

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

(CIVIL) -

DOMHCV 2018/0176, 2019/0091 & 0092

BETWEEN:-

RODMAN LEWIS

Claimant

And

THE STATE

Defendant

JASON TELEMAQUE

Claimant

And

THE CHIEF OF POLICE

Defendant

And

LEON ETTIENNE

Claimant

And

THE CHIEF OF POLICE

Defendant

Appearances:

Anthony Commodore of Elijah Law Chambers for the Rodman Lewis

Dawn Yearwood Stewart for the Jason Telemaque and Leon Ettienne

Sherma Dalrymple and Anne Riviere of the Office of the Director of Public Prosecutions for the Defendant

.....
2018: November 26

2019: June 28

July 22
.....

On written submissions

- [1] **Stephenson J.:** *“The rationale of the law of bail at pre-trial stage is, accordingly that a person should normally be released on bail if the imposition of the conditions reduces the risks ... of absconding, risk to the administration of justice, risk to society-to such extent that they become eligible having regard to the weight which the presumption of innocence should carry in the balance. When the imposition of the above conditions is considered to be unlikely to make any of the above risks negligible, then bail is refused.”*¹
- [2] Before me there are three applications for bail, the matters are not consolidated however, even though each matter turns on its own facts the law to be applied is identical. The Chief of Police and The State through the Director of Public Prosecutions objects to bail in each case. I therefore propose to state the law as I understand it and apply it to each of the cases separately but in the same ruling.
- [3] The power to admit the accused persons to bail is vested in a judge of the High court and is discretionary. .
- [4] In **Noordally –v- Attorney General**² it was held that bail should not be withheld as a punishment and the ultimate question is whether the defendant will turn up to stand his trial.
- [5] Should bail be granted, bail conditions must be earnestly and carefully considered. If the state represented by the Office of the Director of Public Prosecutions wishes to oppose bail they are

¹**Maloupe –v- District Magistrate of Grand Port [2000] MR 264** per Lord Bingham

²[1986] MR 204

obliged to present good reasons for their objections which reasons can stand up to resolute review and serious inquiry.

[6] It is noted that all three applicants before the court have been charged with the offence of murder. Murder is the unlawful killing of any human being with malice aforethought³. It is one of the most serious allegations that can be made against an individual in our judicial system. The other serious offence being treason.

[7] The seriousness of the offence however cannot be viewed in a vacuum, but consideration must be given to the available evidence and the court must assess and give weight to that evidence which is available in support of the charge. The nature of the allegations effect the all important issue of whether or not the accused person will present himself for trial at the appropriate time.

[8] In Dominica there is no Bail Act so we therefore turn to the principles as stated in the common law in deciding whether or not to grant bail. A grant of bail is a grant of liberty to someone who would otherwise be detained. If a person granted bail does not comply with the terms of his bail is liable to be returned to custody.

The Constitution of the Commonwealth of Dominica (The Constitution)

[9] There is a right to liberty as protected by the Constitution. Section 1 of The Constitution sets out in general, the fundamental rights and freedoms of every person in Dominica that is “the right, whatever his race, place of origins, political opinions, colour or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all ...”, every person in Dominica has the right, *inter alia*, to life, liberty, and the protection of law.

[10] Section 3 of the Constitution makes provision for the protection of the right to personal liberty and states in part as follows:

(i) “3 (1) - A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say ... (e) Upon

³ Definition at common law

reasonable suspicion of his having committed or of being about to commit a criminal offence under the law of Dominica;”

(ii) 3(4) - “Where any person is brought before a court ... upon suspicion of his having committed an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.”

[11] In the case of **Thelston Brookes –v- The Attorney General**⁴the learned Judge had this to say

“The notion that the provisions of the Constitution and in particular those provisions in which those fundamental rights and freedoms are enshrined are to be given a generous and purposive construction so as to ensure that those rights are meaningful, may now be taken as trite law”⁵.

[12] When considering applications for bail it is important that the court bears in mind the cornerstone of criminal law as we know and understand it and which is expressly provided for in the Constitution, that is, the presumption of innocence that the accused is innocent until proven guilty by a court of law, or has pleaded guilty⁶.

