[2023] JMFC FULL 03

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

CLAIM NO. SU2021CV00504

CORAM: THE HONOURABLE MRS. JUSTICE CRESENCIA BROWN BECKFORD
THE HONOURABLE MRS. JUSTICE LISA PALMER HAMILTON
THE HONOURABLE MRS. JUSTICE TRICIA HUTCHINSON SHELLY

BETWEEN	**FRITZ PINNOCK**	**1st CLAIMANT**
AND	**RUEL REID**	**2nd CLAIMANT**
AND	**HIS HONOUR CHESTER CROOKS CHIEF JUDGE OF THE PARISH COURTS**	**DEFENDANT**
AND	**THE FINANCIAL INVESTIGATIONS DIVISION**	**INTERESTED PARTY**

Mr. Hugh Wildman and Mr. Duke Foote instructed by Hugh Wildman and Company Attorneys-at-Law for the 1st and 2nd Claimant

Ms. Lisa White and Ms. Faith Hall instructed by the Director of State Proceedings for the Defendant

Mr. Richard Small, Ms. Shawn Steadman, Ms. Jahanne Williams and Ms. Pretania Edwards instructed by Ms. Cheryl Lee Bolton Attorney-at-Law for the Interested Party

IN OPEN COURT

Heard: 8th, 9th May and 28th July 2023

Judicial Review – Conflict of Interest – Apparent Bias – Unconscious Bias – Breach of Constitutional Right to a Fair Hearing by an Impartial Court

BY THE COURT

> *… it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.*[1]

INTRODUCTION

> *Any judge (for convenience, we shall in this judgment use the term "judge" to embrace every judicial decision-maker, whether judge, lay justice or juror) who allows any judicial decision to be influenced by partiality or prejudice deprives the litigant of the important right to which we have referred and violates one of the most fundamental principles underlying the administration of justice.*[2]

[1] This principle is enshrined in **The Constitution of Jamaica in Chapter 3 of the Charter of Fundamental Rights and Freedoms** and preserves for all persons charged before a court, the right to a fair trial. It provides that:

> *16.- (1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.*

This provision mirrors **Article 14 of the International Covenant on Civil and Political Rights**, to which Jamaica is a signatory and has ratified, which similarly provides:

> *1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

Many jurisdictions have incorporated this provision in their domestic law.[3]

[2] It is manifest that to secure these constitutional rights, a judge must neither be biased or appear to be biased for or against any party to a litigation. It is also indisputable that trust in the administration of justice is necessary for a democratic state's survival. An

---

[1] R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256
[2] Locabail (UK) Ltd v Bayfield Properties Ltd [2000] 2 WLR 870, para 3
[3] See for example Article 20 of the Bahamas Constitution

impartial judiciary is critical to preserving this trust. This case concerns the appearance of bias by the Judge in a pre-trial application based on statements made by him, and whether the Judge ought to have recused himself from hearing the application.

BACKGROUND

[3] This is the latest in a series of challenges brought by the Claimants, Dr. Fritz Pinnock and Mr. Ruel Reid, which have postponed their trial in the Kingston and St. Andrew Parish Court **("KAPC")**. The two are charged, with others, for several offences under **The Proceeds of Crime Act ("POCA")**, **The Corruption (Prevention) Act ("CPA")** and other corruption related offences. Dr. Pinnock and Mr. Reid contend that the Financial Investigation Division **("FID")** did not have the power to arrest and charge them under **The Financial Investigations Division Act ("FIDA")**. They made several unsuccessful applications for a Declaration to that effect, and for an Order of Certiorari to quash the charges, through all levels of the courts, up to an application for Special Leave to apply to the Privy Council. Being so rebuffed, they exercised the alternative remedy available to them, pointed out by the several courts, and made the application in the KAPC, to dismiss the charges.

[4] The application was heard by His Honour Mr. Chester Crooks, Chief Judge of Parish Courts, **("the Learned CJPC")**. Before hearing the application, the Learned CJPC indicated that he had a potential conflict of interest. There was no objection taken then to him hearing the application. On 4th February 2021, the Learned CJPC refused the application. At that time the Learned CJPC indicated his intention to recuse himself from presiding over the trial of the matter, his stated reasons being that he had a possible conflict of interest and that in hearing the application he would have been privy to certain information. The exact words used by the Learned CJPC are in issue and will be dealt with further on in this judgment .

[5] Dr. Pinnock and Mr. Reid contend that the statements by the Learned CJPC demonstrated apparent bias and sought leave to apply for Judicial Review. Having been granted Leave, they argue in this application that based on his conflict of interest, the

Learned CJPC harboured an unconscious bias and ought to have recused himself from the matter. They further contend that his failure to do so was in excess of his jurisdiction and therefore rendered his decision a nullity, consequently, the ruling should be quashed and a new hearing ordered. Having heard and considered all the submissions of Counsel, the Court now refuses this application for the reasons set out below.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[6] Counsel on behalf of the Claimants, Mr. Hugh Wildman, contended that the apparent bias of the Learned CJPC was evidenced through his utterances that he had a conflict of interest owing to his familiarity with one of the Claimants from his tenure at Munro College. On this premise, the conflict resulted in the Learned CJPC being unable to grant a fair hearing. Consequently, he submitted that the Learned CJPC ought not to have presided over the proceedings. He relied on **Regina v Bow Street Magistrate, Ex p. Pinochet (No. 2)** [2000] 1 A.C and **Porter v Magill** [2001] UKHL 67. In furtherance of the foregoing, Counsel submitted that the distinction between automatic disqualification and apparent bias is purely academic and as such is irrelevant to the discussion. To this end he relied on **R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another** [2012] 1 ALL ER 1435.

[7] Counsel also submitted that the Learned CJPC, having had prior knowledge of a matter which could arguably give rise to a real danger of bias, ought to have recused himself at the earliest possible stage in the matter. Counsel drew support from **Campbell v Guelph** (1963) 5 WIR 366, **Locabail Ltd v Bayfield Properties Limited and another** [2000] QB 451, **Carol Lawrence-Austin v Director of Prosecutions** [2020] JMCA Civ 47.

