[2014] SC (Bda) 78 Div (25 August 2014)

In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2012 No. 183

BETWEEN:

F

Petitioner

-and-

F

Respondent

Date of Hearing: 19 June 2014

Date of Judgement: 25 August 2014

Petitioner in Person

Marshall Diel & Myers – Georgia Marshall for the Respondent

1. By Summons dated 28 May 2014 the Petitioner applied for an order that:
   i) 'point 1' of the 12 March 2014 ruling be stayed pending the outcome of the Appeal filed on 15 April 2014;
   ii) the cost hearing for the above matter, scheduled for 19 June 2014, be adjourned pending the outcome of the Appeal filed on 15 April 2014.

2. Further, by Summons issued 18 June 2014, the Petitioner sought an order that:
   i) 'the Honourable Justice Wade-Miller recuse herself from hearing any further matters involving me before the Supreme Court'; and
   ii) 'an abridgement of time be granted for the costs hearing scheduled for July [sic] 19th, 2014 before Justice Wade Miller.'

3. On 19 June 2014 the Judge (Justice Wade-Miller) heard the recusal application and the stay application.

4. At close of argument the Court adjourned the stay application and dismissed the application for recusal with reasons for its decision to follow later. These reasons are presented below.

Background

5. The Applicant in this matter is the Petitioner in *F v F* Divorce Jurisdiction 2012 No. 183 in which the Judge handed down a decision on 12 March 2014.

6. The Petitioner sought to appeal this decision: on 26 March 2014 she filed an application captioned 'Ex parte Notice of Motion for Leave to Appeal against the Decision of the Honourable Justice Wade-Miller 13th & 14th November and 17th December 2013 (Order 2 Rule 3 of the Rules of the Court of Appeal for Bermuda)'. Additionally, Notice of Appeal setting out the grounds of appeal was filed on 26 March 2014.

7. The Judge heard this application on 8 April 2014. The Judge ordered:
   i) Leave to appeal to the Court of Appeal in respect of the Ancillary Relief judgement is refused. Leave is not necessary.
   ii) Leave to appeal to the Court of Appeal in respect of maintenance for the children of the family is refused.

8. On 22 April 2014 the Petitioner – henceforth referred to for simplicity as the Applicant – wrote a letter to the Chief Justice. A copy of this letter is not on file.

9. In a 24 April 2014 letter from the Chief Justice to the Applicant, copied to his Excellency the Governor, the Chief Justice states:

> *Your letter of April 22, 2014 refers*. [sic]
>
> *You have asked that I reassign the pending costs hearing relating to an application in which Justice Wade-Miller has recently delivered judgment on the grounds of alleged bias.*
>
> *Please be advised that I have no authority to reassign, comment upon or interfere in any way with an active case that is being dealt with by another judge.*

10. On 6 May 2014 the Applicant responded to the Chief Justice's letter copying in His Excellency the Governor and Dr Peter Hayes (Foreign & Commonwealth Office):

> *…*
>
> *I understand that as I have chosen to appeal the judgement, that the case is still active in this respect. I am not asking you to comment on, or interfere with, any aspect of the appeal process. However, as Justice Wade-Miller has issued her judgment and signed the ordered* [sic] *drawn up by Mrs Marshall, it is reasonable to conclude that the case no longer has to be considered active with respect to her. Surely any further matters, costs or otherwise, can be heard by another member of the Supreme Court judiciary? Why is Justice Wade-Miller considered a necessary component in any further matters which concern me? Considering the strong suggestion of bias on the part of Justice Wade-Miller, insistence on my appearance before her in any further matters appears incongruous with statements made in your welcome to the Bermuda Judiciary website.*
>
> *… If you lack the authority to ensure that, for this and any future matters I appear before a Justice other than Justice Wade-Miller please advise with whom the necessary authority rests.*

11. The Chief Justice responded by letter dated 7 May 2014:

> *…*
>
> *You have now asked for clarification of how you can seek to prevent the judge from dealing with the costs hearing on the grounds of alleged bias. The answer is that you must apply to the judge herself and ask her to 'recuse' herself from the case on the grounds of the matters of which you complain. Should your application be refused, you can of course appeal against the refusal and any subsequent costs orders to the Court of Appeal.*
>
> *I should point out that a costs hearing is generally regarded as an integral part of the application to which it relates and one which the judge who heard the substantive application is uniquely equipped to deal.*

12. On 11 June 2014 the Applicant wrote to the Judge – copying in the Chief Justice, His Excellency The Governor, and Dr Peter Hayes – asking for a reply 'without further delay' to a letter she had written on 27 May 2014. It appears that in this letter the Applicant had requested the Judge recuse herself from any further matters requiring the Applicant to appear before the Supreme Court.

