

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0051/2014
6
7

8 THE QUEEN
9

10 V
11

12 WILLARD KEITH SIMON
13
14

15 **Appearances:**

Ms. Candia James for the Crown

17 Mr. Dennis Brady for the Defendant
18

19 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

20 **Trial dates:**

18th 19th and 22nd June 2015
21

22 **JUDGMENT**
23

24 1. On the 6th June 2014, at his first appearance before Grand Court the Defendant,
25 Willard Simon, pleaded not guilty to the single count on this Indictment which charges
26 him with Bigamy, contrary to s.150 of the Penal Code (2010 Revision).

27 2. The particulars of the charge are that on the 21st April 2012, being a person having a
28 wife, went through a ceremony of marriage in Kingston, Jamaica, to Kathleen Ebanks,
29 which is void by reason of its taking place during the life of the said wife, Deborah¹
30 Brown Simon.
31

¹ The spelling on the Indictment is the same as the spelling on the marriage certificate. However, the spelling on the Exhibit #1 Decree Absolute is "Debroha".



1 **TRIAL BY JUDGE ALONE – THE LAW**

2 3. The Defendant elected trial by Judge Alone rather than trial by Judge and Jury as is his
3 right pursuant to s.129 of the Cayman Islands Criminal Procedure Code (CPC) and I
4 remind myself that the our Court of Appeal first dealt with the duties of a Judge in
5 Judge Alone trials in its judgment in *K. Richards v. R*² when Justice Rowe stated:

6 *“When a trial judge sitting alone has advised himself to the applicable principles*
7 *of law, and given himself any necessary warning, he must indicate clearly in his*
8 *judgment his reasons for acting as he did, in order to demonstrate that he has*
9 *acted with the requisite degree of caution in mind and has therefore heeded his*
10 *own warning. No specific form of words is necessary for this demonstration, what*
11 *is necessary is that the Judge’s mind upon the matter should be clearly revealed.”*

12
13 In *R v. Dave Kennedy Whittaker*³, the Court of Appeal gave some guidelines regarding
14 the duties of a Judge in Judge Alone trials. In the Judgment of Mottley J.A. he adopted
15 the Judgment of the former Lord Chief Justice of Northern Ireland Lord Lowry in *R v.*
16 *Thompson*⁴ in which he stated at page 83:

17 *“While on the subject I might say a word on the duty of the judge when giving*
18 *judgment in a trial under the 1973 Act. He has no jury to charge and therefore will*
19 *not err if he does not state every legal proposition and review every fact and*
20 *argument on either side. His duty is not as in a jury trial to instruct laymen as to*
21 *every relevant aspect of the law or to give a full and balanced picture of the facts*
22 *for decision by others. His task is to reach conclusions and to give reasons to*
23 *support his view and, preferably, to notice any difficult or unusual points of law in*
24 *order that if there is an Appeal, it may be seen how his view of the law informed*
25 *his approach to the facts.”*

26

2 ² 2001 CILR 496

3 ³ Cr. App. R. No. 14 of 2006

4 ⁴ [1977] NI 74



1 More recently our Court of Appeal in *Randy Martin v. R*⁵ delivered their reasons for
2 dismissing the Appeal on the 7th December 2010. Mottley J.A. again adopting *R v.*
3 *Thompson*⁶ also adopted *R v. Thain*⁷ where Lowry LCJ said at page 478:

4 *"Where the trial is conducted and the factual conclusions are reached by the same*
5 *person, one need not expect every step in the reasoning to be spelled out expressly,*
6 *nor is the reasoning carried out in sealed compartments with no inter-*
7 *communication or overlapping, even if the need to arrange a judgment in a logical*
8 *order may give that impression. It can safely be inferred that, when deliberating on*
9 *a question of fact with many aspects, even more certainly than when tackling a*
10 *series of connected legal points, a judge who is himself the tribunal of fact will (a)*
11 *recognize the issues and (b) view in its entirety a case where one issue is*
12 *interwoven with another."*

13
14 Following Lowry LCJ in *R v. Thompson* and *R v. Thain*, Mottley J.A. said in *Randy*
15 *Martin v. R*, at paragraph 31:

16 *"From these cases the following guidance may be discerned. A judge sitting in a*
17 *criminal case without a jury, in rendering his decision and giving his reasons for*
18 *so concluding, is not required to review every fact and to detail each argument on*
19 *which the prosecution and defence rely as if he were summing up to a jury. The*
20 *judge must set out the conclusion reached and make clear the reasons for arriving*
21 *at that conclusion. He is required to have regard to any difficult or unusual points*
22 *of law and to show how those points of law have in anyway impacted the*
23 *conclusion that he has reached."*



