

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **IND. No: 0005/2014**
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8 **MICHELLE BOUCHARD**
9

10 **V**

11 **REGINA**
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15 **Appearances:**

**Ms. Lee Halliday-Davis and Mr. James
Stenning of Stenning & Associates for the
Applicant/Defendant**

**Ms. Toyin Salako on behalf of the
Respondent/DPP**

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22 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

23 **Heard:**

26th June, 8th and 9th July 2015

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25 **RULING**

26 **ON APPLICATION TO VACATE THE TRIAL**

27 **LISTED FOR THE 27TH JULY 2015**
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29 1. It is over 2 years since the first hearing in the Summary Court. The trial is due to
30 commence on the 27th July 2015. The defence applies to vacate the forthcoming
31 trial date.

32 2. The Defendant is alleged to have stolen large sums from the bank accounts of
33 James Handford an elderly but very wealthy individual for whom the Defendant
34 worked.

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DEFENDANT'S TRIAL ON INDICTMENT 5/2014**

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3. The principal issues in the case are (i) what did the Defendant do, and (ii) was the Defendant authorized to act as she did. Did she transfer the sums as alleged for her own benefit? Did Mr. Handford authorize her activities? Did she forge his signature? Was the Defendant taking advantage of Mr. Handford's frailty and vulnerability? These are the main issues to be addressed. The Defendant's defence to the charges is unknown because she made no comment when interviewed by the Police. I read between the lines that her defence is that her conduct was authorized and Mr. Handford was her benefactor.

4. From July 2013 to July 2014 the Defendant was represented privately by very experienced local senior counsel led by a very experienced QC. Their services were terminated by the Defendant but not before the QC's unavailability had resulted in the moving of the trial from the 4th August 2014 to the 15th January 2015 for his convenience. There was never any suggestion that those lawyers were not trial ready. Nor did they apparently feel the need to seek expert assistance in the accountancy and handwriting fields despite being in funds and despite the suggestion in the recently served defence chronology that the Defendant requested her lawyers to obtain expert services in December 2013, February 2014 and June 2014. Also I note that the Defendant had contacted an expert via the internet in July 2013 and by email in November 2014. I will return to this topic later.



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5. From July 2014 until January 2015, the Defendant was represented privately by another highly experienced local senior counsel. I accept (because I am told by the defence) that attempts were made during the instruction period of Mr. 'A' (as I shall refer to him) to obtain the services of experts but nothing came of it. I shall refer to this aspect of the case again later.

I note that the court has never been informed by any previously instructed lawyers that such expert help was needed or was being sought at any stage in the proceedings.

6. Days before the January trial, Mr. 'A' applied unsuccessfully to discharge a restraint order made by Quin J. in October 2013.

7. For reasons unclear to me, the trial did not commence on the 15th January 2015 but next day Mr. 'A' effectively withdrew as trial counsel (although he did not do so formally until the 24th February 2015). His motive was said to be that he was unwilling to work on legal aid rates after the Court refused to discharge the restraint order. I am today informed that the Defendant had already paid around \$110,000 to the lawyers whose services she dispensed with and was being required to pay a further \$160,000 to Mr. 'A' to retain him for the trial. It is not clear why the issue of the defendant's ability to fund her defence only arose at the eleventh hour. What is clear now is that the Defendant had then \$115,000 available to her from which experts could then have been retained and paid.



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Mr. 'A' was otherwise trial ready as evidenced by the fact that he submitted his witness requirements, without reservation, two days before the trial date. The handwriting expert was required to attend for cross-examination but the Crown's forensic accountant was not fully bound.

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8. On that same day (16th January 2015) the Judge advised and urged the Defendant to apply straightaway for legal aid.

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9. The January 2015 trial date was accordingly vacated.

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10. The Defendant failed to apply for legal aid with any sense of urgency. It was not until the end of April 2015 that she did. I am told that she completed an application sooner but, that for reasons unclear, it was not submitted. Legal Aid was granted on the 26th May 2015 and Messrs. Stenning & Associates came on record. The Defendant was, it seems to me, pinning her hopes on some forlorn bid to appeal against or otherwise discharge the restraint order. No other adequate explanation has been provided to me save that she was trying to raise more private money to fund her private defence. After a few days spent quite properly clarifying the terms of the legal aid order, Messrs. Stennings were able to take full instructions. They received case papers from the Defendant and the case papers of Mr. 'A' via the Defendant who collected them from his office but failed to deliver them to her new lawyers for some 10 days. I can see absolutely no reason why she could not have delivered the papers to her new lawyers that very day however I am belatedly informed that the delivery of papers was "determined" to take place on the 26th June 2015 as "most" of the Stennings team were in BVI and the office lift was not functional.

