EASTERN CARIBBEAN COURT OF APPEAL
IN THE COURT OF APPEAL

MONTSERRAT

MNIHCVAP2020/0003

BETWEEN:

KESTON RILEY

Appellant

and

[1] THE ATTORNEY GENERAL
[2] DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal

Appearances:

Mr. Warren Cassell for the Appellant
Ms. Sherasmus Evelyn, on behalf of the Attorney General, for the Respondents

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2020: June 23;
September 17.

Interlocutory appeal — Application to strike out appeal — Whether notice of appeal vague or in general terms — Whether notice of appeal disclosed reasonable grounds for bringing appeal — Appeal against refusal of application for recusal — Apparent bias — Whether learned judge erred in refusing recusal application — Whether fair-minded informed observer would conclude that there was real possibility of bias — Whether learned judge ought to have recused himself given his knowledge and prior involvement in matter — Whether learned judge prejudged or predetermined claim — Judicial oath — Weight to be attached to judicial oath in context of recusal application — Approach to be taken by judge where there are doubts as to need for recusal — Whether inconvenience, delay and costs are relevant considerations in determining whether judge ought to be recused

The appellant, Keston Riley, was charged with and pled guilty to fraudulent evasion of duty, following which he was sentenced by a learned judge to a term of imprisonment. Riley successfully appealed his conviction to the Court of Appeal, following which the

Public Prosecutions sought to appeal to the Privy Council. Upon his release from prison, Riley filed a fixed date claim seeking damages and declaratory relief from the State, flowing from the circumstances surrounding his successful appeal against conviction. The damages claim was set down for hearing before the same judge who presided over Riley's criminal matter.

During the course of an unrelated criminal matter, the learned judge remarked in open court, in relation to Riley's criminal matter, that 'hopefully the Privy Council will get it right', the implication being that the Court of Appeal was wrong in quashing Riley's conviction and sentence. In light of his comment and prior involvement in the criminal matter, Riley applied to the learned judge to recuse himself from hearing the damages claim on the basis that he would not bring an impartial mind to bear on the matter. The learned judge delivered what he referred to as an 'interim decision' on the matter, by which he refused to recuse himself from hearing the matter.

Being dissatisfied with the judge's decision, Riley appealed, alleging, in the main, that the learned judge erred in law by refusing to recuse himself. The respondents applied to strike out the notice of appeal arguing that the grounds of appeal were vague or general in terms and did not disclose any reasonable grounds for bringing the appeal. The respondents further resisted the appeal on the grounds that the judge's prior involvement in the matter and his remarks made in open court would not cause the fair-minded and informed observer to conclude that there was a real danger that the judge was biased.

Held: dismissing the application to strike out the appeal; allowing the appeal; setting aside the decision of the judge not to recuse himself; ordering that a different judge is to be assigned to conduct the hearing of the matter; awarding costs to the appellant to be assessed by a master if not agreed within 21 days, that:

1. Striking out is a severe sanction which ought not to be lightly employed. In this case, the subject of the appeal is made clear from the contents of the notice of appeal and the other material before the Court. Accordingly, the grounds advanced by the respondents for striking out the appeal are unmeritorious and would not conduce to the overall fairness of the proceedings and the wider interests of justice.

   HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and Anor [2014] UKSC 64 applied; **Real Time Systems Limited v Renraw Investments Limited and Ors** [2014] UKPC 6 applied.

2. A judge should not sit to hear a case in which the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased. An appellate court is well-positioned to assume the vantage point of a fair-minded and informed observer and make such an assessment. The Court has to ascertain all the circumstances and ask whether those circumstances would lead to the conclusion that there was a real possibility that the judge was biased.

   Otkritie International Investment Management Ltd and Ors v Mr George Urumov [2014] EWCA Civ 1315 applied; **Mr Ashley Dobbs v Triodos Bank NV** [2005] EWCA Civ 468 applied; **Shaw v Kovac and Anor** [2017] EWCA Civ 1028

applied; **Beard Winter LLP v Kersasp Shekhadar** [2016] OJ No. 3257 (QL) applied; **Virdi v Law Society** [2010] EWCA Civ 100 applied; **Helow v Secretary of State for the Home Department** [2008] 1 WLR 2416 applied; **Harb v HRH Prince Aziz bin Fahd bin Abdul Aziz** [2016] EWCA Civ 556 applied; **Morrison and Anor v AWG Group Ltd and Anor** [2006] EWCA Civ 6 applied; **Resolutions Chemicals Limited v H Lundbeck A/S** [2013] EWCA Civ 1515 applied; **National Assembly for Wales v Condron** [2006] EWCA Civ 1573 applied.

3. Prior involvement and knowledge does not automatically disqualify a judge from hearing a matter. Critically however, a judge must not predetermine or prejudge the matter, or form or give the impression that he or she has formed a firm view adverse to the credibility of a party prior to hearing the evidence. The judge's recusal ruling clearly demonstrates that he was satisfied that the Court of Appeal erred in quashing the conviction; he knew all the evidence; he had reviewed the incriminating evidence against Riley and, as the judge who presided over the criminal matter, he was waiting to put things right in the damages claim. The fair-minded and informed observer would recognise that the learned judge would have approached the matter with a closed mind or would not have brought an objective mind to bear on the claim.

   Stubbs v The Queen [2018] UKPC 30 applied; **Steadman–Byrne v Amjad and Ors** [2007] 1 WLR 2484 applied; **Costello v Chief Constable of Derbyshire** [2001] EWCA Civ 381 applied; **Arab Monetary Fund v Hashim** [1993] 6 Admin LR 348 applied.

4. Where there is real doubt as to the presence of apparent bias, that doubt should be resolved in favour of recusal. In the present case, the learned judge left open the possibility of reviewing his decision not to recuse, asserting that it was an interim decision to be kept under review, and that he will encourage further argument as to actual bias if he or the parties sense his mind is closing unfairly as the case develops. In these circumstances, the judge ought not to have refused the recusal application and ought to have resolved any doubts as to the presence of bias on his part, in favour of recusal.

