authority ex parte Walsh (1965) 1GB 152 and quoted at para 27 of Bain (Re) [1993] BHS J. No. 16 emphasised the importance of demonstrating that the decision was public:***
>
> > ***"Finally, at page 181 Purchas L.J. posed the very question which, mutatis mutandis, I must address in the instant case:***

"did the remedies sought by the applicant arise solely out of a private right and contract between him and the authority or upon some breach of public duty placed upon that authority which related to the exercise of the powers granted by statute to them to engage and dismiss his in the course of providing a national service to the public?"

[15] Generally-speaking, there are three well-established heads upon which judicial review may be brought by which an applicant with a caveat for further development on a case by case basis which may add further grounds such as the principle of "proportionality." In the landmark case of Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 at 410-411, the House of Lords has confirmed that powers derived from the prerogative are public law powers and their exercise amenable to the judicial review jurisdiction. Lord Diplock conveniently classifies under three heads the grounds upon which administrative action is subject to control by judicial review as illegality, irrationality or "Wednesbury" unreasonableness and procedural impropriety. He explained the three well-established heads in this fashion:

"By "illegality, as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable."

By irrationality, I mean what can by now be succinctly referred to as "Wednesbury's unreasonableness: (Associated Provincial Picture House Ltd v Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether the decision falls within this category is a question that judges by their training

and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system…."

I have described that third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

[16] Judicial prudence also dictates that the Court, in exercising this power, must however be careful not to overstep its supervisory role. It must not interfere with a decision that a public authority has reached that was not irrational, illegal or procedurally unfair.

[17] In Bethell v. Barnett and Others [2011] 1 BHS No. 30, a judicial review proceeding which involved a decision by the judicial and Legal Services Commission, Isaacs Sr. J. (as he then was), at para [85] described that a court's role in judicial review proceedings as follows:

"I must caution myself that this is a judicial review and not an appeal. Thus, the only questions I must answer are: was the decision of the JLSC to appoint the Applicant as the DLRRC irrational; and was the Applicant treated unfairly. I remind myself of the manner in which Gordon, JA put the position in Hugh Wildman v The Judicial and Legal Services Commission of the Eastern Caribbean States, Civil Appeal No. 9 of 2006 at paragraph 31. He opined:

"I remind myself that the function of the court in judicial review is not to act as an appellate forum from the body whose decision is being challenged. If the process was

fair and the decision not deviant, then the order sought under the judicial review must be refused."

On the burden of proof:

"[18] In judicial review proceedings, the applicant has the onus to prove that a ground for review exists and warrants a hearing by the Court. In Standard Commercial Property Securities Limited and others (Respondents) v. Glasgow City Council (Appellants) and others [2006] UKHL 50 at para 61, the House of Lords confirmed that the onus is on the claimant [applicant] to establish a case, and in so doing, affirmed the approach taken by Lord Brightman in R v Birmingham City District Council Ex p O [1983] 1 AC 578:

> ***"The onus is on Standard (the Claimant) to establish that, in deciding that an indemnity for their costs represented that best price or best terms that could reasonably be obtained, Glasgow reached a decision which was ultra vires or which no reasonable authority could have reached: R v Birmingham City District Council Ex p O [1983] 1 AC 578, 597C-D per Lord Brightman."***

APPLICANTS JUDICIAL REVIEW APPLICATION

"The Possession Decision"

54. The Applicants contend the Respondents made the decision to take possession of the Land in question. The Applicants relied primarily on the January Preliminary Report. The Applicants aver that this evinces an intention to demolish, expel the occupiers from the land, and to prevent people returning to it. There was little actual evidence presented to support this claim.

55. The Affidavit of Timothy Rolle who claimed to be a resident of "The Mudd" averred that he was denied entry to his home in the Mudd in Abaco after Hurricane Dorian by armed guards.

56. The Applicants assert, notwithstanding the clean-up operation required after the devastation of Hurricane Dorian, prevention of entry to the land is not something the government was entitled to do. Their actions they say, were consistent with taking possession of the land. The Applicants were concerned a similar practice would be mirrored in the New Providence Shanty Towns and elsewhere throughout The Bahamas.

57. As it relates to this issue in an earlier Ruling of this Court which concerned an Application (by the Applicants) to vary the Injunction and also an Application by the Respondents to discharge the Injunction, at paragraph 6 of the said Ruling this Court stated as follows:

> ***"The Court has been made aware that the homes of many of the residents of Abaco previously covered by the Injunction were unfortunately destroyed by the monstrous Hurricane Dorian. The Court is also mindful of the duty of the Government of the Commonwealth of The Bahamas in relation to removing and even in some instances destroying buildings which the government may view as hazardous to the citizens, inhabitants, or to public health or otherwise in breach of law."***

58. The Respondents pointed out that the Applicants initially referred to the decision to possess the land in question as being "an apparent decision". According to the Respondents, this terminology was used because the Applicants were unable to point to a specific decision to take possession of the Land, a position with which the Court agrees.

59. The Respondents also relied on the Affidavit of Dion Alexander Foulkes filed on the 2nd May, 2019. According to this Affidavit, a survey of the Lands on which the Shanty Towns are located reveals that the majority of these communities are located on land which the Government holds a reversionary interest, being Crown Land which were leased by the Government to respective individuals for agricultural purposes. The Respondents pointed out that in the pleadings of the Applicants, they admit that these communities are located on predominantly Crown Land or presumed to be Crown land.

60. Mrs. Kayla Green-Smith Assistant Director on the Respondents teams of attorneys strongly submitted that it is critical to note that the issue of government enforcing building, planning and environmental or health laws is not based on the ownership of the land on which they are located. This is a sentiment with which the Court agrees.

61. In relying on the Building Regulations Act namely section 4, the Respondents averred that this Act gives the Minister of Works statutory powers to issue notices to persons who have built houses or other structures without the statutorily required permits and approvals. These Notices would require them to remove or pull down the works within a specific time. The Respondents submitted that such Notices are subject to appeal. Failing which the Minister may pull down the works and recover the expenses from the person provided with the Notice. Provided the Respondents provide the requisite notice, give explicit and adequate reasons, follow the requisite notice period, they may hereafter proceed to remove the unlawful structures.

62. The case of ***J A Pye (Oxford) Ltd. and another v Graham and another*** *[2003] 1 AC 419* (House of Lords) was instructive in determining whether or not the Respondents had taken possession of the land. In this case the court stated that there are two elements necessary for legal possession, firstly a sufficient degree of physical custody and control (factual possession), and secondly an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess). In the case of ***Powell v McFarlane*** [1977] LS Gaz R 417, Slade J said that factual possession signifies an appropriate degree of physical control. The "paper owner" and a person claiming adverse possession cannot both be in possession of the land at the same time.

63. The Court is of the view that the government has not shown an intention to possess. The Applicants referred to the actions of the government as "apparent" which would suggest they have conceded that factual possession had not occurred. The evidence submitted by the Applicants did

not prove the government had formulated the intention to possess the land. The primary piece of evidence relied on to show actual interference was the governments' interaction with the relevant land in Abaco after one of the worst natural disasters in the history of this country.

64. In the circumstances, the Court finds this allegation of the Applicants to be unfounded. The Court rules that the government did not possess the land in question nor formulated the intention to possess policy as described.

