

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2024/0333
BETWEEN:

DEBBY SAMUEL LOOBY

CLAIMANT

AND

[1] SISLYN PETERS
[2] AMBERZINE JOSEPH
[3] STEPHANIE JOSEPH
[4] VALARIE LOOBY
[5] THE ATTORNEY GENERAL
OF ANTIGUA AND BARBUDA

DEFENDANTS

Appearances:

Ms. Debby Samuel Looby Claimant in person
Ms. Talia Da Costa for the First to Fourth Defendants
Ms. Joy Dublin and Ms. Desrie Markham for the Fifth Defendant

2025: March 18th

REASONS FOR DECISION ON SUBMISSIONS

Background

[1] **BYER, J.:** By way of notice of application filed the 10th December 2024 the claimant herein filed an application supported by an affidavit for this court to recuse itself from further hearing of the instant matter and listed as the reason being the decision given by this court on the 22nd October 2024 to remove as a defendant to the proceedings Talia Da Costa who acts as counsel for the defendants herein.

[2] In the affidavit in support of the application, the claimant cited inter alia the following as being the reason for seeking the recusal of the court:

“3. Mrs. Debby Samuel Looby was fined \$250.00 to be paid to Talia N Da Costa on the basis that joining the sixth defendant Talia Da Costa as counsel for

the 1st to 4th defendant is inappropriate and that the Defendant cannot be sued for acting on instructions of her client regardless of how wrong the claimant believes those instructions to be. The order of the court, however, fails to reflect or quote relevant current legislation to support this statement therefore this requirement must not stand.

4. Removing Talia Da Costa as a party to the proceedings will in the opinion of Mrs. Debby Samuel Looby unfairly influence the outcome of the case, especially due to the fact that Talia Da Costa is an accessory as per the Accessories and Abettors Act of 1877 Cap 4, sections 2,4 and 4. Talia Da Costa...”

5. Mrs. Debby Samuel Looby is not a trained lawyer so she depends on the instructions and assistance of the court to allow the matter to be aired and examined justly and comprehensively so that a fair decision can be reached in a timely manner. Partiality on the part of the judge will unfairly influence the outcome of the case. Mrs. Looby deems the actions of the Honorable Justice Nicola Byer in the instance of Talia Da Costa to be questionable and prejudicial, hence seeks a recusal of the Justice in question from this matter.”

[3] The defendants did not file any evidence in response to the application for recusal and this court made an order on the 22nd January 2025 that submissions should be filed by both sides to the application for recusal and the court would deliver a decision based on those submissions.

[4] However before this court delves into the submissions as made by both sides it also wishes to put on the record the circumstances which led to the making of the order, the genesis for this application to recuse itself.

[5] The claimant filed a fixed date claim form 23rd August 2024 seeking several reliefs against, at that time six defendants who included the said attorney, Talia Da Costa. In that fixed date claim form as against the then sixth defendant, the claimant sought the following:

1. Harassment resulting from causing malicious delivery of a letter to the legal place of residence of the claimant Mrs. Debby Samuel Looby at Cedar Valley Gardens. Ms. Da Costa failed to properly investigate whether she had the right to issue such a letter. As remedy the claimant asks for an applicable restraining order against this person to prohibit future issuance and delivery of any such inappropriate correspondence along with any other award the court deems fit and proper. Ms. Da Costa has previously been warned via email dated 25th July 2023 and hard copy was delivered to her office two days later that Mrs. Debby Samuel Looby was in the process of preparing an application to complete her grandmother's probate.

2. Consequential damages resulting from the actions taken because of that issued letter and letters of administration granted to Ms. Sislyn Peter. This constituted the continuation of actions on the part of Ms. Da Costa which the led to the court granting letters of administration to Ms. Sislyn Peters who is the second child of the deceased Mrs. Fernella Peters.

- [6] By the first hearing of the fixed date claim form, the sixth defendant had filed an application to strike out the claim as against her and the same had been served on the claimant as had been evidenced by the affidavit of service. Upon the matter being called on the 22nd October 2024, the court inquired of the claimant as to whether she was in receipt of the said application and whether she had responded to the same. The claimant responded in the affirmative but then admitted that she had not read the same, although they had been served on her in excess of seven days before the said hearing.
- [7] This court guided by the overriding objective stated CPR 2023 and in particular that in dealing with cases justly the court should ensure there is saving of expense,¹ ensure that the case is dealt with expeditiously² and allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases³ took the decision after clearly explaining to the claimant, that it was inappropriate to sue counsel who acts on instructions to be sued for acting on those instructions, and struck out the claim against the sixth defendant, the said Talia Da Costa.
- [8] It is therefore clear, that the nub of the reason for the recusal application by the claimant is this determination made by the court, removing counsel on the record as a defendant to the proceedings for the reasons as indicated above.
- [9] Additionally, this court wishes to make a further comment about the claimant's repeated reference to the fact that she is a litigant in person and what that means for her. However this court wishes to make it clear that although the court is aware that some allowance must be made for such persons, "respectfully this court is of the view that it is not the function to teach the claimant how to draft or indicate to them what their pleadings should and should not include. Claimants who choose to represent themselves accept this risk and must also accept the consequences of deficient pleadings."⁴ This position was also stated in the case of **Shane Mahagirsingh v Issa Jones**⁵ by Seepersad J in relation to un-represented litigants

