**JAMAICA**

**[2014] JMCA Civ 39**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 14/2014**

**BEFORE: THE HON MR JUSTICE MORRISON JA**
**THE HON MR JUSTICE DUKHARAN JA**
**THE HON MRS JUSTICE MCDONALD-BISHOP JA (Ag)**

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| **BETWEEN** | **BARTHOLOMEW BROWN** | **1ST APPELLANT** |
| **AND** | **BRIDGETTE BROWN** | **2NDAPPELLANT** |
| **AND** | **JAMAICA NATIONAL BUILDING SOCIETY** | **RESPONDENT** |

**AND**

**SUPREME COURT CIVIL APPEAL NO 29/2009**

**APPLICATION NO 26/2014**

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| **BETWEEN** | **BARTHOLOMEW BROWN** | **1ST APPLICANT** |
| **AND** | **BRIDGETTE BROWN** | **2NDAPPLICANT** |
| **AND** | **JAMAICA NATIONAL BUILDING SOCIETY** | **RESPONDENT** |

**AND**

**APPLICATION NO 99/2014**

| | | |
|---|---|---|
| **BETWEEN** | **BARTHOLOMEW BROWN** | **1ST APPLICANT** |
| **AND** | **BRIDGETTE BROWN** | **2NDAPPLICANT** |
| **AND** | **JAMAICA NATIONAL BUILDING SOCIETY** | **RESPONDENT** |

**Bartholomew Brown and Bridgette Brown in person**

**Garth McBean QC for Jamaica National Building Society**

**2 and 24 October 2014**

**MORRISON JA**

[1] Applications Nos 26 and 99/2014 and SCCA No 14/2014 were all heard together on 2 October 2014, at which time the court reserved its judgment. This is the judgment of the court, to which all members of the court have contributed, in respect of all three matters.

**APPLICATION NO 26/2014**

[2] The 1st and 2nd applicants, Bartholomew and Bridgette Brown ('the Browns'), by way of an application entitled 'NOTICE OF APPLICATION TO VARY THE DECISION OF THE SINGLE JUDGE', seek the following orders:

> "1. An order that the judgment of the single judge; [sic] the Hon. Mrs. Justice Harris delivered in Chambers on February 4, 2014 against taxation be vary [sic] by the full court.

2. AND Further, an order that the same judgment be set aside, as the judgment was wronged [sic] in law, pursuant to authorities and guidance's [sic] of the Former President of the Judicial Committee of the Privy Council that supports the Appellants [sic] argument in awarding of costs for litigants in person.

3. And FURTHER, FURTHER, that: The overriding objective (of the CPR) is that the court should deal with cases justly. That includes, so far as is practicable ensuring that each case is dealt with not only expeditiously but also fairly.

4. That the Respondent pays the costs to hear this application.

5. Such further or other relief that this Honourable Court demes [sic] just."

[3] The Browns have stated their grounds for this application to be as follows:

"i. That her ladyship erred in assuming that the Applicants in person are not entitled to the amount of hours spent in researching the complex issues in regards to the Limitation of Actions of Action [sic] 21 James 1, c.16 (1623).

ii. That the judge erred pursuant to guidance that guided the court in dealing with costs in regards to litigants in person. Her lady erred in principle of these guidance and authorities.

iii. That her lady erred pursuant to these paragraphs [5,6,7,8-9] in her judgment, that seek the attention of the full court. That the judged [sic] in Chambers erred and had misdirected herself pursuant to Authorities of the Court of Appeal in England, that guided the Appellants.

iv. That Her Ladyship erred in not using the authority and guide to assist her. Pursuant to the England [sic] Civil Procedure Rule that should help the court, as there is none in Jamaica to assist her in our own CPR for litigants in person. Furthermore, her lady does have conflict of interest in the matter.

v. In principle her ladyship erred in law and facts, which supported and grounded the Appellants Costs in taxation for litigants in person. The said judgment

> of March 4, 2010 affirmed that the Limitation of Actions Act is not in a satisfactory state. @Paragraphs [38]&[43]."