[8] Mr. Wildman also contends that there was no waiver by the Claimants of their right to object to the Learned CJPC presiding over the matter. In the first place the Learned CJPC failed to give full disclosure of his indicated conflict of interest. He argued that there could be no waiver in the absence of full disclosure. Additionally, he asserted that at the time of the Parish Court proceedings, he represented Dr. Pinnock and not Mr. Reid.

Therefore, when he expressed his confidence in the Learned CJPC presiding over the matter, he was not speaking on behalf of Mr. Reid but only on behalf of Dr. Pinnock.

[9] Mr. Wildman also submitted, in response to the Defendant's submission that there was no Order before the Court to be quashed, that pursuant to **Sampson v Air Jamaica Ltd** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No. 99 of 1991, judgment delivered 15 June 1992, there need not be a formal record to give rise to an Order for Certiorari.

[10] Counsel further maintained that the Claimants could not appeal the ruling of the Learned CJPC on the basis that a ruling of a criminal court could not be appealed save and except for the verdict of the court. In the present case there was no verdict.

[11] It was also Counsel's submission that where there is a trial on the merits of the issue an alternative remedy does not arise for consideration. Moreover, there was no alternative remedy available in this case. Reliance was placed on **Alfred Grayson v Hopewell High School** [2021] JMSC Civ 201, **Regina v Falmouth and Truro Port Health Authority Ex parte South West Water Ltd** [2001] QB 445.

[12] Lastly, Counsel Mr. Wildman also refuted the submission of the Defendant concerning delay. He asserts that the issue of delay only arises at the Leave stage and is to be considered on the principles emanated from the case of **Sharma v Brown-Antoine and others** [2007] 1 WLR 780. In furtherance of this position, he noted that Justice Daye, in granting Leave for Judicial Review, found that there was no delay or alternative remedy.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[13] Counsel on behalf of the Defendant, Ms. Faith Hall, refuted Mr. Wildman's assertions that there was a possibility that the Learned CJPC was biased. She argued that the statement of the Learned CJPC that he had a potential conflict of interest was insufficient to meet the threshold for the apparent bias test. The fair-minded and informed observer, she reasoned, would not have concluded, having considered that the Learned

CJPC attended Munro College with Mr. Reid, that there was a real possibility that the Learned CJPC was biased. To this end she relied on **Locabail Ltd v Bayfield Properties Limited and another** [2000] QB 451, **Porter v Magill** [2001] UKHL 67, **Helow (AP) v Secretary of State for the Home Department and Another** [2008] UKHL 62 and **The Honourable Chief Justice of Trinidad and Tobago Mr. Justice Ivor Archie O.R.T.T v The Law Association of Trinidad and Tobago** [2018] UKPC 23. Further, no evidence was proffered as to any close association or animosity between the Learned CJPC and Mr. Reid, nor was there any evidence that they were in the same class. Accordingly, though interest equates to automatic disqualification of the Judge presiding over the matter, such disqualification does not arise in the circumstances. Support was drawn from **Williams v Inspector of Taxes** (1998) EAT/811/97, **Regina v Bow Street Magistrate, Ex p. Pinochet (No. 2)** [2000] 1 A.C and **Fileturn Ltd v Royal Garden Hotel Ltd** [2010] EWHC 1736 (TCC).

[14] It was Counsel's further contention that personal knowledge of the Claimants does not automatically equate to the tribunal being prejudiced against them. Rather, the nature and degree of the familiarity should be examined on a case-by-case basis in order to determine impartiality on part of the tribunal. She bolstered her argument by relying on **Pullar v the United Kingdom** 1996 ECHR. Moreover, the greater the time which had elapsed between the event from which the bias stemmed and the date at which the objection was raised, the weaker the effect of the objection. She relied on **Locabail Ltd v Bayfield Properties Limited and another**.

[15] For the foregoing reasons, Counsel submitted that the Claimants had not demonstrated how the right to a fair hearing was engaged, but instead have used the right to a fair hearing to delay the commencement of the criminal proceedings. To this end she directed the Court to **S.16(1) of the Jamaica Constitution**. It was her assertion that the Claimants have failed to raise any legitimate doubts as to the impartiality of the Learned CJPC and have in effect abused the process of the Court. Further, the substantive issues, having been previously litigated up to the Court of Appeal level, are *res judicata* and are an abuse of the Court's process. Ms. Hall, in passing, also noted that

bias could affect the impartiality of the tribunal but not its jurisdiction. She relied on **Roald Nigel Adrian Henriques v Hon. Shirley Tyndall, OJ et al** [2012] JMCA Civ 18.

[16] Counsel further submitted that the Court is engaged in a nullity for the arguments stated above and on the basis that the Court is exercising a supervisory jurisdiction in Judicial Review proceedings. Therefore, the Court, not being a Court of Appeal, cannot quash the Order of the Learned CJPC, consequently, the criminal charges would remain. Moreover, this Court is not the appropriate forum for challenging the ruling of the Learned CJPC. Any challenge to the Learned CJPC's ruling ought to have been by way of appeal.

[17] In reliance on **Brown and others v Resident Magistrate, Spanish Town Resident Magistrate's Court, St. Catherine** 48 WIR 232, Counsel also submitted that the Learned CJPC did not act without jurisdiction or in excess of said jurisdiction so as to warrant an Order of Certiorari to quash the criminal prosecution instituted against the Claimants.

[18] Counsel also asserted that there was no Order before the Court to be quashed as the Affidavit of Fritz Pinnock, filed to support the Fixed Date Claim Form, did not exhibit a Formal Order reducing the Learned CJPC's ruling to writing.

[19] Lastly, it was submitted that it was only in the most exceptional circumstances that the Judicial Review Court ought to grant Judicial Review where there exists an alternative remedy.

