

Barbados

CV 0063 of 2021

Between

DONKRISON MOORE

CLAIMANT

And

JUSTICE JACQUELINE CORNELIUS

DEFENDANT

Before The Hon. Mr. Justice William J. Chandler, Judge of the High Court

Appearances: The Claimant in person.

Mr. Ralph A. Thorne QC, Mr. Harlow Broomes with him for the Respondent.

Ms. Marsha Lougheed for the Attorney General

Dates of Hearing:

Date of Decision: 2023 January, 31

Administrative Justice Act Cap 109B – Proceedings against a judge of the High Court acting within her jurisdiction- Alleged breaches of the Constitution and Cap 109B- Application for recusal of judge from ongoing proceedings- Application to strike out claim against the Defendant-Whether High Court Judge amenable to proceedings under Cap 109B-Whether Claim an abuse of process of Court- Immunity of High Court Judge from process. Application for presiding Judge to recuse himself from further hearing of the matter-Applicable principles.

Decision on recusal

[1] This decision involves an application by the Claimant, Donkrison Moore, by letter dated 4 January, 2023 received 6 January, 2023 for me to recuse myself from continuing to hear this matter intituled **CV 0063 of 2021** in which he appears in person in a suit against the Defendant arising out of her presiding over a suit entitled **CV 1779 of 2017 Went et al v Cable and Wireless**

Barbados (Limited) et al (CV 1779 of 2017) which is currently before the Defendant's court.

[2] The Claimant, a shareholder of Cable and Wireless Barbados (Limited) (Cable), also asserts, inter alia, that the Defendant has infringed on the Claimant's rights, is in conflict of interest and failed to submit any written judgments or decisions and is also infringing on the rights of the shareholders of Cable's rights under **sections 18(9) and 20** of the **Constitution of Barbados**.

[3] It is unnecessary to detail the particulars of that suit for the purposes of this ruling.

The letter of request for recusal.

[4] The request for recusal is based upon the Claimant's assertion that I have not adjudicated the manner in an "unbiased manner". The grounds upon which the Claimant has formed this opinion are, inter alia:

Ground 1

1. That this Court has failed to sanction Mr. Thorne KC for lies, inconsistencies and provocations, disrespect for the Court and failure to comply with Court Orders.

Ground 2

2. That I have not adjudicated this matter in an "un-biased" manner.

Ground 3

3. That counsel Mr. Thorne KC has breached the provisions of the **Legal Profession Code of Ethics, 1988 (the Code)**.

The issue

[5] The sole issue is whether I ought to recuse myself from this matter.

The Law

[6] I consider that the Law may be found in the dictum of the Constitutional Court of South Africa in *President of the Republic of South Africa v South African Rugby Football Union et al (1999) 4 S.A. 147*, 177: approved in paragraph 21 of *Locabail (UK) Ltd v Bayfield Properties Ltd [2000] Q.B. 451 (17 November 1999)* that:

"... the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or pre-dispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or

himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial."

Discussion and analysis

[7] The Applicant has set out those facts which he relies upon to support his application and which I shall refer to later in this decision, it is important for me to consider some additional material facts which were omitted from the letter and which provide a more balanced factual matrix in which the question ought to be decided.

[8] The chronology of events is as follows:

1. The matter first engaged the Court's attention on 20 April, 2021 by way of the virtual hearing under the zoom platform. There was no answer or appearance by either party. The Clerk of Court informed the Court that links were sent to all parties but that no one responded. The matter was adjourned until 20 May, 2021, and the Court ordered that Notices of the adjourned date of hearing be sent to all parties.
2. On 20 May, 2021, the Applicant appeared in person and the Defendant failed to appear. The matter was adjourned until 25 June, 2021.
3. 25 June, 2021 the Applicant appeared in person. Mr. Ralph Thorne QC, appeared for the Defendant, Mr. Harlow Broomes was with him. Mr. Thorne QC submitted that the Applicant had not filed an affidavit in

support of his application as required **Part 56.3(4)** of the **Supreme Court Civil Procedure Rules, 2008 (CPR)**. The Court noted that the Applicant had also failed to serve the Honourable Attorney General of Barbados in accordance with **Part** of the **CPR**. The Court noted that the Applicant was self-represented and that the Court would “bend over backwards” to assist the applicant.

