

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

**SAINT CHRISTOPHER AND NEVIS  
SAINT CHRISTOPHER CIRCUIT**

**SKBHCV2024/0219**

In the matter of the Constitution of St. Christopher  
and Nevis, 1983, S.1. 881 of 1983, Sections 7, 10  
and 18

and

In the matter of an application for judicial review  
by way of prohibition

and

In the matter of a declaration that the protection of  
the fundamental rights and freedoms guaranteed  
under the Constitution of St. Christopher and  
Nevis are likely to be contravened in relation to the  
Claimant

**BETWEEN:**

**JONARD RAMPLIN**

Claimant

and

**THE ACTING SENIOR MAGISTRATE  
HER HONOUR YASMINE CLARKE**

1<sup>st</sup> Defendant

**THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS**

2<sup>nd</sup> Defendant

**Appearances:**

Mr. Terence V. Byron for the Claimant

Mrs. Simone Bullen Thompson, Solicitor-General, with her Ms. Kenetra Ramcharan, Crown  
Counsel, for the Defendants

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2026: March 16;  
June 12.  
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## JUDGMENT

- [1] **GILL, J:** A prison officer on drug charges seeks to block a particular Magistrate from trying his case. The issue has come about because the matter was heard by another Magistrate who demitted office without rendering a decision.
- [2] This action is brought by the claimant Jonard Ramplin by originating summons/fixe date claim against the 1st defendant, the Acting Senior Magistrate, Her Honour Yasmine Clarke, and the 2nd defendant, the Attorney General of Saint Christopher and Nevis. The claimant seeks judicial review by way of prohibition and declaratory relief under the Constitution of Saint Christopher and Nevis, contending that his right to the protection of the law has been infringed in the course of his impending retrial on charges of possession of cannabis and possession with intent to supply.
- [3] A major bone of contention between the parties is whether the learned Magistrate ruled that the claimant was not entitled to a transcript of the earlier proceedings, and whether such a ruling, if made, amounts to a denial of due process and fairness.

### **Background**

- [4] The claimant is a prison officer employed at His Majesty's Prisons since 2016. On October 4, 2022, he was arrested and charged with possession of cannabis contrary to section 6(2) of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act,<sup>1</sup> and possession of cannabis for the purpose of supply contrary to section 6(3) of the said Act ("the Drugs Act").
- [5] His trial commenced before Magistrate Fitzroy Eddy on September 11, 2023. The prosecution witnesses were examined and exhibits tendered. The material before this court reveals that the claimant declined to give evidence in his defence. The learned Magistrate adjourned the matter *sine die* following an exchange with Crown Counsel. The trial was

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<sup>1</sup> Cap. 9:08 of the Laws of Saint Christopher and Nevis

never resumed, and Magistrate Eddy subsequently resigned from office in or about April 2024.

- [6] On July 16, 2024, the claimant was told that his case would be retried before the 1st defendant, the Acting Senior Magistrate Her Honour Yasmine Clarke. His then counsel, Mr. Hesketh Benjamin, withdrew representation, leaving the claimant without formal legal representation. Counsel from Byron & Byron Chambers thereafter appeared on his behalf without fee.
- [7] At hearings before the Acting Senior Magistrate in September and October 2024, issues arose concerning the availability of exhibits and the entitlement of the claimant to a transcript of the earlier proceedings. Counsel for the claimant relied on the Privy Council decision in **Boodram v The State**,<sup>2</sup> submitting that the court system had a duty to ensure that a defendant had a transcript on a retrial.
- [8] On October 28, 2024, the Acting Senior Magistrate indicated her position in relation to the authority cited. The claimant contends that she ruled he was not entitled to a transcript. The defendants dispute this, asserting that she merely noted the absence of a transcript at that time.
- [9] Magistrate Eddy's notes subsequently became available and in March 2025, the office of the Director of Public Prosecutions served the transcript on the claimant's counsel. The defendants maintain that this provision resolves the issue. The claimant argues that the ruling itself, and the absence of affidavit evidence from the Acting Senior Magistrate, constitute a denial of due process.
- [10] The claimant accordingly filed this claim for judicial review on November 25, 2024, seeking prohibition against the Acting Senior Magistrate proceeding with his retrial, and declarations that his constitutional rights under sections 7 and 10 of the Constitution are likely to be contravened. Specifically, the claim sought the following relief: (1) an order prohibiting the

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<sup>2</sup> [2001] UKPC 20

1st defendant from further proceedings with the retrial of the claimant; (2) a declaration that the impending retrial of the claimant pursuant to section 6(3) of the Drugs Act is likely to contravene section 7 of the Constitution (protection from inhuman treatment) by reason of the mandatory minimum sentence of five years prescribed for that offence; and (3) a declaration that the impending retrial of the claimant is likely to contravene the protection of the fundamental rights and freedoms guaranteed under section 10 of the Constitution by reason of a failure of due process and of fairness.