"The Utilities Decision"

65. The Applicants complain that the government made a decision to unlawfully disconnect the utilities on the land in question. The Applicants refer to this apparent decision of the First to Fourth Respondent to authorize the Fifth and Sixth Respondent to disconnect the power, water, and other utilities for which they are responsible. The evidence used by the Applicants in support of this allegation came mainly from "SATF" Minutes recorded at various meetings held. The Court is tasked with determining this point. The Respondents deny any such policy exists.

66. The Applicants submit the various statements recorded in the Minutes of "SATF" meetings implied that a connection sanctioned by BPL was considered a proxy for a building permit, in compliance with building regulations. The Applicants further alleged that the "SATF" in fact envisaged that BPL would be requested to enter and make wholesale disconnections as opposed to acting on its own accord to exercise the right to disconnect where appropriate. However the Court accepts that the Applicants could not identify any decision by the First through Fourth Defendants to authorize disconnections.

67. The Applicants submitted that on the review of the legislation it appears there are only very circumscribed situations in which utilities can be disconnected. The Applicants submitted that none of these rules authorises either expressly or by implication the blanket disconnections of entire

communities, or the cutting off on the basis that a S.4(3) notice had been served in relation to a given property.

68. The Respondents deny any such policy was ever in existence. They noted that the Applicants referred to these allegations as "the apparent decision" of the First to Fourth Respondents and/or each of any of them to authorize the Fifth and Sixth Respondents to disconnect power, water and other utilities for which they are variously responsible.

69. The Respondents submitted that the Applicants were not able to identify any decision by the First through Fourth Defendants to so authorize disconnections. It is noteworthy that the Applicants have conceded at Paragraph 11 of their Re-amended Application for Leave to Apply for Judicial Review that the Bahamas Power and Light and Company Limited (BPL) and The Water and Sewerage Corporation (WSC) are joined only for the purpose of being bound by the Interlocutory Injunction which was sought. Prior to any lawful demolition it would be necessary for disconnections to be made by the appropriate utilities' providers pursuant to their statutory functions.

70. The Respondents relied on the long title as well as sections 3, 5, 6, 19, and 20 respectively of the Water Sewerage Act. Section 20 (1) of this Act gives the Water and Sewerage Corporation the discretionary power to supply or continue to supply water to any person under such terms and conditions and for such a period as the Corporation may think fit. Section 20 (2) of the Act affords the Corporation the authority to diminish, withhold or suspend, stop, turn off or divert the supply of water. This can be done in circumstances where water in the opinion of the Corporation is insufficient or where it is expedient or necessary for the purposes of connection, extending, altering or repairing the water-supply system.

71. The Electricity Act 2015 and The Bahamas Electricity Corporation Regulations are relevant here. Regulation 11 of the Bahamas Electricity Corporation Regulations provides the Corporation, with the requisite

authority to discontinue the supply of electricity at any time for the purposes of repairs, tests, or any other essential work.

72. The case of ***Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd [1994] 1 WLR 521*** is relevant. In that authority the court found that the decision to terminate an electricity supply contract with the Plaintiff was held not to be reviewable because there was no evidence of illegality. The expressed statutory duty and principal objective of the Defendant body was the operation of a successful and efficient business enterprise. It was for the Defendant to determine if those objectives could be achieved by terminating the contract. The courts ought to intervene only if the decision could be shown to be wrong in law either by fraud, corruption, or bad faith. I find no such evidence here of fraud, corruption, or bad faith.

73. The Affidavit of Craig Delancy (filed 2nd May, 2019) was also relied upon in the Respondents submissions. At paragraph 54 of this Affidavit, Craig Delancy stated as follows:

> ***"From my observation and that of the Buildings Inspectors many buildings were constructed too close together and in some cases, too close to the road. Buildings laid out in such clustered manner are a serious risk to all of the surrounding buildings and a major fire hazard."***

74. The Ministry had on the evidence a justifiable concern for the health and safety of the public residing in the areas due to the sheer cluster of the buildings. In relation to the plumbing and the water supply Assistant Director Kayla Green-Smith strongly submitted paragraphs of the Affidavit of Craig Delancy. At paragraph 55 of his Affidavit, Mr. Delancy stated the following:

> ***"Chapter 36 of the code stipulates the requirements for plumbing installation for the constructing buildings. During the assessment of the Shanty Towns I found that the majority of buildings did not have***

proper sanitary disposal systems that is to say the use of septic tanks and soak-away or sewer connection. Very few buildings had potable water supplied to them while the majority had well-water supplied which were situated in very close proximity to "their" version of a septic tank in many instances was merely a pipe from the buildings into a hole in the ground"

75. The Respondents provided a 2013 Department of Environmental Health Services report relative to the water samples collected. According to this report, 93% of the establishments failed the water analysis, a further 79% of the samples detected the presence of faecal coliform. These were extremely serious health concerns for the occupiers of these areas. It was not a situation the government can continue to allow to exist. Utilities Corporations have the statutory authority to ameliorate these excessive unsanitary and hazardous breaches to the electricity and water supply which adversely impact the health, safety and proper functioning of society at large. These are harsh and unsanitary conditions to live in. They do not comply with the country's building code. It might be said to continue to exist under such circumstances borders on the inhumane. The assistance provided by the government, with the assurance of suitable relocation, regardless of nationality is an acceptable proposed course of action.

76. After carefully reviewing all of the evidence relative to the allegations made by the Applicants under this head, the Court is of the view that there was little evidence to substantiate same. The utility corporations are statutorily empowered to disconnect utilities for non-payment of outstanding bills, to conserve supply during periods where it is limited, for the purposes of upgrading their systems, or any other reasonable circumstance that may require a disconnection.

77. In the circumstances, the Court is of the view that this allegation of the Applicants is unfounded. I hereby Rule that there was not an unlawful policy in place by the government to disconnect the utilities on the lands in question.

"The Notices themselves and the Notices Decision"

Extraneous Purposes (Ground 1)

78. The Applicants submitted that if a power granted for one purpose is exercised for a different purpose then that power has not been validly exercised. This proposition according to the Applicants has its origin in cases of compulsory acquisition of land, which are closely analogous to the current situation. In **Galloway v The Mayor and Commonalty of London** (1866) LR 1 HL 34, 43, the court held:

> **"that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the Legislature to take compulsorily the lands of others, making to the latter proper compensation, the persons so authorized cannot be allowed to exercise the powers conferred on them for any collateral object; that is, for any purposes except those for which the Legislature has invested them with extraordinary powers."**

79. The purposes of the Building Regulations Act are to *"regulate the construction, alteration and repairs of buildings, to provide for the re-instatement or removal or dangerous or dilapidated buildings…*"

Failure to Consider (Ground 2)

80. The Applicants submitted that a decision may be held unlawful where the decision-maker failed to take into account legally relevant considerations or took into account legally irrelevant considerations.

81. In ***R (Friends of the Earth Ltd) v Heathrow Airport Ltd*** **[2020] UKSC 52 at [116]** the Supreme Court of the United Kingdom approved of the following statement of principle by Simon Brown LJ in ***R v Somerset County Council, Ex p Fewings*** **[1995] 1 WLR 1037, 1049:**

> **"… [T]he judge speaks of a 'decision-maker who fails to take account of all and only those considerations material to his task'.**

It is important to bear in mind, however, … that there are in fact three categories of consideration. First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision-maker may decide just what considerations should play a part in his reasoning process."

