

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No: 842 of 2013

BETWEEN

FRANK ERROL GIBSON

CLAIMANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS

DEFENDANT

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

**2017: May 4
June 28
October 26
November 13
2018: August 31**

Appearances:

Mr. Larry A.C. Smith, Q.C., Mr. Ajamu Boardi, Ms. Kamisha N. Benjamin and Ms. Shanna C. Goddard, Attorneys-at-Law for the Claimant

Ms. Donna Brathwaite, Q.C., Mr. Jared K. Richards and Mr. Alliston Seale, Attorneys-at-Law for the Defendant

DECISION

INTRODUCTION

[1] By an Application filed 1 June, 2017 the Defendant sought the following Orders:

1. Further hearing of this matter be stayed and that the Honourable Madam Justice Pamela Beckles recuse herself from the further hearing of this matter; and
2. Further and/or other Orders as this Honourable Court deems just in the circumstances.

[2] The grounds of the Application are:

1. The Defendant reasonably believes that he will not be afforded a fair and balanced hearing, free of bias if the Honourable Madam Justice Pamela Beckles continues to hear and determine this matter because
 - a. The Honourable Madam Justice Pamela Beckles asserted to counsel for the Claimant that if the other side (the Defendant) was not satisfied that the witness summons was correctly issued, that she, the Judge was fully satisfied with its issuance.
 - b. The Learned Trial Judge made several unfortunate and improper comments during the hearing
 - c. The Honourable Madam Justice Pamela Beckles openly made remarks which tended to determine an Application which was yet to be contested before her thus exhibiting unprofessional and injudicious behaviour and conduct.
 - d. The Honourable Trial Judge Beckles J made remarks indicative of bias and apparent bias showing a predisposition to find in favour of the Claimant in the determination of the substantive matter before her.

BACKGROUND

- [3] This matter came on for hearing on the 13 and 14 June, 2016 and was presided over by the Honourable Madam Justice Pamela Beckles, Judge of the High Court (“**Beckles J.**”).
- [4] During the hearings they were numerous verbal exchanges between attorney-at-law Mr. Larry A.C. Smith, Q.C. (“Mr. Smith”) and Mr. Charles Leacock, Q.C., Director of Public Prosecutions (the D.P.P.) and statements made by **Beckles J.**
- [5] This Application for the judge to recuse herself was precipitated by these exchanges and the statements made.

ISSUE

- [6] The sole issue for determination is whether the judge should recuse herself in the circumstances or to put it another way whether the matters adduced by the D.P.P. satisfy the substantive test for recusal.

DISCUSSION AND THE LAW

- [7] It is with a heavy heart that I now seek to address the issue of recusal of the judge.
- [8] The situation was very unfortunate, unpleasant and embarrassing. From the outset however it must be noted that throughout the hearing they were several loud and sharp exchanges between Mr. Smith, Q.C. and the D.P.P. where the tone and temper of the exchanges left must

to be desired. The Judge tried on numerous occasions to bring some control to the proceedings, but the exchanges continued. The Judge even threatened to step down off the Bench in an effort to get the parties to behave in a dignified and profession manner, yet the constant bickering continued.

- [9] The Judge was forced to comment on the behavior of both counsels and it cannot be denied that comments were made by the Judge which are now the subject of this application.
- [10] In order to understand what transpired during the hearing, there must be a reading of the entire transcript and not a sentence here and there, which when read in isolation and taken out of context, does not present an accurate account of what took place.
- [11] It would be easy at this stage to determine that the best thing to do would be for the Judge to recuse herself and let the matter begin before another Judge – that is the easy way out but it is the correct approach that should be adopted in these circumstances.
- [12] In the case of *Ansar v. Lloyds TSB [2006] EWCA 1462* it was stated that:

“Although it is important that justice must be done, it is equally important that Judicial Officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking disqualification of a Judge, they

will have their case tried by someone thought to be more likely to decide the case in their favour.”

[13] The court therefore has to satisfy itself that the issue of bias is not being raised as an attempt by a party to have its case tried by someone it thinks is more likely to decide the case in their favour.

[14] The test for determining apparent bias is set out in the case of *Porter v. Magill [2002] 2AC 357*, that is, if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse himself. This test is to be applied having regard to all the circumstances of the case.

[15] So that the court must consider, after setting out the material facts, whether a fair-minded and informed observer, having full knowledge of the facts would conclude that there was a real possibility that the court would be bias against the party. In so doing the following must be considered. “a fair-minded and informed observer can be assumed to have access to all of the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge...who is under scrutiny.” – See *Gillies v. Secretary of State for Work and Pensions [2006] UK HL2*.

[16] It must also be remembered that Judges are human beings too, prone to human facilities – See **Sir Dennis Byron** PCCJ in Ward v. Walsh [2015] CCJ 14 para 96 where he states:

“Moreover, judges are human and expressions of impatience, dissatisfaction, annoyance, and even anger that are within the bounds of what imperfect men and women, even after having been confirmed as... judges, sometimes display” may rarely rise to a level that could successfully ground an application to recuse. It, on the other hand, it is evident that there is animosity on the part of the judge towards someone involved in a case, including counsel, then that would constitute grounds for recusal.”

THE DEFENDANT’S SUBMISSIONS

[17] The D.P.P. submitted that the learned Trial Judge ought to recuse herself from further hearing in the matter for the following reasons:

1. At the 13 June, 2016 hearing the Learned Trial Judge loudly asserted in court in response to Mr. Larry Smith that if the other side (namely the D.P.P.) was not satisfied that the witness summons was correctly issued, the Judge (Beckles J.) was fully satisfied with its issuance.

[18] The D.P.P.’s position was that the court had been misled or deceived in issuing the witness summons. I tried to explain to the D.P.P. that the court could only act on the information which was before it at the time and based on that information, I do not believe that I was misled or deceived into issuing the witness summons. However now that all the parties were before the court, the issue could be ventilated.

I must reiterate that the only time I used a loud tone of voice was to be heard over the exchanges between Mr. Smith, Q.C. and the D.P.P.

[19] 2. The Learned Trial Judge, openly suggested that the parties (namely, the Crown and applicant) should get together so that liability could be settled viz get beyond this stage (of trial).

[20] As a new Judge dealing with a matter before me and in this case a matter with such a history, I merely sought to ascertain from the parties how they were going to proceed with the matter since three matters were before the court. At no time did I advise the parties about reaching a settlement.

[21] 3. The Learned Trial Judge, openly remarked despite the contested application on the issue of the witness summons, that Mr. Anthony Blackman, Principal Crown Counsel could be called first and then the Director of Public Prosecutions could be called later if the information is insufficient.

The court recognizing that there was an issue with the witness summons which had to be determined before proceeding any further, suggested that since there was an affidavit on file from Mr. Anthony Blackman, so as to avoid any unnecessary delay, Mr. Blackman could be allowed to give his evidence and depending on what transpired, the parties could then decide how to proceed.

I must state that I was very concern with the delay in this matter and was merely trying to move along in furtherance of the overriding objectives of the CPR.

- [22] 4. There was also a suggestion that the Judge was sympathetic towards the claimant when she made the statement “you all are going to behave yourself or I’m going to step off this Bench and poor Mr. Gibson could wait here another year.”

It was stated that this comment is clearly indicative of bias and apparent bias by Beckles J, showing a predisposition is award Gibson damages.

Again I am sure that a fair-minded and informed observer would recognize that this statement was made in reference to the verbal exchanges between Mr. Larry Smith, Q.C. and the D.P.P. which were loud and disrespectful. I threatened to get off the Bench if they would not curb their behavior. The reference to “poor Mr. Gibson” was in recognizing that he was the party who would be disadvantaged by the delay and he was not at fault – he was in court totally silent – he was not part of the outburst in any way.

- [24] In the circumstances I do not find that I acted unprofessional in any way or that my conduct and behavior were injudicious.

- [25] I find that a fair-minded and informed observer, fully aware of all the facts would conclude that here was a judicial officer trying to bring some measure of control to the courtroom in circumstances which

were extremely acrimonious and unpleasant. Every decision made was done objectively and without fear or favour to any particular side.

DISPOSAL

[26] I therefore find no substance in the allegation for apparent bias laid against me and therefore decline to recuse myself from further hearings in this matter.

PAMELA A. BECKLES
Judge of the High Court