### **Claimant's submissions**

- [11] In relation to Relief #3, based on the relief set out in the fixed date claim form, the defendants, in their written submissions, addressed the issue of breach of section 10 of the Constitution on the basis that the claimant is challenging his retrial (at all) on the drug charges.
- [12] At trial, learned counsel for the claimant, Mr. Byron, asserted that the claimant's challenge is not to the fact of a retrial, but to the fairness of a retrial before the 1st defendant, the Acting Senior Magistrate, Her Honour Yasmine Clarke. Learned counsel clarified that the claimant is not saying that there should not be a retrial. The claimant contends that the 1st defendant ruled that he was not entitled to a transcript of the earlier proceedings before Magistrate Fitzroy Eddy, and that such a ruling constitutes a denial of due process and a contravention of his constitutional right to the protection of the law under section 10 of the Constitution.
- [13] The claimant relies on the Privy Council decision in **Boodram v The State** which is authority for the proposition that the provision of a transcript is integral to ensuring fairness in a retrial. He argues that the refusal to provide a transcript in his case is unlawful and undermines the fairness of the proceedings. He further invokes the principle of the duty of candour articulated in **National Bank of Anguilla (Private Banking and Trust) Ltd (in Administration) and another v Chief Minister of Anguilla and 3 others**,<sup>3</sup> where the Privy Council emphasised the obligation of public authorities to furnish the court with all relevant information.

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<sup>3</sup> [2025] UKPC 14

- [14] The claimant also cites **Quorum Island (BVI) Ltd v Virgin Islands Environmental Council and The Minister of Planning**<sup>4</sup> to underscore that the decision-maker is the proper defendant in judicial review proceedings and must explain the reasons for the impugned decision. He submits that the absence of any affidavit evidence from the Acting Senior Magistrate herself is a breach of the duty of candour, leaving the court without a clear account of her ruling.
- [15] Learned counsel Mr. Byron emphasised that the case turns on whether the Magistrate ruled that the claimant was not entitled to a transcript. He argued that the affidavit of Inspector Phillip Eddy (the police prosecutor who now has conduct of the drug case against the claimant) is evasive, noting that while it records that the Magistrate “indicated the Court’s position” on October 28, 2024, it fails to state what that position was. Counsel submitted that if the court has difficulty in determining whether the Acting Senior Magistrate ruled that the claimant was not entitled to a transcript, it is as a result of the lack of the duty of candour on the part of the defendants.
- [16] Mr. Byron further made it clear that the claimant is not relying on section 10 of the Constitution in respect of delay as addressed in the defendants’ submissions.
- [17] As to Relief #2, the claimant accepts that, as pointed out by the defence, the mandatory minimum sentence in relation to section 6(3) of the Drugs Act has been struck down as unconstitutional, and therefore that matter falls away. His case is confined to the denial of a transcript and the fairness of a retrial before the Acting Senior Magistrate who made that ruling.
- [18] Learned counsel further submitted that the subsequent provision of Magistrate Eddy’s notes and transcript in March 2025 does not cure the defect. On the contrary, Mr. Byron argued that the fact that the transcript was provided makes it worse, as the claimant is now required to face retrial before a judicial officer who has made a decision that he should not have it.

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<sup>4</sup> BVIHCVAP2009/021

[19] The claimant therefore seeks an order of prohibition (Relief #1) restraining the 1st defendant, the Acting Senior Magistrate, Her Honour Yasmine Clarke, from proceeding with his retrial, and a declaration that the impending retrial before Her Honour is likely to contravene his constitutional right to the protection of the law under section 10 of the Constitution (Relief #3).

### **Defendants' submissions**

[20] The defendants submit that the decision of the Acting Senior Magistrate to proceed with the retrial of the claimant is lawful and within Her Honour's jurisdiction. They contend that the claimant's challenge misconstrues the nature of the proceedings on October 28, 2024, and that no denial of due process has occurred.

[21] In their written submissions, the defendants identify three issues:

- (i) whether the decision of the 1st defendant to proceed with the retrial is unlawful or otherwise amenable to an order of prohibition;
- (ii) whether section 6(3) of the Drugs Act, by reason of its mandatory minimum sentence, contravenes section 7 of the Constitution; and
- (iii) whether the impending retrial contravenes the claimant's right to protection of the law guaranteed under section 10 of the Constitution.

[22] In light of Mr. Byron's clarification and assertion that the parties have identified different issues, the learned Solicitor General Mrs. Bullen Thompson responded that Relief #3 was a very broad declaration which the defendants viewed, not as a challenge to the specific Magistrate, but to retry the claimant at all.

[23] On the second issue, the defendants point out that the mandatory minimum sentence in section 15(1)(a) of the Drugs Act has already been struck down as unconstitutional by Ventose J, as he then was, in **Shakespeare Southwell v The Attorney General of Saint**

**Christopher and Nevis and the Chief of Police**,<sup>5</sup> and therefore the claimant's challenge on that ground falls away.

