



**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

**Action Nos: CR 35/12 R v. THOMAS CHALMERS MISICK
CR 36/12 R v. MCALLISTER HANCHELL
CR 37/12 R v. MELBOURNE WILSON
CR 38/12 R v. CLAYTON GREENE
CR 40/12 R v. JEFFREY HALL
CR 44/12 R v. FLOYD HALL
CR 18/14 R v. MICHAEL MISICK**

THE QUEEN

V.

(1) MICHAEL MISICK, (2) FLOYD HALL, (3) MCALLISTER EUGENE HANCHELL, (4) JEFFREY CHRISTOVAL HALL, (5) CLAYTON STANFIELD GREENE, (6) THOMAS CHALMERS (“CHAL”) MISICK, AND (7) MELBOURNE ARTHUR WILSON

**EXECUTIVE SUMMARY OF
JUDGMENT ON DEFENCE APPLICATIONS FOR A STAY OF
PROCEEDINGS FOR ABUSE OF PROCESS**

Facts:

1. The Defendants were all on trial for various crimes, all under the umbrella of corruption in public office. They were charged for these crimes between 2011 and 2014. The trial commenced in December 2015 before Justice Paul Harrison, a retired Judge from Jamaica, and continued for five years. It had just entered its sixth year when the trial judge died on 7 February 2021.
2. On 1 March, the lead Prosecutor, Mr Andrew Mitchell QC, announced the decision of the learned Director of Public Prosecutions to continue with the prosecution of the Defendants in a new trial. A new Information containing 13 counts against the Defendants was filed on 3 March.
3. On 16 March, the 2-7 Defendants filed a joint application to stay criminal proceedings ongoing against them for abuse of process, or for being otherwise unfair. The first Defendant filed a similar, but separate application. The Defendants sought to stay the continuation of the prosecution against them for various crimes, all under the umbrella of corruption in public office.
4. With regard to defence arguments seeking a stay for the reason that continuing the proceedings will compromise the integrity of the criminal justice system, the defendants all speak with one voice, alleging that it will be unfair to try them given the circumstances of the case. They assert that the court's processes are the subject of abuse, and that a retrial in the circumstances of the case, will be an affront to its dignity. They insist that a retrial will erode public confidence in the criminal justice system in this country as they point to the excessive, unjustifiable delay in the aborted trial and grave prejudice arising from it to them, as well as the cost to date to the country, which will only be compounded by a retrial. They maintain that their prejudice will be repeated in a retrial of the magnitude presented by the new Information, and urge the court to protect its integrity by not countenancing it.
5. The Crown addressed the Defence arguments, submitting that the delay is attributable mainly to the conduct of the Defendants and the judicial stance, and the

defendants have not demonstrated, beyond their extensive complaint above delay in the aborted trial, how they will be prejudiced in a new trial as they are required to do. They deny that the new trial will be unmanageable, nor that there has been any prosecutorial manipulation, nor that there is insufficient evidence.

6. The issues addressed by the court were: (i) whether the defendants have demonstrated that they are incapable of having a fair trial, (ii) whether they have demonstrated that it will be unfair to try them, or that doing so will bring the criminal justice system into disrepute, and (iii) whether or not the grant of a stay of the proceedings is that appropriate remedy upon a successful demonstration of issues 1 or 2.

Held: Temporary stay of proceedings ordered on the ground of a lack of a fair trial on the new Information date 3 March 2021 until 31 May 2021. On or before the 31 May, the Prosecution, if desirous of continuing with the prosecutions, must present to the court, severed Informations to make possible, expedited trials. Should the Prosecution fail to comply with the time, and/or fail to sever the trials such as will permit speedy retrials as ordered, the stay may be made permanent on the application of any or all of the defendants on, or after 31 May 2021, or on the court's own motion.