   Locabil (UK) v Bayfield Properties Ltd [2000] QB 451 at 472 considered; **Re Medicaments and related Classes of Goods (No.2)** [2001] ICR 564 considered; **Morrison and Anor v AWG Group Ltd** [2006] EWCA Civ 6 considered; **Wewaykum v Canada** 2003 SCC 45 considered; **Resolutions Chemicals Limited v H Lundbeck A/S** [2013] EWCA Civ 1515 applied.

5. In the context of apparent bias, much weight has been placed on the judicial oath of office and the fact that professional judges are trained to act objectively and dispassionately. The judicial oath, however, is more a symbol rather than, of itself, a guarantee of the impartiality on the part of a judge. It is just one of the factors which would inform the view of a fair-minded observer in arriving at her or his objective judgment as to the risk of bias and is not conclusive of whether a judge should recuse himself on the basis of apparent bias.

R v S (RD) [1997] 3 SCR 484 considered; **Jones v DAS Legal Expenses Insurance Co. Ltd. and Ors** [2003] EWCA Civ 1071 considered; **Helow v Secretary of State for the Home Department** [2008] 1 WLR 2416 followed.

6. Whether a judge should recuse themself from hearing a matter is not a discretionary case management decision reached by weighing various factors in the balance. Once the test of apparent bias is satisfied, the judge is automatically disqualified from hearing the case, and considerations of inconvenience, cost and delay are irrelevant. Accordingly, the learned judge's concerns about the prejudicial effect that his withdrawal from the trial would have on the parties and the administration of justice are totally irrelevant, as the paramount concern of the legal system is to administer justice, which must be and must be seen to be fair and impartial.

Man O' War Station Ltd v Auckland City Council [2002] UKPC 228 applied; **Morrison v AWG Group Limited** [2006] EWCA Civ 6 applied; **Bates & Ors v Post Office Limited** [2019] EWHC 871 (QB) applied.

JUDGMENT

[1] **BAPTISTE JA**: 'Hopefully the Privy Council will get it right.' A hope that the Privy Council will get it right is, in the normal course of things, is hardly a starting point to engage an application for recusal. The expression of such a hope would more likely be associated with a party who feels convinced or at least satisfied, that the Court of Appeal erred in its decision, and that the error will be corrected on appeal to the Privy Council. The twist here is that the comment is attributed, not to any party, but to the learned judge who presided over a criminal matter in which the appellant, Keston Riley, pled guilty to fraudulent evasion of duty, as a result of which he was sentenced to imprisonment.

[2] Riley successfully appealed his conviction. The Director of Public Prosecutions sought to appeal to the Privy Council. Upon his release from prison, Riley filed a fixed date claim seeking declaratory and other relief. In particular, Riley sought damages for deprivation of liberty, and damages against the Director of Public Prosecutions for misfeasance in public office. The latter related to his complaint that the learned Director gave an undertaking not to prosecute for fraudulent evasion of duty and having withdrawn that charge, breached that undertaking by subsequently proceeding with the charge against him.

[3] In an unrelated criminal matter[1] the learned judge remarked in open court, in relation to Riley's criminal matter that 'hopefully, the Privy Council will get it right', the implication being that the Court of Appeal was wrong in quashing Riley's conviction and sentence. In light of the learned judge's comment and his prior involvement in the criminal matter, Riley applied to the learned judge to recuse himself from hearing the damages claim on the basis that he would not bring an impartial mind to bear on the matter. The learned judge heard arguments on the recusal application on 10th October 2019 and, on 14th October 2019, delivered a written ruling on the matter declaring himself free from the contaminants of actual and apparent bias. His Lordship described the ruling as an 'interim decision to remain the judge in the case, to be kept under review', leaving open the possibility of encouraging further arguments on actual bias if, as the case develops, he or the parties sense that his mind is closing unfairly.

The appeal and application to strike

[4] Riley appealed the recusal decision on two grounds. Firstly, he contended that the learned judge erred in law in refusing to recuse himself. In that regard, he pointed out that the judge adjudicated at first instance in the criminal matter (**The Queen v Keston Riley and Greenway**)[2] in which he pled guilty and was imprisoned, with the conviction subsequently quashed on appeal. He also pointed out that during an unrelated criminal matter (**The Queen v Claude Gerald**)[3] the learned judge, in referring to Riley's criminal matter, remarked in open court that 'hopefully the Privy Council will get it right', implying that the Court of Appeal was wrong in quashing Riley's conviction and sentence.

[5] The second ground alleged that the learned judge could not or will not bring an impartial mind to bear on the present case in which he is seeking compensation for time spent in prison, as well as damages for misfeasance in public office against the Director of Public Prosecutions. Riley complained that the learned judge's

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[1] The Queen v Claude Gerald MNIHCR2018/0005.
[2] MNIHCR2016/0016 (delivered 10th April 2017, unreported).
[3] See n.1.

expression of dissatisfaction with the Court of Appeal's judgment is consistent with the reasonable belief that he could not, without bias, consider compensating him.

[6] Ms. Evelyn, acting on behalf of the respondents, applied to strike out the appeal, labelling the first ground of the notice of appeal as vague or general in terms. She argued that no particulars were provided to enable the Court of Appeal to determine whether the judge erred in law. Counsel also argued that the mere fact that a judge, earlier in the same case or in a previous case, commented adversely with reference to a party, would not, without more, give rise to a finding that the judge would not bring an impartial mind to bear on the case.

[7] Ms. Evelyn contended that the second ground disclosed no reasonable grounds for bringing the appeal, as the ground was fully ventilated in the High Court and the judge ruled that he was not biased. Counsel submitted that in light of the judge's ruling and in the absence of fresh evidence that the judge was actually biased, there is nothing in this ground for the Court of Appeal to consider. Further, Ms. Evelyn argued that there was non-compliance with rule 62.10(1) of the **Civil Procedure Rules 2000**,[4] which meant that the Court was not positioned to determine whether the learned judge erred in law.