4. The Court ordered the Claimant to file the affidavit in support of his claim on or before 9 July, 2021 and to serve certified copies of all filed documents on the AG on or before 16 July, 2021. With the concurrence of Mr. Thorne QC the Court provided the Claimant with copied of the relevant Rules and the form of affidavit. The issue of costs was reserved. The Defendant was ordered to serve a certified copy of the Order on the Claimant on or before 2 July, 2021 and the matter was adjourned until 17 November, 2021.
5. **On 17 November, 2021**, Mr. Harlow Broomes appeared and informed the Court that Mr. Thorne QC was running late. The Defendant was present and the matter was stood down to 10.25 am. Mr. Thorne appeared and apologized for being tardy. The Applicant informed the Court that he required a Mr. Joseph Jordan to assist him and the Court allowed Mr. Jordan to be present as a Mc. Kenzie friend. Mr. Thorne QC informed the

- Court that the AG had been served that same day and that the Solicitor General would be served shortly. The Court enquired about the impact that that failure to serve timeously would have on the application before the Court. The Applicant informed the Court that he had served the AG on 12 July, 2021 with the application and affidavit. Mr. Thorne informed the court that on 15 November, 2021 he had filed the strike out application and had informed Ms. Marsha Lougheed of the Solicitor General's office.
6. The Claimant acknowledged that he had been served with the strike out application that same morning. The Defendant was ordered to file and serve written submissions on or before 1 December, 2021. The Claimant was ordered to file and serve his affidavit in response on or before 1 December, 2021; parties to file and serve written submissions on or before 8 December, 2021 and the matter adjourned until 20 January, 2022.
 7. On 20 January, 2022, the Claimant appeared whilst Mr. Thorne QC was absent. The Claimant informed the Court that he had filed submissions and was advised that Mr. Thorne QC had not filed. The matter was adjourned until 20 April, 2022.
 8. The Claimant was present and Mr. Thorne QC for the Defendant. On 20 April, 2022 Ms. Lougheed appeared and entered an appearance with Mr. Thorne QC on behalf of the AG and the Defendant. The Court informed

Ms. Loughheed that her client was the Attorney General and not the Defendant. This is because the AG has a special jurisdiction in law and also because the independence of the Judiciary must always be upheld. I reminded myself that justice must not always be done but must also appear to be done.

9. Ms. Loughheed informed the Court that she had not received the documents, however, she would wish to add to or support the submissions of Mr. Thorne. I ordered that (1) Mr. Thorne QC serve all filed documents on Ms. Loughheed on behalf of the AG and (2) the Ag had 21 days to file any documents as he shall be advised. The Claimant stated that he had not received the strike out application. Mr. Thorne QC was unable to verify service. The Claimant reiterated that he had served the AG in July, 2021 and complained about the failure of the AG to comply with the Rules.
10. The Court further ordered that the application to strike out, affidavit in support and the submissions of the Defendant in respect of the application be served on the Claimant on Thursday 23 June, 2022 at the Registration Office near the entrance at 1.00pm. This was done *ex abundante cautela* having regard to previous allegations of non-service. The matter was adjourned until 11 October, 2022.

11. By letter dated 27 June, 2022 from the Registrar of the Supreme Court (the letter), the Court required all parties to file and serve written submissions on the issue of a Judge's personal immunity from suit on or before 21 July 2022. That letter was not returned.

12. On 11 October, 2022, all parties appeared. The Court had received submissions from the Claimant filed 21 July, 2022 whereas no submissions were received from Mr. Thorne KC or Ms. Lougheed in respect of the letter. The matter was adjourned until 19 October, 2022 at 9.30 am for decision.

13. The matter was heard instead on 21 October, 2022. The Claimant and Ms. Lougheed appeared. The Court commenced reading the decision when the Claimant indicated that he had still not been served with the strike out application and supporting documents. Mr. Thorne KC appeared late and tendered an apology. He was unable to confirm service by way of an affidavit. An Order for service was made that the Claimant file and serve submissions on Application to strike out on or before November 21, 2022. Matter is adjourned until December 5, 2022.

14. On 14 November, 2022, the Applicant sent a letter to the Court informing the Court of his indisposition due to illness and his inability to comply with the extended deadline for filing and serving the submissions. At his

request, and without objection from Mr. Thorne QC, the date was extended by 28 days notwithstanding that the Applicant had not produced a medical certificate at the hearing on 2022.

15. On 5 December, 2022 the Claimant and Defendant appeared while the AG did not. The Claimant indicated that he had sent a letter to the Clerk of Court requesting additional time to file and serve his submissions. He was informed that correspondence ought to be addressed to the Registrar of the Supreme Court. Mr. Thorne QC indicated that the correspondence was not copied to him. Without objection from Mr. Thorne QC the time for the Claimant to file and serve his submissions was extended to 2 January, 2023.

16. The Court's decision on recusal and on the strike out application were delivered on 31 January, 2023.

17. The Claimant attended Court late on and provided an excuse that he was unable to find a parking space. No sanction was applied by the Court which accepted his explanation.

18. The Applicant did not attend Court on , no sanction was applied.

Ground 1

[9] The complaint is firstly that:

“Despite various lies, inconsistencies, provocations, disrespect for the court and failure to compile with court orders, Judge William Chandler has failed/refused to sanction and/or punish ralph thorne or Marsha Lougheed.

I do not share the Claimant’s opinion that Mr. Thorne QC lied or was inconsistent. Mr. Thorne QC was robust in his defence of his client and sometimes exuberant. The Court, of its own motion, cautioned Mr. Thorne QC when his utterances in his client’s defence could be described as overly exuberant and he complied. This is allowable, however, disrespect is not. Whilst allegations are made against MS. Lougheed, the Claimant has not pointed to any instances where she lied, except an allegation that she said that the AB had not been served when the Claimant stated positively that he had served the AG on a particular date and time. It must be said that, at no time, did Ms. Lougheed engage in “inconsistencies, provocations, disrespect for the Court.” As alleged

[10] Ms. Lougheed was speaking to the fact that the documents had not reached her in the context of the procedure by which served documents are transmitted to the Attorney-at-Law having conduct of the file. In my view, the Claimant has misconstrued Ms. Lougheed’s statement and his characterisation of her statement as a lie is unfortunate and without foundation.

[11] Ms. Lougheed did, however, fail to attend Court on occasion and did not file any submissions. Her non-attendance was not explained. Her non-filing of submissions must be viewed in the context that she informed the Court that she may have desired to add to anything that was filed by Mr. Thorne QC. Any issue of sanctions is for the Court.

[12] Secondly, the Claimant alleges that:

Furthermore, despite openly defying the court, Judge William Chandler has not adjudicated this matter in an "un-biased" manner, for example providing ralph anthony thorne with extensions to file court documents despite no extensions being requested.

[13] With respect to Mr. Thorne KC's tardiness in attending Court and his failure to file submissions in a timely manner, these are all matters to be dealt with at a time and in a manner within the sole discretion of the presiding Judge. The Claimant may be forgiven for not being aware of this since he is not legally trained. The matter has been assigned an adjourned date of hearing.

[14] Thirdly, the Claimant has alleged that:

"Additionally, ralph anthony thorne missed several consecutive court hearings and the judge simply adjourned the matter. Clearly there is a close, friendly relationship between the defense and the judge which make a fair trial [sic] improbable." (emphasis mine)

[15] Mr. Thorne QC missed Court appearances, the manner of addressing this, and other related matters, is solely in my discretion. The application to strike out

raised serious legal issues and struck at the heart of the Court's jurisdiction to hear the matter. As a matter of common sense, it would be prescient to hear all parties before delivering a decision.

[16] With reference to the allegation of a close friendly relationship between the Court and Mr. Thorne KC, the Claimant has provided no evidence of this in his letter. It seems fair to say that such an inference cannot reasonably be inferred from the statements prefaced in his opinion and that the inference is a non-sequitur. The record will show that I have adjudicated this matter dispassionately and fairly providing reprimands where necessary.

[17] Fourthly, the Claimant states that:

“...as required by Part 10 Rule 10.3(1) of the CPR, ralph anthony thorne failed, neglected and refused to file and serve a Defence within twenty-eight (28) days after being served with my claim form & affidavit filed on August 4, 2021. I also contend that ralph anthony thorne, as of October 21, 2022 hearing had not filed an affidavit of service as required by Rule 15.5 (1) and (2) of the CPR and several orders from the judge.

This is addressed in the chronology above. The Claimant did not file an affidavit in support of his application in accordance with **Part 56.3(4)** of the **CPR** and was given an extension of time to comply with the **CPR**. I repeat that assistance was provided without objection from Mr. Thorne QC in terms

of providing copies of the relevant portions of the **CPR** and the form that the affidavit should take.

[18] Fifthly, the Claimant alleges that:

“ ... as required by Part 10 Rule 10.3(1) of the CPR, ralph anthony thorne failed, neglected and refused to file and serve a Defence within twenty-eight (28) days after being served with my claim form & affidavit filed on August 4, 2021. I also contend that ralph anthony thorne, as of October 21, 2022 hearing had not filed an affidavit of service as required by Rule 15.5 (1) and (2) of the CPR and several orders from the judge.”

[18] This allegation is misconceived. It is worth repeating that the Claimant had not complied with the **56.4** by serving a certified copy of the application on the AG within seven days of filing and was given time to do so without the need to file a formal application, thus saving time and expense. Mr. Thorne QC filed the strike out application on 15 November, 2021, thus, as a matter of law, there was no need to file a Defence until the disposition of the strike out application.

[19] In determining the issue, I must state that when Mr. Thorne KC described the Claimant in unflattering terms, I did not hesitate to reprimand Mr. Thorne KC for an unfortunate reference to litigants before the Court which I did not consider to be in keeping with our traditional standards of conduct. I also reprimanded him for his failure to observe the respect for litigants which, at all times, must characterize members of our profession.

[20] I have refrained from quoting the references to Mr. Thorne QC by the Claimant which are unflattering, unwarranted and unnecessary. In the same way I reprimanded Mr. Thorne QC for his utterances, I reprimanded the Claimant. Litigants have no license to disrespect counsel at the Bar and the Court will not tolerate disrespect in any guise, shape or form. The dignity of the Court, and its role as safeguarding the rights of the citizen must be upheld at all times. Similarly, Court staff, Attorneys-at-Law and litigants must be respected.

[21] With respect to Mr. Thorne's failure to file affidavits of service, it must be stated that considerable time and resources could have been saved as envisaged by the overriding objective of the **CPR** by the filing of affidavits of service which would have put the issues of non-service beyond doubt. It is to the Claimant's credit that he has filed affidavits of service in this matter.

[22] I now come to the resolution of the issue before me. In resolving the issue, I also take into account the Oath of Office to which I subscribed and found in the **First Schedule** of the **Constitution of Barbados, Cap 1**, which enjoins me to “...*do right to all manner of people after the laws and usages of Barbados without fear or favour, affection or ill will.* “(emphasis mine).

[23] The issue must be resolved, not only in terms of my adherence to my oath of office which may be considered to be subjective, but in accordance with public

perceptions of whether or not there has been exhibited any unconscious bias on my part, which I consider to be the objective criterion. *Lord Steyn* in *Lawal v Northern Spirit Ltd [2003] UK HL 35, [2003] ICR 856*, opined that:

"Public perception of the possibility of unconscious bias is the key. It is unnecessary to delve into the characteristics to be attributed to the fair-minded and informed observer. What can confidently be said is that one is entitled to conclude that such an observer will adopt a balanced approach. This idea was succinctly expressed in Johnson v Johnson (2000) 200 CLR 488, 509, at para 53, by Kirby J when he stated that "a reasonable member of the public is neither complacent nor unduly sensitive or suspicious"."

Conclusion

[24] It is clear to me that some animus exists between Mr. Thorne QC and the Claimant, the nature of which has not been vouchsafed to this Court nor do I wish to be informed of. My role is to adjudicate this matter fairly and in accordance with the **CPR**.

