REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Sub-Registry-Tobago)

CV. No.2009 - 02631

BETWEEN

VERNON REID

Claimant

AND

HER WORSHIP THE LEARNED MAGISTRATE JOAN GILL

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mrs. D. Moore-Miggins for the Claimant.

Ms. D. Christopher-Noel; Mr. R. Singh and Ms. G. Jackman instructed by Ms. F. Ramdin for the Defendant.

JUDGMENT

1. In February 2007 four charges were laid against the Claimant by way of indictment arising out of an incident which allegedly occurred between September 2002 and March 2003. The charges were laid pursuant to the Indictable Offences (Preliminary Enquiry) Act Chap.12:01. These indictments were numbered 558; 559; 560 and 561 of 2007 respectively. After a number of adjournments all four indictments came up for hearing before the Defendant, the Magistrate, on 23rd June 2008. On the application of the prosecution the matters were adjourned by the Magistrate to "16th July 2008 last time for trial".

2. On three of the minute sheets, for indictments Nos. 558, 560 and 561, the Magistrate erroneously wrote the date 17th July 2008. On the other minute sheet, indictment No. 559, the Magistrate wrote the date 16thJuly 2008. On the adjourned date, 16th July, both the Claimant and his attorney attended court and were ready to proceed. There was no appearance of the complainant or any of the prosecution witnesses. Upon the request of the Claimant's attorney that the indictments be dismissed the Magistrate played back the electronic recording of the proceedings for 23rd June. The recording confirmed that the indictments had been adjourned to 16th July 2008 for trial. The Magistrate then discharged the Claimant on all four indictments.

3. According to the Magistrate in these proceedings, on 17th July on being informed by the complainant that the minute sheets for three of the indictments had 17th July as the adjourned date and that the witness summonses by which he and the other witnesses were guided also reflected that date as the date of hearing, she formed the opinion that she had no authority to treat with the indictments on 16th July and in "the interest of justice and given her lack of jurisdiction" she adjourned the hearing of complaints numbers 558, 560 and 561 to 22nd September 2008. She then gave instructions for notices to be sent to the Claimant for his attendance on that date. Insofar as complaint number 559 was concerned, since the adjourned date on the minute sheet was 16th July, the Claimant remained discharged on that indictment.

4. The minute sheets for all four indictments for the 23rd June reveal that on that date there was no appearance of the complainant, but that two prosecution witnesses were present and warned to return. While the minute sheets for all the indictments, save No. 559, reflect the adjourned date of 17th July the minute sheet for No. 559 reflects the adjourned date of 16th July.

5. According to the evidence of the police complainant on 10th July he attended the Magistrates' Court for the purpose of having issued witness summonses in the matters. He was

informed by the process clerk that the matters had been adjourned to 16th July. Accordingly he inserted that date on each summons and presented same to the clerk for filing. He says, a short while afterwards the clerk informed him that the actual adjourned date was 17thJuly 2008. He said when the summonses were returned to him he observed that the date the 16th was crossed off on each of the summonses and the date the 17th substituted. He annexes only those summonses relating to indictment No. 560 to his affidavit. No specific reference is made by him to indictment No. 559.

6. According to the Claimant on or around 29th September 2008 he received a notice dated 23rd September 2008 from the Magistrates' Court. This notice advised that indictment No. 561 was listed for hearing on 17th November 2008. The Claimant says that he received no similar notice with respect to the other indictments. On 17th November upon attending court the Claimant says that he was advised by the Magistrate that all four indictments had been reinstated. In truth and in fact only three of the indictments, Nos. 558, 560 and 561, had been reinstated.

7. On 16th March 2009 submissions were made to the Magistrate on behalf of both the Claimant and the Prosecution with respect to the reinstatement of the charges. On 22nd April 2009 the Magistrate rejected the Claimant's submissions and determined that she had the jurisdiction to proceed with the indictments. On the 22nd of May 2009 the prosecution instituted a new charge against the Claimant, No. 2009-01914. This new charge is identical to that contained in complaint No. 559.

