

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. SLUCRD2024/1174,1175,1177

THE KING

VS.

JOEL PHILGENCE/FULGENCE

Applicant

Before:

The Hon. Mde. Justice V. Georgis Taylor-Alexander

High Court Judge

Appearances:

Mr. Giovanni James for the Applicant

Mr. Linton Robinson for the Crown

The Applicant present

2026: March 30;

DECISION ON AN APPLICATION FOR RECUSAL

- [1] **TAYLOR-ALEXANDER J:** The Applicant, Joel Philgence/Fulgence, is the Defendant in ongoing criminal proceedings arising from charges laid in October 2024 for Aiding and Abetting Kidnapping, and Conspiracy to Commit Robbery. In an application for bail heard before this court in October 2025, he raised medical concerns, including a risk of loss of eyesight, that threaten his continued well-being, and which may interfere with his timely participation in the proceedings. In October 2025,

having considered the Crown's submissions regarding witness safety and the Applicant's medical issues, the court prioritised this matter, along with other cases requiring urgent attention, for trial during the first term of 2026. One of the other prioritised cases have since been tried and completed.

[2] On 12th December 2025, the Applicant filed this application seeking to have his matter transferred to another judge on grounds of alleged apparent bias. This application disrupted the court's ability to proceed with case management conference, and the trial of the proceedings.

[3] Some of the contentions made by the Applicant in his application are that:

1. He has appeared before the judge in relation to two previous matters and has encountered animosity towards him from the judge during the deliberation of his matters;
2. Though he was unrepresented in these matters the learned judge has applied a very draconian approach towards the Applicant and his applications and in many instances summarily dismissed his applications without hearing from the Crown in response;
3. The learned judge on previous occasions has entered the arena by arguing on behalf of the Crown as well as making suggestions to the Crown to correct matters in their case to ensure a greater chance at a conviction;
4. The Applicant has on previous occasions experienced perverse decisions and statements made by the judge when considering his health issues viz-a-vis her need to try him as a matter of priority;
5. The decisions taken by the judge regarding his access to adequate medical attention have operated to his detriment;
6. The Applicant has reported the judge to the Chief Justice on two separate occasions regarding her conduct and apparent bias and animosity towards him. In his second letter to the Chief Justice, the Applicant also sent copies of the complaint to other agencies as well as the media. He submits that any knowledge by the judge of the said letters of complaint against her may result in the ordinary person concluding there is a real possibility that subconsciously the judge would be incapable of that high standard of objectivity which strips

any action of hers of any element of bias. That even where the judge may conclude that there is no apparent bias resulting in automatic recusal, the fact that the Applicant has reported the judge twice and has also sent copies of the second report to the media and other agencies, should be enough for the judge to exercise her discretion to recuse herself;

7. The learned judge has prioritized the matter for trial on grounds that cannot be substantiated and has advised the Applicant and his counsel to postpone non-essential travel for Term 1 of 2026. Based on the judge's oral pronouncements, medical care which may not include surgery may be categorised as non-essential;
8. The previous conduct of the judge leading up to the mistrial of a previous matter coupled with the eagerness to try this matter whilst remand inmates on the court's docket who have been awaiting trial for several years are bypassed, causes the Applicant serious concern that his matter is being fast-tracked to ensure a conviction as soon as possible;
9. The Applicant is of the view that any fair-minded person being aware of the animus nature of the interactions between the judge and the Applicant would result in a conclusion being drawn that despite being the arbiter of law, there would be a presumption of apparent bias by the judge;
10. A fair-minded and informed observer, having considered the matters stated above in conjunction with the Applicant's Affidavit in Support, would conclude there is a real possibility of apparent bias on the part of judge.

The Applicable Principles

- [4] An Applicant has a right to a fair hearing before an impartial tribunal at common law. ***Porter v Magill***¹ is now the seminal authority in the UK and commonwealth jurisdictions for assessing claims of apparent bias in judicial or quasi-judicial proceedings. The House of Lords established the objective test for apparent bias:
- (i) Would a fair-minded and informed observer, having considered all relevant facts, conclude that there was a real possibility that the decision-maker was biased?
 - (ii) The standard is not subjective, it is based on the perspective of a reasonable observer, not the applicant's personal feelings.
 - (iii) The appearance of bias must be real and substantial, not fanciful or hypothetical, to warrant recusal.
- [5] Some salient points emerging from ***Porter and Magill*** are that (i) prior opinions or adverse rulings do not automatically demonstrate bias. The focus is on whether circumstances create a reasonable perception of partiality, not on the actual mind of the decision-maker. (ii) The test balances the need for judicial independence with the public's right to confidence in impartiality.
- [6] ***Porter and Magill*** was more recently applied in ***Mengiste and another v Endowment Fund for the Rehabilitation of Tigray and others***; ***Rylatt Chubb v Endowment Fund for the Rehabilitation of Tigray and others***². The court affirmed that the test for judicial recusal on grounds of apparent bias is objective, namely whether a fair-minded and informed observer, having considered the relevant facts, would conclude that there is a real possibility of bias. Where such a possibility exists, recusal is mandatory, not discretionary.
- [7] The court further held that:
- (i) A judge must recuse himself where his prior findings, criticisms, or conduct are so closely connected to a subsequent issue before him that they may reasonably give rise to a perception of predisposition or prejudgment.

¹ [2002] 2 AC 357

² [2013] All ER (D) 116 (Aug)

- (ii) Where a judge has made strong, unnecessary, or one-sided criticisms without hearing from the affected party, this may create an appearance that the judge has already formed a concluded view.
- (iii) The question is not whether the judge is actually biased, but whether the circumstances would lead an informed observer to think there is a real risk that the judge may not approach the matter with an open mind.

- [8] In **Locabail (UK) Ltd v Bayfield Properties Ltd**³ A case that involved an application for the recusal of a judge in a commercial dispute, the Court of Appeal clarified the circumstances in which a judge should recuse themselves. The court stated that recusal is required if there is a “real danger” or “real possibility” of bias, meaning a reasonable person might conclude the judge could not act impartially. The court importantly clarified that not every prior connection, criticism, or adverse decision requires recusal; the connection must be significant enough to create a reasonable apprehension of bias.
- [9] The reasoning of these cases establish that recusal is not concerned with the subjective perceptions of the litigant, but with whether the circumstances would lead an informed observer to have a reasonable apprehension of bias. As further explained in **Locabail (UK) Ltd v Bayfield Properties Ltd**⁴, judges are presumed to be impartial, and adverse rulings, robust case management, or prior judicial involvement do not, without more, establish bias. The threshold is a high one and must be supported by clear and cogent evidence.
- [10] In **Helow v Secretary of State for the Home Department**⁵, Lord Hope set out the approach of the fair-minded and informed observer in this context:

“ The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in Johnson v Johnson (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The “real possibility” test ensures that there is this measure of detachment. The assumptions that the complainer makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively that things they have said or done or associations

³ [2000] QB 451

⁴ [2000] QB 451

⁵ [2008] 1 WLR 2416

that they have formed make it difficult for them to judge the case before them impartially. Then there is the attribute that the observer is “informed”. It makes the point that before she takes a balanced approach to any information she is given she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headline. She is able to put all she has read or seen into its overall social, political or geographical context. She is fair minded so she will appreciate that the context forms an important part of the material which she must consider before passing judgment”

- [11] The question to be considered in assessing the application therefore is whether a fair-minded and informed observer, having considered the relevant facts would conclude that the judge was biased by reason of her conduct of previous cases concerning the Applicant; her intention to prioritise this case for trial, and in the Applicant’s written correspondence to third parties and Chief Justices about the judge’s management of his case which he claims had received wide circulation.

Analysis of the Applicant’s Contentions

- [12] In his affidavit in support of his application, the Applicant purports to give account of the allegations of judicial bias, unfair trial conduct, and treatment of issues related to his medical treatment as perceived by him.
- [13] He deposes that he had previously been charged in 2009, 2012 and 2021, maintaining his innocence in all matters and claims to have successfully defended two of them. Two matters remain pending before the court, including the present charges.
- [14] The Applicant outlines his prior experience before the judge who presided over earlier trials involving him. He states that during those proceedings, which he conducted as an unrepresented Defendant, the judge adopted an approach which he perceived as adverse and lacking in impartiality. In particular, he alleges that the judge intervened in a manner favourable to the prosecution, dismissed or curtailed his applications, and treated him as if he bore the burden of proving his innocence. He contends that the judge disregarded material statements made by a complainant during one of the trials and proceeded in a manner he considered unfair.
- [15] The Applicant also complains of the judge’s conduct in relation to evidential matters, alleging that the judge suggested to the prosecution how deficiencies in its case might be remedied and adjourned proceedings to facilitate this. He asserts that this conduct created the impression that the judge was favourable to the prosecution. Following a mistrial, the matter was transferred to another judge,

whose approach the Applicant describes as fair and impartial, ultimately resulting in the withdrawal of a charge by the Crown. Importantly it was acknowledged by the Applicant's counsel that this is how the Applicant feels, distinct from whether it is an accurate representation of what transpired in his previous matters before the court.

