BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Bail Application No. 0125 of 2014

BETWEEN:

ANDRE OMAR JACKMAN **Applicant**

AND

COMMISSIONER OF POLICE **First Defendant**
THE DIRECTOR OF PUBLIC PROSECUTIONS **Second Defendant**

Before: **The Hon. Mr. Justice Jefferson Cumberbatch, Justice of Appeal**

2020: September 01

Mr. Michael Lashley, QC in association with Ms. Khadisha Wickham for the Appellant

Mr. Kevin Forde for the First and Second Defendants

DECISION

CUMBERBATCH JA:

INTRODUCTION

[1] This application is by way of an appeal of the decision of **Reifer J** on 20 April 2020, in which she denied the appellant's application for reinstatement of bail pending trial.

BACKGROUND

[2] The applicant was charged on 30 September 2018 with offences under the **Firearms Act, Cap. 79**, and under the **Offences Against The Person Act, Cap. 141**. These offences were, as follows:

(a) Two counts of endangering life
(b) Two counts of wounding with intent;
(c) Three counts of use of a firearm; and
(d) Criminal damage

[3] The applicant was initially granted conditional bail in respect of these offences on 14 December 2018 and was eventually released from custody on 9 January 2019.

[4] On 21 September 2019, this grant of bail was revoked for breach of the conditions attached to its grant.

[5] Reinstatement of bail and a claim for *habeas corpus* were sought in December 2019 in an application to the Chief Justice, sitting as a judge of the High Court, but these were both unsuccessful. In February 2020, another application was made for bail, but this was subsequently unilaterally withdrawn by the applicant without being heard.

[6] A further application for reinstatement of bail pending trial was made to **Reifer J** on 23 March 2020. Its denial is now the subject matter of this appeal.

THE APPLICATION BEFORE REIFER J

[7] The learned judge was very careful in outlining the oral and written submissions of both the applicant and the respondent and ultimately denied the application for reinstatement of bail in her discretion. Indeed, she concluded on 20 April 2020:

> "*This court is not convinced … that there has been a change of circumstances or that new considerations have arisen. With the exception of the Applicant's wife's medical condition of hypertension, all matters mentioned by counsel for the Applicant, specifically that he is the breadwinner of the family and the proprietor off several businesses do not constitute new circumstances and there is no affidavit evidence before this court about the alleged medical event which would support the contention that there is a changed circumstance or a new consideration."*

THIS APPEAL

[8] The current appeal requests me, sitting as a single judge of the Court of Appeal as empowered under **section 53 (1) (v)** of the **Supreme Court of Judicature Act, Cap. 117A**, to reverse the decision of **Reifer J** and to admit the applicant to bail pending the commencement of his trial.

[9] In this respect, the appellant bears the burden of establishing that the exercise of discretion by the court below not to reinstate bail fell into the realm of reversible error by (i) being based on a misunderstanding or misapplication of either the law or the evidence; or (ii) there being such a change in circumstances after the ruling has been made that would have

justified the court acceding to an application to vary it; or (iii) that even though there was no error of law or fact, no reasonable judge acting judicially could have come to such a determination; or (iv) that the judge has given no or insufficient weight to a consideration that ought to have weighed with him or her; or (v) that he or she has been influenced by a consideration that ought not to have weighed with him to her, or not weighed so much with him or her.

[10] I accept that it is only after the appellate court has reached the conclusion that the judge's exercise of his or her discretion must be set aside for one or other of the reasons set out above that it becomes entitled to exercise an original discretion of its own.

[11] These principles have been iterated in a plethora of decisions of various courts including **Hudmor Productions Ltd et al v Hamilton et al [1982] 1 All ER 1042,** and even more recently in **CGI Consumers' Guarantee Insurance Co. Ltd v Trident Insurance Co. Ltd, Civil Appeal No. 9 of 2014.**

[12] However, the judge's discretion to refuse bail is not an absolute one, but is cabined and confined by the provisions of **section 5** of the **Bail Act**. **Subsection 1** of this **section**, as relevant to this case, confers the discretion to refuse bail in the circumstances itemized therein:

Where a defendant is accused or convicted of an offence that is punishable with imprisonment, the court may refuse an application for bail if