SUBMISSIONS ON BEHALF OF THE INTERESTED PARTY

[20] Counsel on behalf of the Interested Party, Mr. Richard Small, mirrored the position of the Defendant. He submitted that the utterances of the Learned CJPC to the effect that he had a potential conflict could not validly form a basis for a successful Judicial Review application on the ground of apparent bias. To this end Counsel relied on **R v Sussex Justices, ex parte McCarthy** [1924] 1 KB 256, **Re Pinochet** [1999] UKHL 52, **Locabail (UK) Ltd v Bayfield Properties Ltd and Barbara Hagan Emmanuel** [2000] QB 451, **Porter v Magill** [2002] 1 ALL ER 465, **Helow (AP) v Secretary of State for the Home**

Department and another [2008] UKHL 62, **The Honourable Chief Justice of Trinidad and Tobago Mr. Justice Ivor Archie O.R.T.T v The Law Association of Trinidad and Tobago** [2018] UKPC 23, **Jamaica Redevelopment Foundation Inc v Banton and Banton** [2019] JMCA Civ 12 and **Hampshire County Council v Leslie Keith Gillingham and Patricia Gillingham** Case No. CCRTF 99/1143/B3, UKCA.

[21] It was also Counsel's contention that the Claimants had unequivocally waived their right to object to the Learned CJPC presiding over the matter when, following the Learned CJPC's disclosure that he had a potential conflict, Mr. Wildman expressed confidence in the Judge dealing with the matter. Reliance was placed on **R v Sussex Justices**, **Locabail Ltd v Bayfield Properties Limited and another**, **Winston Finzi and Mahoe Bay Company Limited v JMMB Merchant Bank Limited [2015] JMCA App 32** and **Clynice Spence v Her Honour Mrs. Sonya Wint-Blair** [2015] JMSC Civ 98.

[22] Further, it was the submission of Mr. Small that the Judicial Review proceedings ought to be dismissed on the basis that the Claimants failed to give full and frank disclosure to the Court. He asserted that the Claimants failed to inform the Court that the Learned CJPC had advised the parties of the potential conflict prior to his ruling and that Counsel Mr. Wildman had indicated that he had no objection to the Learned CJPC dealing with the matter. He relied on **Miguel Pine v Commissioner of Police** [2015] JMSC Civ 182, **Khan v Secretary of State for the Home Department** [2016] EWCA Civ 416, **George Flowers v Minister of Justice (Delroy Chuck)** [2017] JMSC Civ 52 and **Zuber Bux v The General Medical Council** [2021] EWHC 762.

[23] Lastly, it was contended that the Claimants have embarked on a deliberate strategy to delay the commencement of the trial for the criminal charges filed against them by pursuing various applications for Judicial Review. In support of this position, he relied on the case of **Louis Smith v Director of Public Prosecutions and Parish Court Judge for the Parish of Saint James Sandria Wong Small** [2021] JMFC Full 3.

ISSUES

[24] Based on the written and oral submissions made in this application, the seminal question for this Review Court is, whether the statements made by the Learned CJPC pertaining to a *"potential conflict"* of interest on his part, portrayed an unconscious bias for or against one or both of the Claimants.

THE LAW

[25] A preliminary issue raised by the Defendant's submissions was whether this Court had the jurisdiction to judicially review the decision of a Parish Court Judge. The Court agrees with Counsel for the Defendant that **Brown and others v Resident Magistrate, Spanish Town Resident Magistrate's Court, St. Catherine** 48 WIR 232 **("Brown v RM")** confirms that such jurisdiction exists only where the Parish Court Judge exceeded his jurisdiction. The Court parts company with the Defendant however on whether a breach of the right to a fair hearing would amount to an excess of jurisdiction.

[26] The right to a fair hearing is distinct from the right to a hearing before an impartial tribunal. Lord Hope of Craighead, speaking of the protections afforded by **Article 14 of the International Covenant on Civil and Political Rights**, pointed this out in **Porter v Magill** [2001] UKHL 67 **("Porter")**. He articulated it in this way:[4]

> *[87] The protections which article 6(1) lays down are that, in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. As I shall explain later when dealing with delay, I consider that this* ***sentence creates a number of rights which, although closely related, can and should be considered separately. The rights to a fair hearing, to a public hearing and to a hearing within a reasonable time are separate and distinct rights from the right to a hearing before an independent and impartial tribunal established by law. This means that a complaint that one of these rights was breached cannot be answered by showing that the other rights were not breached.*** *Although the overriding question is whether there was a fair trial, it is no answer to a complaint that the tribunal was not*

[4] [2001] UKHL 67, para 87-88

> *independent or was not impartial to show that it conducted a fair hearing within a reasonable time and that the hearing took place in public: see Millar v Dickson, 2001 SLT 988, 994D-E per Lord Bingham of Cornhill and my own observations in that case, at p 1003C-F Under this heading the question is whether the auditor lacked the independence and impartiality which is required by art 6(1).*
>
> *[88] … As to the question of 'impartiality', there are two aspects to this requirement. First, the tribunal must be subjectively free from personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect.* (Emphasis mine)

[27] The Privy Council has made it clear in **Neville Lewis v Attorney General of Jamaica and Anor** [2001] 2 AC 50 that Judicial Review was available where there was a breach of procedural fairness. The Board approved the dicta coming out of the Supreme Court of Belize as follows:[5]

> *In re John Rivas' Application for Judicial Review unreported, 2nd October 1992, Supreme Court of Belize, Singh J. said:*
>
> > *"The Solicitor-General also submitted that such 'august', 'unique' and 'powerful' institution as the Belize Advisory Council, should not be liable to have its decisions subject to the supervisory jurisdiction of the Supreme Court. With respect, I disagree.* ***Unique or not, any institution, be it inferior court or superior tribunal, which deals with the legal and human rights of any subject, in any capacity whatsoever, must conform to the time-honoured and hallowed principles of fundamental rights and natural justice. Any allegation that there has been a breach of any of these principles in relation to any person must, in my view, be subject to inquiry by the Supreme Court, irrespective of the calibre of the institution in respect of which the allegation has been made.****"* (Emphasis mine)

The Claimants allege that the Learned CJPC, hearing the application while labouring under a conflict of interest, breached their constitutional right to a fair hearing by an independent and impartial tribunal. This Court therefore has the jurisdiction to review the decision of the Learned CJPC.