    A copy of this 27 May letter was not on file. During the hearing the Applicant undertook to supply a copy of this letter to be placed on file and has done so.

13. The Applicant did not copy the Judge, the Respondent, or the Respondent's Counsel on any of her correspondence with the Chief Justice. She also did not copy the Respondent or the Respondent's Counsel on any of her correspondence with the Judge.

14. On 17 June 2014, after tracing the history of the matter and the context for the Applicant's 11 June letter, the Judge wrote to the Registrar.

    Referring the Registrar to the Applicant's on-file correspondence with the Chief Justice, the Judge suggested that the Applicant be made aware of the correct protocol for applying for a recusal.

    The Judge also raised the issue of a party in a case corresponding directly with the judge: a judge would be remiss in his/her duty to objectivity to enter into direct correspondence with a litigant without the presence of the other party and/or their Counsel.

    The Judge concluded by asking the Registrar to address the situation as she saw fit.

15. On 18 June 2014 the Registrar wrote to the Applicant informing her of the correct procedure. Thereafter the Summons, the subject of this application, was filed.

The Applicant's affidavit

16. The Applicant filed an affidavit dated 18 June 2014 in support of her application stating that the Judge:

> *2. … has failed to execute her duties with the disinterest and duty of care that can reasonably be expected of her. Justice Wade-Miller's handling of my case provides numerous examples of conduct that can reasonably be viewed as illustrating these failures. I cite the following five:-*
>
> *(i) In the March 12th Judgement, Justice Wade-Miller has made a number of significant factual errors. A review of the evidence, submissions and hearing transcript suggests that in compiling the judgement, Justice Wade-Miller either, did not read the evidence, or alternatively, chose not to apply it. Instead Justice Wade-Miller chose to base significant aspects of the judgement on the information provided by Mrs Marshall in her summation during the December 17th 2013 portion of the hearing without regard for the accuracy of the information she provided.*

Having spoken with a number of members of the legal profession it appears that the Justice Wade-Miller has a reputation for not reading documents. It is not unlikely that Mrs Marshall is fully aware of this reputation in this regard, and as such, it is not unreasonable to wonder whether this erroneous information was fed to Justice Wade-Miller intentionally in the knowledge that the judgement would be based on notes from the hearing and not the documentary evidence… Justice Wade-Miller's decision to base significant aspects of the judgement on Mrs Marshall's oral information, despite its clear contradiction by the evidence, has ensured that the judgment is biased in favour of the Respondent.

(ii) During the December 17th, portion of the ancillary relief hearing, Mrs Marshall unexpectedly raised an access issue. She accused me of denying the Respondent access to the children and urged Justice Wade-Miller to order me to allow him access. The Learned Judge's response was to issue me with an ultimatum; allow him to see the see [sic] *the children or else I will order you to. Subsequent to the ultimatum, I offered e-mail evidence which clearly demonstrated that the Respondent and I had come to an agreement regarding the access which Mrs Marshall was requesting on his behalf. Justice Wade-Miller dismissed this evidence, refusing to even read it.*

The Applicant contends that the Judge's refusal to review the evidence offered can reasonably be considered to suggest bias.

Her affidavit continues:

In my discussions with members of the legal profession, comments have been made concerning Justice Wade-Miller's susceptibility to the bullying or pressure tactics employed by Mrs Marshall. Reviewing the transcript of the hearing, it is reasonable to consider that the handling of this access request as representing a fair example of this deficiency on the part of Justice Wade-Miller.

(iii) The March 12th judgement cites no statute or case law whatsoever to substantiate Justice Wade-Miller's conclusions. When compared with the other ancillary relief cases on which Justice Wade-Miller has deliberated, this omission is exceptional. There are over fifteen of Justice Wade-Miller's ancillary relief cases available on The Bermuda Judiciary website, these cases span from 2007 to 2013 and, without fail, every one of them either cites The Matrimonial Causes Act, or case law, very often both. It is therefore, entirely reasonable of me to question why The Honourable Judge considered it unnecessary to compile a reasoned judgment with respect to my case. This question is all the more pertinent considering that the disproportionate and unjustified reliance which has been placed on information provided by Mrs Marshall, has ensured that the judgment fails to comply with the necessary statute and contradicts the applicable case law.