82. In relation to the Notices Decision, s.4(3) of the Buildings Regulation Act provides that the Minister "may" by notice, require the owner to pull down or remove building works. There are no express considerations that the Minister is required to take into account (or exclude from considering) in reaching the decision whether to issue a notice. The Applicants submitted that a relevant consideration arising either impliedly in the statute or within the decision-maker's margin of appreciation is plainly the effect of the decision on the occupants of the building in question.

83. The Respondents stated that this ground was clearly incorrect and misguided. They reminded the Court of the First Foulkes Affidavit where he comprehensively outlined that in January 2018 the Government in its commitment to a comprehensive initiative aimed at removing illegal, unregulated, unsafe structures, houses, units or buildings located in areas commonly known as Shanty Towns. This initiative extended to those buildings that were not built in accordance with the Building Regulation Act, (not complying with the building code). The Respondents claimed the process was detailed and carefully considered, along with the individual circumstances of the occupiers of the land. The Court accepts this, the "SATF" comprehensively considered the needs of the occupiers.

84. Reassurance was provided to the Residents of the The Shanty Town Action Task Force (SATF) objectives included as follows:

"16. Subcommittees were formed within the SATF to ensure that there was the requisite expertise to consider and address aspects of the project. These subcommittees along with their focal areas, were as follows:

(i) ***representatives of the Labour and Social Services Ministries who focused on living conditions and the production of household survey forms;***

(ii) ***A Special Needs group, largely drawn from the Ministries of Social Service and Health who focused on the needs of children the disabled, the elderly and other groups;***

(iii) ***Representatives from the Ministry of Works , Ministry of Health and the Department of Environmental Health Services who focused on an assessment of the building structures and the environmental conditions negatively affecting the quality of life;***

(iv) ***An Alternative Housing group, who focused on finding affordable alternative housing for residents of such Shanty Towns;***

(v) ***Counsel from the Office of The Attorney General who focused on compliance with the law and international Conventions; and***

(vi) ***The Ministry of Foreign Affairs, which made contact with various international organizations to obtain feedback."*** (per the Affidavit of Dion Alexander Foulkes filed 2nd May, 2019)

Decision not taken by Authorised Individual (Ground 3)

85. The Applicants submitted that section 4(3) of the Building Regulations Act provides that "the Minister" may serve a Notice. It was further submitted that "the Minister" being defined in s.2(1) of the Act as "the Minister responsible for Building Regulation". The Minister at that time with this responsibility was Minister Desmond Bannister.

86. The Applicants acknowledged that the usual rule is that "the duties imposed on Ministers and the powers given to them are normally exercised under the authority of the Ministers by responsible officials of the department" (per Lord Greene MR in ***Carltona v Commissioners of Works*** **[1943] 2 All ER 560 at 563**). However in the view of the Applicants due to the momentous nature of the Notices Decision, it required the personal attention of the Minister and should not have been a delegated responsibility.

Acting under dictation (Ground 4)

87. The Applicants submitted that an authority entrusted with a discretion must not, in the purported exercise of its discretion, act under the dictation of another body or person. The case of ***H Lavender & Son Ltd v Minister of Housing and Local Government*** **[1970] 1 WLR 1231** was relevant. In that case the Applicant had applied to a planning authority for planning permission. The Minister of Agriculture (i.e. the head of a completely different authority) strongly objected. The planning authority was minded to grant permission but the Minister of Agriculture still maintained his objection, for which reason the planning authority refused permission. The Minister of Housing and Local Government upheld the decision on the ground that his policy was not to release land unless the Minister of Agriculture was not opposed. On appeal to the High Court, Willis J held that the Minister of Housing and Local Government had improperly delegated his decision to the Minister of Agriculture.

88. The Applicants submitted that in respect of the Notices Decision, the only individual with authority to exercise the power in s.4(3) is the Minister responsible for Building Regulation, namely Minister Desmond Bannister (as he then was).

Fettering of discretion (Ground 5)

89. The Applicants submitted that a decision-making body exercising public functions which is entrusted with discretion must not disable itself from

exercising its discretion in individual cases. The government's apparent policy to achieve the total elimination of unregulated communities, required claiming particular parcels of land and the service of Notices on particular buildings.

90. The Applicants cautioned that the powers relied on must be individually exercised but this Policy related to entire communities. They pointed out to the Court that the served Notices were identical, served simultaneously to the entire community, failed to provide reasons, or follow any sufficient form of consultation in which any occupant was entitled to make representations as to why a Notice should not be served on them. The occupants should be allowed to make representations within a prescribed time period determined by the relevant Authority.

91. The Respondents claim the basic principle with respect to fettering discretion is where Parliament delegates a function to an inferior body, bestows upon it the power necessary to perform that function, the inferior body should not delegate that function to any other body. The Australian case ***Attorney General (NSW) v Quin (1990) 170 CLR 1*** provided that:

> ***"The Executive cannot by representation or promise disable itself from, or hinder itself in performing a statutory duty or exercising a statutory discretion to be performed or exercised in the public interest, by binding itself not to perform the duty or exercise the discretion in a particular way in advance of the actual performance of the duty or exercise of the power."***

92. The Affidavit of Mr. Dion Foulkes (filed 2.5.2019) was also relied on relative to this issue. Paragraph 17 of the Affidavit stated as follows:

> ***"While the SATF was established as an advisory committee to oversee implementation of this project, it was always understood and intended that any executive action would be carried out independently by those entities or bodies entrusted with the statutory powers to carry out those respective."***

93. The second Affidavit of Craig Delancy (filed 2.5.2019), outlines *inter alia*, specific evidence of how he carried out his duties in accordance with the "BRA". His decisions were unfettered. In 2010 he acted on a referral from the Director of the Department of Environmental Health Services (DEHS). DEHS staff were engaged in an assessment of the densely populated area off Joe Farrington Road in the Eastern District of New Providence. The Inspection Report of the Buildings Control Inspectors revealed approximately 100 homes in the area in close proximity. Further these homes were poorly constructed in breach of the BRA. At paragraph 41 of the Affidavit he noted the following:

> ***"41. Under the instruction of the Minister of Works, I was directed to perform my duties on the Shanty Town Action Task Force (referred to hereinafter as "SATF") as the BCO pursuant to the BRA, along with the Division staff. It was made clear to me by the Minister that I am to exercise my powers independently of the SATF with regards to the assessment of the buildings, and to be satisfied that the buildings met the standards as stated in paragraphs 10 through 27 above."***

94. By virtue of paragraphs 42 through 44, Delancey Affidavit, he noted the following:

> **"42. I organized a 20 member technical team to conduct the assessment of the buildings in the Shanty Towns comprising of Building Control Administrative Staff, including Senior Engineers, a former Chief Inspector, Senior Inspectors, Building Inspectors and Architectural Draftsmen. Assessments were conducted over successive weekends commencing 15th April, 2018 and ending on 5th May, 2018.**
>
> **43. Under my instructions, numerous building assessments were carried out in Shanty Towns throughout New Providence to determine the level of visual structural**

intergrity of buildings. We inspected the following areas: Montgomery Avenue; Allen Drive; Cowpen Road, East of Golden Isles Road; Faith Avenue North/Bellot Road and Olga Avenue; Golden Isles Road/All Saints Way; Lazaretto Road; Hamster Road/Butler's Way; Cowpen Road/West of Faith Avenue; Bacardi Road North/Bedrock Court; Bacardi Road South/ Honeydew Court; and Cool Air Subdivision/Kool Air Subdivision.

