

1 **THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

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5 **INDICTMENT NOs: 81 of 2023 and 26 of 2024**
6



10 **R**

11 **V.**
12

13 **ANDREW DEVEROIX BENJAMIN**
14
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17 **Appearances:** **Mr. Gabriel Milton-Job, Crown Counsel, Office of the Director**
18 **of Public Prosecutions for the Prosecution**
19 **Mr. Clayton Phuran for the Defence on Ind. 81/2023**
20 **Mr. James Stenning for the Defence on Ind. 26/2024**
21

22 **Before:** **The Hon. Justice Cheryll Richards KC**
23

24 **Submissions Heard:** **17th April 2024**
25

26 **Ruling:** **1st May 2024**
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30 *Criminal Law - Application for Joinder of Indictments, Section 161 of the Criminal Procedure*
31 *Code (2021 Revision), Principles on Joinder.*
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RULING

1. The prosecution applies for the joinder of two Indictments. Indictment 81/2023 charges the defendant with one count of Theft contrary to s.241 of the **Penal Code** (2022 Revision) and three counts of Dishonestly Obtaining a Pecuniary Advantage by Deception contrary to s.248 of the **Penal Code** (2022 Revision). These charges span the period 1st October 2021 to 8th August 2022.
2. The second Indictment, Indictment 26/2024, charges the defendant with two counts of Dishonestly Obtaining a Pecuniary Advantage by Deception contrary to s.248 of the **Penal Code** (2022 Revision), one count of Making a Document Without Authority contrary to s.293 of the **Penal Code** (2022 Revision), and a related count of Uttering a False Document contrary to s.289 of the **Penal Code** (2022 Revision). Both counts relate to the same document, an employment letter. There are two other counts on this Indictment. One is Forgery contrary to s.285 of the **Penal Code** (2022 Revision) and a related count of Uttering a False Document contrary to s.289 of the **Penal Code** (2022 Revision). Both counts relate to the same documents, a Bank account statement.
3. The application for joinder is made pursuant to s.161 of the **Criminal Procedure Code** (2021 Revision). This states: -

“161. (1) More than one offence may be charged together in the same indictment if the offences charged are founded on the same facts or form or are part of a series of offences of the same or a similar character.

(2) Where more than one offence is alleged in an indictment a description of each offence so charged shall be set out in a separate paragraph of the charge or indictment called a count.

(3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in that person’s defence by reason of being charged

1 *with more than one offence in the same charge or indictment or that for any other*
2 *reason it is desirable to direct that the accused person be tried separately for any*
3 *one or more offences alleged in a charge or indictment the court may order a*
4 *separate trial of any count or counts of such charge or indictment.”*
5

6 4. The application for joinder is opposed by both defence Counsel, Mr. Clayton Phuran on
7 Indictment 81/23 and Mr. James Stenning on Indictment 26/24. The primary basis for
8 the opposition is the submission that the offences cannot properly be regarded as a series
9 of offences given the time span and the nature of the offences. It is argued that they are
10 not of the same or similar character. It is also submitted that a joint Indictment would
11 make the case unduly complex for a jury and that different Counsel have been appointed
12 by the Legal Aid Department in respect of each Indictment and have already done work
13 on the separate cases.

14
15 5. All Counsel have referred the Court to the leading cases of *Ludlow v Metropolitan Police*
16 *Commissioner*¹ and *R v Baird*² with respect to similar legislation in the United Kingdom.
17 Defence Counsel Mr. Stenning has also cited the case of *Andrew Novac and Others*³.
18 Mr. Phuran has drawn the Court’s attention to *Blackstone’s Criminal Practice 2024*,
19 paragraphs D11.66 to D11.70. The Court has read and considered all of this material.

20
21 6. The essential principles to be gleaned from the cited cases may be summarised in the
22 following way. In *Ludlow*, Lord Pearson emphasised the importance of there being a
23 series of offences of a similar character. The learned Judge stated that for this purpose
24 there has to be a nexus between the offences to be joined. It was said that a nexus is a
25 feature of similarity which in all the circumstances of the case enables the offences to be
26 described as a series. The conclusion in that case was that two offences of Attempted
27 Larceny and Robbery with Violence could properly be joined in one Indictment. They
28 had been committed in neighbouring public houses within sixteen days of each other and

¹ [1971] A.C. 29

² [1993] Crim L. R. 778

³ [1977] 65 Cr. App. R. 107



1 were a series of offences of a similar character. They had the same essential ingredient of
2 actual or attempted theft.