(iv) Justice Wade-Miller has twice altered the original judgement of February 28th. These alterations have favoured the Respondent in the sum of $112,000.00. The record demonstrates that, to all intents and purposes,

Justice Wade-Miller's alterations were entirely in accordance with those Mrs Marshall insisted were necessary in her e-mail to Justice Wade-Miller of March 3rd, and those dictated in the order of March 12th, which she drafted. It is therefore, not unreasonable to consider Mrs Marshall to have instructed Justice Wade-Miller with respect to the judgment changes. Justice Wade-Miller's wholesale and unquestioning compliance with the demonstrably unfair changes that Mrs Marshall insisted upon allows the reasonable conclusion that Justice Wade-Miller has exhibited bias and corrupted established process by allowing the Respondent to circumvent the appeals process, and in allowing him this advantage, Justice Wade-Miller has usurped the authority of the Court of Appeal.

I have had the opportunity to have the processes, by which Justice Wade-Miller has altered the original judgment, reviewed by a number of members of the legal profession. The adjectives they have ascribed to these processes ranged from 'unusual' to 'highly irregular'. None of them had encountered judgments altered in a similar way. It was suggested that had I not been a litigant in person, this method of altering the judgment would not have been attempted. Here again, questions were also raised regarding Justice Wade-Miller's susceptibility to influence by Mrs Marshall's methods.

(v) Despite the entirely factual nature of a number of the errors, Justice Wade-Miller chose not to engage in a discussion of any of them during our ex parte meeting of April 8th, 2014. This inability or unwillingness on the Learned Judge's part, to even entertain that a reassessment of her conclusions may be necessary, is extremely likely to continue to disadvantage me.

Cross-examination by Counsel for the Respondent

17. Mrs Marshall, Counsel for the Respondent, did not file an affidavit but she cross-examined the Applicant on her affidavit.

18. Asked by Mrs Marshall, the Applicant confirmed that she had filed a Notice of Appeal and in the notice she seeks redress for what she says are significant factual errors. She accepted that if the three panel members of the Court of Appeal agree with her then she will be successful, but if they disagree with her she will not be successful in her appeal.

    Mrs Marshall asserted that given that the Applicant has the opportunity to appeal, there was nothing in paragraph 2(ii) of the Applicant's affidavit that precludes the Judge from hearing the costs application. The Applicant disagreed: she maintained that there is the case of bias or perceived bias in the Judge taking up Counsel's point of view when the evidence presented was contradictory. She asserted that the judgement was based on factual errors which disadvantaged her.

    Mrs Marshall responded that bringing factual errors before the Court of Appeal 'is normal, there is no bias in it'.

19. In paragraph 2(ii) of her affidavit the Applicant refers to advice and comments from members of the legal profession. Mrs Marshall requested their names and informed the Applicant of her legal obligation to name her sources so that a subpoena could be issued to bring them before the Court.

    The Applicant replied that her sources were volunteers at the 'Legal Advice Clinic', but she refused to give their names. She indicated that this line of questioning was pointless and wasting time.

20. Mrs Marshall then referred to the assertion in paragraph 2(i) of the Applicant's affidavit that the Judge has a reputation for not reading documents. She asked the Applicant to explain the basis for this allegation. The Applicant responded that Mrs Marshall is an '… experienced and seasoned attorney and has had the opportunity to be in this situation often'. Mrs Marshall then asked: 'Have I ever given you any indication that I hold the view that this judge does not read the papers?'. The Applicant said 'No'.

21. Mrs Marshall challenged the allegation that as an experienced lawyer she deliberately fed erroneous information to the Judge. She asked the Applicant whether she was suggesting that Mrs Marshall would lie to the Court. The Applicant responded that this was conjecture.

22. Questioned about her claim in paragraph 2(ii) of her affidavit that the Judge succumbed to Mrs Marshall's 'bullying pressure tactics' the Applicant explained that these referred to '… the talk of procedure, just the way the entire hearing is put forward. The whole presence.'

    Mrs Marshall responded that her job was to present a case to the Court on behalf of her client and

    > *… that is not bullying or pressure tactics … there is a fundamental distinction between bullying and putting forward a forceful case that is well thought out and well presented.*

    The Applicant agreed.