- [16] In fact, a review of the Affidavit confirms that the allegations are founded on personal impressions rather than objectively verifiable facts relevant to judicial bias. The Applicant's conclusions are his subjective perceptions, and he provides no supporting evidence, such as transcripts or audio recordings, which could have been produced with reasonable diligence to substantiate his claims. As a result, the material before the court consists of bare, unsubstantiated allegations, which, without more, amount to nothing more than a characterisation of the bench, effectively assisted and amplified by his counsel, rather than a demonstrable case of bias. The affidavit evidence presented does not allow a fair-minded person to have an appreciation of the context of the allegations and to make an informed assessment, nor does it allow for such reasonable person to determine objectively the conduct, comment, criticism of the Applicant, or adverse decision in the previous matters by the learned judge significant enough to create a reasonable apprehension of bias.
- [17] Insofar, as there was adverse comment made, which was not established by the Applicant, in **Parekh v AG**⁶ a decision of the Seychelles Supreme Court applying Porter, the court explained that mere criticism or adverse comment does not equate to predilection against a party. The party alleging bias bears the onus to present evidence of circumstances that could reasonably be seen as giving rise to apparent bias. The test requires identification of circumstances that would reasonably suggest a real possibility of bias, not generalised statements of unfair treatment. The affidavit evidence of the Applicant is bereft of such evidence of circumstances.
- [18] The Affidavit also reveals that the Applicant conflates issues of procedural fairness with the distinct legal concept of apparent bias. While a fair trial requires that proceedings are conducted in accordance with established procedural rules, the existence of procedural errors, robust case management, or judicial critique of a litigant does not, without more, establish bias. A hearing may be unfair for procedural reasons without giving rise to bias. Not every instance of perceived heavy-handed judicial approach equates to partiality; judges are entitled to manage cases robustly.

⁶ SCA CL 01/2025

- [19] A central feature of the affidavit of the Applicant concerns his medical condition, namely serious and worsening eye problems requiring specialist treatment overseas. He contends that the judge failed to adequately accommodate his medical needs, denied or restricted his ability to obtain treatment, and prioritised the progression of the trial over his health. He states that this has resulted in a deterioration of his condition and has impaired his ability to properly participate in his defence.
- [20] The Applicant further takes issue with case management decisions, including the denial of bail notwithstanding his medical condition, the prioritisation and expediting of his matter ahead of other longstanding cases. He contends that this course of conduct gives rise to concern as to the fairness of the proceedings and suggests a predisposition against him.
- [21] The Criminal Procedure Rules empowers the court, with a duty to manage proceedings efficiently, enforce procedural rules, and ensure the timely administration of justice, even where such management may be perceived as disadvantageous by a party. The overriding objective contained at rules 1.1 – 1.3 of the Criminal Procedure Rules, 2015, empowers the court and the parties to further the overriding objective when it deals with cases and parties. The overriding objective includes dealing with cases efficiently and expeditiously, respecting the interests of witnesses and victims. Further under the court's general case management powers at rules 7.1 and 7.2, the court is empowered inter alia to actively manage cases by the early identification of the needs of witness; the early setting of a timetable for the process of the case; and giving directions appropriate to the needs of a case as early as possible. Such power extends to fixing, postponing, bringing forward a hearing as the case may be, including a trial. The correspondence sent from the court to the parties in October 2025, including to this Applicant, identified the reason for prioritizing the cases identified in the correspondence; one of which was to facilitate "Defendants with health concerns".
- [22] The Applicant criticises the bench for prioritising his case for trial despite other older matters before the court, yet also complains that insufficient attention was given to his medical concerns. A closer assessment of the evidence suggests that the Applicant seeks to have the court consider his medical issues selectively advocating for them when seeking bail but contesting the relevance of his medical issues when the matter of setting a trial schedule arises. This inconsistency suggests that his claims are rooted more in preference for a particular outcome than in any objective demonstration of judicial partiality.

[23] The Applicant also deposes that he has previously raised complaints regarding the conduct of the learned judge by correspondence to two previous Chief Justices and other authorities, none of which he has been afforded a response, and none of which has resulted in investigation or interrogation of or action against the judge. He states that the last of the correspondence was widely circulated by him in the media. He expresses concern that there exists a real risk of bias or the appearance of bias, given this circulation, and that he cannot have confidence in receiving a fair trial.

[24] On this issue too, the application is woefully deficient. The Applicant has not demonstrated whether these complaints, which he claims he made, ever came to the judge's attention, or if they did, that they created any circumstance in which the judge could not remain impartial. He also admits that, despite the widespread circulation of his correspondence, it did not result in any inquiry or change in the management of his case. Accordingly, the evidence adduced by the Defendant establishes, at most, an attempt to influence the proceedings to achieve a desired outcome of his own making, rather than an outcome determined by a fair and impartial administration of justice.

Disposition

[25] Viewed through the lens of the fair-minded and informed observer, and bearing in mind that such an observer is neither unduly sensitive nor suspicious, there is nothing in the material before the court that demonstrates any basis for recusal on grounds of apparent bias.

[26] Accordingly, the application for recusal is refused. The matter shall proceed in the ordinary course.

Justice V. Georgis Taylor-Alexander
High Court Judge



BY THE COURT

DEPUTY REGISTRAR