[25] Having set out in detail the facts of the matter, I am of the opinion and hold that I have adopted the correct approach to managing this matter. I have reprimanded Counsel where appropriate and, in my sole discretion after hearing the parties, will deal with any issues of alleged misconduct in accordance with the law and at the appropriate time. I am of the view also and

hold that there is no need to cloud the issue in the substantive case with matters which can and will be dealt with at an appropriate time.

[26] It is pellucidly clear that I have exercised great patience and extended much leniency with respect to non-compliance with Orders. The Claimant is a litigant in person and, in my considered opinion, has no immunity from non-compliance. Whilst he must comply with the **CPR**, he can only respond when he is furnished with all the materials which affect his case, namely all applications, affidavits in support and written submissions. I have ensured that he was so furnished.

[27] I now turn to a consideration of whether a fair-minded and informed observer, having considered the facts, would conclude that I have been or that it could reasonably be considered that I was biased. This involves the allegation set out at paragraph [2] and [14] above which I may be forgiven for repeating as it was set out in the letter of recusal:

“Judge William Chandler has not adjudicated this matter in an "un-biased" manner, for example providing ralph anthony thorne with extensions to file court documents despite no extensions being requested. Additionally, ralph anthony thorne missed several consecutive court hearings and the judge simply adjourned the matter. Clearly there is a close, friendly relationship between the defense and the judge which make a fair trail [sic] improbable. (emphasis mine)

The Claimant may be forgiven for not understanding that the Court exercises a discretion in relation to granting extensions to file and serve documents and

applying consequences for non-compliance. This may be done at the time of non-compliance or subsequent thereto. I have already dealt with the exercise of my discretion in these matters and will not repeat myself. The object of Court Orders is to manage the Court process in accordance with the overriding objective in **Part 1.1** of the **CPR** so as to get on with the trial and not delay it with too many interlocutory applications with consequential cost implications. I exercised that same discretion in relation to the Claimant's request for an extension of time to file submissions without a formal application. It was done on the adjourned date of hearing since, by that time, the Claimant ought to have recovered from his illness. I fulfilled my duty to all parties.

[28] I now turn to the other aspects of the Claimant's letter on which he grounds his allegation of bias, namely:

“...when the judge reminded perjurer ralph anthony thorne that he had said in previous hearings that he thorne did not want me at his office for fear of his safety, then thorne said that I was "actually" served documents in the registry where thorne had left documents. **The judge then reminded ... thorne that leaving documents at the registry is not service nor does it comply with the judge's orders.** Thorne still insisted that I was served documents, turning & pointing at me on many occasions calling me a liar, " ... he will leave here after this hearing and go down to the market and boast that he is suing a judge ... ". **At this point, the judge had the clerk read from the file (confirmation) that I (claimant) had informed the clerk on June 23, 2022 that thorne did not show at 1 pm to serve me documents as ordered by the judge. ... Furthermore, the judge even had to remind thorne that while he is calling me a liar, thorne had no proof of service as there was no affidavit of service filed by thorne” (emphasis mine).**

An examination of the above allegation demonstrates that, contrary to his assertions of bias, I have acted dispassionately and fairly at all times,

reminding counsel of the facts on record in accordance with my oath of office and my duty to the public that I serve.

[29] I am of the view that, viewed objectively, the facts demonstrate that I have dealt with the parties fairly and even-handedly. I am of the further opinion and hold that a fair-minded and informed observer, having considered the facts, would conclude that I have made every effort to assist the Claimant without descending into the arena. I am also of the opinion and hold that a fair minded observer, having considered the facts, would not conclude that there was a real possibility that I am biased.

[30] The letter of request for recusal clearly indicates that many of the comments with respect to Mr. Thorne KC's conduct are matters which, in the Claimant's opinion, are breaches of the **Legal Profession Code of Ethics, 1988 (the Code)**, this is not the appropriate forum to adjudicate these issues nor is the suggestion that this Court should deal with these alleged breaches the appropriate procedure.

[31] I wish finally to state that, in the same manner in which I reprimanded Mr. Thorne KC for his unfortunate references to the Claimant, I reprimanded the Claimant for his unfortunate references to counsel.

Disposal

[32] In the premises, the application for recusal is without merit and it is ordered that the application is dismissed.

William J Chandler

High Court Judge