COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 127 of 2019

B E T W E E N

THE ATTORNEY-GENERAL

Appellant

AND

JONATHAN REID

1st Respondent

DAVID VALDEZ-LOPEZ

2nd Respondent

RUDOLPH KERMIT KING

3rd Respondent

CELEBRATING WOMEN INTERNATIONAL LIMITED

4th Respondent

BEFORE: **The Honourable Mr. Justice Turner, JA**
The Honourable Madam Justice Fraser, JA
The Honourable Mr. Justice Hilton, JA

APPEARANCES: **Ms. Michelle Dean, with Ms. Kenrah Newry and Mr. Ian S. Winder, Counsel for the Appellant**

Mr. Damien Gomez, KC, with Ms. Monique Gomez, Counsel for the third and fourth Respondents

DATES: **14 May 2025; 18 September 2025; 11 December 2025; 7 July 2026**
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Civil Appeal – Proceeds of Crime Act 2000 – Proceeds of Crime (Designated Countries and Territories) Order 2001 – Fraud - Non-disclosure – Interests of justice - Restraint Order – Abuse of power – Public Interest - Mutual Legal Assistance Treaty - Remittal from the Judicial Committee of the Privy Council

This matter was remitted to this Court by their Lordships of the Judicial Committee of the Privy Council on 24 September, 2024. At paragraphs 53-55 of their Lordships' advice to His Majesty, their Lordships invited this court to adjudicate on the merits of the appeal and to re-hear the Attorney General's appeal against the decision of Grant-Thompson J., on 19 June, 2019, to discharge the Mutual Legal Assistance Treaty restraint order, granted on 20 June, 2017, on the grounds that (1) the application for that order was an abuse of process as it was based on the

same facts and sought to relitigate the same issues as the domestic restraint order and (2) no sufficient nexus had been shown between the fraud and the named Respondents to the originating summons.

In compliance with their Lordship's remittal, this matter was set down for mention on 14 May 2025 and subsequently for hearing on 11 December 2025, at which time, it was agreed between the parties that they were content to rely on written submissions previously filed, in respect of the Appellants on 27 May 2025 and in respect of the Respondents on 17 June 2025. We promised to give our decision in writing, and this we now do.

Held: The appeal is allowed. The order discharging the MLAT restraint is set aside, and the matter is remitted to the Supreme Court for reconsideration under the correct legal framework, in accordance with the legal principles set out in this judgment.

In relation to the proceedings commenced under the MLAT Act, such proceedings are not merely another species of domestic restraint proceedings. They are instituted pursuant to a statutory regime enacted to facilitate international cooperation in criminal matters and to enable The Bahamas to discharge obligations assumed under mutual legal assistance arrangements.

That statutory purpose is materially different from the purpose served by domestic restraint proceedings under POCA.

It follows that the mere existence of substantial factual overlap between a prior POCA application and a subsequent MLAT application cannot, without more, establish an abuse of process. Similarity of facts is not synonymous with identity of legal purpose. The critical question is whether the later proceedings constitute an impermissible attempt to relitigate an issue already determined or whether they invoke a distinct statutory jurisdiction for a distinct statutory purpose.

In all the circumstances of the instant case, we conclude that the learned judge approached the abuse of process issue through an analytical framework which did not sufficiently distinguish the statutory purpose of the MLAT Act from that of the earlier POCA proceedings.

That legal misdirection materially affected the exercise of her discretion. We express no concluded view upon whether the Appellant's conduct ultimately constitutes an abuse of process. Rather, we hold that the issue must be reconsidered by reference to the proper statutory framework and the flexible principles articulated in **Gore Wood**.

The requirement that there exists a sufficient connection between the restrained property and the external criminal proceedings serves an important constitutional function. A restraint order authorises a substantial interference with proprietary rights before any final adjudication of liability has occurred.

Parliament cannot have intended that such interference should be authorised in the absence of evidence capable of linking the property to the proceedings for which international assistance is sought.

Equally, however, the statutory requirement cannot be understood as demanding proof of the matters ultimately to be determined in the foreign proceedings. The jurisdiction is interlocutory and preservative. Its purpose is to preserve property pending the determination of the

substantive issues elsewhere. It follows that the nexus inquiry is directed to whether there exists a sufficient evidential basis for preservation, not whether the allegations have been conclusively established.

We therefore conclude that the learned judge's assessment of the nexus requirement was materially affected by the legal framework adopted elsewhere in her judgment and therefore hold that the issue must be reconsidered by reference to the proper statutory purpose of the MLAT Act and the interlocutory character of the jurisdiction thereby created.

Attorney General v Arnold and Paes BS 2015 SC 70 applied
Director of the Assets Recovery Agency v Kean [2007] EWHC 112 (Admin) applied
Gesbo Enterprises v Attorney General SCCivApp No. 115 of 2015 applied
Henderson v Henderson (1843) 3 Hare 100, 67 ER 313 considered
Johnson v Gore Wood [2002] 2 AC 130 applied
National Crime Agency v Gediminas Simkus and Others [2016] EWHC 255 (Admin) considered

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J U D G M E N T

Judgment delivered by the Honourable Mr. Justice Turner, JA:

Introduction

1. The Appellant appealed to the Judicial Committee of the Privy Council, who on 24 September 2024, allowed the appeal and remitted the case to the Court of Appeal for consideration on the merits of the appeal on two principle grounds, arising out of a decision handed down by The Honourable Madam Justice Cheryl Grant-Thompson ("Grant-Thompson J" or "the learned judge") on 19 June, 2019 to discharge the Mutual Legal Assistance Treaty ("MLAT") restraint order, granted on 20 June, 2017.

2. This appeal concerns the proper construction and application of the Mutual Legal Assistance (Criminal Matters) Act, Chapter 98 ("the MLAT Act") in relation to an application for the continuation of an interlocutory restraint order made in aid of a request for mutual legal assistance from a foreign state. It raises questions of general importance respecting the statutory purpose of the Act, the evidential threshold applicable to interim restraint proceedings, the relationship between proceedings brought under the MLAT Act and domestic restraint proceedings, and the circumstances in which an appellate court may properly interfere with the exercise of judicial discretion.

3. The appeal is brought from the judgment of Grant-Thompson J delivered on 23 October, 2019, by which she discharged the restraint order previously granted under the MLAT Act. In a comprehensive judgment, the learned judge concluded that the Appellant had failed to establish a sufficient evidential nexus between the Respondents and the property sought to be restrained, that the continuation of the proceedings constituted an abuse of the process of the Court, and that the evidential foundation advanced by the Appellant did not justify the continuation of the restraint order.

4. The appeal does not require this Court to determine whether the allegations underlying the request for mutual legal assistance are ultimately established. Nor is it the function of this Court to decide whether the restraint order ought to be continued. Those are matters falling within the jurisdiction of the Supreme Court. The question for this Court is whether the learned judge approached that determination by reference to the correct legal principles governing applications under the MLAT Act.

5. We have had the benefit of detailed written submissions on behalf of the parties. We have also derived considerable assistance from the careful reasons given by the learned judge, whose judgment identifies the principal issues requiring determination.

Background Facts

6. The background facts were set out in the Appellant's written submissions in the following terms:

> **"<u>Domestic proceedings</u>**
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> **4. By an Ex parte Originating Summons filed 13 May, 2016 ("the application") and supported by the Affidavit of Detective Inspector Debra Thompson filed on 11 May, 2016 (the "Thompson Affidavit"), the Commissioner of Police (the "COP") made an application for a Restraint Order and a Production Order against Celebrating Women International Limited ("CWI"), Greg Harry Smith and Anthony Albert Allens (collectively the "Domestic Respondents").**
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> **5. The purpose of the application was to ensure that the suspected proceeds of crime were restrained during the course of the COP's investigation into alleged criminal offences being conducted in The Bahamas.**
>
> **6. The COP made the application before Her Ladyship Madam Justice Grant-Thompson on 26 May, 2016, for which her Ladyship duly acceded to. Her Ladyship made a Restraint Order and Production Order (the "Domestic Restraint Order" and collectively the "Domestic Orders") which were both filed on the same day of the hearing of the application.**
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> **7. The Domestic Respondents filed a Summons and along with the Affidavit of Greg Harry Smith both filed on 20 April, 2017 with a view to discharging the Domestic Restraint Order.**
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> **8. Grant-Thompson J delivered a judgment dated 10 April, 2018, where Her Ladyship discharged the Domestic Restraint Order for, among other things, want of prosecution and inordinate delay.**
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> **<u>The MLAT Request</u>**

9. Pursuant to the Treaty entered into between the Government of the Commonwealth of The Bahamas and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters signed at Nassau on 12 June and 18 August, 1987 (the "MLAT"), the Attorney-General, in his capacity as Competent Authority under and the Mutual Legal Assistance (Criminal Matters) Act, 1988 (the "MLA Act") received a Letter of Request for Legal Assistance dated 28 April, 2017 from Mr. Kenneth J. Harris, Acting Deputy Director, Office of International Affairs, U.S. Department of Justice (the "Request").

10. The United States Department of Justice ("the DOJ") sic alleged that in December, 2015 The Boeing Company ("Boeing"), was the victim of a fraud that took place in The United States. The fraudulent scheme alleges that individuals purporting to act on behalf of CWI International induced Boeing to transfer US $2,289,488.80 (the "Deposit") into account ending 3860 at Sun Trust Bank, an American bank account under their control, and in the name of CWI International. The transfer represented a repayment of a deposit in respect of the proposed purchase of a jet for which a contract had been cancelled. In total, the fraudsters had control of three bank accounts at Sun Trust Bank and the Deposit was transferred through the accounts on multiple occasions.

11. The Deposit was then transferred by the issuance of cheques to various accounts at The Royal Bank of Canada Caribbean, 101 East Hill Street, Nassau, The Bahamas ("RBC"). In particular, there were three deposits made into an account held by CWI totaling US $794,400.00, and two deposits made to an account held by CWI International Investments Limited ("CWI International"). It is alleged that the former was opened by Anthony Albert Allens and the latter by Greg Harry Smith.

12. On 25 April, 2017, The Honorable James L. Robart, District Judge for the United District Court for the Western District of Washington, issued a Temporary Restraining Order covering the accounts were the Deposits had been traced.

13. In making the MLAT Request, the U.S Department of Justice sought to obtain the assistance of the Appellant in obtaining the following:

a. a restraint of funds held at RBC prohibiting Jonathan Reid, David Valdez-Lopez, Anthony Albert Allens, Greg Harry Smith, CWI and International Investments Limited (collectively the "MLAT Subjects") from dealing with funds CWI in Account Numbers 05135-2415420, 05135-2415412 and any funds or interest accruing on all

accounts in the name of the MLAT Subjects (the "RBC Accounts");

b. production of certain bank documents, correspondence, and other information in relation to the MLAT Subjects relation from certain named accounts (including accounts held by the MLAT Subjects) from RBC from the date the account was opened to 26 May, 2016; and

c. production of documents from The Bahamas Telecommunications Company Limited, J.F.K Drive, Nassau, The Bahamas of subscriber's names, addresses, telephone numbers, email address, the means and source of payment for services, among other identifying information in relation to IP addresses 108.60.238.2; 204.236.108.7; and 204.236.105.32.

14. The Director of Public Prosecution advised the Appellant that as a result of an ongoing criminal investigation into possible criminal offences committed in The Bahamas, it had made an application for the Domestic Restraint Order.

15. By an Ex parte Originating Summons and a supporting Affidavit of Ashley Sturrup (the "Sturrup Affidavit") both filed 19 June, 2017, the Appellant made an application to enforce the MLAT Request. On 20 June, 2017, Grant-Thompson J granted an Order enforcing the MLAT Request (the "MLAT Order").

16. Upon hearing an application from the MLAT Subjects, Grant-Thompson J delivered a ruling discharging the MLAT Order dated 23 October, 2019. Her Ladyship based her ruling on finding that the application for the MLAT Order was inter alia an abuse of process and that the MLAT Request was a "fishing expedition" (the "MLAT Discharge Ruling")."

7. Consequently, the two grounds advanced on behalf of the Appellant for determination by this Court are:

"1. The Learned Judge erred in concluding that the application for the MLAT restraint order was an abuse of process as it was based on the same facts and sought to relitigate the same issues as the domestic restraint order; and

2. The Learned Judge erred in finding that no sufficient nexus had been shown between the fraud and the named respondents to the originating summons."

<u>Ground 1</u> - The Learned Judge erred in concluding that the application for the MLAT restraint order was an abuse of process as it was based on the same facts and sought to relitigate the same issues as the domestic restraint order.

8. The Appellant argues that the judge fundamentally misunderstood the nature of MLAT proceedings.

9. The Appellant contends that the Learned Judge fell into error in discharging the MLAT restraint order when she failed to appreciate the distinction between domestic orders and the application made pursuant to the MLAT request (and the legal implications arising therefrom), which aided in reaching the conclusion that the MLAT request was an abuse of process.

10. The Appellant argued that this was a critical legal error because the MLAT proceedings were independent of the domestic criminal investigation and the discharge of the domestic restraint order should not have prevented The Bahamas from fulfilling its treaty obligations to the United States.

11. It was submitted that the two applications had different legal foundations in that the domestic order was brought by the Commissioner of Police to assist a Bahamian criminal investigation into offences allegedly committed within The Bahamas, with those proceedings arising from the police investigation after a suspicious transaction report was made to the Financial Intelligence Unit (FIU).

12. Additionally, it was submitted that the order sought pursuant to the MLAT proceedings was brought by the Attorney General, acting as the Competent Authority under the MLAT and the Mutual Legal Assistance (Criminal Matters) Act for the purpose of assisting the United States Department of Justice with its investigation into offences allegedly committed in the United States.

13. The Appellant emphasized that as it related to the obligations imposed by the Mutual Legal Assistance Treaty and the MLA Act, once the request satisfied the Treaty requirements, The Bahamas had an obligation to process it in accordance with the Treaty.

14. In considering the MLAT's compatibility with international law, the Appellant highlighted **Article 18** of the MLAT, which provides:

> **"l. Assistance and procedures provided by this Treaty shall not prevent either of the Contracting States from granting assistance to the other Party in accordance with the provisions of other international agreements to which it may be a party or in accordance with the provisions of its internal laws.**
>
> **2. Subject to the terms of paragraph 1, a Party needing assistance as provided in Article 1 the investigation, prosecution or suppression of an offence as defined in Article 2 shall request assistance pursuant to this Treaty."**

15. As such, they argue that the MLAT is intended to operate alongside domestic law and not be displaced by it. While accepting that domestic investigations may continue, domestic

restraint orders may exist, but those circumstances do not prevent The Bahamas from complying with an MLAT request and therefore submit that the learned judge wrongly treated the domestic proceedings as preventing enforcement of the MLAT.

16. Additionally, in support of these submissions highlighting the distinction between the Orders and The Bahamas' international obligations under the MLAT, the Appellant relied on the decision in **Attorney General v Arnold and Paes BS 2015 SC 70,** where Bain J stated:

> **"(33) In considering the application to set aside the Order made in June 2010 the court has to take into consideration the purpose of the MLAT. The Preamble to the Treaty states:**
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> **-**
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> **"The government of the USA and the government of the Commonwealth of The Bahamas desiring to provide those effective co-operation between the two states in the investigation, prosecution and suppression of serious crimes, such as narcotics trafficking and desiring to improve coordination and mutual assistance in law enforcement matters in general."**
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> **(34) As stated by Starzeeda A. Ali in "Money Laundering Control in the Caribbean"-**
>
> > **"The primary purpose of bilateral and multilateral treaties providing for mutual legal assistance is to enable each of the contracting parties to obtain, on request, assistance from the requested party in the investigation, and suppression of criminal offences... In general the treaty provision are expected to provide a framework within which one state can enforce its money laundering laws prosecution in its own territory by recovering information, evidence and offenders located in another state, without infringing the sovereignty of the other state."**

17. While accepting that both proceedings involved many of the same individuals, the same bank accounts and similar allegations of fraud, the Appellants contend that similar facts do not amount to an abuse of process and submit that the overlap is explained by the fact that both investigations arose from the same alleged fraud, as different legal powers may legitimately be exercised over the same facts.

18. The Appellant rely on the fact of the initial granting of the two separate orders, which they say is indicative that the learned judge ought to have initially appreciated that they served different legal purposes.

19. Consequently, the Appellant submits that the learned judge's later finding of abuse of process was inconsistent with her earlier decision.

20. As it relates to the allegation of attempted re-litigation, the Appellant relied on the case of **National Crime Agency v Gediminas Simkus and Others** [2016] EWHC 255 (Admin) at paragraph 31, which references the case of **Director of the Assets Recovery Agency v Kean** [2007] EWHC 112 (Admin) and stated:

> **"In Director of the Assets Recovery Agency v Kean [2007] EWHC 112 (Admin) a property freezing order obtained by the Asset Recovery Agency was not discharged despite it having been obtained by non-disclosure and innocent misrepresentation at a without notice hearing, because the agency's misjudgment had not been serious. On somewhat different facts to the present, it had also been contended that the proceedings were an abuse of process as constituting an attempt to re-litigate an issue that had already been decided by a court of competent jurisdiction. Stanley Burnton J held that this submission required a broad, merits-based evaluation of all the circumstances and found no abuse of process as a result of such an exercise. He justified that approach by reference to authority, and I will apply that approach. Abuse of this variety is not a matter of strict technicality. It is akin to issue estoppel or res judicata but it is free from the technical rules which govern the applicability of those concepts. That is why it exists. It was designed to serve the interests of justice where no other tool for doing so existed."**
>
> **...**
>
> **[43] In the first place, the ARA is not to be identified with the CPS. True, both are emanations of the Crown. True, both are concerned with crime and its proceeds. But they have different objects, powers and discretions. In this connection I refer to the judgment of Collins J in T at [20]. Those differences are reflected in the difference between the object of the CPS's participation in the Chancery proceedings and the ARA's claim. In the Chancery proceedings, the object of the CPS was to prevent Mr. Kean acquiring title to the Property. The present proceedings start from the position that he has title, and seek to show that he acquired it with the proceeds of crime."**

21. They further submit that the learned judge erred in her assessment of whether there was an abuse of process, by failing to take a more flexible approach having regard to the public's interest. Paragraphs 11-13 of the learned judge's ruling were quoted as follows:

> **"11. Whilst I am loathe to find against the Requesting State I must protect the bastions of the halls of justice. I find that the current MLAT application was based on the very same facts as the criminal application, with little appreciable difference. Further, that they failed to take any further or proper action to indict in the criminal matter notwithstanding the Restraint and Production Order, initially granted. The action on the civil side**

of the office was used to circumvent the ruling relative to the original delay occasioned on the criminal side under POCA. I find this a misuse of the litigation process.

12. I am satisfied that this is an attempt to relitigate the very same issues which were originally before me. I rely on the ratio decidendi (sic) of Lord Bingham in Johnson v Gore Wood [2002] 2 AC 1 as per paragraph 41 to support my finding, as follows:

> **"It may very well be, as have been convincingly argued (Watt, "The Danger and Deceit of the Rule in Henderson v Henderson: A new approach to successive civil actions arising from the same factual matter" (2000) 19 CLJ 287), that what is now taken to be the rule in Henderson v Henderson has diverged from the ruling which Wigram V-C made, which was addressed to res judicata. But Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter.**
>
> **This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, , so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot**

> **comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. ...While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse".**
>
> **13. In my view, there was an abuse here. A re-litigation of the very same issues. I have considered if the MLAT application before me is based on fresh evidence and new issues. However, I do not so find. The application only became 'fresh and new' at the very end of the hearing and indeed appeared to morph into a case against an entirely new party, when the original parties (the original respondents herein) were all but abandoned and a new "John Doe" indicted. A person purporting to be 'Jonathan Reid' a representative of 'CWI" International. However, this did not in my view change the substance of the case which was still substantially the same matter. All of the above, I find to be an abuse of process requiring me to discharge the original restraint order granted pursuant to the MLAT request..."**

22. It was submitted that though the learned judge referenced the test laid down in **Johnson v Gore Wood [2002] 2 AC 130**, she failed to properly apply it to the instant case, having regard to The Bahamas' international obligations under MLAT, the distinction between the roles and functions of the DPP and the Attorney General and the nature of this particular application.

23. To this, the Respondents submitted that the Appellant misused the MLAT process in this particular case.

24. The Respondents contend that the learned judge fully understood she was dealing with an MLAT application, but concluded that it was nevertheless an abuse because it concerned the same RBC accounts, arose from the same facts, relied on essentially the same evidence and was being used after the Proceeds Of Crime Act, Chapter 93 ("POCA") domestic proceedings had stalled through the Crown's own delay.

25. It was submitted by the Respondents that the original POCA restraint order was never properly pursued, the interested parties were not served, about eleven months passed without the matter progressing and that instead of repairing the POCA proceedings, the Appellant sought MLAT relief, which they say went directly to the learned judge's finding that the MLAT application was being used to circumvent the consequences of the earlier proceedings.

26. Ultimately, the Respondents submit that the learned judge was correct in her findings, as there was evidence supporting that conclusion, and therefore the appellate court should be slow to interfere.

27. Firstly, we note that there is no dispute as to the general governing principles.

28. The rule derived from **Henderson v Henderson** (1843) 3 Hare 100, 67 ER 313 is not a rigid doctrine requiring the automatic exclusion of every subsequent proceeding arising from related facts.

29. As Lord Bingham explained in **Gore Wood**, the Court must undertake a broad, merits-based assessment directed to the question whether, in all the circumstances, the subsequent proceedings constitute a misuse of the Court's process. The inquiry is one of substance rather than form and requires careful consideration of the justice of the particular case.

30. In our opinion, the learned judge correctly identified the relevant authorities but erred in the manner in which those principles were applied to the statutory context of the instant case.

31. In relation to the proceedings commenced under the MLAT Act, such proceedings are not merely another species of domestic restraint proceedings. They are instituted pursuant to a statutory regime enacted to facilitate international cooperation in criminal matters and to enable The Bahamas to discharge obligations assumed under mutual legal assistance arrangements.

32. That statutory purpose is materially different from the purpose served by domestic restraint proceedings under POCA.

33. It follows that the mere existence of substantial factual overlap between a prior POCA application and a subsequent MLAT application cannot, without more, establish an abuse of process. Similarity of facts is not synonymous with identity of legal purpose. The critical question is whether the later proceedings constitute an impermissible attempt to relitigate an issue already determined or whether they invoke a distinct statutory jurisdiction for a distinct statutory purpose.

34. We accept that the learned judge was entitled to regard the Crown's conduct in the earlier proceedings as a relevant consideration. The history of the litigation, the delay in prosecuting the POCA proceedings, and the practical consequences of that delay formed part of the factual matrix against which the MLAT application fell to be considered.

35. However, those matters could not, of themselves, determine the abuse question without first examining whether Parliament intended the MLAT jurisdiction to remain available notwithstanding the existence or failure of earlier domestic proceedings.

36. In our view, that learned judge's assessment of that issue proceeded from the premise that because of the factual allegations, the restrained property and the practical effect of the relief substantially coincided with the earlier proceedings, the commencement of the MLAT application constituted a misuse of the Court's process.

37. Respectfully, that approach gave insufficient weight to the distinct statutory source and purpose of the MLAT jurisdiction. Nor do we consider that the authorities relied upon by the learned judge required such a conclusion.

38. Gore Wood emphasises that the doctrine is flexible and fact-sensitive. It does not establish that proceedings commenced under a different statutory regime, in furtherance of different

statutory obligations, are necessarily abusive because they arise from substantially the same factual background.

39. On the contrary, the inquiry remains whether permitting the later proceedings would amount to an abuse in all the circumstances of the particular case.

40. The Appellant's reliance upon authorities recognising that distinct statutory powers exercised by different public authorities may legitimately give rise to separate proceedings is not, in our view, without force.

41. The fact that both the Attorney General and the Director of Public Prosecutions are emanations of the Crown does not render their statutory functions identical. Parliament has entrusted each with different responsibilities, exercised under different legislative regimes and for different legal purposes.

42. That distinction is capable, depending upon the facts, of providing a legitimate explanation for separate proceedings notwithstanding factual overlap.

43. This is not to say that an MLAT application can never constitute an abuse of process. Plainly, it can. If the statutory jurisdiction were invoked merely as a device to relitigate matters already finally determined, or for an ulterior purpose inconsistent with the Act, the Court would remain under a duty to prevent such misuse.

44. In all the circumstances of the instant case, we conclude that the learned judge approached the abuse of process issue through an analytical framework which did not sufficiently distinguish the statutory purpose of the MLAT Act from that of the earlier POCA proceedings.

45. That legal misdirection materially affected the exercise of her discretion. We express no concluded view upon whether the Appellant's conduct ultimately constitutes an abuse of process. Rather, we hold that the issue must be reconsidered by reference to the proper statutory framework and the flexible principles articulated in **Gore Wood**.

46. Accordingly, this ground of appeal succeeds.

<u>Ground 2</u> – The learned judge erred in finding that no sufficient nexus had been shown between the fraud and the named respondents to the originating summons.

47. The Appellant submitted that the learned judge erred in finding that there was not a sufficient nexus between the Boeing investigation and the Directors and President of the current CWI organization.

48. In support of these submissions, reliance was placed on the principle derived from the Court of Appeal's earlier decision in **Gesbo Enterprises v Attorney General** SCCivApp No. 115 of 2015, stating essentially that the Requesting State is not required to prove that an offence has actually been committed but rather, only needs to show that the requested assistance is required for the purpose of investigating offences covered by Article 2 of the MLAT, which the Appellant submits is a much lower threshold than proof of guilt.

49. Paragraphs 27, 29 and 39 of **Gesbo** were cited, stating:

> **"27. Article I of the (sic) MLAT expresses the purpose and objectives of the Treaty between The Bahamas and the USA, namely to provide mutual assistance to each other in the investigation, prosecution, and suppression of offences defined in Article 2, and in proceedings connected with any such investigation, prosecution or suppression...**
>
> **...**
>
> **29. Such assistance is defined in paragraph 2 of Article 1 to include: a. taking the testimony of statements of persons; b. providing documents, records, and articles of evidence...h. immobilizing forfeitable assets; and i. any other matter mutually agreed between them.**
>
> **…**
>
> **39. Ground 2 was similarly given short shrift for the reason that, as the learned judge found, there was no requirement for the Requesting State to prove that any offence was in fact committed. We are satisfied that all the USA had to show in the material supporting their request, was that the assistance of The Bahamas was required for the purpose of investigating offences covered by Article 2."**

50. The Appellant contends that in the instant case, nexus was established through several links, including the money trail, the identified accounts, and the identified individuals.

51. It was submitted on behalf of the Appellant that the Department of Justice alleged that Boeing transferred approximately US 2.289 million after being deceived; those funds moved through US bank accounts, they were then transferred into accounts at RBC in The Bahamas, and some of those accounts were associated with the MLAT subjects. As such, the Appellants contend that this tracing exercise itself provides a sufficient nexus.

52. The Appellants further contend that the MLAT request specifically identified the named RBC accounts, named account holders and requested restraint and production orders relating to those accounts, which the Appellant argues was not a speculative request for "anything that might exist", but rather, was targeted at identified accounts allegedly connected to the fraud.

53. Additionally, the Appellant argue that the Department of Justice identified specific individuals whom it believed were connected to the fraud, while acknowledging that sophisticated fraud often involves stolen identities and fraudulent documents. The Appellants contend that these investigative challenges should not prevent mutual legal assistance where there is evidence linking the identified suspects to the scheme.

54. To this, the Respondents argue that while they acknowledge that some money eventually entered CWI's account, that fact alone is not enough, as simply tracing money into CWI's account does not establish that CWI participated in the fraud against Boeing.

55. They further submit that **Gesbo**, is distinguishable in that while the affidavits in **Gesbo** demonstrated involvement between the named persons and the suspected criminal conduct, in the instant case, the Ashley Sturrup affidavit does not demonstrate involvement by CWI, its officers or its directors.

56. Ultimately, the Respondents argue that the learned judge was correct in her findings, as the Appellants did not satisfy the evidential threshold that makes **Gesbo** applicable.

57. The requirement that there exists a sufficient connection between the restrained property and the external criminal proceedings serves an important constitutional function. A restraint order authorises a substantial interference with proprietary rights before any final adjudication of liability has occurred.

58. Parliament cannot have intended that such interference should be authorised in the absence of evidence capable of linking the property to the proceedings for which international assistance is sought.

59. Equally, however, the statutory requirement cannot be understood as demanding proof of the matters ultimately to be determined in the foreign proceedings. The jurisdiction is interlocutory and preservative. Its purpose is to preserve property pending the determination of the substantive issues elsewhere. It follows that the nexus inquiry is directed to whether there exists a sufficient evidential basis for preservation, not whether the allegations have been conclusively established.

60. We reject the submission that uncertainty in the investigation is itself sufficient to defeat an application under the MLAT Act. International financial investigations frequently evolve as additional evidence is obtained.

61. The identification of further participants, the exclusion of earlier suspects or the refinement of investigative theories does not necessarily demonstrate the absence of the statutory nexus. To adopt such an approach would risk frustrating the very purpose for which interlocutory preservation powers are conferred.

62. Equally, we reject the suggestion that the interlocutory character of the jurisdiction materially diminishes the requirement for an evidential foundation. The preservation jurisdiction exists to protect assets, not to authorise their restraint upon speculation.

63. The Court must remain satisfied that the evidence discloses a rational and objectively sustainable connection between the restrained property and the external proceedings.

64. Nevertheless, we consider that the learned judge's assessment of nexus was materially influenced by the legal framework through which the application was examined.

65. Having concluded that the MLAT proceedings substantially replicated the earlier domestic restraint proceedings, the subsequent analysis necessarily proceeded upon the premise that the Appellant was required to justify the continuation of proceedings already viewed with considerable scepticism. That analytical premise inevitably coloured the evaluation of the evidence.

66. The significance attributed by the learned judge to the evolution of the investigation illustrates the point. The judgment repeatedly emphasised that the Requesting State had altered its understanding of the identities of those responsible for the alleged fraud and that the evidence connecting particular Respondents had changed over time. Those matters were plainly relevant.

67. However, under the MLAT Act, the proper inquiry was whether, notwithstanding those developments, the evidence remained capable of establishing the statutory connection necessary to justify the preservation of the property pending the foreign proceedings.

68. In our view, that distinction was not maintained with sufficient clarity. The question gradually became whether the Appellant had demonstrated that the investigation had correctly identified the persons ultimately responsible. That is not the inquiry mandated by an interlocutory preservation jurisdiction.

69. Once the statutory purpose of the MLAT Act is placed at the forefront of the analysis, the Court must ask whether the available material, viewed cumulatively, is capable of supporting a rational inference that the restrained property may properly be preserved pending the determination of the external proceedings.

70. That inquiry does not require the Court finally to determine disputed questions concerning beneficial ownership, the precise identity of all participants or the ultimate merits of the criminal allegations. Those are matters for the substantive proceedings. It requires only that the evidence disclose a legally sufficient connection between the property and the proceedings in respect of which international assistance is sought.

71. We therefore conclude that the learned judge's assessment of the nexus requirement was materially affected by the legal framework adopted elsewhere in her judgment and therefore hold that the issue must be reconsidered by reference to the proper statutory purpose of the MLAT Act and the interlocutory character of the jurisdiction thereby created.

72. Accordingly, this ground of appeal also succeeds.

Disposition

73. We are satisfied that the learned judge erred in her interpretation of the statutory framework governing applications under the MLAT Act. That error significantly informed her assessment of the evidential threshold, her treatment of the nexus requirement, and ultimately her exercise of the discretion to discharge the restraint order.

74. Those errors require appellate intervention. However, the grant or refusal of a restraint order under the Act is ultimately an exercise of judicial discretion informed by an evaluation of the evidence. Once the legal errors are corrected, that evaluative exercise remains one for the Supreme Court.

75. Accordingly, we would allow the appeal, set aside the discharging of the MLAT restraint order and remit the application to the Supreme Court for reconsideration under the correct legal framework, in accordance with the legal principles set out in this judgment.

The Honourable Mr. Justice Turner, JA

The Honourable Madam Justice Fraser JA

The Honourable Mr. Justice Hilton, JA