[8] Upon the Court being satisfied by the parties that, on the material available, it was in a position to hear the recusal appeal without detriment to either party, it determined that it would be a more judicious employment of time and resources to subsume the strike out application within the hearing of the appeal. The Court is mindful that striking out is a severe sanction which ought not to be lightly employed.[5] In my judgment, the grounds for striking out are unmeritorious. It is clear from the notice of appeal what the appeal is about, and it cannot be seriously advanced that

[4] CPR 62.10(1) requires an appellant to file and serve with the notice of appeal, written submissions in support of the appeal together with six bundles of documents comprising the judgment or order appealed, such affidavits, witness statements or exhibits relevant to the question at issue on the appeal which were put in evidence before the court below, and other relevant documents.

[5] See HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and Anor [2014] UKSC 64; Real Time Systems Limited v Renraw Investments Limited and Ors [2014] UKPC 6.

there was no reasonable ground for bringing the appeal. Striking out would not conduce to the overall fairness of the proceedings and the wider interests of justice. The application to strike out the appeal is accordingly refused.

[9] In resisting the appeal, Ms. Evelyn adverted to the law on actual and apparent bias and referred to the circumstances bearing on the suggestion that the judge was biased. She submitted that there was no suggestion or evidence of actual bias, therefore recusal on that basis must fail. With respect to presiding over the criminal matter and imposition of a custodial sentence by the learned judge, Ms. Evelyn posited that the question is whether a fair minded and informed observer, not being Riley, would consider that the learned judge would not be impartial in hearing the damages claim. Counsel considered that in a criminal matter, the judge is not a decider of facts; Riley unequivocally pled guilty in the criminal matter; the only matter that fell to be considered was sentencing; and Riley's motion concerned breaches of his rights under the Constitution.

[10] Ms. Evelyn submitted that the fair-minded observer would conclude that in the criminal matter, the judge was only doing his duty. Further, the role of the judge in a criminal matter and a civil matter differed. Coupled with the separate and different issues for consideration by the judge in the damages claim, the fair-minded and informed observer who is not unduly suspicious would conclude that there is no real danger of bias.

[11] Before proceeding further, it is instructive to refer to the legal principles governing recusal.

The law on recusal

[12] In **Otkritie International Investment Management Ltd and Ors v Mr George Urumov**,[6] Longmore LJ summarised the law on recusal as follows:

[6] [2014] EWCA Civ 1315 at paragraph 1.

> "It is a basic principle of English Law that a judge should not sit to hear a case in which the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that he was biased: see Porter v Magill [2002] 2 AC 357 para 103 per Lord Hope of Craighead. It is an even more fundamental principle that a judge should not try a case if he is actually biased against one of the parties. The concept of bias includes any personal interest in the case or friendship with the participants, but extends further to any real possibility that a judge would approach a case with a closed mind, or indeed, with anything other than an objective view; a real possibility in other words that he might in some way have 'pre-judged' the case."

[13] In **Otkritie**, the Court of Appeal reviewed the circumstances under which judges should recuse themselves for bias. The general rule is that a judge should not recuse himself, unless he either considers that he genuinely cannot give one or any of the parties a fair hearing (actual bias) or that a fair-minded and informed observer would conclude that there was a real possibility that he would not do so (apparent bias). There must be substantial evidence of actual or apparent bias before the general rule can be satisfied. The issue of recusal is extremely fact sensitive and recusal ought not to be lightly done.[7] Bias is not to be imputed to a judge by reason of his previous rulings or decisions in the same case (in which a party has participated and been heard) unless it can be shown that he is likely to reach his decision by 'reference to extraneous matters or predilections or preferences'.[8]

[14] In **Dobbs v Triodos Bank NV**,[9] Chadwick LJ gave this important guidance to judges on the issue of recusal at paragraph 7:

> "It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly, a litigant who does not have confidence in the judge who hears his case will feel that, if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If the judges were to recuse themselves whenever a litigant - whether it be a represented litigant or a litigant in

[7] See paragraph 13 of Otkritie.
[8] See paragraph 22 of Otkritie.
[9] [2005] EWCA Civ 468.

person - criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised - whether that criticism was justified or not. This would apply, not only to the individual judge but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr. Dobbs a fair hearing because he is criticising the system generally, Mr. Dobbs' appeal could never be heard."

Likewise in **Shaw v Kovac and Anor**,[10] Underhill LJ stated at paragraph 86, that:

> "One can understand in human terms that a litigant may not like the prospect of a case being heard by a judge in front of whom they have failed on a previous occasion. But the system could not operate if that were recognised as a sufficient reason for requiring recusal. It is necessary to be dispassionate. An impartial observer will generally have no difficulty in accepting that a professional judge will decide the case before him or her on its own merits and will be unaffected by how they may have decided different issues involving the same party or parties. There will of course sometimes be particular circumstances which justify a real doubt about the judge's impartiality; but nothing relied on by Mr Berkley in this case came even remotely close to doing so."

[15] Importantly, in applications for recusal, the court must be astute enough not to allow its composition to be manipulated by a litigant who seeks or sees a perceived advantage in a particular judge presiding over or not presiding over a matter. This is something the court has to guard against. In **Shaw v Kovac**, Lord Burnett LJ warned against those who may wish to manipulate the composition of the court for a perceived advantage. At paragraph 88, he observed that questions of apparent bias are to be judged from the point of view of the fair-minded and informed observer, and stated: 'The party who seeks to bounce a judge from a case may be fair-minded and informed but may very well lack objectivity. There are others who cynically seek to manipulate the composition of the court for a perceived advantage.' In similar vein, in **Beard Winter LLP v Kersasp Shekhadar**,[11] Doherty JA said at paragraph 10:

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[10] [2017] EWCA Civ 1028.
[11] [2016] OJ No. 3257 (QL).

> "...judges do the administration of justice a disservice by simply yielding to entirely unreasonable and unsubstantiated recusal demands. Litigants are not entitled to pick their judge. They are not entitled to effectively eliminate judges randomly assigned to their case by raising specious partiality claims against those judges. To step aside in the face of a specious bias claim is to give credence to a most objectionable tactic."

To the same effect, in **Virdi v Law Society**,[12] the court pointed out that, in our system, litigants are not permitted to choose their judges.