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I would merely express surprise that, bearing in mind the need to act with dispatch in preparing this case for trial, early delays in preparation were caused by unavailability of counsel, an office lift malfunction and the absence of anyone fit enough to convey two boxes of paper to an office on the top floor of the office building where Messrs. Stennings are located.

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11. Meanwhile on the 19th June 2015 the Defendant's new lawyers applied for Legal Aid to be extended to cover a handwriting expert and a forensic accountant. That application was granted within a few days.

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12. The Defendant now applies to vacate the trial date of the 27th July 2015.

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13. The Crown opposes the application. In forceful submissions, Miss Salako has pointed out that the Crown has been ready to proceed at all times. The principal Prosecution witness is elderly and in poor health and unlikely to be able now to attend a trial. She says the defence and the Defendant have been responsible for all delay (excluding Messrs. Stenning & Associates from that criticism). Until the Defendant sacked her legal team leading to the vacation of the first trial date, Mr. Handford had been ready and able to give evidence in person. It is the Defendant's behaviour that has led to a trial date Mr. Handford is now too incapacitated to attend and it does not now lie in her mouth to complain about the difficulties caused to her by his absence from the trial. Particularly important is the Defendant's behaviour in failing to act promptly in obtaining Legal Aid knowing the trial date she faced and her failure, when privately instructing her lawyers, to obtain expert evidence using her unrestrained funds.

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14. I must keep in mind the cardinal guiding principle that the Defendant must have a fair trial.

15. The defence urge four matters:

- i. They require disclosure of all Butterfield bank account records relating to 2 specified accounts as ordered to be disclosed by Quin J. on the 6th June 2014. The records were not time-delineated but the judge ordered that all written instructions and file notes of oral instructions received from Mr. Handford during the preceding 5 years should be disclosed. I have been told by Miss Salako that the bank has agreed to disclose only documents relating to the period since the Defendant became a signatory to the accounts.

She assures me that the previous defence lawyers were clearly informed of the stance taken by the bank and it was made clear that, if they required more records, they would have to take the matter up with the bank themselves. It appears that they did not. The Defence say that they require more records in order to demonstrate the nature of certain banking transactions and particularly whether Mr. Handford was responsible for cheques used to buy presents or jewellery in the past before the Defendant was trusted to be a signatory to his accounts;



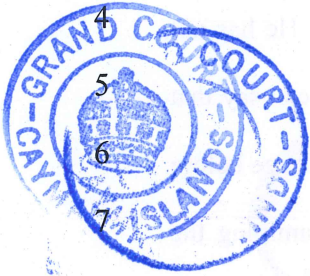
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ii. They require further medical records or even entertain the possibility of an application to have Mr. Handford examined by a defence psychiatric expert (for which they have not yet applied for legal aid and certainly have not yet raised with the Crown or with the Court until yesterday). However I am now informed that the defence intends to apply for Legal Aid to be extended for a medical expert to consider the medical state of Mr. Handford in the light of an anticipated application to read his statement at trial;

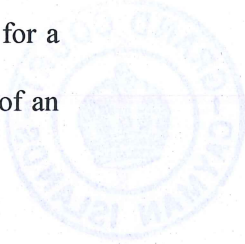
iii. They ask for evidence regarding another example of a girlfriend of Mr. Handford receiving gifts which were claimed later to be loans (this is apparently a recent discovery);

iv. They ask for the trial to be vacated in order to allow expert witnesses in the accountancy and handwriting fields to carry out their work. It is said that the forensic accountant instructed needs to see the 5 years of banking records alongside the other served and disclosed materials forming the evidence in the case. It is said that the handwriting expert needs to see 8 other original examples of Mr. Handford's handwriting (dating from around the time of the disputed signatures) in order to complete his work of examining the questioned signatures.

16. There is no really acceptable reason why such experts are being instructed at this late stage (though I acquit Messrs. Stennings of any blame). In the end, for whatever reason, no experts were instructed until recently.



