

**THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: SVGHCR2022/0015

BETWEEN:

REX

and

LEJAH ALEXANDER

Appearances:

Mr. Karim Nelson, Counsel for the Crown

Mr. Duane Daniel, Counsel for the Accused

2023: November 7

REASONS ON RULING

[1] **COTTLE J.:** The prosecution applied to the court under the Witness (Special Measures) Act 2013 to have the evidence of the main witness against the accused taken via live link. Before this application could be considered, the prosecution realized that they had completely lost touch with the witness who resides abroad. They have therefore applied to have his deposition read to the jury under the Criminal Procedure Code. After hearing the arguments from both sides, I granted the application of the prosecution. I promised to provide written reasons for my ruling. I do so now.

[2] The defence resists the application on two grounds. Firstly they point out that the deposition was never signed by the witness. They say this renders the deposition a

nullity and therefore there can be no application to have a nullity read to the jury. Alternatively it is argued that the application to have the deposition read should be refused as the absence of the witness from Saint Vincent and the Grenadines is no bar to having him testify live using the available technology. The fact that the witness is avoiding the prosecution is no fault of the accused and he should not be penalized by having the opportunity to cross examine the witness denied him.

- [3] Counsel for the defence relies on the case of *DPP V Asim Parris NEVHCR 2014/0004* in support of his first argument. In that case Williams J, was confronted with a deposition which had not been signed by the witness because the witness had testified from a remote location via video link. The legislation in Nevis, the *Magistrates' Code of Procedure AC at section 57* required the witness to sign the magistrate's record of his testimony after this had been read back to him. The Magistrate is also required to sign. There was also the *Evidence Act of Nevis* which allowed for the court to permit the giving of evidence by means of technology such as video or television link permitting the virtual presence of the witness in court allowing the parties to hear, examine and cross examine the witness. The learned judge concluded that the requirement for signature by the witness was mandatory and the absence of a signature rendered the deposition a nullity. A feature of the case was that the evidence of that impugned witness was the sole basis for committal of the accused to stand trial. The Judge concluded that since there was no valid deposition upon which the accused could be committed to stand trial, the indictment should be quashed and the accused discharged.
- [4] With the greatest of respect for the reasoning of *Williams J.* I find that I arrive at a different conclusion.
- [5] Regard must also be had for *section 142 of the Criminal Procedure Code* which governs the taking of depositions. The section mandates that the deposition of a witness taken at a Preliminary Inquiry shall be signed by the witness and the magistrate before whom the deposition is taken. This is the law and Parliament knew the state of the law when it passed the *Witness (Special Measures) Act* in

2013 after the passage of the *Criminal Procedure Code*. Section 3 of that Act provides that where any provision of the Act is in conflict with any other law the provision of the Act applies so far as it so conflicts.

- [6] It appears to me that the absence of a signature by the witness in this case is of no moment. Parliament in Saint Vincent and the Grenadines has passed legislation allowing for witnesses to testify via live link. It is obvious that such a deposition, though read back to the witness by the magistrate, cannot be signed by him if he is not in court. It makes a mockery of the later legislation to suggest that depositions taken in accordance with it are completely invalid.
- [7] For this reason, I find that a deposition taken via live link and not signed by the witness remains a valid deposition. As such the absence of the signature by the witness is no bar to a court, properly exercising its discretion, to permit such a deposition to be read to a jury at trial if the statutory prerequisites have been met.
- [8] Mr. Daniel also submitted that should the court conclude that the absence of a signature on the deposition of the witness taken, as it was, via live link under the Special Measures legislation at the Preliminary Inquiry, is a valid deposition, still the court should not permit the deposition to be read. He says the prosecution should be compelled to have the witness testify in person, whether in the courtroom or via live link.
- [9] Section 193 of the *Criminal Procedure Code*, Cap 172 of the Laws of Saint Vincent and the Grenadines is in the following terms:

“193. Deposition may be read in certain cases

- (1) *Where any person has been committed for trial for any offence, the deposition of any person taken before the committing court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence at the trial of that person, whether for that offence or for any other offence, arising out of the same transaction, or set of circumstances, as that offence.*

(2) *The conditions referred to in subsection (1) are the following—*

(a) the deposition must be the deposition either—

(i) of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 154,

(ii) of a witness whose deposition was taken in accordance with the provisions of section 155 and who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Saint Vincent and the Grenadines or so ill as not to be able to travel,

(iii) of a witness whose deposition was taken at the preliminary inquiry, but who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from Saint Vincent and the Grenadines or so ill as not to be able to travel, or

(iv) of a witness who is proved to be kept away by means of the procurement of the accused or on his behalf; and

(b) the deposition must purport to be signed by the magistrate before whom it purports to have been taken.

(3) *The provisions of this section shall not have effect in any case in which it is proved—*

(a) that the deposition was not in fact signed by the magistrate before whom it purports to have been signed; or

(b) that the deposition is that of a witness whose attendance at the trial was stated to be unnecessary and the witness has been duly notified subsequently that he is required to attend the trial, unless the provisions of subsection 2(a)(iii) or (iv) apply.”

[10] In this case, I am satisfied that the deposition is that of a witness taken at the Preliminary Inquiry. I am also satisfied that the witness is absent from St. Vincent and the Grenadines. My satisfaction stems from the oath of a credible witness. The deposition was signed by the committing magistrate. In the exercise of my discretion, I will allow the deposition to be read as evidence at the trial. Naturally, the trial judge will alert the jury to the fact that the witness is unavailable to testify in person at the trial and will not be subjected to cross examination and that they should treat with this evidence with great care.

[11] The application is granted to have the deposition of the absent witness read to the jury. I thank counsel for their assistance.

Brian S. Cottle
High Court Judge