8. The Claimant, by way of judicial review, seeks declarations and orders against (i) the decision of the Magistrate to proceed with the indictments on the ground that the decision to do so was unlawful, null and void in that it was made without jurisdiction and (ii) the

preferment of indictment No. 2009-01914 on the ground that to do so is an abuse of the process of the court. While denying the Claimant's entitlement to the reliefs sought on the merits the Defendant also submits that the reliefs should be refused because of the Claimant's material nondisclosure and the fact that the court is now called upon to make an academic enquiry.

Material nondisclosure

9. **Section 9 of the Judicial Review Act Chap. 7:08** states that the court "shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal the decision save in exceptional circumstances."

10. The Defendant submits that by failing to disclose that there was an alternative remedy available, namely a right of appeal, the Claimant has committed a material nondisclosure which disentitles him to relief. According to the submission, section 128 of the Summary Courts Act Chap. 7:08 gives the Claimant a right of appeal from the decision of the Magistrate. The Defendant submits that the Claimant failed to disclose the existence of that alternative remedy or his reasons for not availing himself of it.

11. It cannot be disputed that there is a responsibility on a claimant to disclose all relevant facts, which facts include the availability of an alternative remedy. This issue was however raised and dealt with at the permission stage, albeit in the absence of the Defendant. In accordance with the rules, in his application for permission to bring the proceedings, the Claimant, as he was required to do, in answer to the question whether there was any alternative form of redress stated that there was no alternative remedy. At the permission stage, as here, the Claimant submitted that there was no right of appeal under the Indictable Offences (Preliminary

Enquiry) Act Chap 12:01 and, even if section 128 of the Summary Courts Act applied to such proceedings, the section did not provide for an appeal to be lodged before a final determination of the matters before the Magistrate. In the circumstances of this case therefore the Claimant submitted that the remedy of appeal, if available, did not provide an appropriate alternative procedure. At the permission stage therefore the Claimant's position in law was that there was no alternative procedure to question, review or appeal the decision.

12. It is not in dispute that **section 128** of the **Summary Courts Act Chap. 7:08** provides for an appeal from decision of a magistrate in two circumstances. Firstly where a court refuses to make a conviction or order the complainant may appeal to the Court of Appeal against such a decision. Secondly where the court makes a conviction or order the party against whom the conviction or order is made may appeal to the Court of Appeal against such conviction or order. On the face of it and without the benefit of full arguments it would seem to me that this suggests a final order.

13. It would seem to me however that the first step is to ascertain whether, in the circumstances of this case, if the right of appeal exists, does it in fact preclude the Claimant from applying to the Court by way of judicial review. In my opinion it is only then that the issue of the non disclosure and its materiality becomes relevant. Some assistance is obtained from the case of **Regina v Hereford Magistrates' Court, ex parte Rowlands [1998] Q.B. 110**. Before the court in that case were three applications for judicial review from procedural orders made by magistrates. In each of the cases there was a statutory right of appeal to the Crown Court which the applicants failed to exercise. Instead each applicant sought judicial review from the magistrate's decision, in two of the cases, on the ground of procedural irregularity, in the other case, on the ground of the bias of the magistrate.

14. After reviewing the relevant cases and the traditional methods of approaching the court for remedies with respect to procedural irregularities in the Magistrates' Court, and in particular the use of the remedy of certiorari, and after examining the modern approach of the court with respect to alternative remedies the Court came to the conclusion that it was more important to retain the Divisional Court's supervisory jurisdiction over the Magistrates' Court by way of judicial review. This, it said, was necessary to ensure the maintenance of high standards of procedural impartiality and fairness. Accordingly, it was of the view that the existence of a right of appeal to the Crown Court, particularly if unexercised, should not ordinarily weigh against the grant of leave to apply for judicial review.

