[2013] CCJ 1 (OJ) (R)

IN THE CARIBBEAN COURT OF JUSTICE

Original Jurisdiction

CCJ Application No. OA 002 of 2012

Between

SHANIQUE MYRIE **Claimant**

And

THE STATE OF BARBADOS **Defendant**

And

THE STATE OF JAMAICA **Intervener**

THE COURT,

composed of D Byron, President, R Nelson, A Saunders, D Bernard, J Wit, D Hayton and W Anderson, Judges

having regard to the oral application made on behalf of the Claimant on March 18, 2013 for the admission into evidence of statements given to the police by Daniel Forde and Sheka Rowe, the written submissions and authorities of the Claimant submitted to the Court via e-mail on March 18, 2013 and the written submissions of the Defendant and the Intervener both submitted to the Court via e-mail on March 18, 2013 and the addendum to the written submissions of the Claimant submitted to the Court via e-mail on March 19, 2013

and after considering the oral submissions and written observations of:

- **the Claimant**, by Ms Nancy Anderson and Ms Michelle Brown, Attorneys-at-law
- **the Defendant**, by Mr Roger Forde, QC, appearing together with Mr Patterson Cheltenham, QC and Ms. Donna Brathwaite, Attorneys-at-law
- **the Intervener**, by Dr Kathy –Ann Brown appearing together with Ms Lisa White, Attorneys-at-law

on the **19th day of March 2013** delivers the following

RULING

[1] During the testimony of witness Sergeant Farrell, he testified that during the course of conducting investigations on behalf of the Defendant, he had taken statements from persons including Daniel Forde and Sheka Rowe. Neither Daniel Forde nor Sheka Rowe is on the list of witnesses provided by the Defendant. Both of them however, are mentioned with some significance, in the testimony of the Claimant and in the proposed testimony of at least one witness on the Defence's list. They seemed to have played an important role in the development of the factual issues surrounding this matter. It would be fair to indicate that the Court does have some concern that they were not called to testify as their testimony could assist the Court in the determination of the facts of the case.

[2] The Claimant orally applied for the statements to be admitted in evidence. It seemed from the submissions that it was intended that the statements should be treated as evidence of the truth of their contents, but the Court was unsure as to the exact terms of the application. The Defendant expressed strenuous objections. The Court ordered that the parties and the Intervener to make submissions in writing.

[3] The Court notes as a matter of background information that orders had been made for the parties to disclose to each other and to the Court the statements that had been taken in the investigation of the matter. The Claimant stated in submissions that the Defendant released some of these statements on March 1, 2013 and others on March 14, 2013.

[4] In the written submissions the Claimant clarified that she now requests leave of the Court to use some of the statements contained in the statements of Daniel Forde and Sheka Rowe, in cross-examination of the Defendant's witnesses.

[5] The Court does not consider this application to be controversial. It is consistent with standard practice as the Court would routinely allow the use of any statement that has been disclosed by a party to be used in the cross-examination of any of the witnesses.

[6] In these circumstances the Court would admit the statements referenced by the Claimant for identification at this stage and allow all statements in them to be used in the cross-examination of witnesses. The Court should add for clarity that it will also allow any of the statements disclosed by the Defendant to be used for this purpose as well.

[7] However, in addition, the submissions of the Claimant and the Intervener cited legal authority which raised a broader application of the principle of the admissibility of evidence to the extent to which the statements of persons not called as witnesses could be used as evidence in the trial. Since ruling on this principle is not necessary for resolving the application currently before us, the Court has decided not to engage in the discussion of those principles at this time. The Court recognizes and notes that there will be further opportunity to address matters relating to evidential status and weight of the material before the Court.

[8] The Order of the Court is that the statements taken from Daniel Forde and Sheka Rowe be admitted for identification purposes and that the Claimant and by necessary extension, the Intervener, is permitted to use statements contained therein for the purposes of the cross-examination of witnesses.

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The Rt Hon Sir Dennis Byron, President

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The Hon Mr Justice R Nelson	The Hon Mr Justice A Saunders
_____	_____
The Hon Mme Justice D Bernard	The Hon Mr Justice J Wit
_____	_____
The Hon Mr Justice D Hayton	The Hon Mr Justice W Anderson