    Mrs Marshall continued: 'If the Court accepts [my] presentation put forward instead of [the Applicant's] then that is up to the Court's discretion.' The Applicant responded that her problem was 'with incorrect facts'. Mrs Marshall replied that this is a matter for the Court of Appeal. The Applicant agreed.

23. Mrs Marshall challenged each of the five examples in the Applicant's affidavit. Referring the Applicant to paragraph 2(iii) regarding the lack of citation of statute and case law in the 12 March judgement she asked:

    > *Did you cite any case law that [the Judge] didn't consider? … You accept the judge hearing that case is an experienced matrimonial judge and Section 29 and how it is applied is already well known to her and the cases that you provided to her are almost trite law.*

    The Applicant disagreed with this assertion.

Mrs Marshall continued:

> *This judge is very well versed in Section 29(1) and if you look at the decision that is how it is laid out. She took into account income of the parties, financial outlay of the parties, and the assets available for distribution and then she did the best she could divide the assets equally so you and the children can remain in the home.*

The Applicant disagreed: changes should have been made on appeal; the judgement was 'changed outside of the proper process'.

Submissions

24. Mrs Marshall submitted that in respect to the affidavit the Court has heard the evidence on cross-examination regarding the second and third paragraph of the Applicant's affidavit:

> *These paragraphs are nothing short of scandalous. [The Applicant] refuses to comply with the Rules to identify the source of that information and belief so that the evidence can be tested. Also these paragraphs are almost entirely conjecture on her part. She has no evidence or reason to believe that this Court had not read the papers in this proceeding …*

In relation to the issue of access, Mrs Marshall asserted:

> *There was an application before the Court with respect to this. In this Court's duty to act as patriarch for minor children when my client sought this assistance of the Court to facilitate his access to the children bearing in mind that my client was coming [to Bermuda] for the case. It was perfectly appropriate to raise that issue, because he simply wanted to have dinner with the kids. In fact an agreement was reached between the parties … when the children will be collected and dropped off. This shows no bias in the Court but rather the Court acting prudently in its patriarch role to facilitate access to children by a parent.*

Mrs Marshall continued:

> *In relation to the order itself [the Applicant] has filed an appeal for the Court of Appeal … where she will address the settling of the record. However it is abundantly clear that this Court has jurisdiction under the slip rule and has the authority to make corrections if there has been a slip. The correction that was made to the order related to assets in the wife's hands which were confirmed by her that they were joint … These monies were to be divided equally between the parties. [The Applicant] is trying to take advantage of the slip which she accepted to suggest when that issue was brought to the Court's attention. It is cynical to the extreme.*
>
> *There is a test for the Court in determining bias. In the affidavit that was filed by [the Applicant] she mentioned quite a few cases but hasn't expounded on the case law … the appropriate test to determine an issue of apparent bias is*

> *whether the fair-minded and informed observer having considered the relevant facts would conclude whether or not there was a real possibility of bias. [The Applicant] has filed stay, adjournment and now the recusal application. The informed fair-minded observer would look at the submission of Counsel in this specific case and recognise that in submissions Counsel may put forward their client's best case and can give the facts the interpretation and the force and effect that is in accordance with instructions and their client's case.*
>
> *It is also a note that this Court can make certain assumptions and inferences … Courts are in the business of making findings of fact [in] instances were there are two opposing views.*

25. The Applicant submitted that when the Court is considering her request for recusal it should bear in mind the accepted fair-minded and informed observer test for bias as established in *Porter v Magill* [2002] 2 AC 357, HL.

    The Applicant also directed the Court to Lord Justice Ward's comment at paragraph 32 in *El Faragy v El Faragy & Ors* [2007] EWCA Civ 1149:

> *32. It is an embarrassment to our administration of justice that recusal applications, once almost unheard of, are now so frequently coming to this Court in ways that do none of us any good. It is, however, right that they should. The procedure for doing so is, however, concerning. It is invidious for a judge to sit in judgment on his own conduct in a case like this but in many cases there will be no option but that the trial judge deal with it himself or herself. If circumstances permit it, I would urge that first an informal approach be made to the judge, for example by letter, making the complaint and inviting recusal. Whilst judges must heed the exhortation in Locabail not to yield to a tenuous or frivolous objections, one can with honour totally deny the complaint but still pass the case to a colleague. If a judge does not feel able to do so, then it may be preferable, if it is possible to arrange it, to have another judge take the decision, hard though it is to sit in judgment of one's colleague, for where the appearance of justice is at stake, it is better that justice be done independently by another rather than require the judge to sit in judgment of his own behaviour.*

The Law and Principles of judicial conduct

26. Judges are expected to be fair and unbiased. If a situation arises that brings a judge's impartiality into question and one party feels that the judge will not give them a fair hearing, that party can ask for a different judge.