Reasons:

1. With regard to the first issue, the court held that the test to be applied is that it will be impossible to have a fair trial on the preponderance of probabilities, the burden of proof laying on the defence. The authorities are clear that a finding of unjustifiable delay does not automatically lead to a finding of the lack of a fair trial for which proceedings may be stayed. After carefully considering the possibility of a cure, a fair (re)trial will only be achievable after the excessive delay seen in this matter, if drastic change is brought to the new Information by severing the trials (paras 165-191). **Attorney General's Reference (No. 1 of 1990)** [1992] QB 630, p 644 APPLIED, **Attorney General's Reference (No. 2 of 2001)** [2003] UKHL 68, para 13 APPLIED; **Dyer v Watson** [2002] 3 WLR 1488 at 1527 B-C CONSIDERED, **R v Telford Justices ex parte Badhan** [1991] QBD 78 at pp 91C-92C CONSIDERED. The court further found that:
 - a. it agreed with the Defendants' submissions that the first trial was unmanageable with a 17 count Information against 9 Defendants and 108,075 pages of evidence, which expanded by 61,891 more pages during the course of the trial. The new trial is also of giant proportions and will not likely be concluded in a year. It will not produce a fair trial for any of the defendants after the long period of delay which is sure to impact their defence (paras 199-226).

2. With regard to the second issue, the court held that the authorities are agreed that what will lead to a stay is where the moral integrity of the court will be compromised which is mostly found in ‘but for cases’, that is where, but for executive or prosecutorial (including police) misconduct, the prosecution would not even take place. That is not the case here (paras 149- 157). **R v Maxwell** [2010] UKSC 48 CONSIDERED; **R v Latif and Shahzad** [1996] 1 WLR 104 CONSIDERED. The court further found that:
 - a. On an objective standard, criminal proceedings that are just shy of a decade and a trial which in entering its sixth year was far from concluded as the defence had just opened its case is unreasonable delay. It found that of the 1,879 days that elapsed between the trial date in 2015 and the last day of sitting, only 512 days were used as sitting days. These are proceedings which began for most of the defendants in 2012 (2011 for the second and seventh defendants, and 2014 for the first defendant) (paras 115-123). **Attorney General’s Reference No. 2 of 2001** [2004] UKHRR 193 at 73 APPLIED.
 - b. The submissions by the first, second, sixth and seventh defendants that there was prosecutorial manipulation of the new Information by having regard to their no case submissions did not find merit with the court. The court found that if the said submissions had found favour with Harrison J., an alteration in a retrial that appeared to have been informed by them, may have indeed constituted manipulation, but that is not the case here. The second defendant in particular, accused the prosecution of altering the Information, based on the evidence in chief given by him in the first trial, to deprive him of his defence. But this submission also failed as the court found that if giving evidence amounted to such prejudice against the second defendant, there could never be an order of re-trial. Also, in response to the submission that certain amendments to the Information allowed by Harrison J. have been taken advantage of in the new Information, the court found that the inclusion of what was a sought-for correction of the old Information, in the new Information would hardly qualify as a manipulation. (paras 130-138, 162).
 - c. With regard to the second defendant’s submission that the delay has caused a loss of evidentiary material and the death of his witnesses, the court found that he gave evidence for 34 or 35 days, with no complaint of his inability to make his defence and has therefore failed to establish that he could receive a fair trial (paras 140-142).
 - d. And with regard to the complaint of the enormous cost of the proceedings, the public is entitled to have the allegations against the defendants either properly determined or abandoned by the Prosecution at their own discretion. As the circumstance of a new trial has come up only because the trial judge

died, and not because of wrong doing on the part of the Prosecution, the court found that there is no danger of compromising the integrity of the court for the prosecution to be continued in order to bring these proceedings to a conclusion (para 163).

- e. The court found that the defendants have been put to unfortunate prejudice by having gone through an amorphous trial that moved at a snail's pace. But the court has to consider the seriousness of the offences, and must perform a balancing exercise. The authorities are agreed that what will lead to a stay is where the moral integrity of the court will be compromised which is mostly found in 'but for cases', that is where, but for executive or prosecutorial (including police) misconduct, the prosecution would not even take place. That is not the case here. (para 149- 157) **R v Maxwell** [2010] UKSC 48 CONSIDERED; **R v Latif and Shahzad** [1996] 1 WLR 104 CONSIDERED.