⁵ Crim. App. R. 2 of 2010

⁶ [1977] NI 24

⁷ [1985] NI 457

1 *THE CASE FOR THE CROWN AND THE DEFENCE*

2 4. It is the Crown's case that the Defendant was still legally married, the Defendant knew
3 that he was legally married and the Defendant knew that he was not divorced. It is the
4 Defence case that it is a stark mistake of fact on the part of the Defendant, in that, the
5 Defendant thought he was divorced and he had good reason to think that he was
6 divorced.

7 *ADMISSIONS*

8 5. There are certain common facts between the Prosecution and the Defence in this case
9 which are the Admissions, read into evidence on the first day of this trial on the 18th
10 June 2015, and I now set them out as follows;

11 i. The Defendant married Deborah Elaine Brown on the 23rd June 2007 at Divine
12 Ministries Tabernacle in the parish of Kingston, Jamaica – the ceremony
13 performed by Wyatt K.C. Davis, a Marriage Officer of the island of Jamaica;

14 ii. The Defendant went through a ceremony of marriage with Kathleen Monique
15 Ebanks on the 21st April, 2012 at New Life Assembly Church of God in the parish
16 of St. Andrew, Jamaica by Douglas Robb, a Marriage Officer of the island of
17 Jamaica;

18 iii. At the time of the marriage to Kathleen Monique Ebanks the Defendant was still
19 legally married to Deborah Elaine Brown.

20 iv. The Defendant's marriage to Deborah Elaine Brown was dissolved by Decree
21 Absolute on the 15th October 2013.



THE EXHIBITS

6. The Exhibits tendered into evidence are as follows:

- i. Exhibit #1: The Fraudulent “Certified Copy DECREE ABSOLUTE” for the Defendant and Debroha (sic) Brown Simon dated the 24th February 2012.
- ii. Exhibit #2: Marriage Certificate for the Defendant and Kathleen Ebanks dated the 21st April 2012.
- iii. Exhibit #3: The DECREE ABSOLUTE for the Defendant and Deborah Elaine Brown Simon dated the 15th October 2013.
- iv. Exhibit #4: Marriage certificate for the Defendant and Deborah Elaine Brown dated the 23rd June 2007.
- v. Exhibit #5: The transcript of the Defendant’s interview with the Immigration Department.
- vi. Exhibit #7⁸: Letter from the Deputy Registrar of the Supreme Court dated the 27th March 2014 re “Verification of Decree Absolute in claim number M02161/2010”.
- vii. Exhibit #8: The news clippings from Jamaica media re “divorce racket”.



⁸ There was, in fact, no Exhibit 6 and therefore Exhibits 7 and 8 should have been 6 and 7. However, in order to maintain the numbers assigned to Exhibits during the trial, the numbers assigned have been maintained for purposes of the Judgment.



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THE EVIDENCE

7. On the 23rd June 2007 the Defendant married Deborah Elaine Brown in Jamaica (W.I.).

8. Sometime in 2010 the Defendant filed divorce proceedings before the Supreme Court of Jamaica. These divorce proceedings were Cause Number 02161 of 2010. The Defendant was the Petitioner to the Cause and he filed the divorce on the grounds that the marriage between himself and Debroha⁹ Elaine Brown [Simon] had broken down irretrievably.

9. The Decree Absolute dated the 15th day of October 2013 and filed by Brown & Shaw, Attorneys at Law, which is **Exhibit #3**, records the following:

"A Decree Nisi for Dissolution of Marriage having been granted in these proceedings on the 7th day of September 2011 by THE HONOURABLE MR. JUSTICE G. BROWN by which it was decreed that the marriage which took place on the 23rd day of June 2007 at Divine Ministries Tabernacle, 37 Molyne's Road in the parish of Kingston between WILLARD KEITH SIMON and DEBORAH ELAINE BROWN (described in the Marriage Certificate as DEBORAH ELAINE BROWN) be dissolved on the ground that it had broken down irretrievably, AND the Honourable Mr. Justice A Rattray ordered that Joint Custody of the relevant child DANA ADANNA MIKEITHA SIMON granted to the Petitioner and the Respondent AND having certified that the arrangements for the maintenance, care and upbringing of the relevant child namely DANA ADANNA MIKEITHA SIMON, born on the 19th day of August 2004, are the best that may be devised in the circumstances, AND NO cause having been shown to the Court why the said decree should not be made absolute, the Court now pronounces and declares the said marriage be dissolved and the said Decree Nisi to become a DECREE ABSOLUTE."