---

[5] [2001] 2 AC 50, pg 76

[28] Any discourse on the subject of justice will invariably recite the dicta of Lord Hewart C.J. in **The King v Sussex Justices ex parte McCarthy** [1924] 1 KB 256 **("Ex parte McCarthy")**, which opens this judgment and is regarded as one of the fundamental legal maxims. The learned Chief Justice went on to say that *"nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."*[6] There have been a plethora of cases examining this issue of judicial bias since **Ex parte McCarthy**, many of which have been referred to by Counsel in their submissions. The Court is not minded to undertake an exhaustive review of said cases or their particular facts as it is sufficient to refer to only those elements required for these purposes. The principles emanating from the cases that are relevant to this application will be considered under the listed headings:

1. The Rule
2. The Legal Test
3. Disclosure
4. Waiver
5. Context

The Rule

[29] The sacred legal maxim that no man may be a judge in his own cause is an underlying principle that has guided judicial decision makers over centuries. Lord Brown Wilkinson in **Regina Bow v Street Metropolitan Stipendiary Magistrate and others Ex Parte Pinochet Ugarte (No. 2)**, [2000] 1 A.C. 119 **("Pinochet (No. 2)")** describes it as:[7]

> *The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is*

[6] [1924] 1 KB 256, pg 259
[7] [2000] 1 A.C. 119, pg 132-133

> *not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial. In my judgment, this case falls within the first category of case, viz where the judge is disqualified because he is a judge in his own cause. In such a case, once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure: see Shetreet, Judges on Trial, (1976), p. 303; De Smith, Woolf & Jowel, Judicial Review of Administrative Action, 5th ed. (1995), p. 525. I will call this "automatic disqualification.".*

[30] The Court finds a useful working definition of bias to be that given by Lord Phillips MR in **Re Medicaments and Related Classes of Goods (No 2)** [2001] 1 WLR 700. He stated:[8]

> *Bias is an attitude of mind which prevents the Judge from making an objective determination of the issues that he has to resolve. A Judge may be biased because he has reason to prefer one outcome of the case to another. He may be biased because he has reason to favour one party rather than another. He may be biased not in favour of one outcome of the dispute but because of a prejudice in favour of or against a particular witness which prevents an impartial assessment of the evidence of that witness. Bias can come in many forms. It may consist of irrational prejudice or it may arise from particular circumstances which, for logical reasons, predispose a Judge towards a particular view of the evidence or issues before him.*

The Test

[31] It has been observed that judges readily recuse themselves in matters where there is actual bias on the part of the judge. It is whether there is the potential for apparent bias that often calls for a second look.[9] This has led courts in various jurisdictions to seek to identify the criterion by which circumstances suggesting apparent bias on the part of a judicial decision maker are to be examined. Morrison P in **Carol Lawrence-Austin v**

[8] [2001] 1 WLR 700, para 37
[9] [2000] 2 WLR 870, pg 880-881

Director of Prosecutions [2020] JMCA Civ 47 **("Lawrence-Austin")** endorsed the standard as stated in **Porter** as the applicable test in this jurisdiction. He stated:[10]

> *The law is well settled with regard to the test for apparent bias. It has moved away somewhat from the approach laid down in R v Gough [1993] AC 646 in the speech of Lord Goff of Chieveley, where the test was formulated in the headnote as "whether, in all the circumstances of the case, there appeared to be a real danger of bias". The current test is found in the well-known statement of the Lord Hope of Craighead in Porter and v Magill [2002] 1 All ER 465, where he stated that the reference to "real danger" should be deleted as it no longer served any useful purpose, and that the question should now be "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".*

[32] The test is an objective one, personified by *"the man on the Clapham omnibus"* in many cases. The phrase was reportedly first put to legal use in a judgment by Sir Richard Henn Collins MR in the 1903 English Court of Appeal libel case, **McQuire v Western Morning News Co** [1900-03] All ER Rep 673. He opined:[11]

> *One thing, however, is perfectly clear, and that is that the jury have no right to substitute their own opinion of the literary merits of the work for that of the critic, or to try the "fairness" of the criticism by any such standard. "Fair," therefore, in this collocation certainly does not mean that which the ordinary reasonable man, "the man on the Clapham omnibus," as LORD BOWEN phrased it, the juryman common or special, would think a correct appreciation of the work; and it is of the highest importance to the community that the critic should be saved from any such possibility.*

The **Merriam-Webster Dictionary** defines him as *"the ordinary and average person".* In **Healthcare at Home Ltd v Common Services Agency** [2014] UKSC 49, Lord Reed gave this lively description of the myriad of passengers on the Clapham Omnibus identified in the cases. He stated:[12]

> *The Clapham omnibus has many passengers. The most venerable is the reasonable man, who was born during the reign of Victoria but remains in vigorous health. Amongst the other passengers are the right-thinking member of society, familiar from the law of defamation, the officious bystander, the reasonable parent, the reasonable landlord, and the fair-*

---

[10] [2020] JMCA Civ 47, para 36
[11] [1900-03] All ER Rep, 673, pg 675
[12] [2014] UKSC 49, para 1

minded and informed observer, all of whom have had season tickets for many years.

In **Helow (AP) v Secretary of State for the Home Department and another (Scotland)** [2008] UKHL 62 **("Helow")**, this gender-neutral fictitious human is described as:[13]

> *[1] … a relative newcomer among the select group of personalities who inhabit our legal village and are available to be called upon when a problem arises that needs to be solved objectively. Like the reasonable man whose attributes have been explored so often in the context of the law of negligence, the fair-minded observer is a creature of fiction. Gender-neutral (as this is a case where the complainer and the person complained about are both women, I shall avoid using the word "he"), she has attributes which many of us might struggle to attain to.*
>
> *[2] 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 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.*
>
> *[3] 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 headlines. She is able to put whatever 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.*

[33] In applying the test *"whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased"*, two important questions were raised in **Re Medicaments** and are relevant to this application. The questions were:[14]

---

[13] [2008] UKHL 62, paras 1-3
[14] [2001] 1 WLR 700, para 39

> (1) *Must the reasonable apprehension of bias be that of the reviewing court itself,* (I would add 'or the Complainant') *or that which the reviewing court would attribute to an informed onlooker?*
>
> (2) *What are the circumstances that fall to be taken into account when applying the test of bias and how are those circumstances to be determined?*

In **Lawrence-Austin** Morrison P (as he then was) accepted and applied the answer given to these questions by the Master of the Rolls, who had conducted an exhaustive review of the cases, as the appropriate course to be followed by a court reviewing the question of bias on the part of a judicial officer. It was in fact the reasoning and conclusions of Lord Phillips MR in **Re Medicaments** that were approved by Lord Hope of Craighead and formed the basis of the test set out in **Porter**. Lord Phillips MR stated:[15]

> *[83] We would summarise the principles to be derived from this line of cases as follows. (1) If a judge is shown to have been influenced by actual bias, his decision must be set aside. (2) Where actual bias has not been established the personal impartiality of the judge is to be presumed. (3) The court then has to decide whether, on an objective appraisal, the material facts give rise to a legitimate fear that the judge might not have been impartial. If they do, the decision of the judge must be set aside. (4) The material facts are not limited to those which were apparent to the applicant. They are those which are ascertained upon investigation by the court. (5) An important consideration in making an objective appraisal of the facts is the desirability that the public should remain confident in the administration of justice.*
>
> *[84] This approach comes close to that in R v Gough [1993] AC 646. The difference is that, when the Strasbourg court considers whether the material circumstances give rise to a reasonable apprehension of bias, it makes it plain that it is applying an objective test to the circumstances, not passing judgment on the likelihood that the particular tribunal under review was in fact biased.*
>
> *[85] When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in R v Gough is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.*

[15] [2001] 1 WLR 700, paras 83-86

> *[86] The material circumstances will include any explanation given by the judge under review as to his knowledge or appreciation of those circumstances. Where that explanation is accepted by the applicant for review it can be treated as accurate. Where it is not accepted, it becomes one further matter to be considered from the viewpoint of the fair-minded observer. The court does not have to rule whether the explanation should be accepted or rejected. Rather it has to decide whether or not the fair-minded observer would consider that there was a real danger of bias notwithstanding the explanation advanced. Thus in R v Gough, had the truth of the juror's explanation not been accepted by the defendant, the Court of Appeal would correctly have approached the question of bias on the premise that the fair-minded onlooker would not necessarily find the juror's explanation credible.*

The cases made it clear that applying this objective test, using the standard of the fair-minded observer meant that neither the views of the judicial officer, nor the complainant, is determinative of whether bias exists.

Disclosure

[34] The hallmark of the administration of justice is that there is no justice without fair play. This obliges the judge to inform the parties who may be affected of all the information in his possession that may disqualify him from hearing a case before commencing, or as soon as he becomes aware. **R v Gough** [1993] AC 646 established that the purpose of such disclosure was to preserve the administration of justice from any whiff of impartiality. In **Pinochet (No. 2)** it was said to be automatic that if the judge failed to make such disclosure, then the decision could not stand. In **Locabail (UK) Ltd v Bayfield Properties Ltd** [2000] 2 WLR 870 **("Locabail")** what disclosure was required was said to depend in large measure on the stage that the proceedings had reached. The Court in **Locabail** stated:[16]

> *What disclosure is appropriate depends in large measure on the stage that the matter has reached. If, before a hearing has begun, the judge is alerted to some matter which might, depending on the full facts, throw doubt on his fitness to sit, the judge should in our view inquire into the full facts, so far as they are ascertainable, in order to make disclosure in the light of them. But, if a judge has embarked on a hearing in ignorance of a matter which emerges during the hearing, it is in our view enough if the judge discloses*

[16] [2000] 2 WLR 870, pg 888-889

> *what he then knows. He has no obligation to disclose what he does not know. Nor is he bound to fill any gaps in his knowledge which, if filled, might provide stronger grounds for objection to his hearing or continuing to hear the case. If, of course, he does make further inquiry and learn additional facts not known to him before, then he must make disclosure of those facts also.*

The question of disclosure is not abstract. Whilst disclosure may cloak the judge with a *"badge of impartiality"*, as pointed out by Lord Mance in **Helow**;

> *…disclosure could not avoid an objection to a judge who in the light of the matter disclosed clearly ought not to hear the case; and non-disclosure could not be relevant, if a fair-minded and informed observer would not have thought that there was anything even to consider disclosing.*[17]

[35] At the close of the hearing, this Court invited the parties to make submissions on the UK Supreme Court case of **Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd (formerly known as Ace Bermuda Insurance Ltd) (First Respondent)** [2020] UKSC 48 **("Halliburton")** which considered this question of disclosure. Though this case concerned arbitral proceedings, Lord Hodge specifically considered the issue as also applicable to a judge, stating:[18]

> *An arbitrator, like a judge, must always be alive to the possibility of apparent bias and of actual but unconscious bias. The possibility of unconscious bias on the part of a decision-maker is known, but its occurrence in a particular case is not. The allegation, which is advanced in this case, of apparent unconscious bias is difficult to establish and to refute. One way in which an arbitrator can avoid the appearance of bias is by disclosing matters which could arguably be said to give rise to a real possibility of bias. Such disclosure allows the parties to consider the disclosed circumstances, obtain necessary advice, and decide whether there is a problem with the involvement of the arbitrator in the reference and, if so, whether to object or otherwise to act to mitigate or remove the problem: see Almazeedi (above) para 34; Davidson v Scottish Ministers (No 2) [2004] UKHL 34; 2005 1 SC (HL) 7. In the latter case, Lord Hope of Craighead stated (para 54):*
>
> > *"[T]he best safeguard against a challenge after the event, when the decision is known to be adverse to the litigant, lies in the opportunity of making a disclosure before the hearing starts. That is the proper time for testing the tribunal's impartiality. Fairness requires that the quality of impartiality is there from the beginning,*

[17] [2008] UKHL 62, para 58
[18] [2020] UKSC 48, para 70

> *and a proper disclosure at the beginning is in itself a badge of impartiality."*

Lord Hodge allowed that the parties could waive their right to disclosure stating, "*[U]nless the parties have expressly or implicitly waived their right to disclosure, such disclosure is not just a question of best practice but is a matter of legal obligation"*.[19] One can conclude that the fair-minded observer in considering the overall question of whether in the particular context, there existed a possibility of bias, a factor to be taken into account is whether there has been a failure of the judge to disclose any or all information known to him.