- [24] The defendants argue that the claimant's assertion—that the Magistrate ruled he was not entitled to a transcript—is incorrect. They rely on the affidavit of Inspector Phillip Eddy, which states that the Magistrate merely indicated she had not seen any transcript from the earlier proceedings, and adjourned the matter at Counsel's request. They contend that the Magistrate did not make the ruling alleged by the claimant.
- [25] The defendants further rely on the affidavit evidence of Kirsty Lennon, Executive Officer of the Magistrates Department, which confirms that Magistrate Eddy's notes were located in December 2024, and that a transcript was prepared and served on the claimant's counsel in March 2025. They argue that the provision of the transcript conclusively resolves the issue, and that the claimant now possesses the very material he sought.
- [26] In light of the clarification as to the relief sought, Mrs. Bullen Thompson emphasised that the claimant's case has been narrowed to a procedural complaint against the 1st defendant, which could have been addressed by an application for recusal before her. Instead, the claimant has pursued judicial review, which the defendants submit is unnecessary.
- [27] The defendants rely on the Privy Council case of **Brandt v Commissioner of Police and others**<sup>6</sup> to demonstrate that it is an abuse of process to seek constitutional relief where a parallel remedy is available in the criminal proceedings.
- [28] They cite the case of **R (on the application of Parashar) v Sunderland Magistrates' Court**<sup>7</sup> to support the proposition that legal submissions on whether the rehearing ought to proceed and the form it should take ought to be dealt with by the Magistrate, and it is not for this court to instruct and/or direct the Magistrate on such matters.

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<sup>5</sup> SKBHCV2019/0057

<sup>6</sup> [2021] UKPC 12

<sup>7</sup> [2019] EWHC 514 (Admin)

- [29] The defendants also cite the Recording of Court Proceedings Act<sup>8</sup> and the case of **PT Ventures SGPS SA v Vidatel Ltd**<sup>9</sup> to demonstrate that Magistrate Eddy's notes constitute the proper record of the earlier proceedings and that the notes provided to the claimant are the official record.
- [30] The defendants further contend that the duty of candour has been discharged. The learned Solicitor General argued that it is not necessary for the 1st defendant herself to swear an affidavit, provided that the evidence filed on behalf of the defendants sufficiently sets out what transpired. She maintains that the affidavits of Inspector Eddy and Kirsty Lennon adequately record the relevant events.
- [31] The defendants conclude that the claimant is not entitled to the relief sought. They submit that prohibition is inappropriate, as the Magistrate has jurisdiction to retry the matter, and that a declaration under section 10 of the Constitution is unwarranted, since the transcript has been provided and no denial of fairness arises. Further, any application for recusal ought to be made to the 1st defendant instead of bringing a constitutional claim.

### **Issues**

- [32] Based on the evidence and the written and oral submissions of the parties, the court must determine:
- 1) Whether the 1st defendant, the Acting Senior Magistrate, ruled that the claimant was not entitled to a transcript of the earlier proceedings before Magistrate Eddy.
  - 2) If such a ruling was made, whether it amounts to a denial of due process.
  - 3) Whether the subsequent provision of Magistrate Eddy's notes and transcript in March 2025 cures any alleged defect.

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<sup>8</sup> Cap. 5.15 of the Laws of Saint Christopher and Nevis

<sup>9</sup> [2020] ECSCJ No. 256 at para. 14

- 4) Whether the duty of candour has been breached by the defendants in these proceedings; and
- 5) Whether the relief sought - prohibition of the 1st defendant from proceeding with the retrial, and a declaration that retrial of the claimant before the 1st defendant is in breach of section 10 of the Constitution - is appropriate in the circumstances.

### **Law and Analysis**

#### **Issue 1: Whether the 1st defendant ruled that the claimant was not entitled to a transcript**

- [33] The claimant's affidavit evidence is that on October 28, 2024, the learned Acting Senior Magistrate expressly ruled that he was not entitled to a transcript of the earlier proceedings. He relies on **Boodram v The State** to argue that such a ruling is unlawful and undermines fairness.
- [34] The defendants deny that any such ruling was made. Inspector Phillip Eddy's affidavit states that the Magistrate merely indicated she had not seen any transcript and adjourned the matter at counsel's request. At paragraph 30 of the affidavit, he expressly denies that the Magistrate said the defence was not entitled to a transcript.
- [35] The evidential record is therefore in conflict and leaves the court uncertain as to whether the learned Magistrate ruled as alleged by the claimant. This allegation is the crux of the claimant's case.
- [36] The court must therefore assess the competing accounts on the evidence available. Inspector Eddy's affidavit is equivocal, recording that the Magistrate "indicated the Court's position" but failing to specify what that position was. This omission is unsatisfactory and leaves the court in difficulty.

[37] I consider that in judicial review proceedings the claimant bears the burden of establishing the factual basis of his challenge. He must demonstrate, with sufficient clarity, that the decision complained of was made.

[38] I find that there remains genuine uncertainty as to whether the Acting Senior Magistrate ruled that the claimant was not entitled to a transcript. This unresolved tension will inform the court's consideration of the subsequent issues, particularly the question of due process and the duty of candour.

**Issue 2: If such a ruling was made, whether it amounts to a denial of due process**

[39] Section 10(1) of the Constitution of Saint Christopher and Nevis provides:

*10.-(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law.*

Section 10(2)(c) further guarantees that every person charged “shall be given adequate time and facilities for the preparation of his or her defence.”

