

**IN THE MAGISTRATES COURT
CRIMINAL JURISDICTION
Case No. 00340**

Between:

Fiona Miller
(Police Sergeant)

V

[REDACTED]

and

[REDACTED]

Decision: November 29, 2022

Written Reasons: December 5, 2022

RULING ON COSTS

This is a ruling on a cost application by the defendants against the informant pursuant to s 58 of the CJPA 2015, on the basis that the prosecution under the Public Health (Covid 19 Emergency Powers Stay at Home) Regulations 2021 was unfounded.

The basis of the cost application is that the defendants, via their counsel, sought to show the DPP that this was not a case of mixing households by the defendants, and

that no offence was being committed because the defendants co-habited at the residence in question and had done so since March 2020. The position of the defendants was outlined in emails and letters to the DPP; one of which made reference to a statement allegedly made to the defendant [REDACTED] on 13th May, 2021 (by his landlord, the principal prosecution witness) "that it sounds perfectly reasonable that [REDACTED] is living at the property and that it would be his evidence that [REDACTED] is at the premises on a regular basis". The DPP did make some inquiries via the investigators but concluded "nothing further has been revealed to deviate from the charges approved".

The DPP charge approval and prosecution appears to have been primarily based on the evidence of a Detective Chief Inspector of Police who, along with his wife, was the landlord of the property in question where the alleged offence occurred.

The trial of the defendants commenced with the evidence of the Chief Inspector testifying. Following his cross examination, the prosecutor offered no further evidence against both defendants and the charges against them were dismissed by myself as the presiding Magistrate.

I have now heard arguments by counsel for and against the cost application. I have fully considered those arguments, the correspondence, emails and case law cited before me. I am not satisfied that the defendants have discharged the burden of proving that the prosecution (the charge) was unfounded.

In my judgement the prosecution was based on the proofs of evidence contained in 3 witness statements given by the Chief Inspector of police, all of which together asserted suspicion that there was a mixing of households at his tenant's property, that he believed [REDACTED] (the co-defendant) lived elsewhere, that she was not his tenant even though she frequented or stayed with his tenant [REDACTED].

The prosecutor offered no evidence at the end of the Chief Inspector's cross examination because their case collapsed when the Chief Inspector was (to his surprise) confronted with a recorded conversation he had with his tenant [REDACTED] some time after he had reported the alleged offence.

In my judgment the prosecutor offered no evidence and the defendants were discharged because it became evident that the Chief Inspector, the main witness, had been playing both sides. He was not a credible witness, unbeknown to the

prosecution, until he was confronted [REDACTED]
[REDACTED]

The prosecution had every right to rely on the Chief Inspector's 3 witness statements to found a prosecution. The defendants have not persuaded me that the charges were unfounded. In the circumstances their application is not proven and is therefore refused.



Khamisi M. Tokunbo
Magistrate