Waiver

[36] As early as the case of **Ex parte McCarthy**, it was recognized that a party could waive his right to object to a judge hearing his case. However, full disclosure was a precondition to the valid exercise of this right. This position was reaffirmed in the case of **Locabail** where Lord Bingham opined:[20]

> *Although disqualification under the rule in Dimes and Pinochet (No 2) is properly described as automatic, a party with an irresistible right to object to a judge hearing or continuing to hear a case may, as in other cases to which we refer below, waive his right to object. It is however clear that any waiver must be clear and unequivocal, and made with full knowledge of all the facts relevant to the decision whether to waive or not.*

Lord Bingham further adverted to several courses that a litigant and his lawyer could take upon disclosure being made.[21] He continued:

> *In our judgment, Mrs Emmanuel and her lawyers had to decide on 28 October what they wanted to do. They could have asked for time to consider the position. They could have asked the deputy judge to recuse himself and order* ***the proceedings to be started again before another judge. They could have told the judge they had no objection to him continuing with the hearing.*** *In the event they did nothing. In doing nothing they were treating the disclosure as being of no importance.* (Emphasis mine)

---

[19] Ibid, para 78
[20] [2000] 2 WLR 870, para 15
[21] Ibid, para 68

[37] The application of the dicta of Lord Bingham was demonstrated in **Winston Finzi and Mahoe Bay Company Limited v JMMB Merchant Bank Limited** [2015] JMCA App 32. In that case the applicants had indicated that they were waiving their right to object to Morrison JA (as he then was) hearing the matter, having heard of the Learned Justice of Appeal's wife's, an Attorney-at-Law, previous professional involvement with the Respondent. Subsequently, the applicants made an application to the Learned Judge of Appeal to recuse himself based on the applicants and/or their Attorneys-at-Law experiencing a *"level of discomfort"*. The application was refused. Morrison JA pronounced that where a party had made a voluntary, informed, and unequivocal decision to waive their right to object to a judge hearing a matter, a party cannot be allowed to go back on that election except for very good reason. Morrison JA went on further to state:[22]

> *…I would add two textbook statements. First, the extra-judicial comment by Sir Grant Hammond, a Judge of the Court of Appeal of New Zealand, that "[i]t is clear on the recusal law authorities, both in the British Commonwealth and in the United States of America, that a litigant can, either expressly or by their conduct, validly waive an objection that the court is not independent and impartial, or an objection grounded in apparent bias". And second, under the rubric "Where no objection is raised at time of disclosure", there is the following statement by the late Sir Fred Phillips:*
>
> > *"When in a hearing a judge makes a disclosure to which no objection is then raised, a party cannot later be heard to complain as to whether the judge should hear or continue to hear the case. The party would be deemed to have granted a waiver to any charge of bias…"*

Context

[38] The dicta of Lord Bingham in **Locabail** are instructive for the considerations of the Court in determining the presence of bias. He opined:[23]

> *It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily,*

[22] [2015] JMCA App 32, para 18
[23] [2000] 2 WLR 870, pg 887-888

> *could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (see K.F.T.C.I.C. v. Icori Estero S.p.A (Court of Appeal of Paris, 28 June 1991, International Arbitration Report, vol. 6, 8/91)).*

He continues:

> *By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakauta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.*

[39] In essence, the factors to be considered when determining whether there was bias in the tribunal, are to be examined on a case-by-case basis in light of the context in which these factors exist. Here we adopt the caution by Lord Phillip MR in **R (on the application of D) v West Midlands and North West Mental Health Review Tribunal** [2004] All ER (D) 339 (Mar) that while cases and precedent can be helpful to focus the mind on the

relevant issue, thereby producing consistency in approach, in these cases which are fact specific, the citation of authorities may cloud rather than clarify the position.

FINDING OF FACTS

[40] The Claimants contend that certain utterances made by the Learned CJPC have led them to form the view that he harboured an unconscious bias and is the basis for this application. For the purposes of this discussion, we shall look firstly at the statements made by the Learned CJPC prior to the hearing of the application and then at the statements made at the time the ruling on the application was handed down. A significant amount of the submissions turned on whether the Learned CJPC used the word *'potential',* and its significance.

[41] The evidence as to the exact nature of the statements made by the Learned CJPC is mainly consistent on the part of the Defendant and Interested Party. The evidence comes firstly from the Learned CJPC himself, who stated in his affidavit, sworn on 2nd May 2022, that prior to commencing the hearing he stated that *"I would rather not be the Judge to deal with the matter because of a potential conflict of interest, but if there were no objections from either side I would have no problem dealing with it at the case management level"*.

[42] Mr. Hansurd Lawson, one of the Clerks of Court prosecuting in the Return Court at the Criminal Division of the Corporate Area Parish Court, recalls that on an occasion when the matter was heard the Learned CJPC, who was presiding, stated that he would rather not be the Judge to deal with the matter because there could be a *potential* conflict of interest. He also recounted that the Judge also informed the parties that if there was no objection from either side he would have no problem dealing with the matter at case management.

[43] The third account comes from Ms. Cheryl Lee Bolton, Attorney-at-Law and Senior Legal Officer of the Interested Party, who was present in court on the occasion. She recalls that the Learned CJPC, prior to the hearing of the application, indicated to all

the parties that he may have a *potential conflict of interest* as he knew one of the accused in the matter. At the time, she states, he did not name the particular accused to which he was referring, nor did he state the nature of the potential conflict. We note that the account of Ms. Bolton is the only one to indicate that the Learned CJPC gave some indication of the nature of the potential conflict.

[44] The only evidence for the Claimants in this application is given in the affidavit of Dr. Fritz Pinnock in support of the Application for Judicial Review. This affidavit makes no mention of any statement made by the Learned CJPC at this stage. Specifically, there is no evidence given on behalf of the Claimants challenging the accounts given by Mr. Lawson, Ms. Bolton or the Learned CJPC. While we agree with Mr. Wildman that there is no duty on the Claimants to respond to any affidavit, certainly if there are inaccuracies or falsehoods it would be expected that the opportunity would be taken to put the correct information before the Court. The more detailed account of Ms. Bolton is unsurprising given her role as Counsel for the agency responsible for bringing the charges. We accept her account as an accurate recount of the statements made by the Learned CJPC on that day.

