

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTserrat

**CLAIM NO. MNIHCR 2023/0004
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BETWEEN:

[1] The Crown

Claimant

and

**[1] Vincent Cassell
[2] Tandica Hughes**

Defendants

Appearances:

Mr. Oris Sullivan DPP for the Crown

Mr. Dane Hamilton KC and Ms. Chivone Gerald for the Defendants

2024: OCTOBER 15

OCTOBER 24

RULING

COTTLE [AG.]:

- [1] This is an application by the Defendants to have the court strike out 5 counts in an indictment proffered against them. The indictment as filed contains 6 counts. Count 1 charges a conspiracy between the Defendants to cheat the inland revenue of taxes lawfully due. Counts 2, 3, and 5 charge the first Defendant with failing to render a tax return for each of the tax years 2017, 2018,

and 2019. Count 6 charges the second Defendant with failing to render a tax return for the tax year 2018. On count 4 the first Defendant is charged with failing to deduct and pay over the sum of \$20,250 as tax due on income of \$67,500 received on 31st August 2018.

- [2] It is common ground that the first count is properly laid by indictment. The last 5 counts are for offences under section 85 of the Income and Corporation Tax Act. The legislation provides that offences against section 85 are to be tried summarily.
- [3] Counsel for the Defendants submits that the summary offences are improperly joined in a single indictment with the indictable offences. He relies on the case of **R V John Ryan and others from the High Court** in this territory. In that case Fitzpatrick J. concluded that the High Court had no jurisdiction to try summary offences. He viewed summary matters to be the exclusive province of the Magistrates Court. Apart from relying on this judicial precedent, Counsel did not advance any other arguments in support of his application. I have examined the legislation and the authorities. With the greatest of respect for my brother judge I find myself unable to reach a conclusion similar to the one at which he arrived.
- [4] Section 101 of the Criminal Procedure Code of Montserrat deals with joinder of counts in an indictment. Subsection (1) provides that all offences may be charged together in the same indictment if the offences are founded on the same facts or form or are part of a series of offences of the same or a similar character. Sections 49 to 51 of the Criminal Procedure Code sets out a regime where offences are divided into three categories. Some offences may be tried on indictment. Some may be tried summarily. Some may be tried either way. The Criminal Procedure Code provides that indictable trials proceed in a manner distinct from summary trials.
- [5] Fitzpatrick J concluded that those offences which the legislation that creates them classes as summary offences can only be charged and tried before the Magistrates Court. He acknowledges that section 101 allows for the joinder on an indictment of all offences founded on the same facts or forming part of a series of offences of the same or a similar character. However, at paragraph 47 of his judgement he held that the effect of section 101 of the Criminal Procedure Code is that the section does not authorise the High Court to try indictable and summary conviction matters. In the view of the learned judge the section merely lets the offences be charged together on a single indictment. If this is done, then the High Court will hear the indictable offences, and the summary offences set out on the same indictment will need to be tried before the Magistrate.

[6] In my humble opinion there is no need to interpret the Criminal Procedure Code in a way as to arrive at such an absurd result. In the UK, the Court of Appeal in the case of **R. V Plant EWCA Crim. 960 reported at [2008] 2 Cr. App. R 27** considered similar legislation. Section 40 of the UK Criminal Justice Act 1988 reads:

1. A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge —
 - a. is founded on the same facts or evidence as a count charging an indictable offence; or
 - b. is part of a series of offences of the same or similar character as an indictable offence which is also charged,

[7] This section is in pari materia with section 101 of the local Criminal Procedure Code. The UK section is more restricted. It allows for joinder of certain specified summary offences in an indictment. The local legislation allows for the joinder of all offences. In **R V Plant**, the Defendant faced an indictment containing one count for an indictable offence and 2 counts for summary offences. At the close of the prosecution case it was held that there was no case to answer on the count charging the indictable offence. The jury convicted the defendant on one of the summary offences charged in the indictment. On appeal it was argued that the judge ought to have withdrawn the summary offence from the jury and remitted it to the magistrate. The Court of Appeal held that this argument was fallacious. Such a course would be wasteful of resources and in conflict with the desirability of processing criminal proceedings promptly. There was no suggestion that there was no power in the High court to try matter properly included in the indictment by virtue of the legislation.

[8] I find myself persuaded by the views of the UK Court of Appeal. In this case it would be wasteful of resources and contrary to the desirability of processing criminal matters promptly to have two sets of criminal proceedings to deal with a series of offences of the same or a similar character. It seems to me that by permitting the joinder of summary offences in an indictment the legislation intends that the only court empowered to conduct indictable trials must be able to deal with all the counts properly included in an indictment. The Criminal Procedure Code must be read to harmonise the effects of sections 49 to 51 and section 101 so as to avoid absurdity. I hold that the High Court does have inherent power to try all offences properly included in an indictment.

[9] There is also the small matter of Section 90 of the Income and Corporation Tax Act which provides another basis for conferring jurisdiction on the High Court to deal with matters falling

under section 85 of the Act. That section explicitly empowers the Director of Public Prosecutions to bring any proceedings under the Income and Corporation Tax Act in any court.

[10] The application to strike out the counts charging summary offences included in the indictment is refused. I decline to follow the decision in **R v. John Ryan et al.** I thank all counsel for their assistance in this matter.

IT IS HEREBY ORDERED THAT:

1. The application is dismissed
2. I make no order as to costs.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR