

Grand Bahama Port Authority

1 THE COURT: I have with me Mr. Evans, QC,
2 Mr. Damian Gomez, Mr. Fred Smith, and Mr. Greg Moss of
3 counsel.

4 I was this morning to deal with the matter
5 of -- well, concerning the Port Authority. Because of a
6 recent decision I handed down, I might not have been
7 able to deal with it. However, matters have become more
8 serious than I imagined they ever would. I will try not
9 to lapse into the Australian vernacular, but there is
10 plenty I can say. I will be brief.

11 In a statement to the House of Assembly, I
12 think, on the 16th of -- sorry -- on the 15th of
13 November, your Attorney General stood up in the House
14 and claimed that the judgment or judgments that I have
15 written in, I would gather, Pratt and Williams and Moss
16 and Bahama Reef were misleading. That causes me
17 considerable concern.

18 I know the Bahamian community. I know Nassau.
19 I know that at the moment it is electorally charged. I
20 know the color of my skin. I know that I'm a foreigner.
21 I know that you cannot stand up in the Parliament as the
22 officer who is responsible for the Judiciary and as a
23 leader of the Bar and say that a judge of my complexion
24 and of my foreign nationality has misled the Bahamian
25 people on a very serious issue. That, in my view,
26 compromises or could compromise my personal security.
27 It only takes one fool. I am taking measures to protect
28 myself in that respect.

29 The thing that most concerns me, though, about
30 this is the impact on my integrity and reputation. To
31 say that a judge has misled is to impute the possibility

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1 that a judge has untruthfully represented something as
2 to be what it is not. To make such an allegation --
3 sorry -- an assertion -- this was not an allegation.
4 This was an assertion -- goes to the very heart of what
5 a judge is about; that is, that a judge must always
6 truthfully represent matters. If not, then a judge's
7 integrity is obviously up for question. It has,
8 therefore, been asserted by your Attorney General as the
9 leader of the Bar and as the person responsible in the
10 Parliament for representing the Judiciary that the
11 distinct possibility exists that I have, as a judge of
12 the Supreme Court, untruthfully represented a state of
13 affairs to this nation. That impacts, of course, on my
14 reputation; but not only that, my career. You can
15 hardly expect any foreign investors who come here and
16 have litigation and come before my court as the senior
17 commercial judge to have any confidence in a judge about
18 whom the Attorney General has announced to the nation in
19 the Parliament that he misleads. I am greatly disturbed
20 by this.

21 The Parliament is not the place for those types
22 of allegations -- those assertions. It is as simple as
23 that. The Attorney General represents the judges in the
24 Parliament. The Attorney General's constitutional
25 position is to defend the judges in the Parliament.
26 I've covered all of this for the Attorney General's
27 information in my recent decision of Samuel Knowles and
28 the Attorney General delivered on the 28th of September.

29 What the Attorney General has done, has gone to
30 the people of the Bahamas in an emotionally charged
31 matter denying me totally any right of defence or any

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1 right of hearing. She is the person who defends my
2 rights, and she has said to the people of the Bahamas
3 that it is her assertion I have lied to them and misled
4 them. There was no misleading.

5 As a matter of law, Section 4 -- the Judges
6 Pensions and Remunerations Act as a matter of law is
7 compulsory. As a matter of law, the Cabinet had certain
8 compulsory obligations. As a matter of fact, in 2003
9 and 2004, the Cabinet did not perform those compulsory
10 obligations. There was no misleading. The public forum
11 and the Parliament is no place for this.

12 The thing that concerns me greatly, Counsel, is
13 this, is that when all of this dies away, there will
14 remain on the record of your Parliament for posterity an
15 assertion by the Attorney General of the Commonwealth of
16 the Bahamas, the officer constitutionally charged with
17 the political responsibility for the Judiciary and the
18 leader of the Bar, that a judge of the Supreme Court,
19 that is myself, misleads the people of the Bahamas.
20 That imputes that I do not tell the truth in my
21 judgments. The place for that type of allegation by the
22 Attorney General is the Courts of Appeal. The Attorney
23 General has eschewed going to the Courts of Appeal. I
24 have granted the Attorney General leave. The Attorney
25 General has not as of five minutes ago -- and I have
26 checked -- filed any documents in the Court of Appeal.
27 The Attorney General in her statement to the House said
28 she was going to the Court of Appeal. Instead, she has
29 gone to the public forum and the Parliament.

30 The opportunity is -- this is an urgent matter
31 that should urgently be appealed. The Attorney General

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1 has no other responsibility but to appeal this matter
2 urgently. I will stand by the Court of Appeal's
3 judgment on, one, whether I was correct at law. That is
4 inconsequential to me personally. That is the way --
5 that is what courts of appeal are for. But the
6 allegation that I have misled the Bahamian people -- I
7 haven't sworn yet, have I -- is not something that I
8 take lightly. It is something which must as a matter of
9 extreme urgency be dealt with by the Appellate Courts.

10 The opportunity is there for the Court of
11 Appeal to hear the matter as soon as possible. The
12 Privy Council are coming here in historic sittings in
13 December. The opportunity is there for the Attorney
14 General to raise these serious allegations before the
15 Court of Appeal and have them decided on by the Privy
16 Council before Christmas. The Attorney General has not
17 partaken of this process.

18 I call on the Attorney General to immediately
19 file a notice of appeal and to plead in that notice of
20 appeal with particularity those matters that the
21 Attorney General considers that I have misled the
22 Bahamian people on. I call on her to do that without
23 delay.

24 I will stand by and await the judgment of the
25 Courts of Appeal. If it is that they find that I have
26 misled the Bahamian people, as a matter of honor, I must
27 resign. You cannot expect to have sitting on your bench
28 a judge who deliberately or even recklessly and
29 carelessly misleads the Bahamian people in crucial
30 judgments.

31 There is no excuse for the Attorney General

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1 that she is not ready to appeal. She speaks to the
2 House of how she has briefed counsel. I would think
3 that in a matter as serious as this it would be
4 absolutely imperative that before an Attorney General
5 made such a serious allegation to the House that not
6 only did they check their facts and understand that the
7 Attorney General had the required evidence to the
8 required degree -- for example, see Briginshaw and
9 Briginshaw, I think is the Australian case, [1938]
10 Commonwealth Law Reports, if I remember, Bater and Bater
11 is a decision of Lord Denning, I think, about 1961
12 appeal cases -- I would think also that it is absolutely
13 mandatory and, in fact, proper that the Attorney
14 General, before making such assertions, would have
15 unqualified advice from senior counsel that is in order
16 to make such assertions. These things are career ending
17 for a judge.

18 As I've said, if the Court of Appeal and Privy
19 Council in considering properly pleaded matters find
20 that I have indeed misled the Bahamian people, I am duty
21 bound to resign. Similarly, I say to the Attorney
22 General, if it is that the Court of Appeal and Privy
23 Council find that I have not been guilty of such a
24 blatant disregard of my duty, that the Attorney General
25 would resign also. The proper course is for this to go
26 through the appeal process.

27 I think as a matter of propriety that I must
28 recuse myself from all matters until such time that this
29 is resolved. You simply cannot have a judge's
30 credibility questioned and asserted adversely so for
31 posterity in the Parliament of this nation.

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1 That's all I have to say on the matter.

2 Ms. Hoffman, if you could prepare that, please,
3 a copy to Mr. Evans, Mr. Moss, Mr. Smith, and Mr. Gomez.

4 I will transmit a copy of these remarks to the
5 Bar Association and to the Chief Justice immediately.

6 I will take such steps, Mr. Evans, Mr. Moss,
7 Mr. Smith, and Mr. Gomez when I go into my chambers on
8 Friday to transfer all upcoming matters to the Chief
9 Justice. I have two matters in the new year that
10 concern very important matters to the members of the
11 electorate of the Attorney General concerning compulsory
12 land acquisitions. I had, I thought in the matter of
13 fairness, brought all of those matters on and was hoping
14 to deal with them. It is totally and completely out of
15 the question now in point of these assertions that I
16 deal with anything that may affect the electoral chances
17 of the member for Pinewood. I will have to move those
18 aside. I will move those aside -- and I'm saying this
19 publicly -- because I know that there are many persons
20 in that electorate who have been adversely affected for
21 some considerable time. I will move those immediately
22 to the Chief Justice for allocation for other judges so
23 that the dates are not adversely affected those two
24 months until they come up. The matters are prepared for
25 trial, and there is no reason why another judge could
26 not do them.

27 Thank you, Counsel, for your assistance this
28 morning. Thank you, Ms. Hoffman.

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