⁹ The spelling on the Indictment is the same as the spelling on the marriage certificate. However, the spelling on the Decree Absolute is "Debroha"

1 10. A Decree Nisi is a Decree for Dissolution of the marriage (Nisi, meaning “unless”). It
2 leaves six weeks for any party or third party to raise any impediment as to why the
3 Decree Nisi could not become a Decree Absolute.

4 11. Accordingly, on or about the 15th or 16th October 2011 the Defendant would be entitled
5 to a Decree Absolute under the laws of the Cayman Islands.

6 12. Sometime after the 24th February 2012, the Defendant received **Exhibit #1**, which,
7 ostensibly, was a Decree Absolute in Cause 02161 of 2010 before the Supreme Court
8 of Jamaica. This document is dated the 24th February 2012, filed by Carol Davis,
9 Attorney-at-Law, signed by a Judge of the Supreme Court and records the following:

10 *“A Decree Nisi for Dissolution of Marriage having been granted on the 16th day of*
11 *November 2011 by the Honourable MR. JUSTICE LENNOX CAMPBELL by which*
12 *it was decreed that the marriage which took place on the twenty-third day of June*
13 *2007 at Divine at Divine Ministries Tabernacle, 37 Molyne Road, Kingston 10 in*
14 *the parish of St. Andrew between WILLARD SIMON the Petitioner and DEBROAH*
15 *(sic) BROWN SIMON (described in the marriage certificate as Debroah (sic)*
16 *Brown) the Respondent be dissolved on the ground that it had broken down*
17 *irretrievably and no cause having been shown to the Court why the said decree*
18 *should not be made absolute, the Court now pronounces and declares the said*
19 *marriage be dissolved and the said Decree Nisi to become a Decree Absolute.”*

20
21 13. This document also bore the embossed Supreme Court seal.

22 14. It is the Defendant’s case that he had no reason to believe that the document was not
23 authentic.



1 15. The Court has heard from Crister Brady who was Clerk of the Court in the Supreme
2 Court of Jamaica from 2007 to 2013. Mr. Brady is also an attorney in Jamaica. Mr.
3 Brady gave evidence that it was a known practice that officers in the Supreme Court
4 would contact litigants in person and say they could have their divorce upon receiving
5 payment of "x number of dollars."

6 16. There is evidence before me that a member of the Supreme Court staff contacted the
7 Defendant's sister in Jamaica. The fraudulent Decree Absolute was sent to the
8 Defendant's sister who then sent it on to the Defendant.

9 17. The Court accepts from Mr. Crister Brady and from the documents produced by the
10 defence that there has been a "speedy divorce racket" and the Court notes that the
11 Jamaican authorities have actually successfully prosecuted former court officials for
12 this dishonest practice.

13 18. The Court has heard from Kathleen Ebanks. Ms. Ebanks confirmed that it was her
14 understanding that the Defendant's sister dealt with the divorce and the filing of the
15 necessary papers in Jamaica. Ms. Ebanks told the Court that she did not doubt the
16 Defendant's honesty and sincerity. Ms. Ebanks also gave evidence in which she
17 confirmed that the Defendant showed genuine shock at the revelation that Exhibit #1
18 was a fraudulent Decree Absolute. Ms. Ebanks said that neither she nor the Defendant
19 had any cause to doubt this fraudulent Decree Absolute; they had no reason to believe
20 that it was not genuine. Ms. Ebanks gave evidence that, if they had known that the
21 document were fraudulent, they would not have gone ahead with the marriage.



1 19. The Defendant also gave evidence and said that he had no reason to doubt he
2 authenticity of the fraudulent Decree Absolute. The Defendant accepted that he had left
3 his sister and others to deal with the filing of the necessary papers in Jamaica. The
4 Defendant states that he now understands that somebody within the Courts office in
5 Jamaica contacted his sister and agreed to accelerate the process on payment of further
6 fees. However, the Defendant stated in evidence that he never realized that Exhibit #1
7 was a false document.

8 20. I should say at this stage that both the Defendant and Ms. Ebanks impressed me as
9 witnesses of truth who are trying to help the Court.