¹ CPR 1.1(2) (b)

² CPR 1.1(2) (d)

³ CPR 1.1(2) (e)

⁴ **Peter Ducreay and anr v Alix Bernard** DOMHCV2021/0059 per Pariagsingh M(as he then was) at para33

⁵ CV2024-02546 Trinidad and Tobago High Court

in which he stated at paragraph 19, "...it must be remembered that the court is constrained to determine matters based on the law as it is applied to the operative facts and must do so in a proportionate manner which accords with the overriding objective as outlined in the civil proceedings rules." Then at paragraph 20 "it is obvious that the claimant instituted this claim without the benefit of proper legal advice. Serious thought should always be given before one decides to approach the court in person as lawyers play a critical role and their value and advice should not be disregarded. Just as one would not typically operate upon oneself if there was a medical issue, so too citizens should exercise caution and avoid as best as possible from approaching the courts without the benefit of legal guidance."

- [10] That being said, and having had sight of all the submissions by the parties in the matter, it is pellucid that the sole issue for the court is therefore, whether this court should continue to preside over the hearing of the substantive matter or whether the court should recuse itself from further hearing.

Claimant's Submissions

- [11] The gravamen of the claimant's submissions was that the bias she complained of fell within the category of apparent bias on the part of this court. The claimant submitted that this court had failed to allow her to present her side of the application to remove counsel for the defendants as a defendant, that the court showed perceived bias and that the mind of this court was closed to hearing the claimant and as such this court did not act impartially in the process.
- [12] The claimant, in relying on her analysis of the case law, further submitted that this court having made the decision to remove counsel as a party showed that this court had prejudged the matter or predetermined the matter in an attempt, to protect the defendant as an officer of the court at the expense of the claimant. Indeed, the claimant boldly stated that if this court had given her an opportunity to be heard, that the order for strike out would never have been made.
- [13] Thus in the submission of the claimant, any fair-minded observer who had seen this court act in the application to strike out would see that there was the manifest danger that there was a real possibility of bias on the part of this court that the court at the hearing had obviously already made up its mind on the application.

The First to Fourth named Respondent's Submissions⁶

⁶ No submissions were filed by the Fifth Respondent

- [14] Before this court delves into the substance of the submissions made by the first to fourth respondents (the respondents) I wish to again state for the record that court orders are not suggestions, and when this court or any other court makes an order and it is not obeyed, even without an application for an unless order, the court is permitted under the CPR2023 to make orders for the payment of procedural costs. In present circumstances, the submissions were filed one day later than ordered and were not accompanied by an application to have them deemed properly filed. As it therefore stands the submissions are in fact not properly before the court. However there has been sufficient case law within this jurisdiction and at other higher levels that the court should consider documents that have been filed even if not filed in accordance with an order of the court and I would say that this is especially so when there is no further opportunity after the filing to be heard by the court. That, however, does not mean that the court should condone the actions of counsel without repercussions. Therefore, counsel for the respondents (as identified above) is to pay the sum of \$200.00 to the Registrar of the High Court as procedural costs pursuant to Part 26.7 CPR 2023 to be paid within three business days from the delivery of this judgment.
- [15] The nub of the submissions, of the respondents in response to the application for this court to recuse itself, is that the applicant has failed to cite or point to any action taken by the court which could amount to a reason for recusal. In the respondents' submissions, the sole reason they identify as the basis of the application is that the applicant disagrees with the order of the court which the respondents' state was within the wide ambit of powers that exist in the court's case management arsenal.
- [16] They submit that nothing in the application, which is before the court, would or could lead a reasonable informed and not unduly sensitive or suspicious observer to conclude that there was any real danger of bias on the part of the court. Rather in the submissions of the respondents, the applicant having failed to present any evidence of actual or apparent bias has failed to meet the threshold necessary for the court to recuse itself. The respondents therefore maintained their position that the application of the applicant was solely motivated by the applicant's disagreement with the court's ruling as opposed to any real or perceived concern about the impartiality of the court. They therefore prayed for the application to be dismissed.
- [17] The court notes that the fifth respondent also purported to file submissions in this matter some three weeks late, again with no application for an extension of time.
- [18] In this instance this court refuses to exercise its discretion to have them deemed properly filed as done with the first to fourth respondents considering the extended delay for doing the same. The submissions of the fifth respondents are therefore not reflected in this judgment although the same were read.

Court's Consideration and Analysis

- [19] In considering this application, the applicant has not relied on actual bias on the part of this court but apparent bias for all the reasons articulated in her application and submissions. Therefore, this court will only consider the arguments and the law in relation to apparent bias and such as this court considers this application the words of the High Court of Trinidad and Tobago in the case of **Gladys Gafoor v The Integrity Commission**⁷ resound clearly. *“This tension between the duty to sit and the duty to preserve judicial independence and impartiality sets the stage for a recusal process which is open, transparent and fair: where decisions on recusal are made after careful thought and reflection; where the applications themselves are made bona fide, properly formulated, and coherent and well-grounded on established principles of law. The fact that it is a challenge going to the fundamental and solemn duty of a judge of the Supreme Court, the occasion should not be scandalized by improper, spurious and baseless requests for recusal which will do nothing to inspire confidence in the administration of justice. Such applications must not in itself be seen as an attempt to excite suspicion and mischief nor an attempt to ferret out information from the judge to make a case for recusal.”* It is therefore within this very controlled environment that an application for recusal must be considered. Such an application is not an invitation or a means to forum shop or take disagreement with an order of the court with which a party does not agree.
- [20] So what is the test that this court is required to apply to itself for the purposes of determining whether it should recuse itself from the instant case? As stated in the court of appeal decision of **Keston Riley v The Attorney General and the Director of Public Prosecutions**⁸ *“[t]he court has to ascertain all the circumstances bearing on the suggestion that the judge would be biased and ask whether all those circumstances would lead the fair-minded and informed observer to conclude that there was a real possibility that the judge was biased. The facts and context are critical, with each case turning on an intense focus of its essential facts”*. Or as the court in multi-litigant case of **Locabail (U.K.) Ltd v Bayfield Properties Ltd etc.**⁹ so eloquently posed the question, *“[t]he 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*

⁷ TT unrep Claim No. CV2012-00873 at paragraph 7 per Kokaram J

⁸ MNIHCVAP 2020/0003 at paragraph 16

⁹ [2000]Q.B.451 at paragraph 21 from the case of **President of the Republic of South Africa v South African Rugby Football Union** 1999 (4) S.A.147 at 177

of office taken by the judges to administer justice without fear or favor; 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”.

- [21] Thus it must always be borne in mind that an application for “*recusal is a shield to protect the applicant’s interest so that his/her matter is heard by an impartial court. It is not a sword to be wielded by an applicant to steal a match and deny a chance to the other party.*”¹⁰ In that vein it therefore becomes imperative that the assessment of the fair-minded observer is paramount to the entire process.
- [22] So who is this fair-minded observer? As the court in **Helow v Secretary of State for the Home Department**¹¹ so articulately described her, “[t]he 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 that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.” Therefore, as this fair-minded observer approaches her task, she will also always bear in mind that “the concept of apparent bias does not rest on impression based on an incomplete picture but on a fair and reasoned judgment formed as result of composed and considered appraisal of the relevant facts.”¹²
- [23] Thus, from even a cursory perusal of the authorities, this fair-minded observer who must assess the circumstances must do so on the facts of each case and each case is fact specific and sensitive.
- [24] Therefore, what are the facts that this court must consider in coming to the decision whether to recuse itself or not.

¹⁰**Gladys Boss Shollei v Judicial Service Commission and anr** [2018] eKLR at paragraph 31

¹¹[2008] UKHL 62 at paragraph 2

¹²**Belize Bank Limited v The Attorney General of Belize and ors** [2011] UKPC 36

- [25] Having been assigned the file, the court prepared the file and the fixed date claim form and the accompanying affidavit which sought various reliefs, against the respondents for acts involving the estate of the grandmother of the applicant. The applicant had also added as a party counsel on the record for the respondents and the Commissioner of Police. An application was filed by counsel for the respondent counsel to be removed as a party as there was no cause of action against her. The application came on for hearing after service on the claimant and upon the court determining that the applicant had been served but had taken no action as to the application and determined the application in a summary manner. The applicant disagrees with the determination of the court and has appealed the same. In the interim of hearing that appeal, the applicant seeks the court to stand down from further hearing of her matter as she is of the belief that another court could have come to a different conclusion. That is the sum total of the complaint.
- [26] From this factual matrix, two things appear to this court. First, the appropriate avenue to be taken by a litigant who does not agree with the finding of a court is to appeal the order and second there is no evidence put before this court that this court was influenced by any “extraneous matters, predilections or preferences.”¹³ Indeed, as the court in **Oktritie International** ¹⁴ noted, “...bias is not to be imputed to a judge by reason of his previous rulings or decisions in the same case...” without clear evidence.
- [27] This is therefore the information that the fair-minded observer would have to assess on this application.
- [28] The question therefore would then become, can it be said that this court having dealt with the present applicant as a party in proceedings and having made an order to which she did not agree and which she has purportedly appealed, whether the court is barred from considering the substantive claim by coming to it with a closed mind?
- [29] In this court’s mind the answer must resoundingly be no.
- [30] When this court considers that the fair-minded observer cannot be the litigant, the view on this application becomes clearer. It goes without saying that the “...litigant.... lacks objectivity which is the hall mark of the fair-minded observer. He is far from dispassionate.... Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if when viewed objectively their perception is unfounded.”¹⁵

¹³ **Oktritie International Investments Ltd v Urumov** [2014] EWCA 1315

¹⁴ Ibid

¹⁵ **Janan George Harb v HRH Prince Abdul Aziz Bin Fahd Bin** (2016) EWCA Civ 556 at paragraph 69

- [31] Of course it must also be borne in mind that when that fair -minded observer makes her assessment, she must always bear in mind that bias and partiality in the mind of a judge cannot be defined as meaning “the total absence of preconceptions in the mind of the judge”¹⁶ Indeed “interests, points of view, preferences are the essence of living.”¹⁷
- [32] However it is when those matters that make up the “essence of living” become so entrenched to cause or create pre- judgment, that the judicial officer then runs afoul of the test of apparent bias.
- [33] Thus, when this court considers the true genesis of the application, this court is satisfied that “*regardless of previous findings ... [this court’s] duty is to always search for the truth based on the admissible evidence that is advanced in the material case. The reasonable [fair minded] observer would appreciate that in this claim both parties start at ground zero to prove and defend [their] allegations.*”¹⁸ In fact it is the “*...presence of some factor which could prevent the bringing of an objective judgment to bear which could distort the judge’s judgment*”¹⁹ which would amount to grounds for recusal by a court. However, in this court’s mind the applicant has not met this requirement.
- [34] When this court analyses this application and the evidence in support, the applicant is seeking to attribute the real possibility of unconscious bias by some “form of osmosis”²⁰ by the mere fact of the court having ruled against the applicant in the matter as previously described.
- [35] Indeed this court must bear in mind the sage words of Chadwick LJ in the case of **Tridos Bank N.V. v Dobbs**²¹ in which he said, “*It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If the judges were to recuse themselves whenever a litigant –*

¹⁶ Per Judge Jerome Frank **In Re JP Linahan Inc** [1943] 138 F 2d 650 at 651

¹⁷ Ibid

¹⁸ **Indar Singh v Kisundaya Sugrim** Unrep High Court of Trinidad and Tobago Claim No CV2018-00103 at paragraph 44

¹⁹ **JSC BTA Bank v Mukhatar Ablyazov** [2012] EWCA Civ 1551 at paragraph 59

²⁰ **Helow** supra at paragraph 56

²¹ [2001] EWCA Civ 468

whether it be a represented litigant or a litigant in person – criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases, simply by criticizing all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticized – whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; ...”

[36] Bearing that admonition in mind, this court finds that the real possibility of bias has not been established on the evidence of the applicant before this court. It was for the applicant to produce viable grounds of concern to the court, for the court to remove itself from the fundamental duty to sit. In the end of the day, having so found, this court is constrained to dismiss the application before it.

[37] On the issue of costs, as all parties are aware, costs are usually awarded to the successful party on an application, however it must be noted that the respondents did not ask for costs on the dismissal of the application in their submissions. In any event, however, this court has had sight of learning that seems to suggest that unlike other applications, an unsuccessful application for recusal does not automatically attract an order for costs if certain conditions are met.

[38] In the case of **The Attorney General of Trinidad and Tobago v Dr. Wayne Kublalsingh and ors**²² the Court of Appeal of Trinidad and Tobago had to consider an appeal from a decision where the court refused to recuse itself. At paragraph 36 of the judgment of Mendonca JA, the learned judge had this to say *“[o]n the question of costs we are of the view that unless the Court is of the mind that an application for recusal is frivolous or lacking in bona fides, by which we mean that it is motivated by some cause other than the administration of justice, there should be no order as to costs on the hearing before the judge.”*

[39] When this court however considers the case at bar, it finds itself unable to come to any conclusion other than that this application was neither bona fides or not frivolous. As this court has stated throughout this judgment, it is clear, that the sole motivation of the applicant was dissatisfaction with the court’s decision and not motivated by the due administration of justice. Therefore in my discretion I order that the applicant is to pay the sum of \$750.00 to the first to fourth respondents on the dismissal of the application.

[40] **The order of the court is therefore as follows:**

1. The Notice of Application filed on 10th December 2024 is dismissed

²² Civil Appeal No P018 of 2014

2. Costs to the first to fourth respondents in the sum of \$750.00

Nicola Byer

High Court Judge

By the Court



Registrar