[16] The test for apparent bias has a two-staged process. The court has to ascertain all the circumstances bearing on the suggestion that the judge would be biased and ask whether all those circumstances would lead the fair-minded and informed observer to conclude that there was a real possibility that the judge was biased.[13] The facts and context are critical, with each case turning on an intense focus its essential facts.[14]

[17] In **Helow v Secretary of State for the Home Department**,[15] Lord Hope gave an insight into the construct of the fair-minded observer. At paragraph 2, His Lordship stated:

> "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) 174 ALR 655, (2000) 201 CLR 488 (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."

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[12] [2010] EWCA Civ 100.
[13] See Porter v Magill [2001] UKHL 67 at paragraph 102.
[14] See Helow v Secretary of State for the Home Department [2008] 1 WLR 2416 at paragraph 2.
[15] See n.14.

[18] As Lord Hope explained at paragraph 3 of **Helow**, the attribute that the observer is 'informed' 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 relevant matters. She is the kind of person who takes the trouble to read the text of the 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. Being fair-minded, she will appreciate that the context forms an important part of the material to be considered before passing judgment.

[19] In **Harb v HRH Prince Aziz bin Fahd bin Abdul Aziz**,[16] Lord Dyson MR highlighted the important point that the opinion of the notional informed and fair-minded observer is not to be confused with the opinion of the litigant. Further, the informed and fair-minded observer is to be treated as knowing all the relevant circumstances and it is for the court to make an assessment of these facts. The assessment of whether an informed and fair-minded observer, having considered the facts, would conclude there was a real possibility of bias, depends on an examination of all relevant facts. It was held in **Virdi v Law Society**,[17] that the hypothetical fair-minded observer is to be treated as if in possession of all the relevant facts whether publicly available or not. The Court also stated that: '[a] fair-minded observer would not reach a conclusion that a tribunal was biased or appeared to be so, without seeking to obtain the full facts and any explanation put forward by the tribunal.'[18]

[20] As has been seen, apparent bias is to be judged from the point of view of a fair-minded and informed observer. How is this given effect to at the appellate level? As stated by Mummery LJ in **Morrison and Anor v AWG Group Ltd and Anor**:

> "On the issue of disqualification, an appellate court is well able to assume the vantage point of a fair-minded and informed observer with knowledge of the relevant circumstances. It must itself make an assessment of all the relevant circumstances and then decide whether there is a real possibility of bias."[19]

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[16] [2016] EWCA Civ 556 at paragraph 69.
[17] See paragraph 41.
[18] See Virdi at paragraph 38.
[19] [2006] EWCA Civ 6 at paragraph 20.

This was endorsed by Chancellor Etherton in **Resolutions Chemicals Limited v H Lundbeck A/S**.[20] Similarly, Richards LJ stated in **National Assembly for Wales v Condron** that '[t]he Court must look at all the circumstances as they appear from the material before it, not just at the facts known to the objectors or available to the hypothetical observer at the time of the decision'.[21]

[21] In **Resolution Chemicals Limited**, Chancellor Etherton summarised a number of principles at paragraph 35, which I endorse. First, the test of apparent bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. The fundamental principle underlying both the Constitution and the common law principles is the fundamental consideration that justice should not only be done but should manifestly and undoubtedly be seen to be done.[22] The facts and context are critical. Each case turns on an intense focus on its essential facts.[23] If the fair-minded and informed observer would conclude that there is a real possibility that the tribunal will be biased, the judge is automatically disqualified from hearing the case. The decision to recuse in these circumstances is not a discretionary case management decision reached by weighing various relevant factors in the balance. Considerations of inconvenience, cost and delay are irrelevant.[24] I would add that at the appellate level the appeal court carries the mantle of the fair-minded and informed observer.

Discussion

[22] What are the circumstances bearing on the suggestion that the judge would be biased? Firstly, Riley filed an affidavit in support of the application for recusal. He stated that he pled guilty to fraudulent evasion even though the prosecution undertook not to proceed with the matter; this was also evident in the new indictment

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[20] [2013] EWCA Civ 1515 at paragraph 41.
[21] [2006] EWCA Civ 1573 paragraph 50.
[22] R (McCarthy) v Sussex Justices [1924] 1 KB 256 at 259.
[23] Man O' War Station Ltd v Auckland City Council [2002] UKPC 28 at paragraph 11.
[24] Morrison and Anor v AWG Group Ltd [2006] EWCA Civ 6 at paragraph 6.

filed. Riley also stated that he felt he was more or less forced to plead to the offence of fraudulent evasion, a charge which had been withdrawn by the prosecution. He was convicted for that offence and sentenced to prison – his conviction and sentence were vacated by the Court of Appeal. He filed a fixed date claim form seeking declaratory relief as well as damages under the **Constitution of Montserrat**,[25] coupled with damages for misfeasance in public office against the Director of Public Prosecutions.

[23] Riley deposed that the learned judge, the only judge assigned to Montserrat, adjudicated on his criminal matter and gave him a custodial sentence. He stated that he was informed by his attorney that in July 2018, the learned judge, during a hearing before him in the case of **The Queen v Claude Gerald**, stated in open court that 'hopefully, the Privy Council will get it right'.

[24] Riley stated that the learned judge's indication that the Court of Appeal was wrong makes it consistent with a reasonable belief that he could not without bias consider the issue of compensation for him. Additionally, the fact that the judge made a determination that a custodial sentence best suits him is somewhat inconsistent with a determination that he ought to be compensated.

[25] Secondly, the fact that the court must ascertain all the circumstances which have a bearing on the suggestion that the judge was biased is inconsistent with any limitation on the circumstances that should be taken into account. The material facts therefore are not limited to those which are apparent to the applicant. A fair-minded observer would not reach a conclusion that a tribunal was biased or appeared to be so, without seeking to obtain the full facts and any explanation put forward by the tribunal. In that regard, the judge's ruling on the recusal application also constitutes part of the circumstances to be considered. While it is true that, by his ruling, the judge has declared himself free from the contaminants of bias, the judge's

[25] Cap 1.01, Laws of Montserrat 2008.

declaration is not determinative of the issue and this Court is not bound to accept it at face value.[26] In fact, the statements made by a judge in a written ruling may tend to affirm or refute such a conclusion. The judge's ruling therefore remains relevant to the appellate court's assessment of whether there was any bias, actual or apparent, on the part of the judge, notwithstanding his overall conclusion that there was not.