(a) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, whether subject to conditions or not would
(i) fail to surrender to custody,
(ii) commit an offence, or
(iii) interfere with witnesses;
(b) the court is satisfied that the defendant should be kept in custody
(a) for his own protection;
(b) for the protection of the community; or
(c) if he is a child or young person, for his own welfare;

[13] **Subsection 2** delimits the matters to be taken into account in the exercise of that discretion:

"In the exercise of its discretion under subsection (1), the court shall have regard to any relevant factor including the following:

(a) the nature and seriousness of the offence or default, and the probable method of dealing with the defendant for it;
(b) the character, antecedents, associations and community ties of the defendant;
(c) the defendant's record as respects the fulfillment of his obligations under previous grants of bail;
(d) the strength of the evidence of his having committed the offence or having defaulted, except where the defendant's case is adjourned for inquiries or a report; and
(e) the length of time the defendant would spend in custody if the court were to exercise the power

> *conferred on it by section 218A of the Magistrate's Courts Act.*

[14] In **Pedro Deray Ellis aka Pedro Deroy Ellis v DPP CA No. 3 of 2017 (March 7 2019)**, **Burgess JA**, as he then was, giving the unanimous judgment of the Court of Appeal, reasoned that:

> "*This section gives the court a discretion to refuse an application for bail of a defendant who is accused or convicted of an offence punishable by imprisonment.* ***This discretion is not at large but is strictly circumscribed by the conditions set out in that section….this circumscription is reflective of the commanding heights bail occupies in our country's unswerving commitment to fundamental human rights principles and to the rule of law****"* [Emphasis added]

[15] For this application to be successful therefore, I need to be persuaded on a balance of probabilities that **Reifer J** exercised her discretion to refuse the reinstatement of bail outwith these considerations.

[16] In his notice of application filed on 11 August 2020, together with a certificate of urgency, Mr. Lashley QC, counsel for the applicant, applied for special leave to be granted for the Intended Appellant/Applicant to apply for bail pending his appeal against the decision of the High Court dated 20 April 2020 denying the Intended Appellant/Applicant's application for bail.

[17] The grounds of his application were as follows:

> 1. That the learned trial judge erred as a matter of fact that the Applicant was charged with several firearm related offenses when in fact the applicant was charged with one firearm offence.

> 2. The learned trial judge erred in both law and fact in failing to give any or sufficient weight to the evidence of the Appellant regarding him being a fit candidate for bail set out in the Appellant's affidavit sworn on 23 March 2020 in support of his application for bail filed on 23 March 2020.
>
> 3. That there has been a change in circumstances relating to the defendants of the Applicant/Appellant.

[18] In his affidavit filed in support of his application, the applicant deposed that he was 41 years old having been born on 16 February 1979.

[19] He further outlined the filing of an application for bail before **Reifer J** on 23 March 2020 that was heard on 7 April 2020 and refused by the learned judge on 20 April 2020. He appealed this decision on 11 May 2020.

[20] He also deposed that appeals in Barbados generally take some time to be heard and decided and that his attorney at law has advised him that he has a good prospect of success in his appeal based on the fact that the ruling handed down by the learned trial judge stated that he was charged for several offenses under the **Firearms Act, Chapter 68** including possession of a firearm. According to him, this is erroneous and highly prejudicial and has prevented him from having a fair hearing with respect to his bail application.

[21] He made further statements that he had not received the transcript of proceedings up to the time of filing the affidavit, that he is a citizen of Barbados and has been domiciled here for his entire life and that he has

always attended court when he was required to do so and that he undertakes to attend court with the goal of proving his innocence.

[22] Further deposition included that he had extremely strong ties to Barbados including his family, businesses and property; that he maintained his innocence of the charges and that he had been advised that the substantive matter against him is weak.

[23] Additionally, he averred that to the date of his deposition there has been no case management conference held to settle preliminary issues.

[24] Mr. Lashley QC also filed a supplemental affidavit dated 17 March 2020 sworn by Marissa Monique Jackman of Stroud Bay, Crab Hill, in the parish of St Lucy, who deposed that she was the wife of the Appellant in this matter and that they were the parents of four children, namely Makena Jackman, aged 19 years; Malika Jackman, aged 16 years; Andresha Jackman, aged 13 years; and Anissa Jackman, aged 10 years.

[25] She avers further that she is aware of her husband's remand at Her Majesty's Prison Dodds in St Philip having been denied bail on 20 April 2020 and that he was on remand from September 2019.