27. The fair-minded and informed observer test for bias as cited in *Porter v Magill*, supra reads:

> *102. … The Court of Appeal took the opportunity in In re Medicaments and Related Classes of Goods (No 2) [2001] 1 WLR 700 to reconsider the whole*

question. Lord Phillips of Worth Matravers MR … summarised the court's conclusions … :

> *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.*

28. As observed by Justice Wood in *Commonwealth v D'sant* 24 Pa. D. & C. 4th 152 (1995):

> *In considering a motion for recusal, a trial judge must determine whether 'he can hear and dispose of the case fairly and without prejudice. …' Reilly by Reilly v. SEPTA, 507 Pa. 204, 220-21, 489 A.2d 1291, 1299 (1985). This decision is final unless the judge commits an abuse of discretion. Id. 'The party who asserts that a trial judge must be disqualified bears the burden of producing evidence establishing bias, prejudice, or unfairness necessitating recusal.' Commonwealth v. Darush, 501 Pa. 15, 21, 459 A.2d 727, 731 (1983).*

29. In *Mengiste & Anor v Endowment Fund for the Rehabilitation of Tigray & Ors* [2013] EWCA Civ 1003 Lady Justice Arden, referring to judicial recusal gave examples of when judges could be disqualified:

> *3. The doctrine of judicial recusal is a subject of wide importance: see Judicial Recusal – Principles, Process and Problems, Grant Hammond J, (Hart) (2009). An independent judiciary is an essential requirement if the rule of law is to be maintained. Courts need to be vigilant not only that the judiciary remains independent but also that it is seen to be independent of any influence that might reasonably be perceived as compromising its ability to judge cases fairly and impartially. Judges who have a financial interest in a case are automatically disqualified. Depending on the circumstances, judges can also be disqualified by other matters, such as an involvement with one of the parties in the past. The ability of the judge to deal with the matter uninfluenced by such matters is not the issue: it is a question that, to maintain society's trust and confidence, justice must not only be done but be seen to be done. Hence it is common ground in this case that a judge should recuse himself from hearing an application if there appears to be bias.*

Arden LJ continued:

> *4. The test for determining apparent bias is now established to be this: if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse himself: see Porter v Magill [2002] 2 AC 357 at [102]…*

30. In the *Bangalore Principles of Judicial Conduct*, Value 2 refers to the essential need for impartiality of a decision and of the process by which a decision is made. The Application of this principle includes examples of when a judge should recuse him/herself:

> *2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where*
>
> *2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;*
>
> *2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or*
>
> *2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:*
>
> *Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.*

31. A judge will take him/herself off a case if there is a direct connection between the judge and the case. Examples include, but are not limited to, situations where the judge:
    - is an Appeals Court judge and was also the trial judge;
    - has a financial or personal interest in the result of the case;
    - is related to a party in the lawsuit;
    - is, or acts in a way to suggest he/she is, personally biased or prejudiced against a party or party's Counsel (see for example recusal allowed on appeal in *Wilson v Commonwealth*, 630 SE 2d 326 (2006) but not allowed on appeal in *Commonwealth v D'sant*, supra).

The Court

32. This Court is of the view that it has a duty to hear and consider the recusal application and render a decision after having exercised its judgement. The Court has therefore taken the time to provide a written decision in an attempt to give some further guidance and clarification particularly to self-represented individuals.

33. The Court acknowledges the matters put forward by the Applicant as giving rise to her complaint of bias.

34. The Court notes the postscript in *El Faragy v El Faragy & Ors*, supra and the fair-minded and informed observer test for bias as cited in *Porter v Magill*, supra.

35. The question for this Court, having regard to the complaints presented by the Applicant, is whether, based on the material presented, the fair-minded informed observer would conclude it was likely that the Judge is or might be biased.