[26] At paragraph 1 of the recusal ruling, the judge stated that he accepted Riley's guilty plea on 20th March 2017 for the offence of fraudulent evasion of duty on 8th August 2016, for which he was sentenced to two months imprisonment on 10th April 2017. At the time Riley was represented by counsel Mr. David Brandt, but later changed counsel to Mr. Warren Cassell. The learned judge continued:

> "...it appears [Mr. Cassell] on 17.04 18 persuaded the Court of Appeal the prosecution on 22.11.16 had given an 'undertaking' not to prosecute for fraudulent evasion, and in consequence, Riley's conviction following his plea was quashed. Attempt was made by the prosecution to appeal to the Privy Council but this was on 22.08.19 rejected as filed out of time. Counsel Cassell reports that in July 2018, awaiting the outcome of the Privy Council appeal, I commented on this case to the effect, '*hopefully, the Privy Council will get it right*', for which reason he argues I am biased. Further he argues that having dealt with the case at plea and sentence I will be appear to be biased. Therefore for both reasons, for actual and apparent bias, he submits I should be recused."

[27] At paragraph 5, the judge stated:

> "Accepting the decision of the Court of Appeal, of interest is the following:
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> a. During the earlier proceedings, Counsel Cassell represented the co-defendant Greenaway (a civilian, not a customs officer) who agreed he had helped Riley commit the offence, and who pleaded at the same time to fraudulent evasion, receiving a community penalty, and who curiously did not suggest his conviction was illegal as being in the teeth of the so-called prosecution 'undertaking'.
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> b. After Counsel Cassell filed simple notice of appeal for Riley on 24.04.17, the actual evidence for the complaint of wrongful conviction came from affidavits filed as late as03.04.18 by Riley, Greenaway (yet who did not appeal his own conviction), and a friend from the

[26] Locabil (UK) v Bayfield Properties Ltd [2000] QB 451 at paragraph 19.

public gallery named Roach, just two weeks before the Court of Appeal sitting.

c. Though Riley asserts he was 'forced' to plead, begging waiver of legal professional privilege, Counsel Brandt never provided any affidavit to explain why he pleaded.

d. Having read the decision of the Court of Appeal, Thom JA presiding, which was concerned about a change in indictment numbers and whether there had been on 22.11.16 a prosecution undertaking, it seems there was no discussion during the hearing of how an application by a defendant on 20.03.17 to plead to fraudulent evasion would amount to a request to set aside any earlier undertaking (if one had been given) so that if the offered plea was accepted by prosecution, and court, it would likely reverse, and by implied defence agreement dissolve, any such said earlier prosecution undertaking on 22.11.16."

[28] The judge's comments at paragraph 5 of his ruling are rather unfortunate. As already indicated, an application for recusal is very fact sensitive and context is critical. The damages claim in respect of which recusal was sought stemmed from the Court of Appeal allowing Riley's appeal against conviction in the context of an undertaking having been given not to prosecute him for the offence of fraudulent evasion of duty. The judge's comments must be examined in that context. The question, of course, is whether the fair-minded and informed observer having considered the circumstances would conclude that there is a real possibility that the judge would be biased when presiding over the damages claim.

[29] The judge's comments provide a compelling insight into his views with respect to the rectitude of the Court of Appeal's decision (a decision he was bound by) and by extension his views on the facts which underpin both the appeal and the damages claim over which he was to preside. The judge questioned the absence of an affidavit from Riley's counsel, Mr. Brandt, as to why Riley pled guilty to fraudulent evasion in light of his (Riley's) statement that he was forced to so do. The judge also referred to the undertaking as a 'so called prosecution undertaking' in commenting on the fact that Riley's co-defendant had not raised the issue of his conviction being illegal, in light of the undertaking, although he pled guilty at the same time as Riley. The learned judge's critique or criticism of the Court of Appeal's

decision, at paragraph 5(d) of his ruling, is particularly revealing. Apart from seemingly questioning whether an undertaking had in fact been given, the judge, in essence, questioned the propriety or correctness of the decision of the Court of Appeal allowing the appeal against conviction. I have no doubt that a fair-minded and informed observer would readily conclude that the learned judge would approach Riley's damages claim with a closed mind or with anything other than an objective view.

The learned judge's knowledge and prior involvement

[30] In rejecting the application for recusal, the learned judge placed great store on his knowledge, flowing from his previous involvement in the proceedings in court. He regarded this knowledge as a positive thing, highlighting the perceived benefits derivable therefrom which would serve him in good stead in hearing Riley's damages claim.

[31] In **Stubbs v The Queen**[27] Lord Lloyd-Jones addressed the issue of whether the prior involvement of a judge in an earlier stage of the proceedings should require him to recuse himself. In **Stubbs**, a trial for murder took place in 2017 against three defendants. The trial had to be aborted, but before it was, the judge made rulings on admissibility of evidence and on a no case submission. Another trial in 2013 led to their conviction; the judge had played no part in that trial. They appealed. The appeal was heard in 2015 by a panel which included the judge who had conducted the aborted trial and who, by then, had been elevated to the Court of Appeal. The appellants asked him to recuse himself on the ground of apparent bias but he refused to do so. The appeal was subsequently dismissed.

[32] On appeal to the Privy Council, the appellants relied on a basic common law principle that a judge should not sit to hear a case in circumstances where the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. That principle is harmonious

[27] [2018] UKPC 30, per Lord Lloyd-Jones at paragraph 16.

with the jurisprudence of the European Court of Human Rights which affirms the right to an independent and impartial tribunal under article 6 of the European Convention on Human Rights.

[33] In allowing the appeal, Lord Lloyd-Jones, delivering the judgment of the Board, held at paragraph 16 that it is not the case that any prior involvement of a judge in the course of litigation will require him to recuse himself from a further judicial role in respect of the same dispute. In the great majority of such cases there will simply be no basis on which it could be suggested that the judge should recuse himself, notwithstanding earlier rulings in favour of one party or another and there will often be great advantages to the parties and to the administration of justice in securing judicial continuity. The issue will only arise at all in circumstances where prior involvement is such as might suggest to a fair-minded and informed observer that the judge's mind is closed in some respect relevant to the decision which must now be made. While it is not possible to provide a comprehensive list of factors which may be relevant to this issue which will necessarily depend on the particular circumstances of each case, relevant factors are likely to include the nature of the previous and current issues, their proximity to each other and the terms in which the previous determinations were pronounced.

[34] The guidance given by the Board is very instructive for the purpose of this appeal. Applying this guidance, at the outset it is clear that the mere fact of the judge's prior involvement in the Riley's criminal matter does automatically disqualify or preclude him from presiding over the damages claim. I will however consider pertinent aspects of the judge's ruling. At paragraph 6, the learned judge reasoned that an assessment of how Riley claimed he has been wronged by the Director of Public Prosecutions will probably benefit from knowledge of the evidence and plea proceedings, which he (the judge) has. He remarked that knowledge is not automatically bias and that while bias suggests an irrational outlook, knowledge suggests a rational one. The judge further stated that, in principle, being true as best as he can to his judicial oath to act fairly without fear or favour, knowledge will

likely add to a just decision, whereas ignorance of the earlier proceedings may lead to an unjust one.

[35] In continuing with the theme of knowledge, the learned judge stated at paragraph 8 that the informed third-party observer would expect him (the original judge) to sit on the case because of fear that an uninformed judge might be taken advantage of by the parties, in particular perhaps by Riley's counsel, Cassell. This would not arise where there is knowledge of what has happened in the proceedings. He went on to say: 'being rid of me would likely be thought by an observer to be a defence tactic precisely because I do know about the case'.

[36] In furtherance of his discourse on knowledge, the learned judge reasoned that it was not uncommon in a small jurisdiction as Montserrat for a judge to know more about court matters than in larger population groups (where there is also the luxury of finding another judge). The third-party expects the judge to have some knowledge and to do the case, precisely because of his knowledge of its earlier life in court. The third- party would also expect him to be robust in applying his oath. In the circumstances, the judge concluded that this was not a case in which recusal for apparent bias was appropriate.

[37] The learned judge went on however to make important pronouncements which lead this Court to conclude that because of his prior involvement in the matter, he would not approach Riley's damages claim with an open mind. His Lordship's comments at paragraphs 10 and 11 are particularly instructive and indubitably attest to that. At paragraph 10, His Lordship stated that he knew a plea of fraudulent evasion was offered on 20th March 2017 (with a limited maximum of two years) to avoid a trial due to start that day against Riley and Greenaway for conspiracy to defraud (with a maximum life imprisonment) which explains why it was attractive to the defence of both to ask so to plead. Critically, he added:

> "I also know the quality and strength of the evidence as trial was due to start, and I had seen the video of Riley slipping the goods out of bond without paying duty, meaning I am in a position to adjudicate on whether

> the DPP was engaged in misfeasance, whether a miscarriage of justice has arisen, and what scale of damages, if any, might arise in light of the conviction being quashed."

At paragraph 11, the judge continued:

> "As the case develops, if I or the parties sense my mind is closing unfairly, then I will encourage further argument as to actual bias. But for now, in my judgment the case should proceed to trial before me as the designated Judge on Montserrat who knows what happened earlier, and I look forward to what Riley will say about the cctv footage and why he pleaded, and to what Counsel Cassell will say about the absence of any affidavit from Counsel Brandt, nor appeal from Greenaway who became Riley's witness on appeal, plus how best to assess the alleged undertaking of 22.11.16 and what if any damages arise in the face of the incriminating evidence."

[38] I note that the appearance of bias as a result of pre-determination or pre-judgment is a recognised ground for recusal and the appearance of bias includes a clear indication of a prematurely closed mind: see **Steadman–Byrne v Amjad and Ors**.[28] As indicated earlier, the concept of bias extends to any real possibility that a judge would approach a case with anything other than an objective view, a real possibility that he would pre-judge the case. I am satisfied that the terms in which the judge has expressed his views throw real doubt about his ability to approach Riley's damages claim with an objective judicial mind.

[39] At paragraph 11 of his recusal ruling, the learned judge stated that, '[w]hile it may well be I have early thoughts on the merits, I do not consider this knowledge is bias, in the sense that it gives rise to irrational thought processes, and instead I am sure that I still have an open mind, for now'.

[40] It is perfectly proper for a judge, having pre-read the papers and skeleton arguments to have a provisional view before coming into court. It is well recognised that a judge will commonly begin forming views about the evidence as it goes along, and he may legitimately give assistance to the parties by telling them what is presently in his mind. For this disclosure enables the parties to know the way he was currently

[28] [2007] 1 WLR 2484 at paragraph 16.

thinking and accordingly where attention needed to be focussed (more particularly by the claimant) to change his mind: see **Costello v Chief Constable of Derbyshire**.[29] In **Arab Monetary Fund v Hashim**,[30] Bingham MR said at page 356 A-C:

> "But on the whole the English tradition sanctions and even encourages a measure of disclosure by the Judge of his current thinking, it does not sanction the pre-mature expression of factual conclusions or anything which may prematurely indicate a closed mind."

[41] It is proper for the judge to inform the parties of his view so long as he did not give the impression that he had a closed mind on the issue. The test of apparent bias does not prevent the judge from expressing certain views 'along the way'. What is not allowed is for him to express views that demonstrate that he or she has reached a concluded view on something prematurely. There must not be a premature formation of a concluded view adverse to a party. Bias in this case means the premature formation of a concluded view adverse to a party. It is, however, unacceptable for the judge to form or to give the impression of having formed a firm view adverse to the credibility of Riley, even before hearing evidence in his damages claim. The judge was approaching the matter with a closed mind, notwithstanding his comment that his mind was open. He clearly erred in so doing.

[42] In his recusal decision, the learned judge went on to seemingly express ambivalence as to whether he made the remark 'hopefully the Privy Council will get it right'. He explained that:

> "The undated suggested remark in July 2018, '*hopefully the Privy Council will get it right*', if it was said, is not *ad hominem*, and it seems does not obviously show a closed mind, but instead a curiosity as to what they will make of Riley's unusual suit, which amounts to (*sic*) complaint he should not have been allowed to ask to plead guilty to lesser fraudulent evasion to avoid trial on conspiracy to defraud."

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[29] [2001] EWCA Civ 381 at paragraph 9.
[30] [1993] 6 Admin LR 348, cited at paragraph 27 of Jiminez v London Borough of Southwark [2003] EWCA Civ 502.

In my view, the explanation advanced by the learned judge, stripped of its niceties, is essentially reflective of the continuation of the theme that the Court of Appeal got it wrong in quashing Riley's conviction.

[43] The language which Riley complained about, ('hopefully the Privy Council will get it right') and the earlier mentioned critical pronouncements in the judge's recusal decision, demonstrate that the learned judge was satisfied that the Court of Appeal erred in quashing the conviction; he knew all the evidence; he had reviewed the incriminating evidence against Riley; he presided at the assizes when Riley pled guilty and knew what transpired there; Riley's counsel would not be able to take advantage of him at the damages hearing and he, the learned judge, was in fact, just waiting to put things right in the damages claim. Also, the judge's assertion that the informed third party would expect him to do the case precisely because he knows of its earlier life in court, rather than allaying the fears of the well-informed third party, would fortify such fears. The fair-minded and well-informed observer would recognise that the learned judge had serious issues with the rectitude of the Court of Appeal's decision; a matter which is extraneous to the determination of the damages claim and was not a matter which the judge should seek to re-examine. There are real grounds for doubting the judge's ability to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the claim.

The judicial oath

[44] The learned judge also addressed the issue of the sanctity of his oath as judicial officer.[31] The judicial oath is one of the relevant matters which the fair-minded and informed observer is aware of and takes into account when determining the question of apparent bias.[32] The informed observer would know that a judge is supposed to be true to his judicial oath. In the context of apparent bias, much weight has been

[31] See paragraphs 6, 7 and 8 of the judge's recusal ruling.
[32] R v S (RD) [1997] 3 SCR 484 per Cory and Iacobucci JJ at paragraph 111.

placed on the judicial oath of office and the fact that professional judges are trained to judge and to judge objectively and dispassionately.[33]

[45] The issue of the judicial oath was however revisited in **Helow**. The question was whether there was a real possibility that Lady Cosgrove was biased by reason of her membership of an association and her receipt of its quarterly publication which contained some articles which were fervently pro-Israeli and antipathetic to the Palestine Liberation Organisation ("the PLO") of which the appellant was a member. It was held that there was no real possibility of bias in her case. Some of the reasons advanced and factors taken into account were that: (i) the context of the case was crucially important; (ii) Lady Cosgrove was a professional judge with years of relevant training and experience; and (iii) the taking of the judicial oath – albeit as more of a symbol than of itself a guarantee of the impartiality which any professional judge is by training and experience expected to practice and display.

[46] In addressing the issue of the judicial oath at paragraph 57, Lord Mance referred to **R v S (RD)**[34] where it was said at paragraph 117 that:

> "Courts have rightly recognised that there is a presumption that judges will carry out their oath of office... This is one of the reasons why the threshold for the successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced by 'cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias."

After quoting from paragraph 119 of the judgment, Lord Mance concluded:

> "So viewed the judicial oath appears to me more a symbol rather than of itself a guarantee of the impartiality that any professional judge is by training and experience expected to practice and display. But on no view can it or a judge's professional status and experience be more than one factor which a fair-minded observer would have in mind when forming his or her objective judgment as to the risk of bias."

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[33] See for example Jones v DAS Legal Expenses Insurance Co. Ltd. and Ors [2003] EWCA Civ 1071, per Warf LJ at paragraph 28(vi).
[34] [1997] 3 SCR 484.

[47] I endorse the view expressed in **Helow** that the judicial oath appears to be more a symbol rather than of itself a guarantee of the impartiality that any professional judge is by training and experience expected to practice and display. It is just one of the factors which would inform the view of a fair-minded observer in arriving at her or his objective judgment as to the risk of bias and is not conclusive of whether a judge should recuse himself on the basis of apparent bias.

Doubts as to need for recusal

[48] Interestingly, in paragraph 11 of his ruling, the learned judge also left open the possibility of reviewing his decision not to recuse. He asserted that it was an interim decision to be kept under review but, as the case develops, if he or the parties sense his mind is closing unfairly, then he will encourage further argument as to actual bias. It appears to me that this is a rather peculiar stance to adopt. In **Locabil (UK) v Bayfield Properties Ltd**,[35] the court said that because proof of actual bias is very difficult, the policy of the common law is to protect litigants who can discharge the lesser burden of showing a real danger of bias without requiring to show that such bias actually exists.

[49] Where there are real grounds for doubt as to a lack of bias, the doubt must be resolved in favour of recusal. Bias is an attitude of mind that prevents the judge from making an objective determination of the issues that he or she has to resolve. It may arise from particular circumstances which, for logical reasons, predispose a judge towards a particular view of the evidence or the issues before him.[36] The law distinguishes actual bias from apparent bias. Actual bias is subjective and deals with the judge's state of mind. Apparent bias is objective and deals with the judge's conduct and the surrounding circumstances. Where a judge is actually biased in a decision, then justice has not been done. Where a decision is tainted by apparent bias, then justice is not seen to be done. Cases holding that there has been actual

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[35] [2000] QB 451 at 472.
[36] Re Medicaments and related Classes of Goods (No.2) [2001] ICR 564 at paragraph 37.

bias employed by a judge are rare. Most cases dealing with bias are argued and decided on the basis of apparent bias.

