

August 27, 2023

The Hon. Mr. Justice Ian R. Winder
Chief Justice
Supreme Court, Commonwealth of The Bahamas
Bank Lane, In the City of Nassau
New Providence, The Bahamas

Attention: Mr. Nolan Scavella
Clerk

Dear Sir,

Re: Elsworth Johnson, Counsel & Attorney – Request for Recusal of Mrs. Subusola Lawanson-Swain, Assistant Chief Magistrate

I write with reference to the above captioned and further to our (Mr. Justice Ian Winder CJ/Mr. Khalil D. Parker KC/Johnson) meeting of August 8th, 2023, and Your Lordship's direction that I put my concerns in writing. The following is my reply to Your Lordship's request with specific matters for reference: -

Firstly, I thank your Lordship for affording me the opportunity to address what I consider an important issue. For the record, my name is Elsworth Johnson, I was called to The Bar on October 2003, and I am a member of The Bahamas Bar Association in good standing.

Troy Clarke: -

On or about 2015, I was fortunate at that time to be the then sitting President of The Bahamas Bar Association. In my capacity as President of The Bar it was brought to my attention among certain other irregularities that there was an alleged practice of preferential treatment and/or selection of Counselling Institutions in the Magistrate's Court. Further, certain Counseling Institutions felt as if they were being underutilized. My inquiries and/or scrutiny of the information received resulted in a meeting to discuss concerns raised. In attendance at the meeting was Magistrate Andrew

Forbes, Acting Chief Magistrate (as he then was), Mrs. Subusola Lawanson- Swain, Circuit and Stipendiary Magistrate and Mr. Troy Clarke, The National LEAD Institute. At the meeting we discussed circumstances surrounding the selection of counselling institutions for individuals referred by the court to attend counselling and in particular Mr. Clarke, and The National LEAD Institute, in my opinion, at the end of this meeting the matter was resolved.

By coincidence the very same issue(s) were/was raised in by the Office of the Auditor General in an audit report on the Examination of the Office of the Judiciary (Magistrate Court) for the period July 1, 2016, to December 31, 2019. Please see a copy of the report attached hereto for your reference marked “EJ 1”. I am advised that the Learned Magistrate may believe I was responsible for the inquiry conducted by the Office of the Auditor General. However, I had absolutely nothing to do with the said inquiry.

Erica P. Morris

On or about April 2016, my services were retained by Ms. Erica P. Morris to represent her in a criminal trial before the learned Magistrate Mrs. Subusola Lawanson- Swain. Ms. Morris was charged with several offences. At the conclusion of the trial, Ms. Morris was convicted and given a conditional discharge with a stipulation to attend counselling. I reassured Ms. Morris that she would be released in time to collect her child from school. I left the Court only to receive a frantic call from Ms. Morris advising me that I did not advise her that it was mandatory for her to pay to an assigned counsellor the sum of One Thousand Dollars (\$1,000.00) before she would be free to leave the Court. I immediately returned to the Court and appeared before the Learned Magistrate who advised me that she had changed her decision. Consequent thereto, Ms. Morris was “resentenced” to a fine or a term in prison for each count. Attached hereto is the Charge Sheet, and Affidavits of Mr. Troy Kelman, Ian D. Cargill filed on the 30th September, 2016, Erica Morris filed on the 20th of September, Mr. Philip Simon II filed on the 20th September, 2016, Latoya Barnes filed on the 28th of September, 2016, which confirms the information stated above marked and Exhibited “ENJ 2” – “EJ 7”. The aforementioned documents adequately and independently outlined what occurred on the date in question. Further, the information was used to substantiate grounds of appeal filed consequent to the decision of the Learned Magistrate.

Consequent to the decision of the learned Magistrate, I was instructed by my client to file an appeal to have the decision of the learned Magistrate overturned. The requisite application was lodged in the Supreme Court, however, on reviewing the record provided by the learned Magistrate the grounds of appeal were amended to reflect that the record of events as outlined by the learned Magistrate was defective. Please see the Supplemental Affidavit filed by Erica Morris dated October 2016, Notice of Appeal, Amended Notice of Appeal, and the record provided by the Learned Magistrate marked and Exhibited “ENJ 8” – “ENJ 11”.

On the hearing of the appeal before The Hon. Sir. Hartman Longley, Chief Justice of the Commonwealth of The Bahamas (as he then was) it was admitted and accepted that the Learned Magistrate did not respond to the number of allegations as alleged by the Applicant and that the record provided by the Learned Magistrate was in fact deficient among other things it did not record the conditional discharge and the required payment of One Thousand Dollars (\$1,000.00) to a counselling agency. I reassert as I did before His Lordship Sir. Hartman Longley that “there are certain matters that we want to be brought before that Court so that in the future perhaps Justice will be served to the poor and the indigent that come before the Courts who are left with no other recourse than to approach these Courts for that”. Please find attached a copy of the transcript of the hearing before His Lordship Sir. Hartman Longley, the Supplemental Affidavit filed by Mr. Ian Cargil and the Order of Justice Longley CJ marked and Exhibited “ENJ 12” – “ENJ 14”.

By coincidence the very same issues of “a conditional discharge, probation, an Order to attend counselling and, the selection of a counselling agency etc.” were raised by the Office of the Auditor General in an audit report on the Examination of the Office of the Judiciary (Magistrate Court) for the period July 1, 2016, to December 31, 2019. Again, I am advised that the Learned Magistrate may believe I was responsible for the inquiry conducted by the Office of the Auditor General and causing harm to her reputation in this matter. However, I had absolutely nothing to do with the said inquiry.