- 3
4 7. The learned Judge referred to the practical issues and benefits of joinder. It was noted
5 that experience has shown that jurors can be depended on not to infer that because an
6 accused is proved to have committed one offence, he must have committed others as well
7 and that jurors have been found to have been careful and conscientious in considering
8 each count separately. It was also stated that it would be oppressive to an accused, as well
9 as expensive and inconvenient for the prosecution to have two or more trials when one
10 would be sufficient: -

11
12 *“...Also in most cases it would be oppressive to the accused, as well as expensive*
13 *and inconvenient for the prosecution, to have two or more trials when one would*
14 *suffice. At any rate, in my opinion, the manifest intention of the Act is that charges*
15 *which either are founded on the same facts or relate to a series of offences of the*
16 *same or a similar character properly can and normally should be joined in one*
17 *indictment, and a joint trial of the charges will normally follow, although the judge*
18 *has a discretionary power to direct separate trials under section 5 (3).*

19
20 ...

21
22 *The judge has no duty to direct separate trials under section 5 (3) unless in his*
23 *opinion there is some special feature of the case which would make a joint trial of*
24 *the several counts prejudicial or embarrassing to the accused and separate trials*
25 *are required in the interests of justice. In some cases the offences charged may be*
26 *too numerous and complicated (King (supra), Bailey (1924) 18 Cr.App.R. 42;*
27 *[1924] 2 K.B. 300 at p. 306) or too difficult to disentangle (Norman (supra)) so*
28 *that a joint trial of all the counts is likely to cause confusion and the defence may*
29 *be embarrassed or prejudiced.”*



1 8. In *Baird*, the Appellant had been convicted of two counts of Indecent Assault on two
2 boys. The time span between the offences was about nine years. The ground of appeal
3 was that the offences were improperly joined on the Indictment because they were not a
4 series of offences of the same or similar character. The English Court of Appeal held that
5 this joinder was appropriate and that: -

6
7 *“The correct approach was to discover whether the offences were linked by a*
8 *sufficiently close nexus to bring them within rule 9 of the Indictment Rules 1971 .*
9 *In the present case the judge had been entitled to hold that the counts could properly*
10 *be joined in one indictment, and had been justified in refusing to exercise his*
11 *discretion under section 5(3) of the Indictments Act 1915 to sever the counts,*
12 *because of the nexus between them. ...”*



13
14 9. The Court also stated that: -

15
16 *“ In the light of these authorities, and after carefully considering the submissions*
17 *put before us, we have concluded that the judge was entitled to hold that the various*
18 *counts could properly be joined in one indictment under rule 9, that he was justified*
19 *in refusing to exercise his discretion under section 5(3) to sever the counts, because*
20 *of the nexus between them, and that he was similarly justified in concluding that*
21 *the evidence relating to the complaints of B was capable of corroborating the*
22 *complaint of A and vice versa. Since there was no dispute about the identity of the*
23 *appellant, it was unnecessary for the prosecution to adduce evidence of such*
24 *striking similarity between the two sets of offences as to be comparable with the*
25 *signature of the appellant, but the similarities were truly remarkable.*

26
27 ...

28
29 *There was no coincidence in time or, for that matter, in place, but the prosecution*
30 *case could well be described as one of history repeating itself in the methods by*
31 *which and the motives with which the appellant built up a degree of familiarity with*



1 *the boys which resulted in the alleged offences.”*

2
3 10. It should be noted that the legislative provisions which were considered in those cases
4 are similar to the provisions of the Cayman Islands *Criminal Procedure Code*.

5
6 11. The prosecution has explained the alleged facts in the instant case in the following way.
7 The first Indictment relates to rental accommodation secured by the defendant and Mr.
8 Kirk Townsend by way of a lease dated 1st October 2021. The rental cost was \$2,000.00
9 per month. Each agreed to pay half of the rent. Count one of the Indictment refers to the
10 allegation that Mr. Townsend paid his half directly to the defendant. It is alleged that this
11 was never paid over to the landlord for the eight months to September 2022.
12 Additionally, over the period, the property manager questioned the defendant about non-
13 payment of the rent. On five occasions the defendant allegedly sent online banking
14 receipts to the manager and claimed that rent payments had in fact been made. Those
15 transfers were dishonoured by the Bank because of insufficient funds in the defendant’s
16 account. In interview under caution with the police in February 2023, the defendant
17 alleged that he had given the money to a female friend to pay on his behalf and that she
18 had not done so.

19
20 12. The second Indictment relates to the defendant’s rental of another property in May 2023.
21 It is alleged that on signing the lease he handed over a false employment letter. He was
22 to pay a deposit and the first months’ rent. He sent an electronic online bank transfer
23 receipt document evidencing that these payments were made but in fact no money was
24 transferred to the landlord because of insufficient funds. When the landlord asked for
25 further proof of payment, the defendant allegedly sent another document purporting to
26 show a transfer of funds which had not in fact been made. The Bank transfer document
27 that he sent is said to be false. In interview the defendant said that he had given the money
28 to another female friend of his and that she had not paid it over as requested by him.