[40] The claimant's position is that the denial of a transcript strikes at the heart of these guarantees. He relies on **Boodram v The State**,<sup>10</sup> Lord Steyn, under the rubric “*The fairness of the proceedings*”, stated:

“The duty rests on the court system to ensure that on a retrial counsel for the defence is provided with the transcript of the first trial, or relevant part of it. That was the approach adopted by the Privy Council in *Flowers v The Queen* [2000] 1 WLR 2396, 2415F-G, and their Lordships reaffirm it. But, as a minister of justice, there is a residual duty on the prosecutor to ensure that the transcript, or relevant part of it, is delivered to the defence for the purposes of a retrial. The Privy Council stated this duty in *Reid v The Queen* [1990] AC 363, 390H-391A; compare also *Charles v The State* [2000] 1 WLR 384, 390H-391C. In the case under consideration the transcript was never provided to Mr. Sawh.”

[41] The claimant further invokes the principle of candour articulated in **National Bank of Anguilla (Private Banking and Trust) Ltd v Chief Minister of Anguilla**.<sup>11</sup> At paragraphs 89 and 90, Lord Reed and Lady Rose stated:

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<sup>10</sup> [2001] UKPC 20 at para. 32

<sup>11</sup> [2025] UKPC 14

“Judicial review proceedings are not conducted in the same way as ordinary disputes between private parties concerned to protect their competing interests. The supervisory jurisdiction is designed to protect the public interest in the lawful use of the powers conferred under public law, as well as the private interests of those who may be affected by the abuse of those powers. It is intended to secure the constitutional value of the rule of law, to which public authorities, and the other parties to judicial review proceedings, are or should be committed. **In consequence, the parties to such proceedings are expected to ensure that the court is in possession of all the information which it requires to decide the case correctly. This places a particular obligation upon parties in situations where it is not possible for the court to assess the merits of an issue that has been raised unless the parties in question (usually the public authority against whom the claim is brought, but potentially another party to the proceedings) furnish the court with information which they alone are in a position to provide.**

“This obligation, usually described as the duty of candour, is well-established. For example, in *Bahamas Hotel Maintenance & Allied Workers Union v Bahamas Hotel Catering & Allied Workers Union* [2011] UKPC 4, Lord Walker, giving the judgment of the Board, said at para 23 that judicial review proceedings “are meant to be conducted with cooperation and candour”. In *Graham v Police Service Commission* [2011] UKPC 46, Sir John Laws said at para 18 that it “is well established that a public authority, impleaded as a respondent in judicial review proceedings, owes a duty of candour to disclose materials which are reasonably required for the court to arrive at an accurate decision”. More recently, in *Pyaneandee v Leen* [2024] UKPC 27, Lady Simler said at paras 42 and 47 (quoting Laws LJ in *R (Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1409, para 50) that **a respondent to judicial review is under “a very high duty ... to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide”**. Breach of the duty may (but will not necessarily) lead to the court drawing inferences which are adverse to the party in breach (*R v Civil Service Appeal Board, Ex p Cunningham* [1992] ICR 816, 822-824), as well as to the grant of orders for disclosure or orders for costs to mark the court’s disapproval of the conduct of the party concerned.” (*Emphasis added*).

[42] The claimant also relies on **Quorum Island (BVI) Limited v Virgin Islands Environmental Council and The Minister of Planning**,<sup>12</sup> where the Court of Appeal emphasised the opportunity for the decision-maker to explain the reasons for the impugned decision. The claimant alleges that this opportunity has been disregarded. He submits that the absence of

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<sup>12</sup> BVIHC VAP2009/021 at paras. 24 and 25

any affidavit from the Acting Senior Magistrate herself leaves the court without a clear explanation of her ruling, thereby compounding the denial of fairness.

[43] The defendants argue that the subsequent provision of Magistrate Eddy's notes and transcript cures any defect. They rely on the Recording of Court Proceedings Act which provides that the notes taken by the Magistrate constitute the official record of the court. They also cite **Brandt v Commissioner of Police** where the Privy Council reaffirmed that constitutional relief should not be sought where there is an adequate parallel remedy.

[44] I accept that the provision of a transcript is a critical safeguard in ensuring fairness at a retrial. The Privy Council in **Boodram** made it clear that on a retrial, it is the duty of the prosecution to provide the defence with a transcript of the previous proceedings. Therefore, if the Acting Senior Magistrate did rule that the claimant was not entitled to a transcript, such a ruling would be unlawful.

***Clarification on terminology***

[45] I observe that the proceedings before Magistrate Eddy were never concluded. No decision was delivered, and the matter was adjourned *sine die*. In such circumstances, the subsequent hearing before another Magistrate is more accurately described as a trial de novo, rather than a retrial in the strict sense.

[46] A retrial ordinarily follows the setting aside of a completed trial, whereas a trial de novo arises when earlier proceedings cannot be completed and must begin afresh. The fairness concerns, however, remain analogous.

[47] Accordingly, while the parties have referred to the impending proceedings as a "retrial", the correct terminology is a trial de novo. I apply, by analogy, the principles articulated in authorities such as **Boodram** which underscore the importance of transcripts in safeguarding fairness. Nevertheless, for consistency, I will retain the term "retrial" used by the parties.

