

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

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5 **Cause No. 361 of 2012**
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9 **IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR**
10 **JUICIAL REVIEW PURSUANT TO GCR O.53 R.3**
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14 **BETWEEN:**

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16 **SANDRA CATRON**

17
18 **APPLICANT**
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20 **AND**

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22 **(1) THE QUEEN**
23 **(2) LOUIS M. EBANKS, JP**
24 **(3) THE COMMISSIONER OF POLICE**
25

26 **RESPONDENTS**
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30 **Appearances:** **Ms. Sandra Catron, the Applicant, In Person**

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32 **Ms. Suzanne Bothwell of the Attorney General's Chambers**
33 **for the Commissioner of Police, the Defendant**
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36 **Before:** **Hon. Justice Henderson**
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39 **Heard:** **May 20 & 21, 2013**
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41 **Oral Ruling:** **May 21, 2013**
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1 **RULING**

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1. Acting under the authority of a search warrant, Police Officers searched the home, office and vehicle of the applicant, Sandra Catron (“Ms. Catron”) on July 27, 2012. On this judicial review application Ms. Catron challenges the lawfulness of the decision to issue the search warrant and requests the return of the items seized; damages, including aggravated damages, for trespass to land and goods; and damages for unlawful arrest and false imprisonment. Ms. Catron, who represented herself throughout the proceeding, has also made a number of complaints about the manner in which the warrant was executed and the way in which she was dealt with after the search had been completed. As I indicated during the hearing, these latter complaints are outside the purview of a judicial review application.

2. The decision under review is the decision of Mr. Louis Ebanks, Justice of the Peace, to issue the search warrant on July 27, 2012. The warrant was issued on the basis of an Information and Complaint in the following form:

“The information and complaint of Senior **Detective Constable Neblett** - of the **RCIPS** in the Islands of Grand Cayman [sic], made on oath before me,
LOUIS M. EBANKS _____ one of Her Majesty’s Justices of the Peace
in and for the Cayman Islands this 27th day of JULY. , in the year of our Lord two thousand and TWELVE who saith that the following goods [sic] to wit:-

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Cellphones, laptops and other documents or any document or device suspected to be associated with the commission of this offence and any vehicle owned, rented, leased, reduced [sic] in the control of **Sandra Catron** or any vehicle to which she has access

has been used in connection with the offence of **Misuse of ICT** and has by some person or persons unknown within **2 months** last past been illegally used in the Cayman Islands, and that he hath probable cause to suspect and doth suspect and believe that the said items or any document or device suspected to be associated with the commission of this offence is concealed on the premises of **Sandra Catron** situated at **125-2 Rackley Blvd, Newlands, Grand Cayman**

and therefore he the said _____ [left blank] _____ Prayeth that Justice may be done.

Officer’s Signature: ”A. Neblett SDC 101”

Sworn to before me
this 27 day of, July _____ 2012

”L. M. Ebanks” Louis M. Ebanks
Justice of the Peace Justice of the Peace
Cayman Islands

The warrant itself is in this form:

1 Magistrates Court [sic]
2 Cayman Islands
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4 **THE CRIMINAL PROCEDURE CODE.**

5 **(LAW 14 OF 1975) (2005 REVISION)**

6 **SCHEDULE II**
7 **(SECTION 26)**
8

9 **To SDC Neblett and other officers of the RCIPS**

10 WHEREAS I/the Court am/is satisfied by information on oath that there is
11 reasonable suspicion of the commission of the offence of Misuse of ICT and it has
12 been made to appear to me that the production of the following articles (s) are
13 essential to the enquiry into the said offence of: **Misuse of ICT**
14

15 ***Cellphones, Laptop and Documents*** suspected to be associated with the
16 commission of this offence, as also, any vehicle owned, rented, leased, reduced
17 [sic] into the control of **Sandra Catron**, or any vehicle to which she has access to
18 [sic].
19

20 THIS IS TO AUTHORISE and require you to enter upon and search the premises
21 of **Sandra Catron** situated at ***125-2 Rackley Blvd, Newlands***
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23 and if discovered to take possession of the said article(s) and produce the same
24 forthwith before a Court; returning this warrant with an endorsement certifying
25 the manner of its execution.
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27 Given under my hand (and the seal of the Court) [sic]

28 this 27 day of July 2012

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30 **....."L. M. Ebanks".....**
31 **MAGISTRATE/JUSTICE OF THE PEACE**
32 Louis M. Ebanks
33 Justice of the Peace
34 Cayman Islands
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1 3. The Justice of the Peace has sworn an admirably frank affidavit in which he says:

2 3. On the morning of July 27th 2012 Officer Neblett of the Royal Cayman
3 Islands Police Service came to me at #78 Thomas Russell Avenue to
4 my place of business known as L&T Tyre Shop.

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6 4. He provided me with a search warrant and asked for my signature
7 which I provided. The warrant was already typed up in full and I
8 merely provided my signature/stamp.

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10 5. Officer Neblett did not provide any details whatsoever regarding the
11 warrant; which is a customary practice.

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13 6. Since that time I have not received any endorsement or details of
14 if/when the warrant was executed.

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16 7. On August 22nd 2012 Ms. Sandra Catron contacted me via telephone
17 and inquired what evidence I would have been provided in order to
18 sign the search warrant. I replied “absolutely none” and further
19 indicated to her that the police never provide me with any evidence
20 when having a warrant signed.

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23 4. The Officer who signed the search warrant, Detective Constable Adrian Neblett,
24 has sworn an affidavit in which he provides his recollection of the application for
25 the warrant. He says that he provided a verbal “explanation” for the “reason for
26 the warrant” to Mr. Ebanks, who “gave me the impression that he was listening to
27 what I was telling him and that he understood the basis upon which I was seeking
28 the warrant.” He observes that Mr. Ebanks pointed out a typographical error in
29 the Information and Complaint and corrected it. Detective Constable Neblett
30 asserts that the proceedings “were not out of the ordinary”; in essence, he was
31 following what he considered to be the customary practice.

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Applicable Law

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5. The requirements are set out in sections 26 and 28 of the *Criminal Procedure*

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Code (2011 Revision) in these terms:

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...

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“26. Where a court of a Justice of the Peace is satisfied by information on oath that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, such court or Justice of the Peace may, by warrant (called a search warrant), authorize a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

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28. (1) Every search warrant shall be in the form set out in Schedule 2 and under the hand of the person issuing the same and, when issued by a court, shall bear the seal of such court.

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(2) Every search warrant shall remain in force until it is executed or until it is cancelled by the person or court issuing the same.

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(3) A search warrant may be directed to one or more persons and may be executed by all or any one or more of them.

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(4) A search warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

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(5) A search warrant may be executed at any place in the Islands.”

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6. In seeking to uphold the impugned decision, Counsel to the respondents cited a

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number of decisions including *Regina v. Douglas* [1980 – 83] CILR 119; *King v.*

1 *Regina* [1968] 2 All E.R. 610; *Attorney General of Jamaica v. Williams et al*
2 [1998] A.C. 351 (P.C.); *R. v. Inland Revenue Commission* [1980] A.C. 952, 998;
3 and *Gibbs v. Rae* [1998] A.C. 786 (P.C.). From these authorities I distill the
4 following criteria for the issuance of a search warrant:

- 5 1) A Justice of the Peace who is asked to issue a search warrant is engaged in
6 a judicial function;
- 7
- 8 2) information presented to him must be on oath;
- 9
- 10 3) that information must satisfy him that there is “reasonable suspicion” that
11 a specified offence has been committed or that something necessary to the
12 conduct of an investigation into a specified offence is to be found in a
13 building, ship, vehicle, etc.;
- 14
- 15 4) the reasonable suspicion test is a relatively low threshold which does not
16 rise to the level of proof beyond a reasonable doubt or proof on the
17 balance of probabilities;
- 18
- 19 5) the information on oath must be sufficient to raise in the mind of a
20 reasonable and objective observer a suspicion that the named suspect has
21 committed the specified offence and that an object or document to be
22 found at the named location would be relevant evidence of it;
- 23
- 24 6) to discharge his responsibility, the Justice of the Peace must have a clear
25 understanding of the essential elements of the offence identified in the
26 application;
- 27
- 28 7) it must also appear that the officer applying for the warrant has
29 (subjectively) a reasonable suspicion that the offence has been committed
30 or that the sought-after items are necessary to the conduct of his
31 investigation;
- 32
- 33 8) since the Justice of the Peace is engaged in a judicial function, he should
34 keep a written record of what is presented to him and make that record
35 available upon a judicial review of his decision;
- 36
- 37 9) it is of particular importance that the Justice of the Peace keep a record of
38 any evidence given to him orally (which evidence must be given under
39 oath).
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1 **Decision**

2 7. Counsel to the respondents has conceded that no evidence under oath was
3 presented to the Justice of the Peace. On this ground alone, Ms. Catron is entitled
4 to an Order setting aside the decision under review and quashing the search
5 warrant.