15. According to Lord Bingham of Cornhill CJ:

> "While we do not doubt that **Ex parte Dowler [1977] Q. B. 911** was correctly decided, it should not in our view be treated as authority that a party complaining of procedural unfairness or bias in the magistrates' court should be denied leave to move for judicial review and left to whatever rights he may have in the Crown Court. So to hold would be to emasculate the long established supervisory jurisdiction of this court to the magistrates' courts, which has over the years, proved an invaluable guarantee of the integrity of proceedings in those courts. The crucial role of the magistrates' courts, mentioned above, makes it more important that the jurisdiction should be retained with a view to ensuring that high standards of procedural fairness and impartiality are maintained.
>
> Two notes of caution should however be sounded. First, leave to move should not be granted unless the applicant advances an apparently plausible complaint which, if made good, might arguably be held to vitiate the proceedings in the magistrates' court. Immaterial and minor deviations from best practice would not have that effect, and the court should be respectful of discretionary decisions of magistrates' court as

of all other courts. This court should generally be slow to intervene and, should do so only where good (or arguably good) grounds for doing so are shown. Secondly, the decision whether or not to grant relief by way of judicial review is always, in the end, a discretionary one. Many factors may properly influence the exercise of discretion, and it would be both foolish and impossible to seek to anticipate them all. The need for an applicant to make full disclosure of all matters relevant to the exercise of discretion should require no emphasis. We do not, however, consider that the existence of a right of appeal to the Crown Court, particularly if unexercised, should ordinarily weigh against the grant of leave to move for judicial review, or the grant of substantial relief, in a proper case.": **page 125**

16. So too in our jurisdiction, despite the existence of the right of appeal, the remedy of certiorari has from time immemorial been used to correct procedural lapses and irregularities occasioned by magistrates in the magistrates' court. In fact it can be argued that the use of the judicial review procedure in these circumstances provides a quicker, more easily accessible and effective remedy than the appeal procedure. In these circumstances, in my view, it remains the more suitable remedy. In the instant case the claimant alleges procedural irregularity. The fact that the common law principle that judicial review is the remedy of last resort is now reflected in the legislation does not in my opinion make any difference.

17. Even assuming the existence of a right of appeal from the decision of a magistrate in a preliminary enquiry and even assuming that an appeal presents an appropriate alternative procedure to question, review or appeal the decision of the Magistrate. It would seem to me that given: (i) the traditional supervisory role of the High Court with respect to procedural lapses and irregularities by magistrates; and (ii) the fact that in circumstances such as these the remedy of judicial review is faster and more effective than the appeal process, amount to

exceptional circumstances within the meaning of section 9 of the Judicial Review Act justifying the bringing of an application for judicial review. In the circumstances permission to bring these proceedings was granted.

18. The fact that the Claimant may not have in his application disclosed the existence of a right of appeal is therefore not material consideration. In any event it is clear that rather than not being disclosed the Claimant took a position in law that there was no alternative procedure to challenge the decision. This is reflected in the documents placed before the court and the position taken by him at the permission stage.

Is the application purely academic?

19. The Defendant submits that in the end of the day, even if the Claimant succeeds, since there has not been a determination of the charges on the merits, there is nothing to prevent the re-laying of the said indictments. While that may very well be the position, it seems to me that, what is at stake here is the integrity of the proceedings before the Magistrate. As was said in the case of **R v British Broadcasting Corporation ex p Quintavelle (1998) 10 Admin LR 425** it is sometimes appropriate to approach the case in terms of the need for guidance and issue a general principle rather than the merits and prospects of the success of the individual case. In that case it was suggested that two questions were relevant to this approach: (i) whether there is any remedy which the claimant could be granted which would be of value to the decision maker; and (ii) whether the present application is an appropriate vehicle for such guidance. In my opinion the answer to both these questions is yes.

20. An aside, with respect the management aspect of this case, it would seem to me that such a submission ought properly to be made at the case management stage. In

circumstances where there is merit in the submission a lot of time, energy and costs could be saved by dealing with this submission early in the proceedings, whether by way of submissions at a case management conference or as a preliminary point.

Did the magistrate have the jurisdiction to reinstate the charges?