[13] Learned Counsel Mrs Yearwood Stewart on behalf of the applicants Telemaque and Etienne submitted the following quotation from the **Thelston Brooks case** which provides guidance to this court

“Accordingly, the exercise of a judge’s discretion in admitting an accused person to bail calls for a balancing of the scales by weighing the interests of an accused person and his fundamental rights as guaranteed under the Constitution on the one hand, and the interest of the rights and freedoms of others and the public interest, being the sole qualifications on the said rights, on the other”⁷

⁴ CLAIM NO. AXA HCR 2006/0089

⁵ Ibid paragraph 11

⁶ See section 8 (2) (a) of the Constitution

⁷Thelston Brookes –v- Attorney General op cit at paragraph 12

[14] The court is required to assess the allegations made against the accused persons; however, it is important that the judge not conduct a mini trial or a minute analysis of the statements which constitute the evidence against them. It is not the function and or concern of the court at this stage to decide the results of the trial as that would amount to getting ahead of a trial on the merits. The court is not to decide the accused person's guilt in advance of their trial.

[15] It is to be noted however, that the cogency of the evidence is not to be ignored. The Court ought to be conscious of the fact that the stronger the evidence the greater is the incentive for the accused to abscond. The court has to have regard to the nature and the seriousness of the offence. This however is not a determining factor.

[16] What are the factors to be taken into account in considering whether or not bail should be granted or refused? They are:⁸

- a) The risk of the accused person absconding;
- b) The risk of the accused person interfering with the course of justice;
- c) Preventing crime;
- d) Preserving public order; and
- e) The necessity of detention to protect the defendant

[17] After the court has given serious and systematic deliberation to the relevant considerations on whether or not to grant bail, the court if it decides to accede to the relief prayed for by the accused persons must then impose conditions which are to be directed at ensuring their attendance at the preliminary inquiries (PI) or committal proceedings and trial if committed. The conditions are also to ensure that there is a reduced risk of absconding and a minimizing of the risk of any of the accused persons interfering with witnesses, the investigation or the course of justice.

Burden & Standard of Proof

[18] The standard of proof to be applied to the case at bar is the civil one, that is on a balance of

⁸ Factors identified by Lord Bingham in *Hunan –v- The State* [2005] UKPC

probabilities. The submissions as to who bears the burden is at variance in the cases at bar.

[19] State Counsel for the defendants contends in all their brief written submissions that the onus is on the claimants to persuade the court that there are exceptional circumstances existing in their individual cases as to why this court should grant them bail. It is their contention that the claimants have failed to adduce evidence or to establish or support their cases that exceptional circumstances exist.

[20] The claimants all contend that this is not so.

[21] Justice Persad in the Grenada Case of **Ruth James –v- the Commissioner of Police**⁹ made reference to the sections of the Constitution of Grenada which are the same as the provisions here in Dominica. The learned Judge also made reference to the judgment of the Learned Justice Brian Alleyne in the case of **An Application of Teddy Mc Donald to be admitted to Bail**. (Civil Suit 77 of 2000 Grenada) as “ ... a detailed and comprehensive analysis of the law relating to bail”¹⁰.

[22] At paragraph 16 of his judgment Justice Persad had this to say

“It follows from the propositions extracted that in order for the Crown to successfully object to bail they must displace the presumption in favour of bail by satisfying the Court that there are substantial grounds for believing that the defendant, if released on bail would (a) fail to surrender to custody (b) commit an offence on bail or (c) interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.”

[23] Learned Counsel Mr Commodore on behalf of the Claimant Lewis submits that the prosecution counsel failed to have regard to the other factors and principles laid down by the Privy Council in the **Hurnam Case**¹¹ which must be taken into consideration by the court. Mr Commodore

⁹ CLAIM NO. GDAHCV 2012/ 0492

¹⁰ Ibid at paragraph 14

¹¹ At paragraph 15 of Lord Bingham’s judgment “It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable

asked this court to take into consideration these principles which were cited and approved in the Grenada Case of **Ruth Alisha James**¹² along with the principles as laid down by Mr Justice Brian Alleyne in the **Teddy Mc Donald case**¹³.

[24] Counsel Mr Commodore submitted that the burden of proof in the case at bar lies with the prosecution and not on the claimant as submitted by the prosecution counsel. He submitted that it is for the prosecution to show sufficient cause for the denial of bail and he relied on the case of **The Queen –v- Devon Ricardo Murray et al** a Jamaican case cited at paragraph 31 of the **Thelston Brookes Case**¹⁴. Counsel also cited **Hurnam** in support of his submissions in this regard that the onus is on the state and not on the detainee.

[25] Mr Commodore drew to this Court's attention that the prosecution in their objection to the bail application has failed to consider the grounds and factors to be considered by the court, further that they have not presented any evidence of conditions to support their contention or assist the court in considering their opposition to the granting of bail.

[26] The question of the evidential burden in bail applications was discussed by Wallace J (Ag) in the Nevisian case of **JesperQvist –v- The Commissioner of Police**¹⁵. The learned judge took guidance from the Cayman Island Cases of **R –v- Whom** and **R –v- Clarke** [2008] CILR 188 and the judgment of Chief Justice Smellie who having referred to the United Nations Convention for the protection of Human Rights and fundamental Freedoms and how it affected the Caymanian law said

grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail. ... The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of this paragraph, provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given. ..."

¹² Supra

¹³ Supra

¹⁴ Supra

¹⁵ CLAIM NO:NEVHCV2012/0136

*"The burden may not, therefore, be reversed, by placing it upon a defendant, without infringing that principle and the presumption of innocence itself. If a person is presumed innocent until proven guilty, he cannot be required to prove that there should be no infringement upon his liberty, while his guilt is yet to be established."*¹⁶

[27] The learned judge held that in considering whether to grant bail the court had to take into consider the applicable the principles of law and balance them against the public good and presumption of innocence. She said that the Court has to assess whether granting bail in these circumstances would be an unacceptable risk.

[28] Justice Wallace went on to say that

*"Such a determination is made where the court is satisfied that there is an unacceptable risk either that (a) the accused person, if released on bail would fail to surrender himself into custody in order to answer his/her bail or (b) he would commit an offence while on bail. It must be noted however that the burden of establishing either such risk lies on the Respondents"*¹⁷.

[29] In the Jamaican case of **Regina –v-Stewart, Joseph**¹⁸Mr Justice Sykes after reviewing the Constitutional principles and fundamental Constitutional norms that every person is entitled to liberty and the presumption of innocence said

*"The consequence is that no citizen has to justify why he should be free. The common law established this and now the constitution provides for this. The burden is on those who want to deny him his fundamental human right to liberty to show why he should not be granted his freedom."*¹⁹

¹⁶ Ibid at paragraph 16

¹⁷ Ibid paragraph 15

¹⁸ [2014]GCCCD 1 The Supreme Court of Jamaica

¹⁹ Ibid paragraph 15

[30] In the **Thelston Brookes case**²⁰ both counsel were in agreement that the onus lay on the prosecution to show why detention of the Applicant should continue and not for the Applicant to justify why he should be allowed to enjoy his right to liberty. The learned judge held also that the standard was the civil standard on the balance of probabilities.

[31] It is therefore clear that the burden of establishing whether or not to grant these applicants lies with the respondent represented herein by the chambers of the Director of Public Prosecutions.

[32] Learned State Counsel from the Chambers of the Director of Public Prosecutions in all three cases at bar submit that it is the applicant who has to establish that there are exceptional circumstances to justify bail. They sought to rely on the decision of Mr Justice Thomas in the **Martin Seaman et al –v- Chief of Police**²¹ case. In that case, the learned judge in the second to last paragraph of his judgment said “...*There is nothing in the affidavit deposed by the applicants to indicate that these applications are exceptional cases in the context of a murder charge.*” Justice Thomas denied the applications for bail. Based on the law as I understand it and on the reading of the entire judgment of the learned Judge, learned Counsel to my mind is either clearly relying on only a part of the judgment or has misunderstood the entire judgment.