**Issue 3: Whether the subsequent provision of the transcript cures any alleged defect**

- [48] The defendants submit that the transcript of Magistrate Eddy's notes, delivered to the claimant's counsel in March 2025, conclusively resolves the matter. They argue that the claimant now possesses the very material he sought, and that any complaint of unfairness has therefore fallen away.
- [49] The claimant contends that the subsequent provision of the transcript does not cure the defect. He argues that the constitutional violation lies in the ruling itself: the Acting Senior Magistrate denied him entitlement to a transcript, and that ruling remains unreversed. Learned counsel emphasised in oral submissions that it is of no moment that the claimant has the transcript, and asserted that the fact that he has it makes it worse.
- [50] The Privy Council in **Boodram** recognised the provision of a transcript as a safeguard essential to fairness. The principle is directed not only to the physical availability of the transcript, but also to the recognition of entitlement in law.
- [51] The defendants rely on the Recording of Court Proceedings Act which provides that the notes taken by the Magistrate constitute the official record of the court. They argue that once those notes were located, transcribed and served, the claimant's entitlement was satisfied.
- [52] I accept that the provision of the transcript is a significant step toward ensuring fairness. However, even if the transcript was unavailable at the time, in my respectful view, it was incumbent upon the Acting Senior Magistrate to rule that, as a matter of law, the claimant was entitled to it. That entitlement is not contingent upon administrative convenience. Accordingly, the proper course would have been for the Magistrate to affirm the claimant's entitlement to the transcript, while noting that it was not yet available. Such a ruling would have avoided the present dispute.
- [53] Therefore, I conclude that whether the defect was cured by the provision of the transcript depends entirely on the resolution of Issue 1- whether the 1st defendant ruled that the claimant was not entitled to the transcript. If the Magistrate ruled against entitlement, the defect is not cured by later provision. If she did not, then the transcript's delivery resolves

the practical difficulty, though I am of the view that the duty to affirm entitlement in law remained incumbent upon Her Honour.

**Issue 4: Whether the duty of candour was breached by the defendants**

- [54] The duty of candour is a constitutional and procedural safeguard in judicial review. It requires defendants, particularly public authorities, to place before the court a full and accurate account of the facts relevant to the decision under challenge. This duty is not adversarial; it is rooted in the principle that judicial review is designed to uphold the rule of law.
- [55] In **National Bank of Anguilla (Private Banking and Trust) Ltd v Chief Minister of Anguilla**,<sup>13</sup> the Privy Council explained that judicial review proceedings are intended to secure the constitutional value of the rule of law and that this places a particular obligation upon parties to furnish the court with information which they alone are in a position to provide. The Board emphasised that a respondent to judicial review is under a very high duty to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide.
- [56] The claimant argues that the defendants have failed to discharge this duty, because the Acting Senior Magistrate has not sworn an affidavit. He submits that without her direct account, the court cannot resolve the factual dispute as to whether she ruled that he was not entitled to a transcript.
- [57] The defendants respond that the requirement of the defendants to provide evidence that they intend to rely on does not mean that the 1st defendant has to give evidence herself, that she has to be an affiant, and that the duty of candour can be discharged through affidavits from officers of the court or other persons with knowledge of the proceedings. There is no breach of the duty of candour because the evidence put forward by the defendants says what transpired on the occasions when the claimant appeared before the 1st defendant.

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<sup>13</sup> [2025] UKPC 14

- [58] While the claimant criticises the absence of affidavit evidence from the Acting Senior Magistrate herself, invoking the duty of candour, I am not persuaded that it is desirable or necessary for a judicial officer, named as a defendant, to provide personal affidavit evidence. In my view, the duty of candour may be discharged through affidavits from officers of the court or other persons with knowledge of the proceedings.
- [59] To require judges or magistrates to swear affidavits in proceedings where they are named as defendants risks undermining judicial independence and blurring the line between adjudication and litigation. The duty of candour must therefore be balanced against the institutional position of judicial officers.
- [60] In **Warren v Warren**,<sup>14</sup> Lord Woolf MR held that while judges are competent to give evidence, they are not compellable in relation to matters of which they became aware relating to, and as a result of the performance of their judicial functions. His Lordship opined that “no judge in relation to his judicial functions is a compellable witness.”
- [61] In relation to lower courts, Lord Woolf noted (at p. 670 e) from the text Phillips that there-  
*‘is no objection to the judge of an inferior court being called in some circumstances, although it would seem highly undesirable to call such a witness unless there was absolutely no other means of proving some piece of evidence vital to the proceedings.’* [His Lordship’s emphasis]
- [62] The Court (at p. 670 g-j) referred to **Duke of Buccleuch v Metropolitan Board of Works**,<sup>15</sup> as the most impressive authority and endorsed the dictum of Cleasby B that with respect to judges, there are “grave objections to their conduct being made the subject of cross-examination and comment...in relation to proceedings before them; and as everything which they can properly prove can be proved by others, the Courts of law discountenance, and I think may say prevent them being examined.” Lord Woolf observed that this statement by Cleasby B made no distinction between different classes of judge.

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<sup>14</sup> [1996] 4 All ER 664 at 671

<sup>15</sup> (1872) LR 5 HL 418 at 433; [1861-73] All ER Rep 654 at 657

[63] These authorities illustrate that it is undesirable to compel judicial officers to give evidence in proceedings concerning their judicial functions. The rationale is twofold: first, to preserve judicial independence and avoid the spectacle of judges being cross-examined on their rulings; and second, because the duty of candour can ordinarily be discharged through affidavits of other officers of the court or persons with knowledge of the proceedings.

[64] I accept that the duty of candour requires the defendants to provide a full and accurate account of what transpired. The absence of clarity in Inspector Eddy's affidavit, places the court in difficulty. While it is not desirable for a judicial officer to provide affidavit evidence personally, the duty of candour requires that the defendants' evidence be sufficiently complete to enable the court to determine the issue.

[65] In my view, the affidavits provided by the defendants are incomplete. Inspector Eddy's affidavit records that the Magistrate "indicated the Court's position" but fails to specify what that position was. Was her position a ruling? If so, what did she rule? If she did not rule, given the claimant's assertion that she ruled, why is this not clearly averred? This is curious in light of Inspector Eddy's statement at paragraph 28 of his affidavit that paragraph 35 of the claimant's affidavit is admitted. Paragraph 35 of the claimant's affidavit reads:

*"On 14th October 2024, I appeared in Court again before Her Honour Magistrate Yasmin Clarke. Mr. Vincent Byron produced the case of BOODRAN v THE STATE, informed the learned Magistrate that it was a Privy Council case, which directed that the Court system had a duty to ensure that a defendant had a transcript on a re-trial. The learned Magistrate adjourned the re-trial to 28th October, 2024, **promising to read the case to rule on Mr. Byron's submission of a duty to provide the Defendant a transcript as part of a fair trial.**" (Emphasis added)*

[66] The omission by the defendants leaves the court without a clear account of the ruling alleged. The affidavit of Kirsty Lennon addresses the subsequent discovery and transcription of Magistrate Eddy's notes, and that the Magistrate's indication "that there is no objection to the Claimant being provided with a type written copy of Magistrate Eddy's notes in relation to the Claimant's matters as contained in Magistrate' Eddy's notebook", but does not shed light on what transpired on October 28, 2024.

- [67] The duty of candour requires the provision of evidence that is sufficiently clear and comprehensive to enable the court to determine the issues. Where the evidence is vague or equivocal, the duty is not fully discharged. The court is entitled to expect that the defendants' evidence will resolve, rather than perpetuate, factual uncertainty. In this case, the absence of a direct explanation from the Acting Senior Magistrate is not fatal, but the incompleteness of the defendants' evidence is troubling. In these circumstances, I find that the defendants have not discharged the duty of candour to the standard articulated in **National Bank of Anguilla v Chief Minister of Anguilla**. The lack of clarity in Inspector Eddy's affidavit leaves the court in difficulty, and the obligation of candour has not been satisfactorily met.
- [68] The defendants have breached the duty of candour owed to the court. That breach arises from the deficiency and equivocation in the evidence adduced on behalf of the defendants as to what ruling, if any, the Acting Senior Magistrate made in open court about the claimant's entitlement to a transcript.
- [69] It is important to be precise about the nature of the breach. I make a distinction between (a) a judicial officer being compellable to give evidence about matters arising from the performance of judicial functions and (b) the obligation of a defendant in public law proceedings to place before the court the material necessary to decide the claim. As the English Court of Appeal explained in **Warren v Warren**, judges are competent but not compellable witnesses in respect of matters arising from their judicial functions. The authorities caution against compelling judicial officers to be examined about their rulings. That principle, however, does not absolve the defendants from the duty of candour. Where the decision-maker is the proper defendant, the court is entitled to expect an evidential account sufficient to resolve the issues raised.
- [70] I also make a distinction from **Quorum Island** which is authority for the proposition that the person who made the decision should, where necessary, provide the authoritative account. In **Quorum Island**, the decision-maker was a minister of government. To my mind, the present case differs in institutional character. The 1st defendant is a judicial officer and not

a minister. The compellability principle in **Warren v Warren** therefore limits the court's power to require the Magistrate personally to give evidence about her judicial functions.

[71] Nonetheless, the underlying obligation to ensure that the court has the information necessary to decide the claim remains. Where, as here, the evidence adduced on behalf of the defendants leaves a material lacuna as to whether the decision-maker ruled as promised on October 14, 2024, the duty of candour is breached by that evidential deficiency even if the Magistrate is not personally sworn. The defendants' evidence was insufficiently clear about the Magistrate's ruling or position and thereby failed to reach the high duty of candour required in supervisory proceedings.

#### **Issue 5: Whether the relief sought is appropriate in the circumstances**

[72] In his originating motion/fix date claim form, the claimant sought (1) an order prohibiting the 1st defendant from further proceedings with the retrial of the claimant; (2) a declaration that the impending retrial of the claimant pursuant to section 6(3) of the Drugs Act is likely to contravene section 7 of the Constitution by reason of the mandatory minimum sentence of five years prescribed for that offence and (3) a declaration that the impending retrial of the claimant is likely to contravene the protection of the fundamental rights and freedoms guaranteed under section 10 of the Constitution by reason of a failure of due process and of fairness.

#### **Relief #1: Prohibition**

[73] Prohibition is a prerogative order directed to an inferior court or tribunal to restrain it from acting outside its jurisdiction or otherwise unlawful. It is preventive in character and may be granted to restrain unlawful proceedings before they culminate in a final decision. In the leading case of **R v Electricity Commissioners, ex p London Electricity Joint Committee Company (1920) Limited and others**,<sup>16</sup> Atkin LJ established the test for determining when courts can issue writs such as certiorari and prohibition thus:

“Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of

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<sup>16</sup> [1924] 1 KB 171 at 205

their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”

- [74] The authorities confirm that prohibition is available in principle where an inferior court proposes to act unlawfully, but its grant remains discretionary, requiring the court to weigh proportionality and the adequacy of alternative remedies.
- [75] The claimant's case for the making of a prohibition order is that the 1st defendant, in ruling that the claimant is not entitled to a transcript, acted unlawfully, and denied the claimant's constitutional right to a fair hearing; the 1st defendant has not reversed that ruling, and it is abundantly clear from a number of Privy Council rulings that it is an unlawful ruling; and not only has the 1st defendant not reversed her said ruling, she has refrained from giving evidence in this matter.
- [76] The defendants contend that the 1st defendant is acting within jurisdiction; that no definitive ruling denying entitlement to a transcript was made; and that, in any event, the transcript (or Magistrate Eddy's notes, the official record) has since been provided to the claimant's counsel. They submit that prohibition is not warranted because the proceedings are lawful and within the Magistrate's jurisdiction.
- [77] From the authorities relied upon by the claimant, I accept that prohibition is available prospectively. It may be used to restrain unlawful proceedings before a final decision is given where the inferior tribunal or authority is acting, or threatens to act, beyond its lawful powers.<sup>17</sup> I also consider that alternative remedies are relevant but not determinative. The existence of an alternative remedy (for example, appeal or an application for recusal) does not automatically preclude prohibition.<sup>18</sup> The court must exercise its discretion having regard to matters such as the adequacy and practicality of the alternative remedy and the seriousness of the alleged illegality.

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<sup>17</sup> See *Judicial Review* by Sir Michael Supperstone, James Goudie KC and Sir Paul Walker, 4<sup>th</sup> edition at para. 16.5.13; *Stones Justices Manual* (1967 Edition) at p. 311; *Halsbury's Laws of England* (3<sup>rd</sup> Edition) Volume 25 at para. 637; *The Supreme Court Practice* (White Book) for 1982 (Centenary Edition) Vol. 1 at p. 852.

<sup>18</sup> See *Turner v Kingsbury Collieries Ltd* (1921) 3 KB 169; *Reg. v Comptroller-General of Patents and Designs ex parte Parke, Davis & Co* (1953) 2 WLR 760

- [78] The claimant's case is that the 1st defendant ruled that he was not entitled to a transcript which ruling was unlawful and fatal to a fair retrial before her. I have found a breach of the duty of candour by the defendants arising from the deficiency and equivocation in their evidential account of what transpired in open court. That breach is material because it leaves the court without a clear account of the events of October 28, 2024.
- [79] Notwithstanding that breach, the court must still exercise its discretion to determine whether prohibition is the appropriate remedy on the present record. Two facts are of particular significance: (i) the transcript has been provided to the claimant's counsel; and (ii) the claimant has not applied to the Magistrate for recusal. The provision of the transcript substantially reduces the practical prejudice that the claimant originally alleged. The absence of a recusal application means the ordinary mechanism for addressing concerns about a judicial officer's continued participation has not been exhausted. The authorities relied upon by the claimant do not displace the court's duty to weigh these practical considerations. The remedy remains discretionary.
- [80] The court must balance the availability of prohibition against the ordinary remedies within the criminal process. In the present case, the claimant has not applied to the Acting Senior Magistrate for recusal. Recusal is the ordinary procedural mechanism to address concerns about bias or fairness arising from a judicial officer's prior ruling. Unless and until such an application is made and refused, the court is asked to intervene pre-emptively, restraining the Magistrate from proceeding at all.
- [81] In my view, while prohibition is not barred in principle by the existence of alternative remedies, the availability of recusal weighs heavily against granting it here. To grant prohibition without the claimant first pursuing recusal would be disproportionate and premature. The supervisory jurisdiction should not bypass the established mechanism for addressing judicial bias within the criminal process. The claimant cannot pre-suppose that a recusal application will be refused.
- [82] Accordingly, the court declines to grant prohibition. The claimant remains entitled to pursue recusal before the learned Magistrate.

**Relief #2: Declaration that mandatory minimum sentence contravenes section 7 of the Constitution**

[83] Having conceded that the objectionable provision has already been struck down in prior litigation, this head of relief falls away, and the claimant is not entitled to this declaration.

**Relief #3: Declaration that retrial before the 1st defendant contravenes section 10 of the Constitution**

[84] Section 18(2) of the Constitution provides:

*(1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.*

*(2) The High Court shall have original jurisdiction –*

*(a) to hear and determine any application made by any person in pursuance of subsection (1); and*

*(b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3)*

*and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 17 (inclusive):*

***Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.*** (Emphasis added)

[85] The supervisory jurisdiction is designed to protect the rule of law, but it is also a remedy of last resort. In **Brandt v Commissioner of Police**, Lord Stephens reaffirmed that judicial review should not be used where an adequate alternative remedy exists. In delivering the judgment of the Board, His Lordship stated:

“ First, to seek constitutional relief where there is a parallel legal remedy will be an abuse of the court’s process in the absence of some feature “which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate”. The correct approach to determining whether a claim for constitutional relief is an abuse of process because the applicant has an alternative means of legal redress was explained by Lord Nicholls, delivering the judgment of the Board in *Attorney General of Trinidad and Tobago v Ramanoop* [2006] 1 AC 328 at para 25, as follows:

“...where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court’s process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.”