[4] The application is opposed by the respondent, Jamaica National Building Society ('JNBS').

**The background**

[5] This is one of several satellite proceedings emanating from a single claim filed by the Browns against JNBS in the Supreme Court on or around 6 June 2007. The claim is still pending following an aborted trial. In one of those proceedings brought before this court, on 4 March 2010, the Browns, being self-represented, were successful in an appeal they brought against orders made by Morrison J on 24 November 2008 striking out their claim on the basis that it was statute-barred and entering summary judgment for JNBS. As a result, JNBS was ordered by this court to pay the Browns' costs of the appeal.

[6] Pursuant to that order, the Browns submitted to the registrar an amended bill of costs setting out various items in respect of which they sought to recover costs totaling $1,107,402.25. Included in those items of costs was the sum of $770,000.00 claimed in the following terms:

> "In March 2009 the Appellants spent some 110 hours preparing Notice of Appeal at $7000.00 per hour."

[7] The registrar taxed the costs in the sum of $216,000.00 disallowing some items as claimed, in particular, the sum of $770,000.00. For some items in respect of which the Browns claimed $7,000.00 per hour, the registrar only allowed $4,500.00 per hour.

[8] The Browns appealed by way of a procedural appeal to a single judge in chambers against the taxation of the registrar. The appeal was considered on paper by Harris JA pursuant to rule 2.10(3) of the Court of Appeal Rules 2002 ('the CAR'). Harris JA, having considered the several grounds of appeal put forward by the Browns, documented her findings in a written judgment delivered on 4 February 2014, **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2014] JMCA Civ 8. The written judgment has obviated the need for us to restate all that the learned judge found in relation to the appeal. Suffice it to say, by way of background for present purposes, that the learned judge did not agree with the Browns that the registrar should have allowed the sums they claimed for some of the items.

[9] Harris JA also noted, which we have also observed, that although it was an appeal against taxation, the Browns did not set out the items of costs appealed against in keeping with the requirements of the Rules. She, however, considered it fit to consider the appeal in the interest of justice. We have approached our consideration of this application with the same motive in mind, that is, to ensure that justice is done despite non-compliance by the Browns with the rules of court.

[10] The Browns made very detailed written submissions in support of the application. However, substantial portions of those submissions are irrelevant to the issues to be determined on this application. Having heard the oral arguments of Mr Brown who addressed the court on their behalf, we have managed to reduce the core of their complaint against the learned judge's decision as being, primarily, embodied in ground

(iii) of their notice of application. Ground (iii) makes specific reference to the impugned paragraphs of the learned judge's decision and is, more or less, intertwined with all the other grounds. By way of reminder, ground (iii) reads:

> "That her lady erred pursuant to these paragraphs [5,6,7,8-9] in her judgment, that seek the attention of the full court. That the judged [sic] in Chambers erred and had misdirected herself pursuant to Authorities of the Court of Appeal in England, that guided the Appellants."

[11] In an attempt to promote a clear understanding of the issues that have arisen for resolution on this application, we have seen it fit to outline briefly the relevant findings of the learned judge that are being challenged by the Browns before this court.

**The challenged decision of the single judge**

[12] *Disallowance of items not included in bill of costs:* In paragraph 5 of her judgment, Harris JA dismissed, as being irrelevant to the appeal on taxation, the question posed by the Browns as to whether they were entitled to receive costs for attendance at the two days hearing of the appeal on 2 and 3 November 2009. She found that they did not list their attendance for the two days as an item for taxation in their bill of costs and so that was not an item before the registrar to be allowed on taxation.

[13] *Refusal to award indemnity costs:* The learned judge also rejected the Browns' contention that costs should have been awarded in accordance with the indemnity principle. In rejecting that argument at paragraph [6] of her judgment, she opined:

> "The case is not a complex one. The registrar, in assessing the costs, was required to adhere to the basic costs principle, in accordance with the schedule to the Court of Appeal Rules. There is no rule requiring her to have taxed the costs in accordance with the indemnity principle. Nor is there any reason for her to have done so."