[45] The only evidence as to what the Learned CJPC said on the occasion that he delivered his ruling comes from Ms. Bolton and Dr. Pinnock. Ms. Bolton, in what appears to be a verbatim account of the statements made by the Learned CJPC (see the observation above as to her recordkeeping) indicated that he said *"I am recusing myself for more than one reason. Apart from having hearing* (sic) the *arguments there is a possible conflict of interest. At least one of the defendants is relatively well known to me so I don't think I ought to be the person who will try this matter".* Dr. Pinnock, on behalf of the Claimants, recalls in his affidavit that the Learned CJPC stated that he had a conflict of interest in the matter and so he could not continue hearing the case. Dr. Pinnock further said that the Learned CJPC also stated that he had consulted with other Judges and so he had decided to send the matter to another Judge for hearing. Again, there was no challenge to Ms. Bolton's account which was given in her affidavit sworn and filed after the affidavit of Dr. Pinnock. In the circumstances we accept the evidence of Ms. Bolton

as to the details of the statements made by the Learned CJPC when he delivered his ruling.

[46] The Learned CJPC gave the particulars of his potential conflict of interest in his affidavit. He stated that he and the Claimant Mr. Reid attended Munro College in St. Elizabeth and Mr. Reid was his senior and head boy of the school at a point in time when they were both students there. This account, which has not been contradicted, is accepted.

[47] The other questions of fact to be determined are: (a) whether the Claimants waived their right to further disclosure? and (b) whether the Claimants waived their right to object to the Learned CJPC hearing the application? Once again, a closer look at the evidence regarding the actions of the Claimants on each occasion is called for.

[48] On the first occasion, which was prior to the application being heard, the evidence given on behalf of the Defendant and the Interested Party is that Mr. Wildman, then Counsel appearing for Dr. Pinnock, immediately and before the Learned CJPC completed his statement, indicated that he had no issue with the Learned CJPC continuing. The Learned CJPC, in his affidavit, indicated that the words were barely out of his mouth before Mr. Wildman emphatically interjected saying he had every confidence in him dealing fairly with the matter. He also indicated that the Crown's representatives made no objection. There is no indication that anything was said by Counsel on behalf of Mr. Reid.

[49] Ms. Bolton in her account indicated that Mr. Wildman immediately stood up and addressed the court with words to the effect that he had no difficulty with the Judge hearing the matter as he believed he could fairly deal with the matter. She further indicated that there was no objection from any of the other parties. Mr. Lawson stated that Mr. Wildman, in his style, got up and told the court that he had no problem with that position and that he had all confidence with the Judge dealing with the matter fairly. Importantly, he states that the Learned CJPC then stated that if there were no objections from either side, he would have no problem dealing with the matter at the case management level.

[50] Dr. Pinnock does not indicate in his affidavit what action was taken by the Claimants or their attorneys' on any of the two occasions that the Learned CJPC made the crucial statements, but in any event, there is no affidavit from either of the Claimants denying that these indications had been made.

[51] Further, there is no evidence that any party made any comment specifically relating to the Learned CJPC''s disclosure that he knew one of the Defendants and that he was fairly well acquainted with one of the Defendants.

[52] Again, there being no contest from the Claimants as to the account given on behalf of the Defendant, the Court accepts that no objection was taken by or on behalf of any of the Claimants to the Learned CJPC continuing to hear the matter on any occasion, nor did any party seek any further information from him concerning his indication of a potential conflict of interest.

APPLICATION OF LAW

[53] The cases are clear that it is the duty of the Judge to disclose any information in his possession which could arguably be said to give rise to a real possibility of bias. All the parties acknowledge that the Learned CJPC did not make a full disclosure of his potential conflict of interest, however some indication of the possible source of conflict was given. Mr. Wildman made heavy weather of the fact that full disclosure was not made and hangs his hat on the Learned CJPC's failure, on each occasion, to provide the full details or full disclosure of the potential conflict as he has now set out in his affidavit. He contends that this failure must be fatal, and this vitiates the decision of the Learned CJPC. He reasoned, apparently taking no objection to the evidence that he had raised no issues with the Learned CJPC hearing the matter, that any election to waive the irregularity could not be effective where there was incomplete disclosure.

[54] We are constrained to vigorously disagree with Counsel. While the Learned CJPC had the duty to disclose, Mr. Wildman, with no hint of objection from Counsel for Mr. Reid, stopped the Judge in his tracks, thereby forestalling any further flow of

information. He affirmed his confidence in the impartiality of the Learned CJPC, thereby implicitly rejecting the need for any further information. Indeed, the Learned CJPC's evidence that the words were barely out of his mouth when Mr. Wildman made his utterances, was not rebutted. The Learned CJPC had also invited the parties to indicate whether they had any objections, opening the door to continue the flow of information. No questions were asked to elicit the specific nature of the potential conflict. No time was sought to consider the matter. Counsel for Mr. Reid said and did nothing at all. We agree with Counsel Mr. Small that Mr Wildman's statement of confidence in the Judge was not restricted to Dr. Pinnock. The history of the litigation in this matter so far shows Mr. Wildman to be integrally involved in the case against Mr. Reid. His Counsel's inaction in light of the posture taken by Mr. Wildman is therefore understandable.

[55] In all the circumstances the Claimants, through their Counsel, must be taken to have unequivocally waived their right to further disclosure from the Learned CJPC. They should not now be permitted to go back on that election. Whether the Learned CJPC used the words *"potential conflict of interest"* or "*conflict of interest*" is immaterial to this issue.

[56] This reasoning applies *mutandis mutandis* to the question of whether the Claimants waived their right to object to the Learned CJPC hearing the matter. In this regard, the timeline of events is also important. The application was filed on 7th July 2020, submissions were made between 29th October and 11th December 2020 and the Learned CJPC made his ruling on 4th February 2021. No objection was taken between 29th October 2020, when the Learned CJPC made his indication and 4th February 2021 when he gave his decision, a period of just over three months. The first inkling of an objection was when the application for Leave to apply for Judicial Review was made.