29
30 13. The prosecution submits in summary that the offences alleged on both Indictments have
31 a similar character within the meaning of the *Code*. They are similar in law in that they

1 have as their root the element of dishonesty and at their branches they require the element
2 of fraudulent deceit. Counsel submits that the Indictments are similar because the
3 offences alleged had a central aim which was the deception of two property owners to
4 obtain a pecuniary advantage namely the evasion or deferment of a rental debt. Counsel
5 submits that the offences properly constitute a series of offences notwithstanding the
6 space in time between them. Counsel also submits that although there are no forgery
7 offences on the first Indictment, the forgery offences were part and parcel of securing the
8 rental properties and there is thus a sufficient nexus in respect of all the offences on the
9 Indictments.

10
11 14. Mr. Stenning submits that the offences in the Indictments do not and cannot be said to
12 constitute a ‘series of offences’. This given the almost two years between the time when
13 the particularised offences within the Indictments were allegedly committed. Counsel
14 submits that the notable issues against finding a nexus between the Indictments are as
15 follows: -

- 16
17 (a) “There is a lack of time proximity between the offences.
18 (b) The two Indictments involve different properties.
19 (c) The two Indictments involve different complainants, and
20 (d) The two Indictments incorporate counts that do not go to support a ‘series of
21 offences of the same or similar character’ given – Indictment One, First count
22 (theft) and in Indictment Two, Third Count (Making a document without
23 authority), Fourth Count (Uttering a false document, Fifth Count (Making a
24 document contrary to section 282 of the Penal Code (2022 Revision), and Sixth
25 Count (Uttering a False Document).”



26
27 15. Counsel submits that both *Ludlow* and *Baird* are distinguishable on their facts. In *Ludlow*
28 there were only sixteen days between the two offences compared to the two-year time
29 span in the instant case. In *Baird* the time span of nine years “was as remarkable as were
30 the similarities in the peculiarities/modus operandi of the sexual assaults, which (through
31



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3 joinder) allowed each boy to corroborate the complaints of the other”. Counsel submits
4 that this does not arise in the instant case.
5

6 16. Counsel also notes that both in *Baird* and *Novac* the Court was critical of the overloading
7 of the Indictment and emphasised the need to avoid lengthy and complex trials. The
8 Indictment in *Novac* contained nineteen counts against four defendants which had led to
9 a long and complex trial, and which had put an immense burden on the judge and jury.
10 The Appellate Court said that severance should have taken place to allow for shorter
11 separate trials or one moderately long trial.
12

13 17. Mr. Phuran submits that in the instant case, there are no legal similarities between the
14 offences charged on the first Indictment and those in the second Indictment.
15

16 18. Having considered all the submissions of Counsel and the authorities cited, I take
17 particular note that as the dicta in *Ludlow* makes clear, the offences do not have to have
18 the same legal title or description. Additionally, from the dicta in *Baird*, a distance in
19 time does not necessarily mean that joinder cannot be ordered. Each case must be
20 considered on its own facts to determine whether it meets the test and whether the
21 circumstances are such that there would be prejudice to the defendant such that joinder
22 ought not to be granted even if the test is met.
23

24 19. In this case there are striking features of factual and legal similarity. Each offence alleged
25 in the two Indictments has the factual base of a connection with a property leased or
26 rented by the defendant. Each offence has the legal element of dishonesty or deception.
27 There is an undoubted nexus in fact and in law. Such is the similarity of fact that the
28 explanation given by the defendant in each case is similar, being that the monies were
29 given to a female friend who did not make payments as requested by him.
30

1 20. Having considered all the submissions, I accept the submissions of the prosecution that
2 this is a classic case for joinder. There is in my view no apparent complexity for a jury
3 and with the assistance of all Counsel, jury directions can be prepared in such a way that
4 the jurors will be assisted to identify the critical issues in the case. Any possible prejudice
5 to the defendant by way of joinder can be dealt with as pointed out in the case of *Ludlow*
6 by proper jury directions that the jurors are to consider each offence separately.

7
8 21. There is a practical benefit in having one trial instead of two, and in having legal aid
9 payments for one trial instead of two. The fact that there will be one trial will also be of
10 benefit to the defendant in that he will not have to undergo the strain of two separate
11 trials. The fact that some preparatory work has already been undertaken by both Counsel
12 would be of benefit to one or other Counsel. The defendant will no doubt in the usual
13 way be afforded his choice of Counsel.

14
15 22. In my view it is appropriate for there to be joinder in the circumstances of this case. The
16 legal test is met. The application of the prosecution is granted and joinder of the two
17 Indictments is ordered.

18
19 **Dated this the 1st May 2024**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

20
21 **The Hon. Justice Cheryll Richards KC**
22 **Judge of the Grand Court**