21. The question for my determination here is whether the Magistrate became functus officio when she discharged the Claimant on the three indictments. This is the crux of the Claimant's case. In my opinion this is the issue that reflects the need for guidance. The Claimant submits that upon making the order discharging him on the 16th the Magistrate was in fact functus officio. As a result all subsequent decisions by her with respect to those three indictments were taken without jurisdiction. While not denying that the indictments were adjourned by her to the 16th July, the Magistrate reasons that since the proceedings reflected an adjourned date of the 17th July, and since the summonses sent out to the witnesses reflected that date, she in fact had no jurisdiction to deal with the matters on the 16th. Accordingly the hearing on the 16th was a nullity. The effect of which was to allow her to retain jurisdiction over the indictments until their final adjudication.

22. The cases relied on by the Magistrate in support of this position, in my view, do not assist. In **R v Midhurst Justices ex parte Thompson [1973] 3 All ER 1164** at the conclusion of the prosecution's case, the chairman of the justices immediately said: "there will be a conviction". The clerk to the court then pointed out the mistake. The matter was then adjourned to the afternoon to allow for the consideration of what should be done. At that time the justices then proposed that the matter be reheard before another panel of justices that day or another day. The defendant, of the view that the justices were functi officio, approached the Divisional Court

for an order of certiorari to quash the conviction pronounced. Recorded on the proceedings before the justices was the following note:

> "Submission of "no case to answer" on behalf of the defendant not accepted. The court having announced conviction before ascertaining whether or not the defendant wished to give or call evidence, hearing adjourned sine die without proceeding to final adjudication."

In fact no sentence had as yet been pronounced.

23. In these circumstances, the Divisional Court was of the opinion that there had not been a final adjudication of the matter. The justices were in those circumstances still seized of the matter and in the circumstances could properly have made the order for rehearing before a different panel. The court, in that case, adopted the position and the statement of Lord John in **S (an infant) v Manchester City Recorder [1969] 3 All E.R.1230** to the effect that a court "retains full jurisdiction over all matters before it until sentence, that is until the final adjudication of the matter".

24. In the instant case the Magistrate discharged the Claimant. Upon the discharge of the Claimant there was clearly nothing left to be done by the Magistrate with respect to any of the four charges. It cannot be disputed that in these circumstances there was a final adjudication on the matter.

25. In any event the Magistrate submits that the court cannot be "functus" where the decision is taken in proceedings which are a nullity. In this instance the defendant submits the decision to discharge the Claimant was a nullity because the Magistrate lacked the jurisdiction to do so. According to the submission: section 6 of the Summary Courts Act confines the jurisdiction of magistrates to the four corners of the statute; since pursuant to section 54 of the

Summary Courts Act a magistrate is only empowered to hear a matter on the date and time mentioned in the summons; and since with respect to all the indictments, save number 559, the date on the summons was 17th July 2008, the Magistrate had no jurisdiction to hear the indictments on 16th July. The fact that she may have intended to adjourn the proceedings to the 16th July is, the defence submits, irrelevant. What is relevant is the date that appeared on the witness summonses. According to the submission the action of the Magistrate in discharging the Claimant on three of the indictments on 16th July being a nullity would not have the effect of rendering the Magistrate functus officio.

26. In this regard the Defendant relies on the case of **R v Seisdon Justices, ex parte Dougan [1982] 1 WLR 1376**. In this case the justices proceeded to hear the matter on an adjourned date in the absence of applicant. The applicant was convicted in his absence. It turned out that the applicant had not been served with the notice of the date of the adjourned hearing. In those circumstances the justices decided to relist the case for hearing. On the new date they were advised that they were functi officio and the matter adjourned to allow the applicant to apply for judicial review. On appeal the court was of the opinion that, given the provisions of the relevant sections of the Magistrate's Court Act and the attendant rules, the failure of the justices to satisfy themselves that a notice of the adjourned date been sent and received by the applicant rendered the hearing a nullity and in those circumstances there was nothing to prevent the justices from re-listing the matter.