[14] *Claim for time spent was unreasonable:* In relation to the hours claimed by the Browns for preparation of the appeal, Harris JA found, as stated in paragraph [7] of her judgment:

> "[7] The hours claimed by the appellants in relation to various items were unreasonable. The registrar correctly assessed and allowed the hours spent by the appellants in respect of each item. However, on three items, she erroneously fixed the hourly minimum rate of the costs at $4,500.00. By the basic costs schedule, the hourly costs are calculated at a minimum rate of $6000.00. In keeping with the provision of the schedule, the hourly rate ought to have been calculated by the registrar at $6000.00. As a consequence the appellants would have been entitled to $6,000.00 per hour instead of $4,500.00."

Following on this finding, the learned judge made an upward adjustment in the costs awarded by the registrar bringing the sum awarded to $232,490.00. The taxation of the registrar with respect to the other items remained unchanged.

[15] *Irrelevant issues raised on appeal:* In paragraph [8], Harris JA found, as being irrelevant to the taxation of costs on appeal, the following questions posed by the Browns:

> "Should the Registrar take into account the Conduct [sic] of the Respondent? Whether the Respondent's [sic] and their Attorney's [sic] are abusing the process of the Courts? And if so should she invoke the Indemnity Costs Principle?

> Whether there was any Procedurals [sic] Fraud committed by these individuals? [sic] Were the Courts [sic] process been [sic] abused by the Respondent's [sic] and Mr. McBean?"

[16] *No entitlement to wasted costs:* Harris JA also ruled in paragraph [9] that there was nothing to show that the Browns would have been entitled to recover an amount for wasted costs. She maintained that the allowance of basic costs at the rate of $6,000.00 per hour, as specified by the schedule to the CAR, was reasonable.

**Discussion and findings**

**Whether learned judge wrong in disallowing costs for time spent preparing appeal**

[17] We have examined each ground of the Browns' complaint, in turn, albeit not necessarily in the order they were presented in the application. This is in an effort to bring some measure of order and coherence in our consideration of the matters raised by the Browns.

[18] In ground (i) of the notice of application, the Browns contend that Harris JA "erred in assuming that the Applicants in person are not entitled to the amount of hours spent in researching the complex issues in regards to the Limitation of Actions of Action [sic] 21 James 1, c.16 (1623)". This ground is connected to ground (iii) which contains, in part, the complaint in relation to the learned judge's findings, set out in paragraph [7] of the judgment, that she found the claim for time spent as being unreasonable. It is also connected to ground (v).

[19] We have tried our best to distill the gravamen of the Browns' submissions concerning the refusal of the learned judge to allow the costs claimed for the time spent in preparing the case for appeal. According to them, the learned judge was wrong to conclude that the matter was not a complex one and that the costs claimed for the time spent preparing the case were unreasonable. They pointed out that they had spent "numerous hours" doing research on the law relating to the Limitation of Actions Act given the unclear state of the law in Jamaica on this statute. They also argued that the time spent was, in fact, more than what was actually claimed as they spent "countless hours in the Supreme Court library just to find a case on the issue of conceal [sic] fraud". They said that they had to examine several cases on the various statutes of limitation in England to ascertain the correct position of the law.

[20] The Browns, in advancing the 'complexity – of – the – case' argument, relied on the dictum of K Harrison JA in a previous judgment of this court involving these same parties in **Bartholomew Brown and Bridgette Brown v Jamaica National Building Society** [2010] JMCA Civ 7. Therein, the learned judge stated at paragraph [38]:

> "[38] It is against this background that Morrison J came to consider JNBS' application to strike out the claim on the ground that it was statute barred. The law governing the limitation of actions in Jamaica is not, in our view, in an entirely satisfactory state. Section 46 of the Limitations [sic] of Actions Act explicitly drives one back nearly 400 years to the United Kingdom Statute 21 James 1 Cap 16, a 1623 statute (and the first limitation statute) passed in England. Section 46 acknowledges that statute as one 'which has been recognized and is now esteemed, used, accepted and received as one of the statutes of this island'."