The end result was that the decision of the Learned Magistrate was overturned, and the matter was reheard by Mr. Darence Rolle-Davis, Circuit and Stipendiary Magistrate.

.

Emerika Robinson

Ms. Emerika Robinson was arrested and charged along with her then partner because of an altercation between them. Ms. Robinson and her partner was and still are respectable citizens of The Bahamas with no prior convictions. Ms. Robinson advised me of the circumstances surrounding her arrest and charge and requested that I represent her at her trial. On learning that the matter was to be heard before the Learned Magistrate, I advised Ms. Robinson of my concerns and advised her that she should considered retaining the services of another attorney to assist her at the trial, as I was concern that my presence at her trail may not assist her. However, Ms. Robinson insisted that I appear at her trial. On the date of the hearing, I appeared before the Learned Magistrate and represented Ms. Robinson. The Defendant was at the hearing along with a local Clergyman who advised the Court that he had counselled Defendants, for what in his opinion amounted to no more than a dispute between two highly intelligent individuals who understood that their relationship was over. I asked for an absolute discharge if not a conditional discharge. However, the Defendants were convicted and fined. Ms. Robinson was consequently held in custody in a cell pending the payment of her fine. I later received a call from Ms. Robinson who was recognizably upset and crying. Ms. Robinson advised me that she was told by the attendant Police Officers that she was ordered to be placed in a cell and that they were of the belief that it was done because of the view that the Learned Magistrate had of me.

Ms. Emerika Robinson presently resided in China and has authorized me to provide Your Lordship with her contact should Your Lordship have any questions or concerns.

Audit Report on the Examination of The Office of the Judiciary (Magistrate Courts)

I approach this portion in presenting my concerns with the thought-provoking admonition of Lord Atkin, as follows: -

“Justice is not a cloisters virtue.... She must be allowed to suffer the scrutiny and respectful, even though outspoken comments of ordinary men”.

I present for Your Lordship’s consideration the Audit Report on the Examination of the Judiciary (Magistrate Court). I must admit that in the main the report records may have confirmed a number of concerns held by myself and others concerning the alleged procedure/practice in the court

supervised by the Learned Magistrate. On receiving and reviewing the report, I spoke to The Most Hon. Dr. Hubert Alexander Minnis, Prime Minister of The Commonwealth of The Bahamas (as he then was) and advised him of the “scrutiny and respectful, even though outspoken comments of ordinary men” reported to me concerning the workings in the Learned Magistrate’s Court. I hasten to say that despite popular belief, that I did not initiate, nor did I cause an investigation to be conducted by the Office of The Auditor General. Suffice to say, I am of the considered opinion that Mr. Troy Clarke and Ms. Erica Morris experience mirrors in almost every aspect, the findings of the Office of the Auditor General.

Whether real and/or imagine, I am of the considered opinion that the Learned Magistrate may be of the opinion that my acts and/or omission may have resulted in the Audit Report and that the Learned Magistrate holds me personally responsible.

Charles Krepps Jr., Charles Krepps III, Kelsey Kmoch & April Krepps

The Kripps were visitors to The Bahamas who on or about April 18, 2023, were charged with several offences while being concerned together at a local hotel where they resided while on vacation in The Bahamas. The Krepps were referred to me by another attorney. I appeared before that Learned Magistrate who rightly convicted my clients, in light of the fact that they plead guilty. At a point in the proceedings, I submitted and invited the Court to allow one of the Defendants to be allowed to go and get the fines levied. The Learned Magistrate retorted that she did not want to be accused of anything. I simply replied and said that I knew of which she spoke. I later learnt that one of the individuals was allowed to leave and to acquire the funds to pay the fine. Despite my best efforts, my experience before the Learned Magistrate left me feeling humiliated and embarrassed. On completion of the matter, I proceeded to the officer of The Hon. Sir Brian Murry, Chief Justice of The Commonwealth of The Bahamas (as he then was) to lodge a complaint. However, I was advised that His Lordship was out of office and that I was free to communicate with His Lordship via email. In hindsight, I should have followed through in presenting my concerns as I do now.

More Recently:

In recent times I had conduct of two (2) matters before that Learned Magistrate. After deep reflection, consideration and information provided to me, I determined that my former clients

would be better served if I were to recuse myself and allow another counsel and attorney to represent my clients. In the circumstances, I no longer act as counsel and attorney for the individuals.

Request:

It was my intention to retain Senior Counsel to assist me in making an application to the Court to have the Learned Magistrate recuse herself from all my matters going forward. However, on the advice of Mr. Kahlil Parker KC, President of The Bahamas Bar Association, I have decided to communicate my concerns directly to you. If it is at all possible, I crave Your Lordships intervention/indulgence and request that the Learned Magistrate not be allowed to hear any matter for which I have carriage in the future as I am of the opinion that a fair minded and informed observer would genuinely conclude that there was or is a real possibility that the Learned Magistrate may not be able to conduct a fair hearing where I am Counsel and Attorney therein.

Conclusion:

In the interest of the administration of Justice, I have exercised restraint and brevity in this matter. However, I would be remis if I did not mention concerns brought to my attention by Mr. Devard Frances, Counsel and Attorney at The Bahamas Bar Association, who finds himself in a similar position and simply refuses to appear before the Learned Magistrate.

I am grateful for Your Lordship's forbearance and temperance in this matter.

Yours respectfully,

.....

Elsworth Johnson

Cc: Mr. Mr. Khalil D. Parker KC
President
The Bahamas Bar Association