There are examples of the application of that approach in cases such as *Harrisssoon v Attorney General of Trinidad and Tobago* [1980] AC 265 at 68, *Jaroo v Attorney General of Trinidad and Tobago* [2002] 1 AC 871 at para 39 and most recently, in *Warren v The State (Pitcairn Islands)* [2018] UKPC 20 at para 11.”

- [86] Learned counsel for the claimant clarified that Relief #3 is confined to a declaration that the impending retrial **before the 1st defendant** would likely contravene his constitutional right to the protection of the law under section 10. The claimant does not object to a retrial per se, but to a retrial presided over by the 1st defendant in light of her alleged ruling on transcript entitlement. This narrowing of the issue to retrial by the 1st defendant causes the court to repeat a major part of its reasoning for Relief #1.
- [87] I accept that the right to a fair hearing under section 10 encompasses adequate facilities for defence preparation, including access to transcripts where necessary. The transcript of the earlier proceedings has since been delivered to the claimant’s counsel, which substantially mitigates the practical prejudice originally alleged.

- [88] However, I have found that the defendants have failed to discharge the duty of candour. Notwithstanding that breach, the court must consider whether declaratory relief directed at the retrial before the 1st defendant is appropriate.
- [89] Judicial review is a remedy of last resort. In **Brandt v Commissioner of Police**, the Privy Council reaffirmed that judicial review should not displace adequate remedies available within the ordinary process. Where a party believes that a judicial officer cannot fairly preside, the proper course is to apply for recusal. No such application was made in the present case. The breach of the duty of candour is a serious matter and has been taken into account in the court's overall assessment of the case. It does not, however, automatically entitle the claimant to the relief he seeks in Relief #3 — a declaration that a retrial before the 1st defendant would contravene section 10. The court must still consider proportionality, the availability of alternative remedies, and whether the claimant has established that a declaration directed at the 1st defendant's continued involvement is necessary to prevent a real risk of unfairness.
- [90] Applying these principles, again I note that the transcript of the earlier proceedings has been provided to the claimant's counsel, substantially reducing the practical prejudice alleged. Further, the claimant has not sought the ordinary remedy of recusal before the 1st defendant. Where a litigant believes that a judicial officer cannot fairly preside, the proper first step is an application for recusal.
- [91] For these reasons, notwithstanding the breach of the duty of candour in the defendants' evidential account, in my view, Relief #3 would be premature and disproportionate on the present record. The claimant remains at liberty to apply to the Magistrate for recusal. The court records its disapproval of the defendants' failure to provide a clear evidential account and warns that continued evasiveness in similar circumstances may attract appropriate consequences of costs or otherwise.
- [92] In the circumstances of this case, I am not persuaded that Relief #3 should be granted. The availability of recusal constitutes an adequate alternative remedy. The provision of the transcript further diminishes the risk of unfairness. A declaration directed at the 1st

defendant's continued involvement would be premature and disproportionate. The court therefore declines to grant Relief #3.

### **Conclusion**

[93] The claimant seeks three forms of relief: prohibition, a declaration concerning the mandatory minimum sentence under the Drugs Act, and a declaration that a retrial before the Acting Senior Magistrate would contravene section 10 of the Constitution.

[94] The defendants have breached the duty of candour. The breach lies in the deficiency of the affidavits filed, which fail to disclose clearly what ruling, if any, was made in open court on transcript entitlement.

[95] As to prohibition, the existence of an alternative remedy is not in principle a bar, and prohibition may issue even absent a final decision. Nonetheless, prohibition is discretionary. The transcript has since been provided, and the claimant has not applied for recusal, which is the ordinary and adequate remedy within the criminal process. In these circumstances, prohibition would be disproportionate and premature.

[96] As to the mandatory minimum declaration, the claimant has properly conceded that relief in light of the prior striking down of the objectionable provision.

[97] As to the section 10 declaration, the court declines to grant Relief #3. Although the breach of candour is serious, the transcript has been delivered and recusal remains available. A declaration directed at the 1st defendant's continued involvement would be premature.

### **Order**

[98] Based on the foregoing, it is hereby ordered:

- 1) The claim is dismissed, in that:
  - i. An order prohibiting the 1st defendant from further proceedings with the retrial of the claimant is refused.

- ii. In light of the concession by the claimant, a declaration that the impending retrial of the claimant on the charge of possession of a controlled drug for the purpose of supplying to another contrary to section 6(3) of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act by reason that it is likely to contravene section 7 of the Constitution is refused.
  - iii. A declaration that the impending retrial of the claimant before the 1st defendant is likely to contravene section 10 of the Constitution is refused.
- 2) There is no order as to costs.

**Tamara Gill**  
High Court Judge

**By the Court**

**Registrar**