10 21. The Court has also heard from the Defendant's nephew Samuel Myrie. He recalls that
11 a person whom he described as "an unscrupulous person" called his mother, i.e., the
12 Defendant's sister, from the Court in Jamaica and offering to "expedite matters".
13 Samuel Myrie also confirmed that they had not realized that Exhibit #1 was a
14 fraudulent document and he felt that they had been "scammed". Mr. Myrie said that his
15 mother was nervous about giving evidence and he also said that his mother genuinely
16 felt that she would put herself in a very dangerous position.

17 22. Mr. Crister Brady also told the Court that the Defendant and Ms. Ebanks would not
18 know that the papers that they had paid for and acted upon were not authentic. Mr.
19 Brady's evidence is supported by the reports in the Jamaican media – the Gleaner and
20 RJR News.



ANALYSIS AND CONCLUSION

23. I have to ask myself was the mistake of fact which the Defendant relies upon a reasonable one, in all the circumstances of this case. Also, if it were unreasonable, there may be powerful reasons for coming to the conclusion that the mistake of fact was not honestly held and should be rejected.

24. I ask myself is the mistake of fact honestly believed by the Defendant and is it reasonable in all the circumstances of this case.

25. If the Defence raises a mistake of fact. In other words, if the Defendant held an honest and reasonable belief that he was divorced, and therefore free to marry Kathleen Ebanks, there is an evidential burden on the defence, that is, to adduce evidence fit for consideration by the jury, or by me as tribunal of fact. However, once that is done, the legal burden of proving the Defendant's guilt still rests with the prosecution. That is, the Prosecution must prove that the Defendant did not hold any view that either there was a mistake of fact or, if he did raise the mistake of fact, there were no reasonable grounds where the mistaken belief that he was divorced at the time he married Kathleen Ebanks could have been held by the Defendant.

26. I take into consideration that the Defendant is a person of good character. Although that is not a defence it is something I take into account. The Defendant comes before the Court as a man of 35 years of age with a good record and no trouble whatsoever with the police or the law.



1 27. The Defendant has given evidence and, as with any man of good character, it supports
2 his credibility. This is a factor I take into account when assessing his evidence. It also
3 may well mean that he is less likely than otherwise might be the case to commit the
4 crime with which he is now charged.

5 28. Having listened to the Defendant and heard of his good character I do give
6 considerable weight to his good character. He has impressed me as a man who is
7 telling the truth. I also accept that he was in genuine shock when he discovered that
8 Exhibit #1 was a fraudulent document and not the Decree Absolute which he thought it
9 was.

10 29. Accordingly, I find that the Defendant made a genuine mistake of fact. He honestly
11 believed that he was divorced. He paid legal fees and filing fees and, consequently, he
12 thought that Exhibit #1 was a proper document.

13 30. It is for me to decide upon the evidence put before me whether the Defendant acted
14 dishonestly. I find that the Crown has not discharged the burden of proving that the
15 Defendant knowingly and dishonestly married Kathleen Ebanks when he knew he was
16 still married.

17 31. I have considered all the evidence adduced by the Crown and by the Defendant. I am
18 not satisfied beyond all reasonable doubt that the Defendant went through the marriage
19 to Kathleen Ebanks knowing that he was still legally married to Deborah Brown.

20 32. There is a distinct lack of evidence to support the contention that the Defendant
21 orchestrated or took steps which resulted in the creation of the false document. In fact,
22 the evidence supports the contention that the Defendant honestly believed that he had
23 the reasonably held belief that Exhibit #1 was authentic.



1 33. I take into account that the Defendant has fully cooperated with the police and the
2 Immigration authorities. The Defendant gave a full and detailed account of his position
3 to the Immigration authorities. The Defendant then gave his evidence to the Court and
4 was subject to rigorous and proper cross examination by Crown counsel.

5 34. I find that the evidence the Defendant gave before the Court is consistent with the
6 answers and the evidence he provided to the officers from the Department of
7 Immigration.

8 35. I find that this case is very similar to the case of *R v. Gould*¹⁰.

9 36. I find that the Defendant and or his agents and representatives paid legal fees and filing
10 fees for Exhibit #1 and therefore the Defendant reasonably held the view that Exhibit
11 #1 was an authentic Decree Absolute.

12 37. Accordingly, I find the Defendant not guilty.
13

14 **Dated this the 22nd day of June 2015**

15 



16 **Honourable Mr. Justice Charles Quin Q.C.**
17 **Judge of the Grand Court**

¹⁰ [1968] 2 QB 65