[33] Having due regard to the principles of law emanating from the jurisprudence on the granting of bail for serious offences I will now review each of the applications before the court.

[34] Respectfully adopting and following the guidance emanating from **Maloupe –v- The District Magistrate of grand Port**²² and approved by the Privy Council in **Hurnam –v- The State**²³ this court does not intend to conduct a detailed assessment or minute analysis of the evidence produced to the court in support of the applications.

²⁰ Supra

²¹ DOMHCV2015/071, 73 & 74

²² [2000] MR 264

²³ Op cit

Leon Etteinne

[35] Leon Ettienne ("Ettienne") aged 24 years has been charged for the murder of Telford Kerry George on the 4th July 2018 at Newtown.

[36] Ettienne swore to an affidavit in support of his application for bail on the 2nd May 2019.

[37] Firstly Ettienne avers that he suffers from migraine headaches and tendered a doctor's certificate in support of his application and that he does not receive any treatment for these headaches at the state prison. It is noted that the Doctor states that he has been treating Ettienne for "severe headaches" and that his family has a history of Migraine headaches. It is noted that the Doctor did not say he (Ettienne) suffers from migraines as averred. It is noted also that the doctor opined that these headaches can be mitigated by less stressful conditions.

[38] Ettienne also avers that he was close to a cousin of his who he says is a psychiatric patient who he looked after and that he has been made to understand that since his incarceration at the state prison his cousin does not want to go anywhere or take his medication or food and constantly asks for him. The deponent says this causes him great distress. It is noted that there is no independent evidence offered by the applicant to support his story in this regard.

[39] The applicant Ettienne in his affidavit briefly states his version of what happened on the morning of the 4th July 2018 in Newtown.²⁴ and makes reference to the reputation of the deceased and that the evidence as presented by the prosecution comes from persons who have an interest to serve because they were friends of the deceased.

[40] Ettienne further avers that he turned himself in with his then counsel some six days after the incident and that he had the opportunity to flee but that he did not do so. Further that he verily believes that he will be vindicated of the charge of murder brought against him.

²⁴ See paragraph 8 of the affidavit of Ettienne sworn in support of

JASON TELEMAQUE

[41] Jason Telemaque (Telemaque) aged 22 years old swore to an affidavit on the 16th April 2019 in support of his application for bail.

[42] He said he was arrested and charged on the 10th July 2019 for the murder of Telford Kerry George. He and Ettienne are charged for the same murder.

[43] Telemaque avers that prior to his being detained he lived with his mother, his younger siblings, his girlfriend and their two young children. That he worked as a labourer and that he assisted his mother with the finances of running their home and at the close of the tourist season he bore the entirety of the home finances. He further stated that since his incarceration he has been informed that his girlfriend has left his mother's home and left their two young children behind causing grave financial strain on his mother.

[44] Telemaque avers that his mother has informed him of her intention to leave Dominica to seek greener pastures and he fears if this happens his two young children will end up in foster care. He has stated that if he is at liberty he will be able to earn money that will alleviate the financial hardship being suffered by his family.

[45] Telemaque offers his versions of the events that happened on the 4th July 2019 essentially saying that yes he shot at the deceased but it's because he saw the deceased remove what appeared to be a gun from in his bus so he quickly fired several shots in the direction of the deceased and shouted to Ettienne who was riding the bike they were on to "go go go".

[46] Telemaque averred that based on his knowledge of the deceased that the deceased has shot and wounded persons he was not taking any chances and he was forced on the 4th July 2018 to defend himself and his friend Ettienne as he believed that they would have been shot by the deceased.

[47] Like Ettienne he averred that the witnesses for the prosecution all have an interest to serve as they were all friends of the deceased.

Evidence on behalf of the Chief of Police

(Against Ettienne and Telemaque)

[48] Sergeant Chaucer James gave evidence by affidavit on behalf of the Respondent in this matter objecting to the defendants Ettienne and Telemaque being granted bail.

