



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

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

AND

**MICHAEL MISICK, FLOYD HALL, MCALLISTER EUGENE HANCHELL, JEFFERY
CHRISTOVAL HALL, CLAYTON STANFIELD GREENE, THOMAS CHALMERS
("CHAL") MISICK, AND MELBOURNE ARTHUR WILSON**

CORAM: AGYEMANG CJ

**FOR THE CROWN: MR A. MITCHELL QC; WITH HIM MR. Q. HAWKINS AND MS
K. DUNCAN**

**FOR THE FIRST DEFENDANT: MR. R. ARMOUR SC, WITH HIM MR. A KAYNE
HANDED DOWN ON 7TH MAY 2021**

EXECUTIVE SUMMARY

**OF JUDGMENT ON DEFENCE APPLICATION FOR A STAY OF
PROCEEDINGS FOR ABUSE OF PROCESS IN HIS EXTRADITION
FROM BRAZIL**

Facts:

1. This judgment, while related to the application of the first defendant brought along with the other defendants for a stay of the criminal proceedings in **R v Michael Misick and others**, is concerned with the discrete point of the propriety of the first defendant's extradition from Brazil, as well as the propriety of the charges that have been preferred against him in the new Information of 3 March 2021.
2. The first Defendant applied for political asylum in Brazil on or about 24 November 2011. A warrant for his arrest was issued by the Magistrate's Court on 6 February 2012. On 25 September 2012, by an Exchange of Notes, the treaty was extended to include the Turks and Caicos Islands. On 7 December 2012, the first Defendant was arrested and detained in Brazil. The arrest was revoked by the Brazilian court, but he was re-arrested on 14 March 2013 and extradition proceedings began. On 20 October 2013, the Brazilian court ordered him to be extradited to the TCI on the charge of conspiracy to receive bribes. The legality of the extradition proceedings was raised and determined before Harrison J in December 2015.
3. The issues considered by the Court were: (i) whether the first Defendant's argument is *res judicata*; (ii) whether the extraditions of the first Defendant was contrary to law, as done in pursuance of a treaty extension that improperly targeted the first Defendant; (iii) whether the first Defendant can invoke the Treaty's protections; and (iv) whether under the Rule of Speciality, the first Defendant can be charged with any offences other than Conspiracy to Receive Bribes.

Held: (i) there was no wrongdoing in the extradition of the first Defendant either by the Government of the TCI (TCIG), the UK Government, the Foreign and Commonwealth Development office or any combination of the three; (ii) the first Defendant is entitled to invoke the treaty protections, and in particular, to invoke the Rule of Specialty in relation to the offences he has been charged with in this retrial; (iii) in accordance with the Rule of Specialty, counts 2, 4 and 9 of the Information, which charge the first Defendant with

Conspiracy to Defraud must be excluded from the charges against him and it will be an abuse of process to try him on these counts.

Reasons:

1. Justice Harrison determined the extradition argument in December 2015, just before the commencement of the trial, but that fact does not prevent this court of coordinate jurisdiction from revisiting the issue in the new trial due to the settled law that there is no issue estoppel regarding a matter decided in a criminal trial, in a subsequent trial. This is a recognition that a retrial is fundamentally a new trial which is neither encumbered nor informed by the first trial. In particular, this new trial is upon a new Information (paras 40-45). **DPP v Humphrys** [1977] AC 1 APPLIED.
2. The court found the first Defendant's argument that securing a change in legal relations between Turks and Caicos Islands and Brazil, just to bring him to the TCI to face prosecution was done *ad hominem*, without merit. The Court did not see how an extension which was provided for under section 16(1) of the treaty, without any limitation on when it should be applied for, would, when accessed, result in an abuse of process. The availability of extension of the treaty suggests that it was in the contemplation of the parties to be used whenever necessary. Thus, the securing of the extension by the Governor and/or TCIG was an executive act within the contemplation of the parties (paras 46-59). **Liyanage and others v Reginam** [1966] 1 All ER 650 (Privy Council Ceylon), **Ferguson v The Attorney General of Trinidad and Tobago** [2016] UKPC 2, *ex parte Bennett* [1994] 1 AC 42, **R v Mullen** [2000] QB 520 CONSIDERED.
3. The court found that the first Defendant was entitled to invoke the protections of the treaty. Upon the application of the **Extradition Act 2003 (Overseas Territories) Order 2016**, the first Defendant is entitled to invoke the Specialty Rule in accordance with section 17(2) of the Extradition Act. Although in the new Information, the charge is Bribery instead of Conspiracy to Receive Bribes, no issues arises, even though the extradition was sought on the inchoate offence rather than the substantive one. Further, the court held that as money laundering is an offence under Brazilian law, even if its ingredients are somewhat different from the definition in the TCI, the money laundering charge at count 13 of the Information is also an extraditable offence. However, the court found that the charge of Conspiracy to Defraud was outside what he was extradited for and the prosecution failed to discharge their burden to prove that Conspiracy to Defraud was indeed extraditable. (paras 60-87)