[50] How does a judge assess whether there should be a recusal? It must be stressed that the assessment as to whether there should be a recusal for apparent bias is not a matter for the discretion of the judge. There was either a real possibility of bias in which case the judge was disqualified by the principle of judicial impartiality, or there was not, in which case there was no valid objection to trial by him.[37] To put it otherwise, either there should be a recusal based on an application of the fair minded observer test or there should not. So, disqualification of a judge for apparent bias is not a discretionary matter. The Supreme Court of Canada recalled in **Wewaykum v Canada**[38] that the public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must also do so without bias or prejudice and must be perceived to do so. The essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind.

[51] In the present case, the application for the judge to recuse from hearing the damages claim was taken in advance of the trial. As Mummery LJ observed in **Morrison and Anor v AWG Group Ltd** at paragraph 9, where the hearing has not yet begun, there is scope for the sensible operation of the precautionary principle. If, as in the present case, the court has to predict what might happen if the hearing goes ahead before the judge to whom objection is taken and to assess the real possibility of apparent bias arising, prudence naturally leans on the side of being safe rather than sorry. Chancellor Etherton at paragraph 38 of **Resolution Chemicals Limited** referred to and endorsed the passage from Mummery LJ. The Chancellor referred to the fact that Mummery LJ pointed to the practical difference between an objection to the judge based on facts discovered during the course of, or only at the end of, the hearing and a situation where the objection is taken before the hearing has begun. In the latter situation, he observed that there is scope for the

[37] Morrison and Anor v AWG Group Ltd [2006] EWCA Civ 6 at paragraph 20.
[38] 2003 SCC 45 at paragraphs 57 and 58.

sensible application of the precautionary principle, that is to say prudence naturally leans on the side of being safe than sorry.

[52] At paragraph 39 of **Resolution Chemicals Limited**, Chancellor Etherton said that the precautionary principle is a sensible one in view of the obvious practical complications if there is an appeal from a refusal to recuse or if there is a challenge made on the basis of actual or apparent bias at the end of the case. The overriding objective that justice should be seen to be done and of the need to maintain the confidence of society in general, and of the parties in particular, in the administration of justice also promotes a disposition of a judge to accede to a recusal application when it is made by a party's legal advisors. At paragraph 40, the Chancellor recognised the importance of distinguishing between a pragmatic precautionary approach and the application of the test itself. If a fair-minded and informed observer, having considered the facts, would not conclude that there is a real possibility that the tribunal will be biased, then the objection to the judge must fail even if that leaves the applicant dissatisfied and bearing a sense that justice will not or may not be done.

[53] Of course, the position is that if a fair-minded and informed observer would conclude that there is a real possibility that the tribunal is biased, the judge must recuse himself.[39] Further, if there is a real ground for doubt, that doubt should be resolved in favour of recusal. A closed mind is the very antithesis of fairness. In the circumstances, I am of the view that a judge, having refused a recusal application, should not embark on hearing a matter and wait to see whether there comes a time where he or the parties sense that his mind is closing unfairly, then make a decision, after encouraging further arguments from the parties on actual bias, whether he should recuse himself. I very much doubt whether such a position should be encouraged or countenanced, having regard to the law on recusal.

Inconvenience, costs and delay occasioned by recusal

[39] Dorman & Ors v Clinton Devon Farms Partnership [2019] EWHC 2988 QB at paragraph 59.

[54] At paragraph 8 of the learned judge's ruling, His Lordship makes passing mention of possible logistical or budgetary implications attendant on the success of the recusal application, in support of the view that he should not recuse himself from hearing Riley's damages claim. At paragraph 8, the learned judge stated:

> "Noting I am the lone designated judge on Montserrat, I leave aside it may be too expensive always to find other judges in every case where knowledge arises, as might be easier to do for example in London, and observe merely that in my experience of three years on island the folk of Montserrat will expect me to do this case precisely because I know about its earlier life in court."

[55] The decided cases however do not countenance such considerations as having bearing on the question of disqualification or recusal by virtue of apparent bias. Quite oppositely, it is clear that once the test of apparent bias is satisfied, the judge is automatically disqualified from hearing the case and considerations of inconvenience, cost and delay are irrelevant.[40] These considerations do not count where the principle of judicial impartiality is invoked. The importance of the trial being seen to be fair takes precedence. This is because it is a fundamental principle of justice both at common law and under the Constitution. If on an assessment of all the relevant circumstances, the principle either has been, or will be, breached, the judge is automatically disqualified from hearing the case. It is not a discretionary case management decision reached by weighing various relevant factors in the balance.[41]

[56] The learned judge's concerns about the prejudicial effect that his withdrawal from the trial would have on the parties and the administration of justice are totally irrelevant to the crucial question of bias and his disqualification. In terms of time, cost and listings, it might well be more efficient and convenient to proceed with a trial but efficiency and convenience are not the determinative legal value: the paramount concern of the legal system is to administer justice, which must be and must be seen by the litigants and fair-minded members of the public to be fair and

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[40] Man O' War Station Ltd v Auckland City Council [2002] UKPC 228 at paragraph 11.
[41] Morrison v AWG Group Limited [2006] EWCA Civ 6 at paragraph 6.

impartial. Anything less is not worth having.[42] Disruption to the administration of justice is irrelevant to the crucial question of the real possibility of bias.[43]

Conclusion

[57] Having conducted the requisite assessment, and for the reasons given, I am of the firm view that the learned judge erred in not acceding to the recusal application. Justice and fairness required recusal as the fair-minded and informed observer, having considered the facts, would have concluded that there was a real possibility that the learned judge was biased, and in particular, that he would have approached the matter with a closed mind.

[58] I would accordingly order that:

(1) The application to strike out the appeal is dismissed.

(2) The appeal is allowed.

(3) The decision of the judge not to recuse himself is set aside.

(4) A different judge is to be assigned to conduct the hearing of the matter.

(5) The appellant is awarded costs to be assessed by a Master, if not agreed within 21 days.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

EASTERN CARIBBEAN SUPREME COURT
SEAL
COURT OF APPEAL

By the Court

Chief Registrar

[42] Morrison and Anor v AWG Group Limited [2006] EWCA Civ 6 at paragraph 29.
[43] Bates & Ors v Post Office Limited [2019] EWHC 871 (QB) at paragraph 76.