27. In that case however the applicable legislation required the justices to be satisfied that the parties had adequate notice of the time and place of the hearing and proof that the adjourned date came to the knowledge of the accused. In those circumstances it was held that it was incumbent on the justices to satisfy themselves that the necessary information as to the time and place of hearing had been received by the applicant. In the opinion of O'Connor L.J.

the case before him was covered by the statement of Salmon J. in **R v Essex Justices, ex parte Final [1963] 2 QB 816 at page 823** when he stated:

> "It is quite plain on authority, that once a decision by justices is announced open court that decision so announced amongst either to an acquittal or to a conviction, as the case may be. Once the justices have convicted or acquitted, the functi officio and cannot alter their decision. The only apparent exception to that rule is in the sort of case which is exemplified by **Rex v Marsham, Ex parte Pethick Lawrence [1912] 2 KB 362**. In that case, after the magistrate had convicted, it was discovered that one of the witnesses called had not been sworn. When the magistrate's attention was drawn to the circumstances which I have referred, he said, in effect, that there had been a mis-trial and he heard the case all over again. The defendant was convicted. When the case came to this court, it was decided that the magistrate had not fallen into any error because the first so-called trial was a nullity. Accordingly, there had been no conviction and there was nothing to prevent the magistrate hearing the case according to law. I say that **Rex v Marsham ex parte Pethick Lawrence,** is the only apparent exception to the rule, which I have referred because, in that case, in the cases of that kind, the original proceedings are a nullity and the magistrate is merely going on to try a case which has never been tried."

28. In the case of **R v Essex Justices, Ex Parte Final**, despite the statement of Salmon J. referred to above and relied on in Dougan's case, on facts very similar to those of the instant case, the court was of the view that once the conviction had been pronounced in open court, the justices were functi officio and could not alter their decision. The court in that case was satisfied that an exception to the general rule did not arise on the particular facts.

29. In the case of **Rex v Marsham ex parte Pethick Lawrence**, relied on by Cotton LJ., in Final's it was stated:

> "In order to set aside the second conviction the applicant must show that the magistrate has done something on the previous hearing which either exhausted his jurisdiction to rehear or which made it unjust that the applicant should be put on her trial in regard to the offence charged. In my judgment, the magistrate, finding out that upon the first hearing he had had before him evidence which was not admissible and had therefore not heard and determined the case according to law, was entitled in the exercise of his jurisdiction to have the case heard and tried before him on proper evidence.": per **Lord Alverstone C.J.at page 365**.

30. In the instant case the defendant relies on **section 54 (1)** of the **Summary Courts Act** Section 54 reads as follows:

> "On the day and at the place mentioned in the summons, or on the day and at the place at which the defendant is brought before the court under warrant, as the case may be, the case with respect to which a complaint has been made shall be called for hearing in the court."

31. The date placed on the witness summonses was the 17th July. The Defendant submits that in those circumstances the Magistrate had no jurisdiction to deal with the indictments on any other date. In my view, an examination of section 54 and the Summary Courts Act does not lead to such a conclusion. In the first place I accept the submission of the Claimant that section 54 deals with the first hearing. Taken in context, in my opinion, sections 54 to 63 seem to deal with preliminaries and the first hearing. Section 59 gives the magistrate the jurisdiction when the case is called, in my view, for the first time, to deal with the matter either by dismissal or adjournment of the complaint. Section 63 onwards deals with the procedure at

the commencement of the hearing. So that, for example, section 63 deals with the requirement that a defendant be asked to make a plea of guilty or not guilty.

32. The fallacy of the defendant's argument is that it is predicated on the submission that a magistrate is not empowered to hear a matter except on the date and time stated in the summons. **Section 66** of the **Summary Courts Act** specifically gives a magistrate the power to adjourn a matter and deal with that matter on the adjourned date. In particular **section 66 (1)** of **the Summary Court Act** provides:

> "At any time before or during the hearing of a complaint, it shall be lawful for the court, in its discretion, to adjourn the hearing of the complaint to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or his or their respective Attorney at law."