[26] She states that she is unemployed and that her husband is the sole breadwinner of the family; that he provided for the household and also for

the educational requirements for the three minor children and for Makena who attends the University of the West Indies Cave Hill Campus.

[27] The affidavit also states that her husband is the owner of a rental car business and a shop and that she has utilized their savings for the upkeep of her family.

[28] According to her, these savings have vastly dwindled and it is becoming increasingly difficult to maintain the household and the children especially with the advent of the pandemic in March because there is no revenue from the businesses.

[29] Additionally she swears that she has been diagnosed with migraine headaches by Dr. Andrew Cadogan of Speightstown, St Peter; that she has also visited Dr. Nagdee in Strathclyde, St Michael who has recommended that she have a CT scan.

[30] Finally, she affirms that she verily believes that if her husband is granted bail he would be able to restart the businesses which would enable to alleviate the extreme financial hardships that she is going through and she gives an undertaking to provide any medical report or prescription as evidence that she is receiving medical attention if the Court so orders.

SUBMISSIONS

[31] Learned counsel for the applicant**,** Mr. Lashley QC submitted that **Reifer J** had made an error in her determination in that she had stated in her outline of the facts that the applicant had been charged with "several offences under the **Firearms Act** and **Offences Against The Person Act**, the most serious of which is the use and possession of a firearm contrary to the **Firearms Act, Cap 179, section 3**".

[32] Mr. Lashley QC pointed out that the applicant had not in fact been charged with possession of a firearm, but merely with the use of one without a license, a distinct offence. In his submission, this error served to compromise the ruling.

[33] In response, counsel for the Crown, Mr. Forde, insisted that this error was of minor significance and that, in any event, the punishment under **section 30 (1)** of the **Act** was the same for both offences. This is correct. I agree with Mr. Forde's submission here. While it is true that a misapprehension of the evidence may lead to an abuse of discretion by the trial judge, this misapprehension should also be operative in influencing the exercise of the discretion. This Court does not accept that this misstatement would have critically affected the discretion of **Reifer J** not to reinstate the applicant's bail.

[34] Mr. Lashley's QC contention that the applicant was a fit person for bail centered on two main grounds. First, that since he had merely been charged with and not convicted of any of the alleged offences, the applicant was entitled to the benefit of the presumption of innocence. This is a self-evident truth, but counsel also relied *sub modo* on the dicta of *Barnard CJ* in **Krishendath Sinanan et al v The State (No.1) (1992) 44 WIR 359, 366** where, referring to the contrasting case of an applicant who has been convicted, the learned *Chief Justice* stated:

> *"In the case of a convicted person no justice or bench of justices had any inherent jurisdiction to grant bail. The jurisdiction, if it existed, must be found within some statutory provision which defined the persons on whom the jurisdiction was conferred, the extent of the jurisdiction, the manner in which it was to be exercised and the consequences of exercising it."*

[35] Contrastingly, Mr. Lashley QC submits, the applicant who is not a convicted person is not to be similarly treated as a convicted person and is entitled to the grant of bail.

[36] Mr. Lashley QC also referred to the consideration at **section 5 (2)(c)**, the strength of the evidence of the applicant having committed the offence, under the rubric of the likelihood of success at the eventual trial. In this connection, he directed me to the decision in **The State v Lynette Scantlebury (1976) 21 WIR 103** where *Haynes C* observed that

circumstances must be “exceptional’ to justify the grant of bail to convicted persons. Again, he seeks to contrast the circumstances of the current application with those in that case.

[37] So far as the strength of the evidence of the applicant’s commission of the offense is concerned, Mr. Lashley QC provided two affidavits, the first from one Blair Antone Greaves of Checker Hall, St Lucy who deposed on 8 November 2018, that he never made a statement to the police in respect of the charge of the applicant having engaged in conduct which placed him in danger of death or serious bodily harm; and that he has no intention of giving evidence in the matter as his life was never placed in danger by the applicant.

[38] The second affidavit was from Judith Griffith of Harrison Tenantry, Crab Hill, also in the parish of St. Lucy, who deposed on 29 October 2018 that she was shot while at home; that she cannot say who shot her; that she saw persons wearing masks and carrying guns; that she does not believe any of the persons she saw was Andre Jackman based on the physical features that she saw. According to her affidavit, Andre Jackman lives across the road from her and she is very familiar with him.