[49] Officer James in response to Etienne's statement that he suffers from migraine headaches and that the prison authorities have refused him treatment averred that he has been informed by the Principal Officer at the Dominica State Prison and that he verily believes that Ettienne has at June 2019 only made only a single complaint of suffering from migraine headache on the 1st October 2018 and further that medical attention is available to all inmates every Thursday. The officer did not provide any further evidence in this regard.

[50] This court however takes note that on more than one occasion I have received sworn evidence from Prison officials and the doctor assigned to the prisons as to the medical attention offered to the inmates of the prison allowing me to take judicial notice that there is regular medical treatment available to the persons held at the Stock Farm Prisons. This court has received evidence under oath in previous matters that prisoners are taken to the Princess Margaret Hospital for treatment if and when necessary.

[51] Officer James provided as exhibits to his affidavit the written statements from eyewitnesses who all basically say the same thing as to what took place on the 4th July 2018 resulting in the death of Telford Kerry George. These are the witnesses whom the applicants seek to discredit.

Rodman Lewis (Lewis)

[52] In his affidavits sworn in support of his application Lewis denies the allegation and charge which he faces. He does not offer his version of the incident or of the facts as alleged by the State.

He simply denies the allegations which he is entitled to do. Lewis also does not offer any indication of his prospective defence again, he is fully entitled to do this.

[53] Lewis focuses on the delay and the length of time he has been on remand. He also speaks of being injured in the prison and his fear for his life. It is noted that he denies starting any fight in prison supposedly in response to the averments of Officer Chaucer James on behalf of the State. The affidavit of Officer James never accused him of starting any fight albeit officer James averred that Lewis was involved in a fight but denies that he Lewis was stabbed as he says he was. Lewis offered no evidence in support of his injuries.

[54] Lewis in his affidavit also spoke to the length of time his committal proceedings are taking and laid blame at the feet of the State for same. The State countered this by stating that the applicant is partially responsible for the delay because of their cross examination of the State's witnesses, which has in their view served to lengthen the process which was being done by paper committal. The State also made mention of the delays also caused by the damage and disruption caused to Dominica as a result of the passage of Hurricane Maria.

[55] Lewis drew to the court's attention that following the passage of the storm he could have made good his escape but he didn't do so in support of his position that he will make himself available for his trial.

[56] Much was made by Lewis of the about the statements regarding the facts arising from the incident resulting in him being charged.

[57] No information by way of disclosure was provided to this court in this application that would or could meaningfully assist this court to make the necessary assessment and to balance the interest of the applicant against that of the State. Neither have there been sufficient facts made available to the court to enable this court to assess the available evidence against the applicant so as to allow the court to make an assessment as to whether or not the applicant will present himself at the appropriate time to the court.

[58] Therefore in the circumstances this court is not seised with sufficient material to accede Lewis' application at this time.

Should bail be granted to the applicants?

[59] The dictum of Lord Bingham in the **Hurnam**²⁵ case provides this court with some assistance in considering the question at caption. At paragraphs 14 and 15 of his judgment he said

"14 In other words, it is only in exceptional circumstances²⁸ that a detainee provisionally charged with a serious offence like murder, attempted murder, conspiracy to commit murder or drug trafficking will be released on bail, the more so if, as is the case with a small jurisdiction like Mauritius, the police, the prosecuting authorities and judges and magistrates (judicial officers) are fully conscious of the fact that the law and order situation is everyday deteriorating and the scourge of drug consumption and trafficking is rampant. We consider judicial officers in Mauritius who have first-hand knowledge of the prevailing local conditions regarding law and order and organized crime should have a margin of appreciation in exercising their discretion and deciding on the need for a detainee to be admitted to bail, taking into account all the public interest grounds for refusing bail..."

"15. It is obvious that a person charged with a serious offense, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are no reasonable grounds to infer that the grant of bail may lead to such a result which cannot be often eliminated by the imposition of appropriate conditions, they afford good grounds for refusing bail."