6 8. Mr. Ebanks gave evidence under oath during the hearing before me. It was clear
7 from his evidence that he had no sufficient understanding of the alleged offence,
8 which is described in unhelpfully brief terms in the Information and Complaint as
9 “misuse of ICT”. Without such an understanding, it is not possible for him to
10 make a considered decision on the question of whether a warrant should issue.
11 He has failed to take into consideration a matter of fundamental importance - the
12 legal elements of the alleged offence – and for that reason his decision is
13 manifestly unreasonable.

14 9. Moreover, the evidence before me does not show that a reasonable and objective
15 observer would, after considering it, have a reasonable suspicion that the alleged
16 offence had been committed. The Information and Complaint contains nothing
17 more than a bare assertion by Detective Constable Neblett that he believes that an
18 offence has been committed and that the sought-after items are relevant evidence
19 of that. Whatever grounds for suspicion Detective Constable Neblett may have
20 had were presented orally (and not under oath) to the Justice of the Peace. No
21 written record was kept. In these circumstances, I conclude that it was manifestly
22 unreasonable for the Justice of the Peace to have determined that, viewed

1 objectively, the evidence presented to him gave rise to a reasonable suspicion.
2 For this reason also the warrant must be set aside.

3 10. Ms. Catron took some objections to the form of the warrant.

4 11. The warrant is addressed “to SDC Neblett and other officers of the RCIPS.” Ms.
5 Catron argues that every officer taking part in the search must be named in the
6 warrant. Similar wording (“To Insp. Rankine and other officers of the Cayman
7 Islands Police Force”) was used in the search warrant which was the subject of
8 *Douglas, supra*. Chief Justice Summerfield held that the warrant was invalid as it
9 amounted to an authorization to any and all officers on the Police Force to
10 participate in the search. This was a ruling given following a No Case to Answer
11 submission in the course of a trial.

12 12. The Chief Justice’s ruling rested upon his reading of *King, supra*, a decision of
13 the Privy Council. In *King*, the search warrant was addressed “To any lawful
14 constable of the parish of Kingston”. Thus, the person who was the subject of the
15 search could not ascertain from the face of the warrant which officer was charged
16 with its due execution. The legislative provision under consideration authorized
17 the issuance of a warrant to any constable named in it. The judgment of Lord
18 Hodson in the Privy Council says simply (at p. 613) that “the warrant is defective
19 ... because the terms of the section were not complied with since no constable was
20 ‘named’ in the warrant.”

1 13. It seems to me that the principle of importance is that a named officer is to be
2 responsible for executing the search according to law. He will usually be assisted,
3 for various practical reasons, by other officers whose identities may not have been
4 ascertained when the warrant is obtained. The decision in *King* establishes the
5 salutary rule that a warrant which names no one is bad; it does not stand for the
6 broader proposition that every single officer who participates must be named. I
7 must respectfully disagree with our former Chief Justice’s ruling in *Douglas*. I am
8 satisfied that a search warrant which names an officer as responsible for its due
9 execution need not also name each one of those who are assigned to assist him. In
10 my view, the words “and other officers of the Cayman Islands Police Force” are
11 mere surplusage once the responsible officer has been named. I would not set
12 aside the warrant on this ground.

13 14. The search warrant purports to emanate from the “Magistrates Court” of the
14 Cayman Islands; the proper term is now the Summary Court. The warrant
15 purports to be given under the “seal of the Court” but there is no seal upon it and
16 Mr. Ebanks does not have a seal. These are matters of form and were addressed
17 in argument only in passing. I prefer to leave them for decision in a case where
18 their effect has been fully argued. The Attorney General may wish to consider
19 whether an amendment to the form of search warrant found in Schedule 2 to the
20 *Criminal Procedure Code* is needed.

21 15. For these reasons the decision of Mr. Ebanks to issue the search warrant is set
22 aside and the warrant is quashed. Anything seized under the authority of this

1 search warrant is to be returned forthwith. Ms. Catron is at liberty to set down a
2 hearing on the question of damages.

3 16. The original application for leave to apply for judicial review asserted that Ms.
4 Catron is seeking damages for unlawful arrest and false imprisonment in addition
5 to damages flowing from the issuance of the search warrant. However, a review
6 of any decision to arrest Miss Catron engages different legal issues and, in any
7 event, such a decision has not been the subject of any direct challenge on this
8 judicial review. Accordingly, I decline to make any findings concerning Ms.
9 Catron's arrest.

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11 Henderson, J.
12 Judge of the Grand Court

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