[39] There was a third affidavit sworn by one Clint Harvey of Archer’s Bay, Crab Hill, in the parish of St Lucy, on 30 October 2018. He deposed that on the

28 September 2018, he was at Archer's Bay, Crab Hill, before 10 am until after 6 pm, and that while he was there the applicant was there for the entire period of his stay. He deposes that he learned later that the applicant had been held by the police for a shooting that occurred elsewhere during the stated period. He affirms that he went to District E Police Station to indicate to the officers that the applicant could not have been present at the scene of the shooting as the applicant was with him and several other persons, but the police refused to take a statement from him.

[40] In his written submissions on this matter, Mr. Lashley QC termed as "questionable" the strength of the Crown's case against the applicant. He argued that this contention was further supported by the affidavit deposed to by Blair Greaves stating that he had no intention of giving evidence in this matter as his life was never placed in danger by the applicant. He also adverted to the fact that the applicant had never given a written or oral confession in relation to these matters and the Crown had disclosed no forensic, photographic or medical evidence to the defence.

[41] He submitted, in sum, that the Crown's case was "manifestly weak and did not substantiate the elements of the offenses as charged".

[42] In this connection, he relied on a passage from *Blackstone's Criminal Practice 2018*, *para D7.21* on *page 1470* to the effect that "*the strength of*

the evidence of the accused having committed the offense is relevant to whether an accused would answer bail, in the sense that, one who knows there is a good chance of being acquitted is less likely to abscond than one who anticipates almost certain conviction. It can be argued that there is no point in the accused absconding if he is likely to be acquitted anyway. Conversely, if the prosecution's case is strong, he may abscond rather than face the music, especially if a custodial sentence is likely. It is also relevant that a remand in custody followed by an acquittal crates a manifest, if x sometimes, unavoidable injustice. In borderline cases where the arguments against bail are strong but not overwhelming the court may prefer to run the risk of the accused absconding, rather than the risk of his being acquitted after a long period of custody on remand."

[43] These affidavits *ex facie* appear to go some way in absolving the applicant, but the Greaves affidavit at least was placed before and considered by **Reifer J** in the earlier exercise of her discretion to refuse reinstatement of bail. In this context, it cannot be said that the exercise of her discretion was based on an error of misunderstanding the evidence placed before her.

[44] It does not appear on the facts before me that the Griffith and Harvey affidavits were considered by **Reifer J** but, at best, these averments by the

deponents would serve to satisfy one only of the several criteria to be taken into account under **section 5 (2)**.

[45] In his application before me, Mr. Lashley QC also laid great store by the applicant's family and business connections with regard to the factor of the character, antecedents, associations and community ties of the defendant to be found at **section 5 (2)(b)** of the **Bail Act**. He relied on an excerpt from *Blackstone's Criminal Practice (2018) at Para. D7.19* to the effect that the Court should examine *"how easy it would be for the accused to abscond and how much he has to lose by absconding. How long has he lived at his present address? Is he single? Does he have dependent children? Is he in employment? How long has he had his present job? Does he have a mortgage or protected tenancy? An accused of no fixed place of abode or living in short term accommodation is not automatically debarred from bail but the ease with which he could disappear to a different address is [a] factor to consider."*

[46] According to Mr. Lashley's QC written submissions, the applicant has a fixed palace of abode at Stroud Bay, Crab Hill in the parish of St Lucy where he has resided for most of his life. He shares a home with his wife of four [4] years, whom he has been in a relationship with for over twenty [20] years. He has six children, four of whom reside with him and are children of

the marriage. He is the Managing Director of the businesses AMJ Car Rentals and AMJ's Bar, both of which operate from within the parish off St Lucy. Therefore, he argues, it [is] clear that the applicant has strong community ties.

[47] He also acknowledged the single criminal antecedent of the applicant and noted that it related to simple possession of a controlled drug that was disposed of summarily, and submitted that it could be argued that in light of the accused's strong community ties and his lack of convictions for serious offenses, **section 5 (2)(b)** of the **Bail Act** should be resolved in favor of the applicant.

[48] And, in contrast to the application to the court below, Mr. Lashley QC provided me with documentary evidence of the acceptance of Miss Makena Jackman to the Faculty of Social Sciences at the Cave Hill campus of the University of the West Indies; a certificate of incorporation of AMJ Car Rentals Inc, Company No. 33126 dated 29 March 2010, having its registered office at Crab Hill 31 St Lucy, Barbados and having as directors Andre O Jackman of Crab Hill, St Lucy and Ms. Eudene Chandler of the same address.