36. The Applicant complains *inter alia* that the Judge is biased and should recuse herself and take no further part in the present ancillary relief matter including the hearing on costs. She claims that volunteers at the 'Legal Advice Clinic' told her that the Judge has a reputation for not reading documents. She extrapolates from this that the Judge based her judgement on oral evidence from the Respondent's Counsel and notes from the hearing rather than on the documentary evidence. In paragraph 2(i) of her affidavit she avers that the Judge based 'significant aspects of the judgement on Mrs Marshall's oral information, despite its clear contradiction by the evidence' and that this 'has ensured that the judgement is biased in favour of the Respondent'.

    The Applicant contends that these are matters that would cause the fair-minded and informed observer to conclude that there is a real possibility that the Judge is biased. The Applicant says in effect that the Judge is unable to hear the case with an objective judicial mind therefore the cost hearing should be passed to another judge.

37. The Applicant has a legal obligation to provide her sources pursuant to Order 41 Rule 5(1) and (2) of the Rules of the Supreme Court 1985:

> *41/5 Contents of affidavit*
>
> *5 (1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.*
>
> *(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.*

38. The Applicant refused Mrs Marshall's request to provide the names of the lawyers she spoke to at the Legal Advice Clinic who she claims told her that the Judge has a reputation for not reading documents. She produced no admissible evidence as to the truth of this statement.

    The Court therefore rejects this statement in its entirety due to the lack of evidence. Even if it can be proved that the Applicant was in fact told that the Judge has a reputation for not reading documents, this is a matter that should be advanced during the hearing before the Court of Appeal.

39. Additionally, the Court notes that the Applicant has made an attack on the professionalism of Mrs Marshall who is obliged to act on her client's instructions. Again, even if it were true that Mrs Marshall used bullying and pressure tactics, and/or if the Court accepted incorrect facts that were put forward by Mrs Marshall, this would be a matter for the Court of Appeal.

40. If a situation arises where a judge does not meet the objective standard to be fair and impartial between the parties, then the situation requires recusal.

41. This Court is of the view that in this case the issue of bias does not properly arise because the Judge was merely carrying out her judicial functions by presiding over the hearing. There is no real danger of, or reasonable apprehension of, bias if the Judge continues.

42. There is no dispute about the law. Both parties agree with the exhortation in *Locabail* supra that a judge – whilst attempting not to 'yield to tenuous or frivolous objections' – can deny a complaint and yet pass the case to a colleague.

    However, as the Hon. Chief Justice wrote in his 7 May response to the Applicant, the cost application is an integral part of the application to which it relates.

    The cost application has to be heard and understood in the context of the entire case therefore, under those circumstances, it would be unusual if not difficult for another judge to take over the cost hearing.

43. Given the details of this case and the material presented, a fair-minded informed observer would not believe that the Judge was biased. It has not been suggested that the Judge had any personal or pecuniary interest in the outcome of the case. The observer would also be aware that any decision the Judge makes is not final: the final decision does not rest with the Judge, but with the Court of Appeal.

Conclusion

Recusal application

44. Considering all the circumstances of this case, and for the above reasons, the Applicant's application for the Judge to recuse herself from any further dealings with this case is refused. This Court is unable to find any evidence that would be perceived as the Judge being biased.

45. It is clear to this Court that the matters which are the subject of the Applicant's complaint, are matters to be considered by the Court of Appeal.

46. In the Court's judgement the Applicant has failed to establish the alleged bias, the appearance of bias and the consequential injustice.

47. There is no real danger that the Applicant will not be given a fair hearing. The Court therefore dismisses the recusal application, with costs to the Respondent to be agreed or taxed.

Stay application

48. The Applicant applied for a stay of 'point 1' of the 12 March 2014 ruling pending the outcome of the appeal filed on 15 April 2014.

49. The Court has had regard to the submissions of the parties and has considered the authorities to which the Court has been referred, among them *Linotype-Hell Finance Ltd. v Baker* (1992) 4 ALL ER page 887 or (1993) 1 WLR 321 in which Staughton LJ said

> *... if a defendant can say without a stay of execution he will be ruined and that he has an appeal which has some prospect of success, that is a legitimate ground for granting a stay of execution.*

50. The Applicant has not persuaded this Court that it should depart from the usual rules that there should not be a stay.

51. The Court has considered all the circumstances and there is no risk of injustice to one or other or both parties if the Court refuses the stay. The Respondent would be deprived of the fruits of his judgement.

52. Accordingly, the application for a stay is refused, with costs to the Respondent to be agreed or taxed.

Dated _____ day of _____

_____

Justice Norma Wade-Miller PJ