[21] The Browns' contention as expressed in ground (v) of their application is that "the said judgment of March 4, 2010 affirmed that the Limitation of Action Act is not in a satisfactory state. In the light of that, they had the privilege of familiarising themselves with these difficult statutes (the limitation statutes of Jamaica and the England) and so for Harris JA "to affirm that the Limitation of Actions Act is not a complex issue for a first timer using the courts was unfortunate". According to them, "[s]everal senior Attorneys-at-law affirm that that is not true" and so against that background, the quantum of hours allowed by the registrar should be increased.

[22] Mr McBean QC, in a succinct response to this point, directed the attention of the court to the bill of cost which shows that the Browns claimed 110 hours for preparation of the notice of appeal. He pointed out that this was reduced by the registrar to five hours. According to learned Queen's Counsel, the learned judge had found the time claimed by the Browns as being unreasonable and so her findings ought not to be disturbed.

[23] We have considered all that the parties have urged on us on this issue. We find that the dictum of K Harrison JA relied on by the Browns does not assist them in successfully arguing that Harris JA was wrong in finding that the claim for 110 hours for the preparation of the notice of appeal was unreasonable. It was the choice of the Browns to embark on a research of legislation that has no application to Jamaica and which was not necessary to the presentation of their case on appeal.

[24] The CAR, by virtue of rule 1.18, have expressly incorporated the basis for the quantification of costs as set out in rule 65.17 of the Supreme Court of Jamaica Civil Procedure Rules, 2002 ('the CPR'). Those provisions are, therefore, applicable to the consideration of costs by this court. Rule 65.17 (1) states:

> "65.17 (1) Where the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount –
>
> (a) that the court deems to be reasonable; and
>
> (b) which appears to the court to be fair both to the person paying and the person receiving such costs."

Rule 65.17 (3) then provides that in deciding what would be reasonable, the court must take into account all the circumstances which include, among other things, the time reasonably spent on the matter and the novelty, weight and complexity of the matter.

[25] Harris JA, evidently, applied her mind to the circumstances of the case as was required of her by the CAR and having done so, she found that the case was not a complex one and that the claim in relation to the time spent was unreasonable. There is nothing to say that, as a matter of law, the learned judge was wrong in coming to such a conclusion in her quantification of the costs. We would not disturb her findings on this issue as there is no proper basis presented for us to do so.

**Whether the Browns are entitled to indemnity costs**

[26] In paragraph [6] of her judgment, Harris JA explained her rejection of the Browns' contention that they are entitled to have their costs assessed in accordance

with the indemnity principle. They are maintaining that indemnity costs should have been awarded based on the conduct of JNBS and its attorney-at-law. They argued that JNBS "has conducted the proceedings improperly, unreasonably and fraudulently in pleading the statute of limitation when they knew they had fraudulently concealed facts from the applicants". According to them, the court "should express that such conduct will not be tolerated much further".

[27] Mr McBean, in response to the Browns' argument, submitted that they are not entitled to costs on such a basis. He cited a very useful decision of Brooks J (as he then was) in **Michael Distant & Anor v Nicroja Limited et al** Claim No 2010 HCV 1276 delivered 8 March 2011. Brooks J, during the course of an insightful discourse on the issue of indemnity costs, restated the instructive dictum of Coulson J, in **Noorani v Calver** [2009] EWHC 592, the relevant portion of which states:

> "If indemnity costs are sought, the court must decide whether there is something in the conduct of the action, or the circumstances of the case in question, which takes it out of the norm in a way which justifies an order for indemnity costs."

[28] Having paid due regard to the law as it relates to the award of indemnity costs, generally, we are moved to conclude that there is no basis for the award of such costs as contended by the Browns. The registrar was under no legal obligation to award such costs and, so, was duly entitled to allow the costs on the basis she did. Also, Harris JA was correct in concluding that there was no basis for an award of costs in accordance with the indemnity costs principle. We see no good reason to disturb the findings of the learned judge on this issue.

**Whether the Browns are entitled to wasted costs**

[29] In paragraph [9] of her judgment, Harris JA, in dealing with the, then, ground six of the appeal before her, found that there was nothing to show that the Browns would have been entitled to recover an amount for wasted costs. The Browns' reason for claiming that they should have been awarded wasted costs is, again, based on the conduct of JNBS that they said had turned the matter into a "very complex and vexatious dispute".