[49] He also provided me with a copy of a document headed Request for Radiologic Exam on the letterhead of Diagnostic Radiology Services, signed

by a Dr. Nagdee in respect of a Marissa Jackman of Stroud Bay Road in the parish of St Lucy and dated 18 August 2020 and a letter from Dr. Nagdee dated 28 August 2020 and affirming that she is under treatment for hypertension and the need for a CAT scan of Mrs. Jackman to ascertain the cause of her headaches. These documents corroborate much of the material deposed to in the affidavit of Mrs. Marissa Jackman referred to above and I accept her affirmations as truthful.

[50] These matters were all considered by **Reifer J** in the court below and, save for commenting on the absence of affidavit evidence as to what she referred to as "the alleged medical event", she refused to be swayed by the fact that the Applicant was the breadwinner of the family as proprietor of several businesses.

[51] The sole ground upon which this exercise of the learned judge's discretion may be reviewed here appears to be that there was such a change in circumstances after the ruling has been made that would have justified the court acceding to an application to vary it. Apart from the need for Mrs. Jackman to have a CAT scan as deposed, I perceive no change in circumstances that would have sufficed to require the lower court to accede to an application to vary its ruling in this regard.

[52] With regard to **section 5 (2)(c)** of the **Bail Act**, treating the defendant's records as respects the fulfillment of his obligations under previous grants of bail, Mr. Lashley QC submitted that the applicant had appeared in court on each occasion he was required [to]. In addition, no issues arose on the facts of this matter in relation to the applicant absconding.

[53] He further submitted that the applicant was at all times compliant with the Order of **Worrell J** made on 12 December 2018 that he reside at the residence of his brother at Jackson, St Michael, second, he had adhered to the highly restrictive condition prohibiting him from entering the parish of St. Lucy despite his strong community ties to the said community, and third, he also demonstrated "reasonably" good conduct in respect of his reporting condition. Mr. Lashley QC posited that based on these facts, it could be argued that the applicant was generally compliant with his bail conditions, save for the breach of his curfew.

[54] Mr. Lashley QC cited the case of **R (on the application of Vickers v West London Magistrates (2003)** where the court considered a breach of curfew to be "just one factor to be taken into account when considering whether to release the accused on Bail again or to remand him into custody." He argued that in accordance with this principle, the Court ought to have regard to all the circumstances of the case and that the admitted breach by the

applicant should merely be treated as one factor for consideration, and should not operate as an axiomatic bar to bail.

[55] He also referred to three local decisions, **R v Shawn Evelyn; Andrew St Mark v COP et all, BA N o 105 of 2017 and Romario Phillips and Shamar Ishmael** in all of which the breach of a bail condition had met with a strong reprimand and the accused had been allowed to continue on bail in identical terms to those previously granted. He also referred to **Shawn Weeks, Shaquille Elder, Leon Lawrence, Rohan Holder and Jamal Ramsey**, for none of which he supplied a copy or a citation.

[56] In any event, these decisions are not binding on this court and do not serve in any way to impugn the exercise of her discretion in this matter by **Reifer J**.

[57] Mr. Lashley QC also submitted that other factors may be relevant to the exercise of the discretion in addition to those expressed in **section 5 (2)** which, according to him, were not exhaustive. He cited in this context the likelihood of substantial delay in the criminal justice system and that this matter will not be brought to trial within a reasonable time. He also adverted to the hardship caused to the applicant's family by his continued detention, especially the illness of his wife.

[58] In his submissions, Mr. Forde for the Crown stoutly met each argument of Mr. Lashley QC. He argued that the factor of the wife's indisposition was an irrelevant consideration. He purported to rely on para. 45 of the decision in **Hawkesworth et al v the Superintendent of Prisons HC Barbados's Civil Suits Nos. 1043, 1045 and 1062 of 2011; Bail applications Nos. 123, 124 and 125 of 2011**. Unfortunately, in the copy of the case supplied to me by counsel, no such point is made in para 45.

