

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

**ANTIGUA AND BARBUDA
CASE NUMBER: ANUHCR2020/0008**

BETWEEN:

THE QUEEN

VS

MOISES ANTONIO BENJAMIN

Appearances: Mrs. Shannon Jones-Gittens and Mr. Curtis Cornelius for the Crown
Mr. Ralph Francis for the Defendant

2020: 3rd 6th 9th 10th March
27th April

SENTENCING DECISION

Headnotes: *defendant entered a plea of guilty to bigamy—first time offender—element of deception—prison overcrowding and Corona Virus Pandemic—harm to the complainant—sentencing guidelines.*

Background

- [1] **SMITH J:** On 10th March 2020, the defendant, Moises Benjamin was arraigned and entered a plea of guilty to one count of bigamy. The offence of bigamy is contrary to Section 55 of the Offences Against the Person Act, Cap 300 of the Revised Edition of 1992 of the Laws of Antigua and Barbuda. At his arraignment the defendant was represented by Mr. Ralph Francis, and the Crown by Mrs. Shannon Jones-Gittens and Mr. Curtis Cornelius.
- [2] The matter was adjourned to 20th March 2020 for Counsel to put forward a plea in mitigation and sentencing to follow thereafter. However due to the corona virus pandemic the matter was further adjourned for sentencing to 27th April 2020.

Facts

- [3] In 2004, the defendant a national of the Dominican Republic and Antigua/Barbuda was in an intimate relationship with Gracieyis Ramirez De Los Santos in the Dominican Republic. She was a national of the Dominican Republic also. The defendant migrated to Antigua but the two maintained a long-distance relationship. They married on 28th February, 2007 in Santo Domingo and the then Mrs. Benjamin moved to Antigua to join her husband. They had one child together prior to the move then added three (3) more while they resided in Antigua.
- [4] When Mrs. Benjamin came to Antigua, she brought her marriage certificate with her and subsequently had it officially translated to English. According to Mrs. Benjamin, her husband became unfaithful during their marriage and began staying away from the home overnight and in 2017 he moved out completely.
- [5] Ms. Sashira Perez Altagracia also a national of the Dominican Republic had known the defendant for approximately twelve (12) years. They became friends while both lived in Santo Domingo and this developed into an intimate relationship which according to her lasted for about four months before the two lost contact with each other. They eventually reconnected on Facebook and rekindled their friendship. Ms. Altagracia arrived in Antigua in May of 2014 and the communication between them became more frequent. They eventually met at a club and thereafter the intimate relationship recommenced.
- [6] One day Ms. Altagracia told the defendant that “she was out of time and did not wish to remain in Antigua illegally”. The defendant then indicated that he would assist her and made her aware at that time that he had a woman and children and that they lived together but he failed to mention that he was married to that woman.
- [7] On 4th September 2014, the defendant took Ms. Altagracia to the Immigration Department to extend her time and informed the officer that “he was responsible for her that he would marry her within seven (7) months”. He presented his Antiguan passport and her time was accordingly extended. From that time, he started to spend more time with her and would stay at her house for most of the weekend. The relationship continued to flourish and on 2nd September 2015, the two were married on the beach at Dickenson Bay Beach.
- [8] Sometime in November 2018 both women on separate occasions went to the Immigration Department for an extension of time and presented a copy of the defendant’s passport as their husband’s document.
- [9] They were both given dates to return but failed to do so. Upon the Immigration authorities discovering the anomaly they took both women into custody (separately) when they returned to the department in

January 2018. The defendant and Ms. Altagracia were picked up by immigration officers on 4th January, 2018

[10] The defendant gave a caution statement while in custody. He confirmed that he married Gracieyis in 2007 and that they moved to Antigua and started a family and built a house. He asserted that he caught his wife at the house being unfaithful and they separated. He confirmed that he reconnected with Sashira on Facebook, as she had been his girlfriend in Santo Domingo. He then made arrangements for her to come to Antigua. However, when she started experiencing difficulty with extending her time they got married. He claimed that before he married Sashira he had started the divorce process but he never got the divorce finalized. He confirmed in an interview with the police that he was aware that he was not divorced from Gracieyis.

The Crown's Position

[11] The prosecution in their submissions submitted that there were no aggravating and mitigating factors in relation to the offence. They further submitted that in relation to the offender, he was dishonest with Ms. Altagracia by failing to reveal that he was married. Further mitigating factors attaching to the defendant were that he is a first-time offender that he had entered an early guilty plea and that bigamy is not a prevalent offence in Antigua and Barbuda.

[12] Mrs. Benjamin appeared in Court on 27th April 2020 and indicated that the 'marriage' between her husband and Ms. Altagracia had caused her and her children pain and suffering. She said that she felt humiliated and that Ms. Altagracia had met her in town and had told her of the "marriage" and urged her to divorce the defendant. She said she was embarrassed by her husband's actions and by meeting Ms. Altagracia in this manner.

Plea in Mitigation

[13] Learned Counsel Mr. Francis who appeared for the defendant in his plea in mitigation indicated that: the defendant and the complainant shared four children aged from fourteen (14) to six (6) and that he supported the children and his wife financially. Mrs. Benjamin is unemployed. He stated that the defendant was gainfully employed as a fridge and air conditioning repairman and earned seven hundred (\$700) Eastern Caribbean dollars per week. Learned Counsel also indicated that the defendant was of the opinion that he and his wife were "getting along under the circumstances" and that he was remorseful for his actions.

[14] Although bigamy is not a prevalent offence there are regional authorities which offer guidance and which guide the Court in relation to imposing a fit and proper sentence for this offence.

Regional Authorities

- [15] The case of **R vs. Finnegan**¹ a case from the BVI is instructive in the approach taken by the Courts in relation to bigamy. In that case the defendant Mr. Finnegan who was a Canadian national resident at Cane Garden Bay, Tortola in the Territory of The British Virgin Islands. The complainant Zoe Tydeman of Nanaimo, British Columbia, Canada was married to the defendant on 2nd August 2003. They were married in Victoria, British Columbia. The marriage was registered at the Vital Statistics Agency of British Columbia, Canada.
- [16] On 25th February 2010, Mr. Benjamin Finnegan and one Ms. Carla Lacario visited the Attorney General's Chambers in Road Town and applied for a marriage licence. Mr. Finnegan and Ms. Lacario completed the marriage licence application form. Before filling out the application form, Mr. Finnegan was orally asked whether he was married before. He replied that he was not. He also filled out the application form indicating that he was never married and signed it. Ms. Lacario and a witness also signed. The same day, a marriage licence was issued by the Deputy Governor to Reverend Paul Ricketts. Two days later, Reverend Ricketts solemnized the marriage between Mr. Finnegan and Ms. Lacario at Nanny Cay, Tortola. A marriage certificate was duly issued thereafter. A report was made to the police by Ms. Tydeman and Mr. Finnegan was arrested and charged with one count of bigamy. In his statement under caution Mr. Finnegan admitted that he was legally married to Ms. Tydeman who is still alive; that their marriage had not been dissolved nor declared to be void nor was any decree of nullity made by a court of competent jurisdiction. He also admitted that he made an application to obtain a marriage licence on 25 February 2010 and that he married Ms. Locario two days after he obtained the marriage licence. In that case Justice Hariprshad Charles sentenced the defendant to a fine of twenty thousand US dollars or six months imprisonment.
- [17] In **The Queen vs. Norriston Henry**² the defendant had married both women in Antigua but several years apart after his first wife had moved to St Lucia. He entered a guilty plea and was fined seven thousand EC dollars, in default twelve months hard labour. The Court also made an order that the purported second marriage be declared null and void. There was also an order that the Registrar of the High Court was to cancel the marriage certificate between the defendant and the second "wife".

UK Authorities

- [18] In **R vs. Arthur William Ballard**³ the Court of Appeal reduced a sentence of five months to three months. The Court reiterated that a custodial sentence should be given where the innocent party has been deceived and suffered some injury. The Court found that the defendant had caused distress to the victim, being his second "wife". The offence was not discovered until after the second wife had been separated from the defendant and this was considered to have lessened the distress.
- [19] In **R vs. Bajlu Islam Khan**⁴, Mrs. Kennedy was legitimately married to the defendant in 1990. In July 2002 and again in November 2002, she married two separate individuals, both of whom were

¹ BVIHCR2011/0005

² ANUHCR2019/2002

³ [2007] 2 Cr. App. R. (S) 94, C.A.

⁴ [2004] EWCA Crim. 3316, CA.

Bangladeshi nationals. The marriages were shams with the object of defeating immigration laws. She was sentenced to twelve months imprisonment for one count and fifteen months imprisonment for the second count; to run consecutively. The Court took into account the circumstances that Mrs. Kennedy had initiated matters by going to the police and making admissions, she made early guilty pleas and she was willing to give evidence to the Crown. However, the Court of Appeal was of the opinion that there was “nothing impeachable in the sentences imposed on Mrs. Kennedy.” The Court stated that “deterrence is a legitimate aim of judicial disposition” and “the sentencing remarks properly underlined the evil behind these indicted offences, that is, flouting of immigration provisions.”

The Court's Considerations

[20] It appears to this Court that the sentence for bigamy must vary very much with the particular circumstances of the case. In many cases of bigamy, it is possible to deal with the case by some sentence which does not involve deprivation of liberty. In other cases, there may be a clear deception which has resulted in some injury to the woman or women concerned; in which an immediate custodial sentence must be passed, and the length of that sentence must depend greatly on the seriousness of the injury that has been done. In the case at bar it is clear that the defendant set out to deceive both women as well as the immigration authorities of Antigua and Barbuda knowing full well that he was not in a position to marry Ms. Perez Altagracia within seven months knowing full well that he was still legally married to Mrs. Benjamin. This deception must be categorized as an aggravating factor to the offence.

[21] The Court finds the following aggravating factors of the offence to be:-

- I. The defendant deliberately set out to deceive both his current wife and Ms Perez Altagracia
- II. The defendant set out to deceive the immigration authorities of Antigua and Barbuda
- III. The offence was premeditated

[22] The Court finds no mitigating factors of the offence. However the Court does find the following to be mitigating factors attaching to the defendant:-

- I. He is a first time offender
- II. He is the father of four minor children
- III. He entered an early guilty plea
- IV. Through his Counsel he has shown remorse

[23] In constructing the sentence, the Court should assess the harm occasioned to the women involved. The first wife indicated in her deposition that as far as she was aware, she was still married to the defendant. Today she has indicated that she was embarrassed and humiliated by the actions of the defendant and stated that this has affected her children as well as herself negatively. In addition to the second “wife” who has since been deported, said in her deposition that she was not aware that the defendant was still married to the defendant. So both women had been deceived. The Court cannot ignore the fact that lies were also told to the Immigration Department thus aggravating the offence.

[24] The Court, as in the case of Finnegan, has to consider as a starting point the harm occasioned to the two women. I have set the harm out in the preceding paragraph 21.

[25] As a starting point the Court would begin with a fine. The Court has to take into account the current state of the local prison with overcrowding being a major factor as well as the current pandemic of Corona Virus.

[26] In the case of **R vs. Trigger Alan Mike Seed and Philip Stark**⁵ the Court highlighted the issue of prison overcrowding and the need for judges to consider non-custodial sentences, in the context of two joined sentencing appeals, where custodial sentences had been imposed for minor offences of assault occasioning actual bodily harm, bigamy and failing to surrender to bail. The Lord Chief Justice stated at paragraph 6:-

“Unless imprisonment is necessary for the protection of the public the court should always give consideration to the question of whether the aims of habitation and thus the reduction of crime cannot better be achieved by a fine or community service rather than by imprisonment, and whether punishment cannot adequately be achieved by such a sentence. Enforcement of fines is now rigorous and effective and where the offender had the means, a heavy fine can often be an adequate and appropriate punishment”.

[27] The Court finds that the offence of bigamy in Antigua and Barbuda carries a maximum penalty of three years imprisonment. However, the law has invested a wide discretion in the Court to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case.

[28] The Court also bears in mind the cardinal principles of sentencing which can be summed up as being “retribution, deterrence, prevention and rehabilitation”. This defendant being a first time offender, who has expressed some level of remorse, is in the Court’s view a good candidate for rehabilitation. Mr Francis has indicated in his plea in mitigation that the family is getting a long well and that Ms Altagracia having been deported is no longer in the picture so to speak. Imposing a custodial sentence on this defendant would serve no useful purpose at this time.

[29] There are very few cases of bigamy coming before the Courts of the Eastern Caribbean. The United Kingdom cases referred to above in paragraphs 17 and 18 accentuate the principles that the level of injury caused to the victims by the defendants deception and the deliberate deceit perpetrated upon the Immigration authorities are serious aggravating factors in the determination and imposition of a custodial sentence. The case from Antigua referred to in paragraph imposed a fine of seven thousand five hundred dollars. In the case at bar Counsel has indicated that there are four children to be maintained and that they are the sole financial responsibility of the defendant.

⁵ [2007] EWCA Crim 254

The Sentence

[30] For the reasons set out in paragraph 28 above, the defendant will pay a fine of Three Thousand Eastern Caribbean Dollars (\$3,000). The fine is to be paid no later than 31st July 2020; in default the defendant will spend six months in prison.

[31] It is also ordered that the purported marriage ceremony solemnized on 2nd September 2015 at Dickenson Bay Beach between the defendant and Ms. Sashira Perez Altagracia be declared null and void and that the Registrar General is directed to cancel Marriage Certificate number 737 given under her hand and seal.

**Ann-Marie Smith
High Court Judge**

By the Court

Registrar