The Finding of the Report are as followings:

a. There are a total of approximately 450-500 structures determined to be located in the various Shanty Towns.

i. 58 structures in Montgomery Avenue- approximately 19 or 20% of the 58 structures appear to comply with Code and 2 buildings have BPL connections;

ii. Allen Drive – 27 structures- approximately 8 or 28% of the 27 structures appear to comply with the Code and there are no building with BPL connections;

ii. Cowpen Road/East of Golden Isles Road- 23 structures- appeoximately 7 or 30% of the structures appear comply with the Code and there are three buildings with BPL connections;

iv. Faith Avenue North/Bellot Road and Olga Ave- 15 structures- approximately 2 or 11% of the structures appear to comply with Code and thereis one building with BPL connections;

v. Golden Isles Road/ All Saints Way- 84 structures- approximately 38 or 45% appear to comply with the Code;

vi. Lazaretto Road- 29 strutures- approximately 4 or 12.5% appear to comply with the Code. One building with BPL connections;

vii. Hamster Road/Butler's Way-47 structures-no Code-worthy structures- no BPL connections.

vii. Cowpen Rd/West of Faith Avenue-49 structures – approximately 3 or 7% appear to comply with the Code.

ix. Bacardi Rd North/Bedrock Ct. 38 Structures – approximately 23 or 60% appear to comply with the Code.

x. Bacardi Rd South/Honeydew Ct.-22 Structures – approximately 8 or 35% appear to comply with the Code.

xi. Cool Air/Kool Air Subdivision-67 Structures- approximately 5 or 7% appear to comply with the Code."

Legitimate Expectation (Ground 6)

95. The Applicants submitted that where a public authority's decision has breached a legitimate expectation of the Applicant the decision may be unlawful and give rise to a right either to have the decision reconsidered or to have the legitimate expectation fulfilled.

96. In ***Council of Civil Service Unions v Minister for the Civil Service*** **[1985] AC 374 at 408–409 (HL)** Lord Diplock stated that, for a legitimate expectation to arise, the decision:

> **"must affect [the] other person … by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."**

97. It is the Applicants' case that they had a substantive legitimate expectation of being offered alternative accommodation, alternatively a procedural legitimate expectation of being consulted, before being issued with the Notices.

98. The doctrine of legitimate expectation can be invoked where a public body states that it will do (or not do) something. A person or a group of persons would have to reasonably rely on the statement. In the case of **United Policyholders Group and Others v Attorney General of Trinidad and Tobago [2016] UKPC 17,** paragraphs 37, 38 and 39 which states:

> ***37. "In the broadest of terms, the principle of legitimate expectation is based on the proposition that, where a public body states that it will do (or not do) something, a person who has reasonably relied on the statement should, in the absence of good reasons, be entitled to rely on the statement and enforce it through the courts. Some points are plain. First, in order to found a claim based on the principle, it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification", according to Bingham LJ in R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd [1990] 1 WLR 1545, 1569, cited with approval by Lord Hoffmann in R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2) [2009] AC 453, para 60.***
>
> ***38. "Secondly, the principle cannot be invoked if, or to the extent that, it would interfere with the public body's statutory duty - see eg. Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629, 636, per Lord Fraser of Tullybelton. Thirdly, however much a person is entitled to say that a statement by a public body gave rise to a legitimate expectation on his part, circumstances may arise where it becomes inappropriate to permit that person to invoke the principle to enforce the public body to comply with the statement. This third point can often be elided with the second point, but it can go wider: for instance, if, taking into account the fact that the principle applies and***

all other relevant circumstances, a public body could, or a fortiori should, reasonably decide not to comply with the statement.

39. "Quite apart from these points, like most widely expressed propositions, the broad statement set out at the beginning of para 37 above is subject to exceptions and qualifications. It is, for instance, clear that legitimate expectation can be invoked in relation to most, if not all, statements as to the procedure to be adopted in a particular context (see again Ng Yuen Shiu [1983] 2 AC 629, 636). However, it is unclear quite how far it can be applied in relation to statements as to substantive matters, for instance statements in relation to what Laws LJ called "the macro-political field" (in R v Secretary of State for Education and Employment, Ex p Begbie [2000] 1 WLR 1115, 1131), or indeed the macro-economic field. As the cases discussed by Lord Carnwath show, such issues have been considered by the Court of Appeal of England and Wales, perhaps most notably, in addition to Begbie, in R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213, R (Nadarajah) v Secretary of State for the Home Department [2005] EWCA Civ 1363, and R (Niazi) v Secretary of State for the Home Department [2008] EWCA Civ 755, and also by the Board in Paponette v Attorney General of Trinidad and Tobago [2012] 1 AC 1."

99. Deane J in ***Haoucher v Minister of State for Immigration and Ethnic Affairs*** **(1990)** ***93 ALR 51 at 52-53***, (High Court of Australia) stated;

"The notion of a "legitimate expectation" which gives rise to a prima facie entitlement to procedural fairness or natural justice in the exercise of statutory power or authority is well established in the law of this country…" The notion is not, however, without its difficulty. For one thing, the word "legitimate" is prone to carry with it a suggestion of entitlement to the substance of the expectation whereas the true entitlement is to the observance of procedural fairness before the substance of the expectation is denied…"

100. In **Paponnette and Others v Attorney General of Trinidad and Tobago [2010] UKPC 32.** Sir John Dyson SCJ, in delivering the judgement of the Board said at paragraphs **[34], [36]** and **[37]:**

> ***"[34]. The more difficult question is whether the government was entitled to frustrate the legitimate expectation that had been created by its representations. In recent years, there has been considerable case law in England and Wales in relation to the circumstances in which a public authority is entitled to frustrate a substantive legitimate expectation. Some of it was referred to by Warner JA in her judgment. The leading case is R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213. Lord Woolf MR, giving the judgment of the Court of Appeal said, at para 57: "Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy. "***
>
> ***[36]. The critical question in this part of the case is whether there was a sufficient public interest to override the legitimate expectation to which the representations had given rise. This raises the further question as to the burden of proof in cases of frustration of a legitimate expectation.***
>
> ***[37]. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the***

authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest."

101. The Government was, entitled to take into consideration the extent that, it would interfere with the public body's statutory duty, when deciding how far to give effect to the needs, requirements, and voices of the residents of Shanty Towns. First, in order to found a claim based on the principle, as set out in the case of ***United Policyholders Group and Others v Attorney General of Trinidad and Tobago [2016] UKPC 17,*** it is clear that the statement in question must be "clear, unambiguous and devoid of relevant qualification". As stated in ***Haoucher v Minister of State for Immigration and Ethnic Affairs (1990) 93 ALR 51*** mentioned above**,** "legitimate" is prone to carry with it a suggestion of entitlement to the substance of the expectation whereas the true entitlement is to the observance of procedural fairness before the substance of the expectation is denied…'

102. The Court finds under the circumstances an overriding public interest. If an Applicant can prove the existence of a legitimate expectation, the decision making authority can frustrate such an expectation if the authority demonstrate an overriding public interest: see ***Laker Airways Ltd v Department of Trade [1997] QB 643 and R v. Inland Revenue Commissioners, ex parte Preston [1985] AC 835.*** They have successfully done so here.