[59] He also argues that the family connections and responsibilities of the applicant do not constitute special circumstances, in that one might say they are factors that are generally applicable to all persons in the applicant's position. In this connection he refers to paras. 42 and 43 of **Hawkesworth (loc. cit. supra)** where **Gibson CJ** alluded to the decision of the Federal Court of Australia that examined an application for bail in **O' Donoghue v Ireland and Calder (2009) FCA 394** where the defendant's affidavit averred that his family were entirely dependent upon his income, and that if committed, he would be unable to pay the rent on their home; his wife and two of their children had surrendered their passports and the other two children did not have passports; he had been on bail since February 2004 and had complied with all the bail conditions… and that he suffered from health

issues including high blood pressure, loss of consciousness and blackouts which worsened with stress and anxiety.

[60] Notwithstanding these averments, a Federal Court did not consider that these types of matters constituted special circumstances, in the sense that one might say they are generally applicable to all persons in the applicant's position…"

[61] Of course, I am not bound by this observation from the Australian court nor do I have to find under our law that special conditions exist as did the Australian Court. Nevertheless, **section 5 (2) (b)** requires that they be taken into account and it is clear that **Reifer J** did take them into account in her determination in the court below when she stated:

> *"In a review of the submissions made, …the strength of the evidence, the character, antecedents associations and community ties of the Applicant…this Court is of the view that while any single one of these considerations in and of itself does not pose a sufficiently powerful reason for the refusal of bail, looked at in their totality, they do".*

[62] In consequence, it has not been established that the exercise of her discretion is to be impugned in this regard.

[63] So far as the strength of the case against the applicant is concerned, Mr. Forde submitted that the Greaves affidavit had "absolutely no bearing on" nor did it affect the causes against the accused. He argued that in any case, Mrs. Wanda Blair, the Magistrate in charge of District E Holetown

Court had committed the applicant to stand trial at the Assizes for two counts of endangering life, two counts of wounding with intent, three counts of the use of a firearm and criminal damage based on the existence of a prima facie case against him.

[64] In his written submissions, Mr. Forde also emphasized the origin, nature and seriousness of the offenses charged, and the applicant's disregard of the conditions of the curfew imposed by **Worrell J**. He also submitted that the applicant should be kept in custody for his own protection and that of the community pursuant to **section 5 (1) (b)** of the **Act** in that there exist disagreement and tension between the applicant and his group and another group of guys in the community.

[65] Mr. Forde next drew the Court's attention to the applicant's propensity to reoffend through his antecedent of having been charged with no fewer than 8 drug offences between 2000 and 2013, (although he conceded that these bore no relation to the current charges), and his reputation as an influential leader of one of the rival factions operating within Crab Hill #2 St Lucy. Finally, he noted the applicant's disregard for the sanctity of the court by his earlier breach of bail conditions.

DISCUSSION

[66] Mindful of my purely supervisory role in this matter, if I am to reverse her decision, I am obliged to find that **Reifer J** engaged in an improper exercise of her discretion under **section 5** of the **Bail Act** in refusing to reinstate the grant of bail to the Applicant in her determination in the court below.

[67] I do not so find. The learned judge was careful to consider all the relevant factors and took no irrelevant considerations into account. There appears to be some material placed before me that did not fall to be considered by **Reifer J** but I do not find that these would have justified her altering the exercise of her discretion in the circumstances.

[68] I should observe further that it has been close to one year since the Applicant has been on remand awaiting trial and Mr. Lashley QC rightly drew my attention to what he considered to be the wholly unsatisfactory response of the Public Prosecutions Department to his letters of 20 March and 19 June 2020 inquiring as to its intention to indict and try the applicant.

[69] The reply of the Department was that the *"DPP will make a determination regarding this matter as soon as practicable".* During oral argument of this matter, Mr. Forde set a timeline of eight weeks, one that he promised to make efforts to reduce to six weeks at the urging of the court.

[70] I should wish to insist here that the Department of Public Prosecutions make every effort to have the applicant indicted within a six-week period from today's date. The interests of justice and adherence to the rule of law would require no less.

DISPOSAL

[71] **(i) The application is denied as having failed to establish that the exercise of her discretion by Reifer J to refuse the reinstatement of bail for the applicant was improper and so ought to be reversed.**

(ii) The applicant is at liberty to apply to the full Court of Appeal. This appeal is to be heard on 6 October 2020.

[72] My thanks to both counsel for their learned assistance in this matter.

Justice of Appeal