33. Further **section 66 (4)** provides:

> "If, at the time and place to which such hearing or further hearing is so adjourned, either or both of the parties does or does not appear, the Court may proceed to such hearing or further hearing as if such party or parties was or were present; or, if the complainant does not appear, the Court may dismiss the complaint."

There is no question here of the issue of a summons specifying the date and place of the hearing.

34. It is clear therefore that section 66 specifically gives a magistrate the jurisdiction to adjourn the hearing of a complaint and to proceed with the complaint on the adjourned date and in circumstances where there is no appearance by the complainant to dismiss the complaint. In my opinion therefore the magistrate had the jurisdiction to adjourn the indictments to a fixed

dated and to deal with the indictment by way of a further adjournment; hearing or discharge of the accused as she saw fit.

35. This jurisdiction in my opinion is not affected by the provisions of section 54 of the Act. It must be remembered that the issue here is not the manner in which the Magistrate exercised her jurisdiction but whether in the particular circumstances the Magistrate had the jurisdiction to make the order discharging the Claimant on 16th July. It would seem to me that under the Summary Courts Act the magistrate's jurisdiction to adjourn a matter to a fixed date and deal with that matter on that date is not affected by section 54 of the Summary Courts Act.

36. In this case the indictments were brought pursuant to the Indictable Offences (Preliminary Enquiry) Act Chap 12:01. There is no indication from the record of the proceedings before the Magistrate that the matter was being proceeded with summarily in accordance with Part V of the Summary Courts Act. That omission seems to indicate that the matter was being proceeded with indictably in accordance with the Indictable Offences (Preliminary Enquiry) Act Chap 12:01. For our purposes therefore it is necessary to also examine the provisions of the Act to see whether those provisions affect the jurisdiction of a magistrate in the circumstances such as these.

37. It has not been suggested that a magistrate has no jurisdiction under either Act to discharge a defendant. Indeed, **section 23** of the **Indictable Offences (Preliminary Enquiry) Act** allows a magistrate to do just that in circumstances where, after hearing the witnesses, if any, the magistrate is of the opinion that no prima facie case of an indictable offence has been made out. The Act gives the magistrate the power to adjourn the hearing of the indictment to a certain time and place: **sections 10 and 11 and 14**. There is no equivalent to section 54 of the Summary Courts Act in the Act.

38. To some extent any distinction in procedure may be of no moment however since by virtue of **section 2** of the **Summary Courts Act**: "Court" or "Summary Court" or Court of summary jurisdiction" unless the same is expressly or by implication qualified, means any Magistrate or Justice when sitting in open court to hear and determine matters within his power or jurisdiction under this Act or under any other written law and as such Magistrate or Justice when so sitting as aforesaid shall be and be deemed to be a "Court" or "Summary Court" or Court of Summary Jurisdiction within the meaning of this Act."

39. It seems to me that the effect of this definition is to make those sections in which the aforementioned words are used of general application with respect to magistrates unless that effect is expressly or by implication qualified by any written law. It would seem to me therefore that, insofar as the issues for determination here are concerned, and given the fact that the relevant provisions in the Indictable Offences (Preliminary Enquiry) Act do not qualify either section 54 or section 66 of the Summary Courts Act, both of these provisions apply to magistrates whether sitting in their summary jurisdiction or hearing preliminary enquiries. In other words the fact that the Magistrate may have been dealing with an indictment which was proceeding under the Act makes no difference to my findings with respect to the effect of sections 54 and 66 of the Summary Courts Act on her jurisdiction.

40. In the instant case it is not in dispute that the indictments were adjourned to 16th July. Neither is it in dispute that the date 17th July was endorsed on the minute sheets for three of the indictments erroneously. It is in these circumstances and against the background of the legislation that I am asked to declare the discharge of the Claimant on the indictments a nullity. It seems to me that in this regard, as in ex parte Final, the general rule applies. In my view these circumstances are not akin to circumstances where the action of the Magistrate could be

considered a nullity. It is clear to me that the Magistrate had the jurisdiction to do what she did under both Acts.