[57] The actions of the Claimants and their attorneys were synonymous to those of Mrs. Emmanuel and her lawyers in **Locabail** when they sprang into action and complained about bias only after receiving an adverse ruling. Here, as then, it is not open to the Claimants to wait and see how their application to dismiss the charges turned out before pursuing their complaint of bias. We are inclined to agree with Counsel for the Defendant and Counsel for the Interested Party that this application is opportunistic and is no more

than a tactical attempt to further delay the trial of the Claimants. Consequently, this application should be given short shrift.

[58] The Claimants' application must also be refused on the further ground of whether a fair-minded and informed observer would apprehend the possibility of unconscious bias in the Learned CJPC. Mr. Wildman placed considerable emphasis on his submission that the Learned CJPC's statements showed that he harboured an unconscious bias. As pointed out by Counsel Mr. Small, Mr. Wildman variously saying in his oral submissions that the learned CJPC was *"so conflicted*", *"conflicted because he knew one of the parties*", *"ruled as he did because he had a conflict*," *"was burdened by his conscience*", and *"being conflicted*",*"* created a false impression as to the meaning of the words used by the Learned CJPC. In this regard, the actual words used by the Learned CJPC take prominence. As we have found, he stated that he had a ***"potential conflict"***. It is clear from all the evidence, including the uncontradicted evidence of the Learned CJPC himself, that the Learned CJPC was indicating a possible concern as to how his association with Mr. Reid could be viewed by an impartial observer, and not that he himself was personally conflicted. Of course, if he was, he ought to have recused himself for actual bias.

[59] What are the relevant circumstances that would be known to the fair-minded and informed observer? He would know that:

1. Mr. Reid and the Learned CJPC were students together at Munro College, a prominent high school for boys. Mr. Reid was his senior and head boy. There is no evidence of any specific association or interactions between them at that time.

2. There is no evidence of any personal friendship or animosity between them.

3. It appears that they have had no contact or association since that time.

4. Mr. Reid has given no evidence of knowing the Learned CJPC during that period as students.

5. Both Mr. Reid and the Learned CJPC attended that institution many years ago. Though the age of neither man is given, it is apparent that they are not in the bloom of youth.

6. Sometime had passed between the event of them attending school together and the time of the hearing.

7. Many schools in Jamaica have alumni associations with persons identifying strongly with their alma mater all their lives.

8. The Learned CJPC failed to make or to give full disclosure to the parties of the nature of his association with Mr. Reid.

9. The Learned CJPC took an oath to administer justice without fear or favour and would honour and carry out that oath by virtue of his training and experience.

10. The Learned CJPC, again by virtue of his training, would disabuse his mind of any irrelevant personal beliefs or predisposition and set aside any unconscious bias.

11. An impartial tribunal was fundamental to the proper administration of justice.

[60] We are mindful that it is not the Claimants' view of how this information operated on the mind of the Learned CJPC that is of importance. Neither is it the Judge's assertion that his prior knowledge of Mr. Reid did not give rise to a real possibility of bias on his part and he applied the law objectively and fairly. What is of significance is the opinion of the fair-minded and informed observer in these circumstances. "*The fair-minded and*

informed observer, who is also sensible and rational" ,[24] would not, on this evidence of a scant acquaintance, many years ago, reasonably apprehend that the Learned CJPC did not bring an impartial mind to bear on the adjudication of the case. Given this position, the non-disclosure of the nature of the Learned CJPC's knowledge of Mr. Reid was of no consequence. In light of the foregoing, the Court finds that the Claimants have not satisfied us, on a balance of probabilities, that there was a real danger that the inferior tribunal was biased.

CONCLUSION

[61] Despite our Brother's provisional findings, this review has shown that Counsel for the Defendant and the Interested Party are correct that this application was doomed to failure. The stay granted should be removed and the Parish Court should make every effort to schedule the matter for trial at the earliest possible date. This is a matter in which there is great public interest and the comments made by the Full Court in **Pinnock, Fritz and Reid, Ruel v Financial Investigations Division** [2020] JMFC Full 2 are apropos still. It has now been almost four **(4)** years since this matter was first before the Court. The obviously hopeless applications of the Claimants, for which they have been penalized by the award of Costs against them, have contributed much to this delay. These Costs remain unpaid. The Claimants should not be allowed to continue to engage the Court, Counsel and other parties in fruitless applications without repercussions. No further applications by them should be heard if these Costs have been taxed and remain unpaid.

[62] In view of the several dicta emanating from this Court and the Court of Appeal, with which Counsel for the Claimants is well familiar, we invite the parties to address the Court and/ or file written submission on the question of costs.

ORDERS

---

[24] The Honourable Chief Justice of Trinidad and Tobago Mr. Justice Ivor Archie O.R.T.T v The Law Association of Trinidad and Tobago [2018] UKPC 23, para 35

(i) The Application for Judicial Review for an Order for Certiorari quashing the decision of the Defendant made on February 4, 2021, in the Kingston and Saint Andrew Parish Court - Criminal Division, refusing the Claimants application to have the charges brought against them dismissed, is refused

(ii) The application for a Declaration that the statement made by the Defendant in handing down his ruling on February 4, 2021, in the Kingston and Saint Andrew Parish Court - Criminal Division, that the Claimants' Application to have the charges brought against them dismissed, is refused, and that the matter was properly before the Court, and that he no longer wishes to continue as presiding Judge in the matter, because he had a conflict of interest is unlawful null and void and of no effect, is refused.

(iii) The stay of the Criminal Proceedings is set aside. The Kingston and St. Andrew Parish Court should make every effort to schedule the matter for trial at the earliest possible date.

(iv) No further applications by the Claimants should be heard if the Costs awarded against them in previous applications have been taxed and remain unpaid.

(v) Costs to be determined. Submissions on Costs are to be filed and exchanged by the parties on or before the 18th September 2023.

(vi) Defendant's Attorneys to prepare, file and serve the Formal Order made herein.

BROWN BECKFORD J

PALMER HAMILTON J

HUTCHINSON SHELLY J