103. The Respondents further submitted that the principle of "legitimate expectation" cannot be invoked as it would obviously interfere with the public body's statutory duty. They continued by stating that the Government of The Bahamas has a statutory duty to enforce the laws of The Bahamas, therefore it cannot breach its public body's statutory duty.

Failure to Consult (Ground 7)

104. The Applicants claimed the obligation to consult does not arise under statute but arises either as a matter of legitimate expectation or at common law as a result of the requirement of fairness. The Respondents accept there was an obligation to consult. However they claim to have satisfied this requirement by the various meetings with church, and other community leaders, the survey, and Mr Foulkes' walk-arounds. The Applicants however do not agree that the consultation threshold requirement was met.

105. In ***Regina (Moseley) v Haringey London Borough Council [2014] 1 WLR 3947 (UKSC)***, Lord Wilson JSC said:

> ***"[23] A public authority's duty to consult those interested before taking a decision can arise in a variety of ways. Most commonly, as here, the duty is generated by statute. Not infrequently, however, it is generated by the duty cast by the common law upon a public authority to act fairly. The search for the demands of fairness in this context is often illumined by the doctrine of legitimate expectation; such was the source, for example, of its duty to consult the residents of a care home for the elderly before deciding whether to close it in R v Devon County Council, Ex p Baker [1995] 1 All ER 73. But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted.***
>
> ***[24] Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation. In R (Osborn) v Parole Board [2014] AC 1115, this court addressed the common law duty of procedural fairness in the determination of a person's legal rights. Nevertheless the first two of the purposes of procedural fairness in that somewhat different context, identified by Lord Reed JSC in paras 67 and 68 of his judgment, equally underlie the requirement that a consultation should be fair. First, the requirement is liable to result in better decisions, by ensuring that the decision-maker***

receives all relevant information and that it is properly tested: para 67. Second, it avoids the sense of injustice which the person who is the subject of the decision will otherwise feel: para 68. Such are two valuable practical consequences of fair consultation. But underlying it is also a third purpose, reflective of the democratic principle at the heart of our society. This third purpose is particularly relevant in a case like the present, in which the question was not: Yes or no, should we close this particular care home, this particular school etc? It was: Required, as we are, to make a taxation-related scheme for application to all the inhabitants of our borough, should we make one in the terms which we here propose?

[25] In R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said, at p 189: Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third . . . that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals. Clearly Hodgson J accepted Mr Stephen Sedley QC's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved. The Court of Appeal expressly endorsed them, first in Ex p Baker [1995] 1 All ER 73, cited above (see pp 91 and 87), and then in R v North and East Devon Health Authority, Ex p Coughlan [2001] QB 213, para 108. In Ex p Coughlan, which concerned the closure of a home for the disabled, the Court of Appeal, in a judgment delivered by Lord Woolf MR, elaborated, at para 112: It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory

obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this. The time has come for this court also to endorse the Sedley criteria. They are, as the Court of Appeal said in R (Royal Brompton and Hareeld NHS Foundation Trust) v Joint Committee of Primary Care Trusts (2012) 126 BMLR 134, para 9, a prescription for fairness".

106. The obligation to consult was reflected in the Ministry of Works' historical practice of issuing warning notices prior to s.4(3) notices. These Notices informed the recipient of a potential infringement. It afforded the recipient an opportunity to make representations. According to the Applicants, the June Notices cannot be so described as general in nature, but more importantly all they did was ask those with building permits to contact the Ministry of Public Works for verification. The proper procedure according to the Applicants was to inform all recipients of the opportunity to make representations.

107. The Respondents on the other hand submitted that the need for public officials to be transparent in executing its policies is vital to good governance ***(R v The Minister of Public Works Ex Parte Arnold Heastie et al SCCIvApp 3 of 2011).***

108. In ***Responsible Development of Abaco (RDA) Ltd. and another v Ingraham and others[2012 3 BHS J. No. 35*** (hereinafter referred to as Wilson City) at paragraph 40 to 42 Honourable Mrs. Justice Allen, President of the Court of Appeal stated:

"40. The common law however, recognizes no general rule to consult parties before making decisions or rules which may affect them: See Bates v Lord Hallsham (1972) 1 WLR 1372. But the common law may impose an obligation to consult before making a decision that will deprive a person or group of individuals of some benefit :see Devon

CC ex parte Baker (1995) 1 All ER 73. Moreover, if a public body has published policy guidelines, the doctrine of legitimate expectation may prevent it from departing or changing its policy without first consulting affected parties."

"41. Further, if a public body has in the past followed a practice of consulting particular groups or individuals before making rules or regulation on certain topics, it could have been held to have acted illegally if it abandoned that practice and made regulations without first consulting affected parties.

"42. However, a statutory duty to consult, as, distinct from a power to consult, will be held to be mandatory, and failure to comply with the duty to consult, will render a decision, rule or regulation Invalid: see Howker v Secretary of State for Work and Pensions (2003) 1 CR 406."

109. The duty to consult arises where there is a statutory duty for a public body to consult interested parties or where the public body is following a practice or has published a policy or if a person, or a group of persons will be deprived of some benefit.

110. Our Applicants allege procedural unfairness and a breach of the common law duty to consult. To found this breach of procedural unfairness, the Respondents behaviour must be examined. The Dion Foulkes Affidavit (paragraphs 9 and 10) outlines the seminal point underpinning the government's initiative with regards the housing circumstances of the Applicants, the 177 Residents and/or occupants of Shanty Towns in The Bahamas.

111. This Court accepts that due regard be had to the sensitivity of Governments initiative, recognizing the need to implement the initiative in as humane and dignified manner as possible. The "SATF" upon its establishment by the government, appointed the Second Respondent as its Chairman. The members of the "SATF" were technical officers appointed from government and non-government agencies. By letter dated 14th

February, 2018, the Chairman of "SATF" sent invitations targeted at churches and community civic groups who were either representatives of the Haitian community or were closely affiliated with the Haitian community. The said letter of the 14th outlined the government's objective, the need for a synergistic approach to solving the identified problem and invited these representatives to attend a meeting on 19th February, 2018 as well as to serve on the "SATF".

112. Numerous meetings were held with representatives, Pastors, organizations of the Haitian communities residing in the Shanty Towns and other key players. During these meetings these organizations were represented, provided robust input into the discussions. The Respondents submitted that based on the sheer impossibility in consulting every single resident of the Shanty Towns in some instances general notices selected to reach the entire community could suffice. A submission with which the Court agrees.

Irrelevant Considerations (Ground 8)

113. The Applicants contend that the mechanism for obtaining an occupancy certificate is set out in the **Buildings Regulation (General) Rules 1971**, which mandates various inspections to take place. It was further submitted that it was therefore entirely possible that a structure is built without any breach of **s.4(3)** but does not (yet) have an occupancy certificate. The presence or absence of an occupancy certificate cannot be used as a proxy for the breach of **s.4(1)** according to the Applicants.

114. The Applications claim that Mr Foulkes had confirmed on oath that the production of an occupancy certificate was taken into account by the decision maker in taking the decision to serve the July Notices. The Applicants state that the express reason given is nothing to do with s.4, but rather invoking the offence created by **s.9(3)**.

115. The Applicants submitted that it was an irrelevant consideration for the purposes of s.4(3) whether or not an occupancy certificate has been issued. Whilst the fact of an occupancy certificate would indicate an absence of

breach of s.4(1), the reverse is not true. It does not follow from an absence of an occupancy certificate that a breach of s.4(1) has occurred.

Notices Invalid on their face (Ground 9)

116. The Applicants submitted that section 4(3) entitled the Minister to *"by notice, require the owner to pull down or remove the work"*. On its proper construction this must require the Notice to identify both the owner and the work. Otherwise it would be impossible to comply with, and that cannot have been Parliament's intention.

117. The July Notices failed. The July Notices are simply not Notices within the meaning of s.4(3). The Minister's right to pull down the works is a statutory one and is only engaged *"if a person to whom such a notice has been given fails to comply"*. If no notice has been given, there cannot be a failure to comply. If there is no failure to comply there is no right on the Minister's part to demolish. The Applicants concluded that in the absence of a valid Notice, a writ of prohibition must issue in relation to any future action in reliance on the July Notices. The Court accepts adequate Notice was provided.

118. The Respondents submitted that Section 3 of the BRA makes provisions for a Building Control Officer, who shall both have such powers and perform such duties as are assigned to him. Notwithstanding the Minister of Public Works' obligation to perform functions bestowed on him by Parliament **Section 3 of the Buildings Regulations,** authorized the Minister of Public Work under his delegated authorities, to delegate others to carry out these functions. As Per Lord Denning MR in ***Lever Finance v Westminster London Borough Council [1971] 1 QB 222, at p 230 "a public authority…cannot be estopped from doing its public duty"***.

119. The Minister of Public Works had the overall responsibility for utilities. In order to effectively carry out Statutory functions, the Minister in his discretion has the authority to delegate his function further to ensure that the function of his department be carried out. Constitutionally, the actions of civil servants are the actions of the Minister, for which the

Minister is held responsible to the Parliament. The Respondents relied on the Privy Council case of ***Jeffs v New Zealand Dairy Productions and Marketing Board [1967]1 AC 551,*** where the Court held that the board, which was concerned with determining applications for permission to grow produce in zoned areas, could delegate to a committee the function of collecting evidence relating to how it should act, which was an administrative function. In the result no rights were directly affected.

120. The Affidavit of Dion Alexander Foulkes (in response to the Applicants' Application for Judicial Review) (dated 2.5.2019) under the heading "The Notice Decision" starting at paragraph 31 stated as follows:

> ***"31. As noted, one of the decisions being challenged is the decision of the Minister of Works to issue notices to the residents of the Shanty Towns, pursuant to the BRA.***
>
> ***32. That Act provide for the Minister of Works to issue notices to persons who have built houses or other structures without statutorily required permits and approvals and require them to remove or pull down the works within a specific time (subject to any appeal), failing which the Minister may pull down the works and recover the expenses from the person given notice.***
>
> ***33. I understand that the issue of the notices will be addressed more comprehensively in the Affidavit of Craig Delancey, Building Controls Officer in the Ministry of Works, which will also be filed on behalf of the Respondents in this matter. I incorporate the contents of that Affidavit by reference, and what I say about the notices here is only intended to supplementary and from my perspective as the Chairman of the "SATF".***
>
> ***34. But I wish to make it clear, in light of the allegations levelled in the SSF Affidavit- i.e., that the "authorised decision makers under the relevant legislation appear to have acted under the dictation of the***

SATF or Minister Foulkes"- that these notices were issued by the relevant decision makers pursuant to their statutory powers.

35. In fact, the Applicants' Application for Leave to Apply for Judicial Review references comments attributed to me in a 2nd May 2018 article in which it is reported that I said words to the effect that the issue of the notices "…was a matter for the Attorney-General and the Ministry of Works".

36. It also appears very clearly on the face of both notices (the general 25 June 2018, and the 9th July 2018 notices addressed to landowners) that they were issued by the Ministry of Public Works, pursuant to their statutory powers, and the latter notices are specifically signed by the Buildings Control Officer, Craig Delancey."

121. The Court having thoroughly reviewed the abundance of evidence submitted relative to the decision of the government to issue Notices, I am of the view that the actions of the government, although it bordered on the line, they were not unlawful.

Constitutional Relief Application

Inhuman or degrading treatment in breach of Article 17 (Ground 1)

122. Article 17(1) of the Constitution provides as follows:

> **"17. (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment."**

123. The Applicants submitted that the use of the words "inhuman or degrading treatment" the words of Article 17(1) mirror those of Article 3 of the European Convention on Human Rights.

124. The case of ***Pretty v United Kingdom*** **(2002) 35 EHRR 533** was submitted by the Applicants relative to a definition of "inhuman or degrading treatment". At paragraph 22 the Court stated as follows:

"As regards the types of "treatment" which fall within the scope of Article 3 of the Convention, the Court's case law refers to "ill-treatment" that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering [*Ireland v United Kingdom* (1978) 2 EHRR 25, [167], *V v United Kingdom* (1999) 30 EHRR 121, [71]]. Where treatment humiliates or debases an individual showing a lack of respect for, or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (See amongst recent authorities, *Price v United Kingdom* (2002) 34 EHRR 53, paras 24–30; App. No. 44558/98, *Valasinas v Lithuania*, 24 July 2001, para. 117). The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible."

125. The Applicants do not contend that the mere fact of eviction from land or destruction of property amounts to inhuman or degrading treatment. But the manner of destruction, especially when combined with the personal circumstances of the victims, may qualify. According to the Applicants, on the present facts there are families who are threatened with the demolition of their homes before their very eyes.

126. The Respondents according to the Applicants have adduced no evidence to say what will happen if the Applicants remain in possession come the appointed day for demolition of their homes. The inexorable conclusion that follows from the proposed demolition according to the Applicants is that they will likely suffer inhuman and degrading treatment.

Invasion of home and property in breach of Article 21 (Ground 2)

127. Article 21 of the Constitution which is headed **"Protection for privacy of home and other property"**, provides a blanket prohibition on entry by others onto a person's premises except with their consent. It was further submitted that it is not necessary for the person in question to have a legal or equitable interest in the real property itself. It is sufficient if the property in question is his home or that he occupies it. The Applicants submitted that the proposed action involves entry into the applicants' property, demolishing it and dispossessing the 177 occupants. According to the Applicants, under the express terms of Article 21, this action is only lawful if (1) the Applicants consent to it; or (2) the "reasonably required" exception is engaged.

128. The Applicants have not consented to these alleged actions. As such they submitted that whether the proposed action infringes Article 21 hinges on whether it can be brought within the "reasonably required" exception. For an act to be "reasonably justifiable in a democratic society" the individual circumstances of each affected party must be considered.

Prevention of freedom of movement in breach of Article 25 (Ground 3)

129. The Applicants submitted that Article 25 of the Constitution which is headed *"protection of freedom of movement"*, provides a blanket prohibition on hindering the enjoyment of free movement with consent. Taking of land on which the Applicants reside and forcing the Applicants off the land involves depriving them of their right to reside where they do, they contend.

130. Similar to Article 21 of the Constitution, the Applicants submitted that there was only one exception that could possibly prove relevant, namely Article 25(2)(a)(i), which refers to a law or action under it that:

> **"makes provision…which is reasonably required…in the interests of…town and country planning…except so far as that provision, or as the case may be, the thing done under**

the authority thereof is shown not to be reasonably justifiable in a democratic society."