[60] In the **Thelston Brookes Case the learned Judge said**

"... the exercise of a judge's discretion in admitting an accused person to bail calls for a balancing of the sides by weighing the interests of an accused person and his fundamental rights as guaranteed under the Constitution on the one hand, and the

²⁵ Supra at paragraph 12

interest and rights and freedoms of others and the public interest, being the sole qualifications in the said rights, or the other."²⁶

Public perception

[61] Is detention necessary in order to maintain confidence in the administration of justice? Would the public think justice was not properly administered if an accused was released in the circumstances? In this context, the public's view should notionally be represented by the concept of a fair minded right thinking and informed person who would take all the circumstances into consideration. The concerns that should be satisfied is whether or not it is likely that the accused persons would attend for trial or whether or not they would commit further offences or whether or not they would interfere with the administration of justice.

[62] Learned Counsel Dawn Yearwood Stewart on behalf of Telemaque and Ettienne in response to submissions made by the Prosecution cited learning and guidance to be obtained from Australia. Learned Counsel sought to augment her previous submissions to say that, the fact that the case has not as yet commenced at any stage, and that her clients have been on remand amounts to special circumstances which should be considered by the court in favour of Telemaque and Ettienne.

[63] Counsel in her submissions filed on the 17th July 2019 seems to accept that the onus rests solely on her client to establish and prove exceptional circumstances in their application for bail and cited the Australian position. Having reviewed the reference made by Counsel it seems clear to this court that the Australian cases refer to and are based solely on the Australian Bail Act which makes the situation distinguishable from the case at bar. The considerations are entirely different.

[64] As attractively presented as were these submissions, I did not agree with them.

Delay:

[65] Much has been made in all three applications on the issue of delay and it would be remiss of me

not to touch on this issue. In Dominica and indeed I dare say in the wider Caribbean the issue of delay has been plaguing our court systems. The courts have been undergoing physical and legislative changes to cut down and avoid these delays. It is recognised that these delays cause stress and possible injustice to the accused person who may be acquitted and the delays in our system contribute to the lack and loss of public confidence in the administration of justice in our territories. We are to consider also the impact these delays have on the victims of the crimes in our systems.

[66] The courts are required to balance the fundamental rights of the individual to a fair trial within a reasonable time against the public interest in the attainment of justice. This must be done in consideration of and in the context of the current system of legal administration and the prevailing economic, social and cultural conditions to be found in the country. This was discussed in the case of **Bell v Director of Public Prosecutions of Jamaica and another**²⁷ The Privy Council in this case went on to look at the inevitability of delays with some detail as it relate to Jamaica which are similar what we too face here in Dominica.

[67] When a criminal matter is commenced there are activities such as retention of counsel, bail hearings, police and administration paperwork, disclosure, etc. which takes some amount of time. The length of time in some cases will necessarily be influenced by local practices and conditions and should reflect that fact.

[68] A major delay which is inherent in our system which must be taken into account is, that the indictable or more serious matters proceed through paper committal or traditional preliminary inquiry and the culture in Dominica is for Counsel to seek to cross examine the witnesses as if they are in full blown trial which serves to further lengthen the time the matters reach to Jury trial. Therefore a longer time must be allowed for these cases to proceed through a “two-stage” trial process so to speak. It is noted that this two-stage process involves many adjournments for various reasons on both sides of the case.

²⁷[1985] AC 937, (PC)

[69] Some courts it has been noted, with the cooperation of counsel, have undertaken commendable efforts to change courtroom culture, maximize efficiency, and minimize delay by utilising the paper committal route in the way and manner that it is meant to be, thereby showing that it is possible to do better.

[72] It is noted that there are institutional and systematic delays in Dominica which have been caused by the often repeated and referred to post Hurricane Maria damage and effects there from.

[73] In the circumstances of the cases at bar, I am of the view that the delays in these cases do not amount to exceptional circumstances warranting the grant of bail.

Disposition:

[74] Having taken into consideration the applicants' constitutional rights to liberty and the exceptions to the said rights also the relevant test for the grant of bail and the facts pertinent to the cases before the court it is the considered view of this court, on the evidence, information and circumstances placed before me there is no substantial reason to grant bail and that the applications for bail must therefore be denied. This is without prejudice to the claimants' right to make future applications for bail if there is a sufficient change of circumstances.

[75] I wish to thank Counsel for their assistance in this matter.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar