

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2021/0007A

IN THE MATTER OF THE INCOME TAX ACT CHAPTER 435 OF THE LAWS OF SAINT VINCENT AND
THE GRENADINES REVISED EDITION 2009

AND

IN THE MATTER OF AN APPEAL FROM AN ORDER OF THE APPEAL COMMISSIONERS DATED THE
18 DAY OF DECEMBER 2020

BETWEEN

MASSY STORES (ST. VINCENT) LTD

APPLICANT/CLAIMANT

AND

APPEAL COMMISSIONERS

FIRST RESPONDENT

AND

THE COMPTROLLER OF INLAND REVENUE

SECOND RESPONDENT

Appearances:

Ms. Paula David and Ms. Zoe Williams for Applicant/Claimant

Mr. Grahame Bollers for the First named Respondent

Mr. Duane Daniel and Ms. Chanté Francis for the Second named Respondent

Ms. Vanessa DeSouza for the Applicant present

No representative for the First named Respondent

Mr. Kelvin Pompey for the Second named Respondent present

2021: 29 July
13 September

REASONS FOR DECISION

Byer, J.:

- [1] At the hearing of this matter on 20 May 2021, this court raised with all counsel the circumstances that had arisen out of the extensive press coverage that had been created by the Second defendant, emanating from the decision of this court in the **Unicomer (St Vincent) Ltd v The Appeal Commissioners/Comptroller of Inland Revenue**¹ (hereinafter referred to as “the judgment”). The court on that date, invited comments from counsel on the issue of whether the parties were of the view that this court should recuse itself.
- [2] Both counsel for the first and second named respondents on that date made it clear that they saw no reason for this court to recuse itself and reiterated, that they were of the opinion, that this court could render a decision in the instant case. Counsel for the second respondent in fact made it clear on that date that there was nothing in the instant case that touched and concerned any of the issues that were dealt with by the court in the judgment. However, counsel for the applicant informed the court on that date that she required to take full instructions from instructing counsel and senior counsel who appears with her in the matter. On 1 July 2021 when the matter was again listed, counsel for the applicant informed the court that they wished to “accept the court’s offer to recuse itself” in the matter based on the findings of the court in the judgment. With the agreement of all counsel the court ordered that the request should be encapsulated in writing, and the applicant was ordered to file a notice of application identifying the reason that they sought recusal of this court.
- [3] No allegation of actual bias has however been made against the Court.
- [4] By the Notice of Application filed by the applicant the applicant sought the recusal of this court based on the following grounds:
- “1. That the Judge’s offer of recusal having been prompted by her statements and findings in her Decision in the proceedings referred to hereunder which were widely reported in the Press confirmed as follows:
- a) That the learned Judge herself was concerned about the impartiality of the judicial process in these proceedings being undermined and the public perception that there was the real possibility of bias against the Applicant because its sister company was the subject of an adverse finding which was praised in the Press by the Second Respondent herein.
 - b) That the Judge was of the opinion that public confidence in the judicial process could be preserved by the matter being adjudicated upon by another Court which would be free of the perception of apparent bias to which this Court would be subject.
2. That in High Court proceedings SVGHCV2018/0206 consolidated with SVGHCV2019/001 was a matter in which the Court, as currently constituted, made a finding that *Massy United Insurance Limited (United)*, a company related to the Claimant as members of the Massy Group (operating throughout the Caribbean) was party to a transaction which was not at arm’s length and resulted in

¹ SVGHCV2018/0206 consolidated with SVGHCV2019/0001

*artificially reducing the tax liability of a tax payer. This finding (based on unfounded assertions of the Second Respondent) was wholly inconsistent with and contradicted by the evidence relating to the role played by **United** in that transaction. As a consequence the Claimant harbours the enduring concern that there is the real possibility that this Court as presently constituted may not be an impartial arbiter with respect to the Claimant's case but instead may unfairly favour the position advocated by the Second Respondent herein."*

- [5] The Notice of Application was supported by the Affidavit of Vanessa De Souza, the General Manager of the applicant. The operative part of the affidavit is contained in paragraphs 8 of the said affidavit and is reproduced here in its entirety:

"8. I am advised by counsel for the Claimant and I verily believe that the Unicomer judgment has given rise to this recusal issue for the following reasons:

- a. The Unicomer judgment upheld a decision of the Appeal Commissioners and went largely in favour of the Comptroller of Inland Revenue. The finding in that judgment which gives rise to a fear of absence of judicial impartiality in this matter can be gleaned from paragraphs 78 to 81. In essence, the learned judge's finding was that Massy United Insurance Limited was party to transactions which were not at arm's length and which facilitated Unicomer in artificially reducing its tax liability.*
- b. A finding that Massy United Insurance Limited was party to transactions which were not at arm's length is a negative finding. It is a particularly damning finding as the transactions in question had implications for the revenue. The Massy Group of Companies to which Massy United Insurance Limited and the Claimant belong, prides itself on its commitment to conducting its business ethically.*
- c. It is extremely difficult to comprehend how the learned judge could have, on the one hand, reasoned and found from paragraphs 58 to 64 that Massy United Insurance Limited was not a conduit of Unicomer, yet on the other hand, from paragraphs 78 to 81, reasoned and found that "the insurance coverage and contracts: in question "did not occur at arm's-length". A finding that Massy United Insurance Limited was not a conduit funneling money between Unicomer and Canterbury, a company to which Unicomer is related, must surely mean that the contracts between Unicomer and Massy United Insurance Limited and Massy United Insurance Limited and Canterbury were contracts at arm's length. This contradiction in findings gives rise to an enduring concern of apparent bias in favour of the Comptroller of Inland Revenue."*

- [6] It is therefore clear that the nub of the reason for recusal by the applicant was that this court had made a finding against a party who is a part of the umbrella group of companies to which the applicant is a part but which fundamentally was not a party to the judgment issued by this court.

- [7] The affidavit of the second named respondent² in response to the application was fulsome and fundamentally based on the second respondent's "well-informed" view and interpretation of the judgment issued by this court. Additionally, the second respondent made it clear that even if the judgment was publicized by the newspapers the reports were clearly grounded in terms of the judgment. Further the only reference that was made to the sister company of the applicant stated that the court had made no finding of wrongdoing on the part of this sister company.
- [8] Having therefore seen the nature of the application and the response thereto, and the comprehensive submissions by all parties to the matter, it is pellucid that the sole issue for the court is whether this court should continue to preside over the hearing of the substantive matter or whether the court should recuse itself from further hearing.
- [9] As all parties agreed at the hearing of the application on 29 July 2021, this matter is not one of actual bias on the part of the court but rather of apparent bias and as such this court will address its mind only to the principles that apply in those circumstances.

Applicant's Submissions

- [10] Throughout the submissions of the applicant, it was clearly stated that it was never the intention of the applicant to seek the recusal of this court. Indeed, the applicant made it clear that it was only based on the court "offering to recuse itself" that the application had in fact been made.
- [11] The applicant's submission essentially was that the court by its "invitation" had taken judicial recognition of the possibility of apparent bias, which arose on a two-fold basis. Firstly, that the second respondent had exposed the judgment in their favour to the public and secondly that that judgment having made "findings" against the sister company of the applicant herein created "grave disquiet to the claimant as to whether at this point in time it could receive impartial justice."³
- [12] The applicant therefore submitted that having examined the authorities that speak to the principles that govern recusal by the court, that this case was in fact a proper case by which the court should make an order of recusal which would "support maintaining the appearance of impartiality and instill public confidence in the administration of justice."⁴

The First Respondent's Submissions

- [13] The first respondent, the entity that heard and determined the appeal against the second respondent's decision by the applicant, submitted that the only reason given by the applicant for the recusal of the court was as given in the affidavit of Vanessa DeSouza at paragraph 8 (a) while 8 (b)

² Filed on 23/7/2021

³ Paragraph 9 of the submissions of the applicant filed 27/7/2021

⁴ Paragraph 15 of the submissions of the applicant filed 27/7/2021

and (c) contain the opinion of the affiant on the “findings” that the applicant said were made by the court in the judgment.

- [14] The first respondent made it clear that the applicant had made no allegations of actual bias against the court nor did the reason advanced contain any allegations of perceived bias.
- [15] The first respondent therefore submitted, that the key to assess whether a judicial officer should recuse himself or herself must be whether there is a public perception of the possibility of unconscious bias on the part of the judicial officer concerned. Therefore, the appropriate test is what the fair-minded and informed observer can conclude from looking at the facts of the case, knowing that that fair-minded observer must have all the facts. The first respondent therefore made it clear that a fair-minded observer could not in the present circumstances having in their possession all the pertinent facts conclude that there was any issue of apparent or perceived bias on the part of this court.
- [16] In making this submission the first respondent clarified that the judgment issued by the court did not concern any of the issues concerning this matter at bar and that further Massy United is not a party to these proceedings. Indeed, the first respondent submitted that in any event contrary to the contention of the applicant, the judgment did not make any adverse findings against Massy United and that further this court had not in fact made any comments against this present applicant that could possibly show that the court had anything close to a closed mind in addressing the present matter. The mere fact that the applicant and Massy United are part of the same group of companies was not, in the submission of the first respondent, a sufficient basis to cause the court to recuse itself and as such there was no sound reason for the application which should be dismissed with costs.

The Second Respondent's Submissions

- [17] The second respondent's submissions, like the first respondent's, also considered that the applicant's application was misconceived in all the circumstances. Indeed, the second respondent made it clear that the basis upon which the applicant seeks the recusal of this court is entirely fallacious in that the applicant herein was not a party to the proceedings from which the judgment emanated and certainly, this applicant was never considered by this court in those proceedings.
- [18] Indeed the second respondent made it clear, that not only was the present applicant only part of the group of companies to which Massy United is a member but additionally the mere fact that a court may consider proceedings in which the same litigant may appear more than once before that same court, is not a reason that the court is automatically disqualified from hearing the fresh proceedings.
- [19] The second respondent in fact submitted, that in order for the applicant to succeed on this basis they would have to show that the court had approached the matter with a closed biased mind from what they may have said or done. That being said, the second respondent also made it clear that this was a high threshold in jurisdictions where the court was likely to encounter the same litigant in multiple

matters and therefore that fact alone could not warrant the court acceding to a request for recusal without more.

- [20] The second respondent also submitted that the nature of the issues that this court had to determine in the proceedings in which the judgment was written were so far removed from the issues that the court would have to determine in the present proceedings. Therefore, there not being any logical connection between the matters, the second respondent submitted that there was no reason upon which the applicant could rely in this regard to seek the recusal of the court.
- [21] The final ground upon which the second respondent submitted was whether the fair-minded observer would have had any concerns from the judgment, that the court would not be able to approach the present proceedings impartially. In the second respondent's submissions, any such concern was totally unfounded in that the judgment did not make any finding adverse to Massy United and as such there was nothing on the face of the judgment that would have any potential to raise a concern of a real possibility of bias in the mind of the fair-minded observer. In fact, the submission was stated thusly, "[t]he mere tangential exposure to a company which is in the same group of companies as the claimant, in separate proceedings which concerned entirely different issues of fact cannot be regarded as being sufficient to displace the court's presumption and appearance of impartiality and objectivity in the determination of matters in dispute in the instant case".⁵
- [22] In light of their submissions the second respondent opined that it was therefore not open to the court to recuse itself as a mere means of making either the applicant or the court more comfortable and the application should therefore be dismissed with costs.

Court's Consideration and Analysis

- [23] So 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**⁶ resound clearly, "*[t]his 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, 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 in this context that the application and all the circumstances surrounding it must be considered.

⁵Paragraph 29 of the submissions of the second defendant filed 27/7/2021

⁶ TT unrep Claim No. CV2012-00873 at paragraph 7 per Kokaram J

- [24] So what is the test that this court requires 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**⁷ “[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**⁸ 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 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”.
- [25] 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.”⁹ In that vein it therefore becomes imperative that the assessment of the fair-minded observer is paramount to the entire process.
- [26] So who is this fair-minded observer? As the court in **Helow v Secretary of State for the Home Department**¹⁰ 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

⁷MNIHCVAP2020/0003 at paragraph 16

⁸ [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

⁹**Gladys Boss Shollei v Judicial Service Commission and anr** [2018] eKLR at paragraph 31