Unlawful discrimination in breach of Article 26 (Ground 4)

131. Article 26 of the Constitution provides a guarantee of freedom from discrimination. It was the Applicants' submission that the alleged policy and the decisions involve discriminatory treatment because they subject people of Haitian race or place of origin to disabilities or restrictions in comparison to people of The Bahamian race or place of origin, who are not subject to such disabilities or restrictions.

132. It was proposed to the Honourable Court that there are similarities between the area known as "Over-the-Hill" and "Shanty-Towns". According to the Applicants, "Over-the-Hill" has dilapidated housing and poverty, so do the "Shanty Towns"; "Over-The Hill" has **"**obscure" property title, so do the "Shanty Towns"; "Over-the-Hill" has a lack of running water and indoor plumbing, so do the "Shanty Towns"; The Applicants contend in the result that "Over-the-Hill" is to be the subject of a regeneration initiative and yet on the other hand the "Shanty Towns" are to be demolished.

133. The Respondents dismissed the comparison with Over-The-Hill. At paragraph 78 of the 1st Affidavit of Dion Foulkes, he stated the following:

"my view is that this does not establish any case for differential treatment, as there is no evidence that the attributes of these communities are sufficiently similar as to make them comparators".

Unlawful deprivation of property under Article 27 (Ground 5)

134. Article 27 of the Constitution provides protection from deprivation of property. In the decision of the Privy Council in ***Bahamas District of the Methodist Church in the Caribbean and the Americas v Symonette*** **(1999) 5 ITELR 311**, Lord Nicholls stated at 337:

> **"The key lies in the purpose of article 27 and the need to construe the article purposively. Broadly stated, the aim of art 27 is to afford protection against all forms of arbitrary, in the sense of unfair, compulsory acquisition of property interests. Property interests are affected by many forms of non-consensual interference. A comprehensive and detailed definition of the forms which are acceptable and those which are not is well-nigh impossible. But the intended scope of art 27 is illuminated by art 27(2). Article 27(2) lists many instances of compulsory taking which are not to be regarded as falling within the generality of the prohibition on compulsory acquisition contained in art 27(1). These instances range widely. In addition to those stated in para (k), already mentioned, they include compulsory taking in satisfaction of tax, by way of penalty for breach of the law, as an incident of a lease or contract, in execution of court orders, following extinguishment of title by adverse possession, and by reason of buildings being dangerous or unhealthy. Nothing in art 27 is to be construed as affecting the listed instances. The characteristic shared by each of these instances, and others in art 27(3) and (4), is the absence of the element of arbitrariness, or unfairness, against which art 27 gives protection. In each instance there is a good reason for the compulsion."**

135. The Applicants allege that they have a range of property rights between them. According to the Applicants, Article 27 applies to *"property of any description",* including both real and personal, tangible and intangible. Given the length of time the Shanty Towns have existed, Applicants may be able to assert an adverse title to land. They went on to submit that establishing title to the land by adverse possession would entitle the occupier to full beneficial ownership of the land, including buildings built upon it. The Applicants have formed the view that the demolition of those buildings and the exclusion of the occupiers from the land plainly involves both a taking of possession of it and the compulsory acquisition of it.

Respondents Submissions Relative to Constitutional Relief

136. The Respondents provided extensive submissions relative to the Constitutional Application raised by the Applicants. They claim the Applicants were excluded from bringing a separate Constitutional action in a Judicial Review Application. The Respondents drew to my attention case of ***Dwight Armbrister and The Queen and Others 2020/PUB/jrv/00024*** to substantiate this important point of law. In this case starting at paragraph 22 under the heading "Law on the exclusion of constitutional matters from judicial review", my sister the Honourable Madam Senior Justice Indra Charles (as she then was) stated as follows:

> ***"[22] Courts have determined that judicial review applications which are substantially constitutional matters ought to be refused. In In the Matter of an Application by Seereeram Brothers Limited HCA No. 3123 of 1993 (Trinidad and Tobago), the Applicant Company brought an application for judicial review of a decision by the Central Tenders Board to award a contract for construction of the Belmont Road in Tobago to a company notwithstanding that the Applicant Company has submitted the lowest bid. One of the grounds for judicial review submitted by the Applicant was that the decision was made contrary to natural justice principles. In particularizing how in was so perverse, the Applicant Company alleged that its right to equality of treatment from a public authority was infringed in the at the decision was contrary to the principles of natural justice in that the Respondent Board (i) failed to disclose the criteria for selection; (ii) treated the applicant unfairly; iii) acted in breach of the principle of fair procedure and (iv) impinged upon the enshrined right under the Constitution of the Republic of Trinidad and Tobago of the individual to equality of treatment from a public authority. The Respondents raised the question of whether it was proper for the Applicant to have raised a breach of a constitutional right in an application***

for judicial review. To this, Jones J referred to his own judgment in Nixie Quashie v Airports Authority of Trinidad and Tobago HCA 1220 of 1990 wherein he struck out allegations of breach of constitutional right in an application for judicial review. Jones J stated then:

"Neither the speeches of Lord Diplock and Lord Roskill cited above nor the decision in Lynch v Trinidad and Tobago Racing Authority and the Attorney General of Trinidad and Tobago detract from the principle that a litigant must bring his case within the rules applicable to the particular type of action he pursues. An applicant for Judicial Review must still show that he wishes to impugn the decision of the body on the ground of illegality, irrationality or procedural impropriety. Mr. Applewhite quite rightly pointed out that the applicant in his affidavit went at great lengths to show that he was denied the enjoyment of his property and equality of treatment, matters which were clearly outside the realm of Order 53. Accordingly grounds 4(a) and 4 (b are struck out": see page 38 of Seereeram Brothers.

137. The policy and the subsequent decisions were constitutional. Any interference with any right was justifiable and applied reasonably to obtain a legitimate aim/purpose. It was further submitted that such policies were not discriminatory in their effect. The Applicants were not unlawfully deprived of their property.

FINAL ANALYSIS AND CONCLUSION

138. In relation to the Judicial Review Application before this Court, the Courts' role is to exercise supervisory jurisdiction over the decisions made by the Government to ensure that the substantive principles of public law were observed and that the decision makers did not exceed or abuse their power whilst performing their duties **(see Brian R. Christie v The Civil Aviation Authority 2017/PUB/jrv/00010)**

139. The allegations of impropriety raised by the Applicants concerned decisions by the government to possess the land, disconnect the utilities, and issue Notices to the residents of Shanty Towns within The Bahamas. Relative to the "possession" decision, the Applicants referred to this as being "apparent". After careful review of the plethora of evidence submitted to the Court, the Applicants failed to substantiate this claim. The Court granted the original Injunction. The result of this Injunction was to halt any potential actions of the Government to demolish homes in Shanty Towns without more, until this process was reviewed in depth by the Court. Due to the Injunction, the government did not have an opportunity to possess the land even if it had intended to.

140. The main evidence of the Applicants relative to acts that could possibly be attributed to possession, occurred on the Island of Abaco subsequent to the passing of Hurricane Dorian which struck our beautiful shores and made landfall on the 1st September 2019. Hurricane Dorian was an extremely powerful Category 5 Atlantic hurricane which became one of the most intense cyclones on record to strike The Bahamas, and tied for the strongest landfall in the Atlantic basin. It was recorded as the worst natural disaster in our history causing an estimated 5.1 billion dollars of damage and an estimated 200 deaths. The Shanty Towns were not spared the wrath of Hurricane Dorian. It appeared to have escalated the plans of the government to seek to clean up, assist the indigent, provide aid and ensure that structures were properly built, rebuilt, and regulated. The Court finds nothing sinister in this government policy to restore public health subsequent to this disastrous hurricane.

141. The Court also formed the view that notwithstanding to amount of information submitted by the Applicants to support the allegation that the 1st to 4th Respondents authorized the 5th and 6th Respondents to disconnect power, water and other utilities for which they are variously responsible from the Land, the substance of this allegation was limited, nor unlawful, the statutory process was duly observed and adhered to.

142. The Applicants' evidence on this point comprised mainly Minutes recorded from the "SATF" meetings. The Applicants also conceded that Bahamas Power and Light and Company Limited (BPL) and The Water and Sewerage Corporation (WSC) were joined only for the purpose of being bound by the Interlocutory Injunction which was sought. The Court is of the view that this allegation was without merit and akin to a fishing expedition. In the circumstances the Court has Ruled that there was not an unlawful policy in place by the government's decision to disconnect the utilities on the lands in question.

143. The strongest case for the Applicants in my view concerned the issuing of Notices to residents of the Shanty Towns. The Applicants raised a total of nine (9) irregularities pertaining to "the Notice Decision" which they claim were unlawful. The Court eventually found the majority of these claims to be unsubstantiated and without merit. The strongest of the accusations levied were in relative to Grounds Three (3), Four (4), and Nine (9). Ground three concerned the allegation that the decision was not taken by the authorized individual. The Act requires the Minister responsible for building regulations who then was Mr. Desmond Bannister to serve the Notices however the Applicant claim these duties were actually performed by the Chairman of the "SATF" who then was Minister Dion Foulkes.

144. The Court considered the Affidavit of Dion Foulkes (filed May 2nd, 2019) to be credible. In this Affidavit Minister Foulkes stated the Notices were issued by the Ministry of Public Works, pursuant to their statutory powers. The Court is of the view that the actions of then Ministers' Bannister and Foulkes may have bordered the line of irregularity, however I do not accept that the line was crossed. I am satisfied that the decision to issue Notices to the inhabitants of the Shanty Towns pursuant to section 4(3) of the Building Regulations Act was in compliance with the legislation. These Notices were duly signed by Building Control Officer Mr. Craig Delancy who acted in accordance with the Building Regulations Act.

145. The finding of this Court is that the Applicants were not unlawfully deprived of their property. The Commonwealth of The Bahamas has obligations under International law, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child. The policy decisions and related actions in my view were sensitive to the plight of the relevant population in particular making decisions in a manner so as to minimally affect schooling of the children in the affected areas and locating or providing alternative housing for the affected community within the limits of available resources.

146. With regard to the policy of demolishing housing that failed to meet the Bahamas Building Code, this policy in my view was applied with due notice and consideration. As early as 2013 there was evidence of efforts made by the Government to compile data regarding conditions in the Shanty Towns with the stated objective of forming a working committee of all relevant government agencies to formulate a plan to ensure compliance with minimum standards. The resulting studies revealed substandard housing, sanitation (disposal of human waste and access to potable water) and disposal of solid waste and/or access to the aforementioned. The Court is satisfied that Minister has the authority to remove or require the removal of dangerous or dilapidated buildings even to the point of demolishing them. Such structures would obviously pose a risk to the health and safety of the public.

147. As a result of this Ruling, the Injunction which was in place covering the “Shanty Towns” is hereby discharged. The Respondents are no longer restrained directly or through their agents, appointees or employees from taking possession of, demolishing any building on, or otherwise interfering with the 177 Applicants' and other residents' and occupiers' enjoyment of land in “Shanty Towns” in New Providence or elsewhere in The Bahamas including by disconnecting any utilities in accordance with the relevant enabling legislation.

148. The Applicants Constitutional Application is also dismissed. My Learned sister Her Ladyship Senior Justice Charles (as she then was) also

followed this approach in the matter of **Dwight Armbrister v The Queen** 2020 PUB/jrv/00024. Starting at Paragraph 23 she stated as follows:

"[23] Later on, in the same page (38), Jones J said:

> ***"While on a further consideration of the matter I might have gone too far in my treatment of the applicant's grounds in that particular case, I am still of the view that where for instance the only complaint an applicant has against a public authority is that the authority had breached his constitutional rights, a Court in this jurisdiction ought not be called upon to embark upon an enquiry into a beach of constitutional rights in order to determine whether an administrative discretion has been properly exercised".***

[24] In applying the foregoing to the facts of Seereeram Bros., the Court allowed the grounds because the other eight grounds submitted were grounded in illegality, irrationality and procedural impropriety, and the constitutional breach was merely cited as an instance of the Board's illegality. The overarching ground was still procedural impropriety namely that the Board had come to its decision contrary to natural justice. The breach of the Constitution was not the substance of the ground for judicial review.

[25] Bharath J in In the Application of Corporal No 10089 Christopher Holder HCA No 2581 of 1993 (TT) considered both the decisions of Quashie [supra] and Seereeram bros. [supra] in holding that constitutional matters are inappropriate for application for judicial review. He had this to say at page 7:

> ***"In my view, comingling of constitutional matters with errors in administrative decisions are inappropriate in Judicial Review proceedings and should be struck out. The proper procedure to be followed where there are mixed questions of constitutional and administrative law is to file separate proceedings for review of administrative decisions and constitutional matters for infringement of the Constitution and then consolidate them so they can be***

heard together. ***All proper reliefs with damages can then be granted.*** ***Although I hold that constitutional matters are inappropriate and should be struck out, I heard full arguments in these proceedings and will treat this matter as an exception but dealing with the infringement ot constitutional right on the basis of denial of fairness or breach of natural justice and not otherwise.*** ***For the future I do not propose that this exception should be used as a precedent." [Emphasis added]***

[26] Like Jones J in Seereeram Bros, here, Bharath J was careful to distinguish complaints of infringement of constitutional right in relation to natural justice, which is itself an accepted ground of judicial review based on illegality on the one hand, and on the other, infringements of constitutional rights not on that basis. This distinction makes it is clear that allegations of constitutional rights breaches generally ought not to be heard in a judicial review applications."

149. The Court concurs with this position and likewise accepts that comingling of constitutional matters with errors in administrative decisions are inappropriate in Judicial Review proceedings. The procedure to be followed as espoused by Brarath J in cases where there are mixed questions of constitutional and administrative law is to file separate proceedings for review of administrative decisions and constitutional matters for infringement of the Constitution. These matters can be consolidated and heard together.

150. Notwithstanding the Court Ruling rejecting both the Judicial Review and Constitutional Application brought by the Applicants, I am of the view that this was a matter of national importance. Lead Counsel for the Applicants Mr. Fredrick Smith KC, is a brilliant trailblazer in our country who continuously fights to ensure the rights of persons within The Bahamas are not infringed and our country is better for it. Assistant Director, Mrs. Kayla Green-Smith stoically, carefully, and comprehensively refuted the allegations brought on behalf of the

Applicants and I am thankful for her contribution. I would also like to thank my Judicial Research Assistant Mr. Kevin Armbrister for his research and assistance in this matter.

151. This Application is a matter of general public importance. In the result, in the exercise of my discretion I make no Order as to Costs. I promised to put my reasons in writing, this I now do.

DATED this 10th day of February A.D., 2023.

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson