

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

**ANTIGUA AND BARBUDA**

**CASE NO: ANUHCR 2017/0070  
ANUHCR 2018/0039**

**THE QUEEN**

**And**

**D. GISELLE ISAAC**

**Appearances:**

Mr. Anthony Armstrong Director of Public Prosecutions for the Crown  
Mr. Dane Hamilton, QC for the Accused

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2020: February 18  
2020: March 23  
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**JUDGMENT**

- [1] **JOHN, J:** This application comes before the court by way of a motion by the accused seeking a stay of the indictment and all charges preferred against her on the grounds that her continued prosecution would be an abuse of process by reason of political interference as a result of comments made by the Honourable Prime Minister of Antigua and Barbuda.
- [2] The accused was the former speaker of the Parliament during the period 2004 – 2014, when the United Progressive Party (UPP) was the party in Government in Antigua and Barbuda. Additionally, she served as the Executive Secretary to the Board of Education. She is currently the Chair of the UPP, now the party in opposition. The accused was summarily dismissed from the office as Executive Secretary of the Board of Education on 18<sup>th</sup> July 2014.
- [3] The accused was indicted in three matters, namely ANUHCR 2018/0039, ANUHCR 2017/0070 and ANUHCR 2017/0053. The offences were allegedly committed during her tenure as Executive Secretary

to the Board of Education during the period of 1<sup>st</sup> February 2001 to 18<sup>th</sup> July 2014. She was tried on one indictment, namely indictment no. ANUHCR 2017/0053 between 3<sup>rd</sup> October - 11<sup>th</sup> October 2019. On 11<sup>th</sup> October 2019, Counsel for the accused made a submission of no case to answer which submission was upheld by the trial judge and she was discharged. There are still pending two indictments for similar offences. Those indictments are now the subject matter of the application before me. A stay, if granted, would have the effect of ending the proceedings.

- [4] In an affidavit filed on 19<sup>th</sup> November 2019, the accused deposed that on the day following her discharge by the trial Judge, the Honorable Prime Minister, Mr. Gaston Browne made several statements on the Point FM radio station in relation to her prosecution. In her affidavit, the accused exhibited two newspapers articles outlining what were said by the Honorable Prime Minister. Those statements were widely published and included the following remarks:

***“Unfortunately, there were one of two individuals who were very zealous perhaps overzealous and they went ahead and did their private investigation.”***

***“And let me make it abundantly clear that the cabinet did not sanction any investigation into the Board of Education.”***

***“Now I have to admit that maybe I was not as forceful as I ought to have been and one of the reason for that is D. Gisele Isaac is my son’s God Mother and I didn’t want any bod to accuse me of obstructing justice.”***

***“But you have to understand that it is very difficult to get a conviction based on certain circumstances, and I am of the view that unless there is overwhelming evidence, that is an absolute slam dunk in which you have the evidence and you also have individuals to corroborate what happened, it is perhaps going to be an exercise in futility.”***

***“We all know that the UPP plundered the country and there is no question about it but you can’t prove it, and that is where the challenge lies.”***

***“I remember when this matter with D Giselle Isaac and Serpent first featured, within a matter of weeks I took the position that the matter should be left alone. Not that I am saying that Serpent and D Giselle Isaac did not do any wrong, but I felt that it would be difficult to prove the alleged wrongdoing.”***

- [5] No affidavit was filed denying the statements attributed to the Honorable Prime Minister. Accordingly, the court must therefore accept that the statements were made. However, an Assistant Commissioner of Police, deposed in an affidavit filed on 5<sup>th</sup> December 2019 that there was no political involvement during the course of the investigation and that the investigation team never spoke with nor received directives from any politicians in the matter. He further deposed that all directives received directive form the then Commissioner of Police, Wendell Robinson.

## Submissions by Counsel for the Applicant

- [6] Mr. Dane Hamilton Q.C for the accused submitted that the comments were highly prejudicial to the accused having a fair trial in that prospective jurors may have heard the statements made by the Honorable Prime Minister and that her prosecution was initiated by a private investigation pursued by two overzealous cabinet ministers. Counsel further submitted that in the eyes of reasonable persons there is likely to be a feeling that the prosecution of the accused was politically motivated and pursued by the government under the leadership of the Honorable Prime Minister and Political leader of the Antigua and Barbuda Labor Party.
- [7] Additionally, he submitted that the comment “***the UPP plundered the country***” could result in a prospective juror drawing an inference that the defendant was one such person responsible for plundering the country. Counsel relied on the case of **Warren v AG for Jersey** [2011] UKPC 10 para. 21. In that case, Lord Dyson in giving the lead judgment for the board stated that the court has the power to stay proceedings in 2 categories of cases:
- i. Where it will be impossible to give the accused a fair trial.
  - ii. Where it offends the courts sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.

In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises.

In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court’s sense of justice and propriety; the two categories are distinct and should be considered separately.

- [8] Counsel also referred to the case of **Antigua Power Company Ltd v Attorney General of Antigua and Barbuda and others** [2013] UKPC 23 where Lord Neuberger said at paragraphs 52-53 “

*“...the basic complaint against the Prime Minister is that he should not have instructed the Commissioner or any other member of the police force to carry out a specific policing operation. As Lord Denning M said in R v Comr of Police of the Metropolis v Blackburn [1968] 1 All ER 763 at 769, it was ‘the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land’. Having given examples of what could be done ‘that honest citizens may go about their affairs in peace’, he said:*

*‘...but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone’.*

*This view was repeated in the more recent decision of the Court of Appeal in R v Secretary of State for the home Department, ex p Northumbria Police Authority [1988] 1 ALL ER 556 at 560, where it was described as ‘common ground’ (between highly experienced counsel) that ‘[t]he chief constable*

*has complete operational control of his force' and that '[n]either the police authority nor the Home Secretary may give him any directions about that'.*

### **Submissions by the Crown**

- [9] Mr. Anthony Armstrong Director of Public Prosecutions who appeared for the crown submitted that the accused had failed to meet the standard required to grant a stay as set out in **Warren v AG for Jersey (supra)**. In referring to the affidavit of the Assistant Commissioner of Police, Mr. Armstrong urged the court to accept the evidence that the police received no instruction from any politician. He further submitted that there is no fact from which an inference can be drawn that the executive had any involvement with the prosecution.
- [10] The DPP further stated that there was no issue of the accused not getting a fair trial and the size of the society ought not to be taken into consideration, as the court has the tools to address any such problem. He relied on **The Queen v Crawley et al** [2014] EWCA Crim 1028 and **Sharma v Antoine** [2006] UKPC where the court emphasized that the recourse to a stay is an exceptional remedy, only to be used in exceptional circumstances where it is impossible by other means to prevent an unfair trial. The Director further stated that there was no evidence to make a nexus between the statements of the Hon. Prime Minister and the police investigations.
- [11] Mr. Armstrong further referred the court to **Attorney General's Reference (No.1 of 1990)** (1992) 3 W.L.R., where the Court of Appeal stated that a stay for delay or any other reason was to be imposed only in exceptional circumstances.

### **The Law and Analysis**

- [12] The court in arriving at its decision on this application has kept uppermost in its mind that a stay is to be imposed only in exceptional circumstances. **Attorney General's Reference (No.1 of 1990)** concerned an application for a stay on the ground of delay and the court stated that even when delay could be said to be unjustifiable the imposition of a permanent stay was to be the exception rather than the rule. In the course of delivering the judgment, reference was made to the case of **Connelly v Director of Public Prosecutions** [1964] A.C 1254, 1296 where Lord Reid said there must always be a residual discretion to prevent anything which savors of abuse process of process.
- [13] The remarks of Lord Reid were later reflected in the judgment of Lord Parker CJ in **Mills v. Cooper** [1967] 2 Q.B 459 @ 467 and also in the speech of Lord Salmon in **Reg. v Humphrys** [1977] A.C 1, 46:
- "a judge has not and should not appear to have any responsibility for the institution of prosecutions; nor has he any power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy it ought not to have been brought. It is only if the prosecution amounts to an abuse of process of the court and is oppressive and vexatious that the judge has the power to intervene."*
- [14] I have found the statement of Lord Steyn in **R v Latiff** [1996] 1 LRC 415 to be very instructive in arriving at my conclusion. At page 423 Lord Steyn opined as follows:

*"The law is settled. Weighing countervailing considerations of policy and justice, it is for the judge in the exercise of his discretion to decide whether there has been an abuse of process, which amounts to an affront to the public conscience and requires the criminal proceedings to be stayed (see **Bennett v Horseferry Road Magistrates' Court** [1993] 3 LRC 94, [1994] 1 AC 42). Bennett was a case where a stay was appropriate because a defendant had been forcibly abducted and brought to this country to face trial in disregard of extradition laws. The speeches in Bennett conclusively establish that proceedings may be stayed in the exercise of the judge's discretion not only where a fair trial is impossible, but also where it would be contrary to the public interest in the integrity of the criminal justice system that a trial should take place. An infinite variety of cases could arise. General guidance as to how the discretion should be exercised in particular circumstances will not be useful. But it is possible to say that in a case such as the present the judge must weigh in the balance the public interest in ensuring that those that are charged with grave crimes should be tried and the competing public interest in not conveying the impression that the court will adopt the approach that the end justifies any means."*

[15] The citizenry at large usually look to the leader of the government and political leader of the party in office for stability in the society and good governance. Antigua and Barbuda have a population of just fewer than 100,000 people. I cannot agree with Mr. Armstrong that the size of the population is of no moment. I think it is of paramount importance. Such statement must of necessity have national reach and impact the minds of the citizens.

[16] The court has to consider, in light of the Hon. Prime Minister's statements, whether the prosecution of the accused should be characterized as an abuse of process thereby justifying a stay of proceedings.

- i. Whether the accused could be given a fair trial?
- ii. Whether a stay is necessary to protect the integrity of the criminal justice system?

[17] The Hon. Prime Minister commented on various aspects of this matter including: the quality of the evidence and suggested that the accused may have been culpable of some wrongdoing. He further stated that the investigation leading to the prosecution of the accused into the alleged misconduct of the accused was initiated by two cabinet ministers. That is "*two individuals who were very zealous perhaps overzealous and they went ahead and did their private investigation.*"

[18] The court finds that the comments made by the Hon. Prime Minister could prejudice the pending prosecutions resulting in the accused being denied the right to a fair trial. Further, the fact that the statements were made on the public radio, and published widely in two newspapers creates a greater likelihood that a potential juror who may have read or heard the remarks would be negatively impacted by them, to the detriment of the accused. There must be a higher level of responsibility that comes with holding public office. Making public statements in relation to a pending prosecution is highly prejudicial and unbecoming of the leader of government. The courts must therefore intervene to avoid such conduct resulting in an abuse of process.

[19] On the evidence, the court finds that the accused has met the threshold for the granting of a stay. There is a live risk that the accused would be not receive a fair trial, and further that the statements are tainted

with the possibility of executive interference thereby creating an abuse of process. The court will not shirk from its responsibility to protect the integrity of the criminal justice system and ensure that a fair trial is secured to all manner of persons.

[20] The motion for a stay is hereby granted that is to say, that the pending prosecutions are at an end.

Justice Stanley John  
Criminal Judge (AG)

By the Court

Registrar