¹⁰[2008] UKHL 62 at paragraph 2

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.”¹¹

- [27] 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.
- [28] Therefore, what are the facts that this court must consider in coming to the decision whether to recuse itself or not.
- [29] Having been assigned the file as one of the two civil judges in this jurisdiction, this court obtained knowledge that a previous decision written by this court involving the second respondent had been widely publicized as a victory for the tax authority against the claimant in that matter, Unicomer (St Vincent) Limited. In that matter, which was essentially an appeal from the findings of the second respondent herein, the claimant therein had raised several points of concern and one such point had been the disallowance of the payment of premiums for Credit protection Insurance to an entity Massy United who had reinsured the entire risk with Canterbury Insurance. The main contention of the second respondent had been that Massy United (who was not a party to the proceedings) had acted as a mere conduit for the payments by Unicomer to Canterbury (an external company) that would have attracted inter alia withholding tax liability under the provisions of the Income Tax Act of this jurisdiction. This applicant has complained that in paragraphs 78 to 81 of the judgment this court made certain findings against Massy United. This may have in fact been an error on the part of the affiant as when those paragraphs of the judgment are in fact considered by this court, there is nowhere included therein any findings regarding Massy United but rather those paragraphs referred to this court’s determination as to why this court was not in a position to follow a case out of Barbados in which similar issues had been raised on behalf of Courts (Barbados) Ltd.
- [30] Indeed as the second respondent identified in his affidavit¹² the relevant passages that this court included in the judgment referring to Massy United were elsewhere. These were at paragraphs 47, 51, 52, 62, 63, 64 and finally at 65 in which this court made it clear that it had **not** been convinced by the defendant therein (the second respondent herein) that either Massy United had acted in any improper way or that they could be considered a conduit acting on behalf of Unicomer (St Vincent) Ltd.
- [31] From this factual matrix several things appear to this court. First, that unlike the present matter, Massy United was not a party to the proceedings in which the judgment was delivered. Second, the court made a clear finding that Massy United had not done anything wrong in their dealings with Unicomer and that Unicomer had shot themselves in the foot with the production of financial statements which clearly showed that payments had been made to this reinsurer directly for an

¹¹**Belize Bank Limited v The Attorney General of Belize and ors** [2011] UKPC 36

¹² Filed on the 23/7/2021

extended period of time¹³. Third, that the issues which were considered by this court in the judgment did not directly affect or involve any of the business of Massy United.

- [32] The nature of the present matter before the court on the other hand is for this court to consider whether the concept of unknown shrink which applies in the business of supermarkets, applies to the applicant and whether the same should have been accepted as a legitimate loss in business in the calculation of tax liability by the second respondent.
- [33] This is therefore the information that the fair-minded observer would have to assess on this application.
- [34] The question therefore would then become, can it be said that this court having not dealt with the present applicant as a party in proceedings and having not made any adverse findings against a sister company of the present applicant, whether the court is barred from considering the present application by coming to it with a closed mind?
- [35] In this court's mind the answer must be in the negative.

¹³ Paragraphs 68 - 71 of the judgment:

- [68] *However by the admission of this same witness this classification continued until 2014, an eight year period, until the Claimant's accountants made the "correction."*
- [69] *The Defendant has submitted to this court that it should completely discount this explanation as being wholly incredulous. The Defendant's contention is that the Claimant, who bears the onus of proving that the assessment was incorrect, has failed to meet that threshold of evidence upon which the court can be expected to rely. Indeed, the Defendant identified for the court that rather than any evidence of the Claimant clarifying that this may have in fact been an error, the position taken by the Claimant, in the Defendant's estimation, was that without more the court and the Defendant were to accept the purported re-classification and the fact that the previous classification/description was an error. However, the contention of the Defendant is that this description in the financial statements was only an error at the point when the Claimant's exposure to tax liability became exorbitant.*
- [70] *Indeed this court accepts that this contention of the Defendant is wholly reasonable when one considers the entirety of the evidence before it. Additionally, this court is mindful that "on the revenue rests only the evidential onus that it rightly appears to the revenue to act; which it discharges by adducing evidence of the information or material which caused it to appear to the revenue that the tax payer was under assessed. On the other hand, the statutory burden of the whole case is on the tax- payer." This court accepts that on the evidence of the tax-payer themselves that the Defendant was entitled to hold and maintain his determination.*
- [71] *Even when this court considers the evidence of Mr. Miller as to the "error" and the unsubstantiated correspondence from United in 2015 which purports to show sums received as CPI from the Claimant for the period 2007 to 2014, this court must also consider that the Claimant not only in their financial statements recognized payments to Canterbury for CPI over an eight year period but that their very own employee, the OECS Finance Director of the claimant in 2015 Ian Peter, admitted to the Defendant that United was in fact the agent for Canterbury locally."*

(The judgment is an exhibit to the application of the applicant filed 16/7/2021)

- [36] 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.*”¹⁴
- [37] 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”¹⁵ Indeed “interests, points of view, preferences are the essence of living.”¹⁶
- [38] 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.
- [39] Thus, when this court considers the genesis of the concern raised with all counsel for the parties, it was grounded in the publicity that emanated from the judgment. That publicity, as unwanted and as unnecessary as it was, did not however divulge anything that could create the impression that this court could not make a finding on the material before it on the application before it holding fast to the knowledge that “*regardless of previous findings [even if there were] [this court’s] duty is to always search for the truth based on the admissible evidence that is advanced in a 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.*”¹⁷ 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*”¹⁸.” In this court’s mind the applicant has not satisfied that requirement for this court to consider that there is a need to recuse itself.
- [40] When this court analyses this application and the evidence and all the circumstances as divulged and the inference being sought on the disclosure, it would appear that the applicant is seeking to attribute the real possibility of unconscious bias by some “form of osmosis”¹⁹ by the mere fact of my having mentioned a sister company, in a judgment that had nothing to do with the present applicant or application.
- [41] Indeed this court must bear in mind the sage words of Chadwick LJ in the case of **Tridos Bank N.V. v Dobbs**²⁰ 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*

¹⁴ **Janan George Harb v HRH Prince Abdul Aziz Bin Fahd Bin** (2016) EWCA Civ 556 at paragraph 69

¹⁵ Per Judge Jerome Frank **In Re JP Linahan Inc** [1943] 138 F 2d 650 at 651

¹⁶ *Ibid*

¹⁷ **Indar Singh v Kisundaya Sugrim** Unrep High Court of Trinidad and Tobago Claim No CV2018-00103 at paragraph 44

¹⁸ **JSC BTA Bank v Mukhtar Ablyazov** [2012] EWCA Civ 1551 at paragraph 59

¹⁹ **Helow** *supra* at paragraph 56

²⁰ [2001] EWCA Civ 468

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 – whether it be a represented litigant or a litigant in person – criticised 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 criticising 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 criticised – whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court...”

- [42] 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. Further, although it was indeed this court who raised the issue of the unwarranted publicity, and its impact on this applicant, it was still for the applicant to produce viable grounds of concern to the court, for the court to remove itself from the fundamental duty to sit. At the end of the day, having so found, this court is constrained to dismiss the application before it.

Costs

- [43] On the issue of costs, as all parties are aware, costs are usually awarded to the successful party on an application, and indeed both the first and second respondents have asked for costs to be awarded to them on the dismissal of the application. This court has however 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.
- [44] In the case of **The Attorney General of Trinidad and Tobago v Dr Wayne Kublalsingh and ors**²¹ 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.” The learned judge went on to say a consideration of an appeal however would be a different matter and the unsuccessful party would be required to pay the costs of the appeal. This is also the position that has been held by the Privy Council in the authorities submitted by the first respondent. None of them dealt with the position regarding costs before the judge.
- [45] Thus in the case at bar, although the claimant was unsuccessful on this application, this application arose because of the matters as raised by the court and in fact represented an “*application ...between the requesting party and the court.*”²² Therefore, although this court is not bound by the

²¹ Civil Appeal No P018 of 2014

²² **Reynold Bahadoor v Sunshine Publishing Company Ltd** (TT unrep) CV2016-01629 at paragraph 33 per Seepersad J

pronouncements of the Court of Appeal of Trinidad and Tobago, I am satisfied in my own mind that this learning is entirely appropriate in the instant case. This application arose solely due to the disclosure by this court. The applicant was entitled to place their application before the court and this court finds as a matter of fact that there is nothing to suggest that it was “frivolous or lacking bonafides”²³. I therefore in my discretion make no order as to costs.

The order of the court is therefore as follows:

1. The Notice of Application filed on 23 July 2021 is dismissed.
2. No order as to costs.
3. The matter will proceed to case management on 23rd September 2021.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar

²³The Attorney General of Trinidad and Tobago and Dr Wayne Kublalsingh and ors supra at paragraph 37