41. On the facts the Magistrate adjourned all four of the indictments to the 16th for the last time for trial. On the date fixed for trial no evidence was presented by the complainant because he was not present. By section 66(4) the Summary Courts Act therefore the Magistrate had the power to dismiss the complaint on the nonappearance of the Claimant. Further on the date fixed for hearing no prima facie case of any indictable offence having been made out, section 23 of the Indictable Offences (Preliminary Enquiry) Act gave the Magistrate the jurisdiction to discharge the Claimant. In my opinion section 54 of the Summary Courts Act does not affect this jurisdiction. The reasons given by the Magistrate for her reinstatement of the three indictments in my opinion ignores the fact that on her own admission the indictments were properly adjourned to the 16th July. The fact that the Magistrate may not have exercised her discretion to discharge the Claimant in that manner if all the facts were known to her does not, in my view, affect her jurisdiction to deal with the matter on the adjourned date and make the order.

42. This is not a case where, as in ex parte Dougan, the relevant provisions required the court to be satisfied that the parties were served. Or where, as in Rex v Marsham ex parte Pethick Lawrence, the applicant was convicted upon the unsworn evidence of the complainant in circumstances where the law required that the evidence be sworn. In this case there is no dispute that the Magistrate adjourned the matters to the 16th to proceed and in the absence of any appearance of the complainant exercised her discretion to discharge the accused. In my opinion the Magistrate had the jurisdiction to adjourn the case to a fixed date and to hear the matter on that date. Further, it is clear that the Magistrate had the jurisdiction to discharge the Claimant if the complainant did not appear, whether or not the complainant's witnesses were present. The complainant did not appear.

43. It seems to me that the fact that had the complainant appeared on that date, as he should have done on indictment number 559, the Magistrate may have exercised the discretion differently has no relevance to the question of whether the magistrate had the jurisdiction to act as she did. Interestingly despite the fact that, according to the police complainant, the witness summonses in No 559 also reflected the date the 17th July the Magistrate accepts the validity of her decision to discharge the Claimant on that indictment.

44. In my opinion the Magistrate acted within her jurisdiction in discharging the Claimant on all four indictments on 16 July. Her decision on the date was therefore not a nullity. Having discharged the Claimant there was nothing left to be done on those indictments. The decision was therefore a final determination by the Magistrate on the indictments. In those circumstances, in my opinion, on the 16th July the Magistrate exhausted her jurisdiction on the indictments and became functus officio. The action of the magistrate on 17 July in reinstating the three indictments was therefore without jurisdiction.

Is the re-laying of the indictment No. 559 an abuse of the process?

45. Upon the dismissal of indictment No. 559 the complainant re-laid the said charge on a new indictment. The Claimant submits that this constitutes an abuse of process. This indictment, 2009-01914 is dated the 22nd of May 2009. On the evidence before me it is clear that no submissions were made to the Magistrate with respect to the re-laying of this charge. The Defendant submits that in the circumstances the Magistrate having not made a decision on this point there is nothing to review. In any event it submits the decision to prosecute is not that of the Magistrate.

46. While there is merit in these submissions I prefer to rest my decision on this point on the fact that this is ultimately an issue which can and ought to be resolved within the criminal process: **Sharma v Brown-Antoine [2007] 1 WLR 780**. In the circumstances I make no determination on this issue. The Claimant is at liberty to raise the question of the abuse of the process before the Magistrate on the hearing of indictment 2009-01914.

47. In all the circumstances of the case therefore I find that the Claimant is entitled to a declaration that the decision of the Magistrate given on the 26th April 2009 to reinstate the three indictable charges brought against the Claimant on the 15th February 2007 and for which he was discharged on the 16th July was made without jurisdiction and null and void. The Claimant is therefore entitled to an order of certiorari removing into this Court and quashing the decision of the Magistrate.

Dated this 23rd day of February, 2011.

Judith Jones
Judge