EMBARGOED



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17. I am told that the forensic accountant Mr. Chris Johnson who is locally based cannot really begin work until he has all the banking materials ordered (by Quin J) to be disclosed. He has apparently said that he cannot be trial ready. He has not said that he cannot begin his work and at present I do not see how he can say that his task is impossible – in the absence of documents that came into existence before the Defendant became a signatory to the accounts - without first examining the disclosed records. Nevertheless, examination of the absent records can only be a comparatively small element of his work and may prove to be unnecessary surplusage in the light of what I have been told the accountancy issues are. Having seen the served papers in this case and the report of the Crown's accountancy expert, I cannot see any valid grounds for believing that, with some concerted defence effort, this expert cannot report and be ready for trial.

18. As for the handwriting expert, although he is based in the UK, I can see no reason for him not to be able to report on the authorship of the two questioned signatures in good time before trial. I am quite sure that the Crown and their own expert witness will cooperate in the production of any original documents and comparison handwriting (if they are in possession of any examples as required by the defence). This kind of co-operation between experts is common and sensible and can result in huge savings of time and expense. In passing I note that the expert approached by the Defendant in late November 2014 to examine a single signature was able to be ready for a trial six weeks later and was quoting a price for a report and its preparation expected to take, in total, around five hours of his time.

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I reject the suggestion that the handwriting expert cannot be ready in time for trial. It also appears that the Defendant obtained details of a hand-writing expert via ExpertPages in July 2013 but did not follow this up until she emailed the same expert in November 2014 for a quotation. These approaches seem not to have been followed up by the defence until now, many months later. The late instruction of experts is entirely due to the Defendant's failure to make a timely application for Legal Aid and to comply with the exhortations of Quin J. that she should do so urgently in her own best interests. I am driven to the conclusion that the Defendant thought that her own best interests were best served by delaying the trial and inconveniencing Mr. Handford.

19. The suggestion that time is required to raise evidence relating to other examples of Mr. Handford favouring other girlfriends with gifts and then seeking to explain the gifts as loans is one of those normal enquiries for the defence to make as and when such stories come to their attention. This particular incident is said to have reached the Supreme Court of Queensland and must therefore be in the public domain and the facts easily accessible to the defence. Such material is generally reduced to formal admissions if relevant and probative. Those matters cannot be sufficient to derail this trial.

20. The complaint that the medical records relating to Mr. Handford's mental condition are inadequate or incomplete is also not a matter which should properly obstruct the start of the trial. The evidence about Mr. Handford's condition has been available for some time. These issues can be addressed if and when the Crown applies to read his evidence.

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2 21. Mr. Stenning (who has appeared to assist Miss Halliday-Davis) has asked me to
3 consider the case of *DIO and RV5 Trust Limited v Regina*¹ in which Quin J was
4 considering whether restrained funds might be released to cover legal
5 representation. That case differs from the present in that Legal Aid was not
6 available to those Defendants whereas Legal Aid has been granted to this
7 Defendant. The judge in that case held that the absence of Legal Aid coupled with
8 the inability to fund a defence out of restrained funds was likely to result in the
9 Defendants being unrepresented at trial which would be likely to be in breach of
10 their right to a fair trial under Article 6(1) of the European Convention on Human
11 Rights. I do not find myself in any way assisted by that decision.

12 The Defendant has the benefit of Legal Aid, she is represented under her Legal Aid
13 certificate by extremely competent counsel well able to prepare and present her case
14 with consummate skill and from a basis of adequate preparation. Furthermore,
15 Legal Aid has been extended to cover the services of experts who, in my judgment,
16 have more than enough time and access to sufficient evidence to report on the
17 issues raised by this case in time for the trial.

18 22. As Miss Halliday-Davis has said, the case was accepted by her firm in full
19 knowledge of the impending trial date on the basis that they would be able to be
20 ready for trial. I can see no adequate reason why any competent advocate (and
21 Miss Halliday-Davis falls easily into that description) with the excellent back-up
22 support services of Messrs. Stenning & Associates cannot adequately prepare and
23 provide a first-class defence for this Defendant in her forthcoming trial.

¹ Reported in 2010 (1) CILR 339

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23. This application is therefore refused and the trial date remains fixed. However in order to ensure that there are no problems affecting this trial outside the control of the defence and in order to provide the defence with a little further leeway for additional preparation, I am prepared to postpone the start of the trial for one week to the 3rd August.

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24. Witness requirements are to be confirmed by the 16th July 2015. There is liberty to the defence to apply if difficulties in preparation are encountered.

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Dated this the 9th July 2015



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Honourable Mr. Justice Malcolm Swift (Actg.)

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Acting Judge of the Grand Court