[30] Wasted costs are awarded by the court in the circumstances prescribed by rules 64.13 and 64.14 of the CPR. Those rules, by virtue of rule 1.18 of the CAR, are also applicable to this court. This court, in awarding costs to the Browns upon completion of the appeal, had made no order for wasted costs. The registrar, without such a directive from the court, could not have awarded such costs on her own initiative. There was no basis, in fact or in law, for Harris JA to have made such an award. She was, therefore, not wrong in refusing to award wasted costs. There is no reason for this court to interfere with that finding and to order otherwise.

**Whether learned judge erred in ruling certain matters as being irrelevant**

[31] The Browns have also taken issue with the findings of Harris JA in paragraphs [5] and [8] of her judgment. In paragraph [5], Harris JA expressed her finding that they did not list their attendance for the two days hearing of the appeal as an item for taxation in their bill of costs and so they could not recover for such items not claimed. We find no problem with that conclusion of the learned judge and so we have no basis to disturb it.

[32] Having considered the questions posed by the Browns concerning the conduct of JNBS and its attorney-at-law that Harris JA had addressed in paragraph [8] of her judgment, we find that the judge was correct in her findings that those questions were irrelevant. We, therefore, agree with the learned judge's disposal of those questions and see no proper basis on which her findings can be disturbed.

**Whether judge erred in failing to rely on English authorities on award of costs to self-represented litigants**

[33] In considering the remaining aspects of the grounds of appeal set out in grounds (ii), (iii) (in part) and (iv), we find that they can be combined, summarised and presented as a single ground which would be that the judge erred in not following the guidance provided by the English authorities cited to her with respect to the award of costs to self- represented litigants. According to the Browns, there is no authority in Jamaica to guide judges on this matter and Harris JA ought to have adhered to the guidance given by the English authorities. They pointed to the English Civil Procedure Rules, in particular, CPR 48.6 (3) that provide for the award of costs to litigants in person as well as section 51 of the Supreme Court Act, 1981 (England). They cited the following English authorities, **R** (**on the Application of Wulfsohn v Legal Service Commission**) [2002] EWCA Civ 250 at paragraphs [17-24]; **Malkinson v Trim** [2002] EWCA Civ 1273; and **Callery v Gray** [2001] EWCA Civ 1117, [2001] WLR 2112. We have examined those authorities.

[34] The submissions of the Browns and the authorities they have cited have proved rather informative as to the approach of the English courts on the issue of costs to self-

represented litigants. However, the statutory instruments cited by the Browns and on which the decisions are based are not applicable to Jamaica. Accordingly, such authorities are not binding on the courts in Jamaica and would be, at best, persuasive, if they are found to be useful for our purposes. Therefore, Harris JA was not obliged to follow them. Having regard to the provisions of our CAR, she formed the view that an allowance of basic costs at the rate of $6,000.00 per hour, as specified by the schedule to those rules, was reasonable. We have no good reason to interfere with that finding.

[35] We find, therefore, that there is no merit in the complaint of the Browns that the judge erred in not adhering to the guidance of the authorities on the issue and that she had misdirected herself pursuant to authorities of the English Court of Appeal from which they have received guidance. These grounds also fail as a basis on which to vary or set aside the orders of the learned judge.

**Conclusion**

[36] We conclude that the Browns have failed to establish any basis on which the findings and orders of Harris JA made on 4 February 2014 on their appeal against the taxation of costs by the registrar should be varied or set aside. Accordingly, we would refuse the application to vary or set aside the order of the single judge with costs to JNBS.

**APPLICATION NO 99/2014**

[37] This is an application by the Browns asking this court to review an order it had made on 24 October 2008. They seek several orders from this court which are not

necessary for present purposes to be set out verbatim. Suffice it to say that the application reads thus in paragraph 1:

> "(1) The Applicants seeks [sic] the attention of this Honourable Court to enlarge its numbers and review its Order delivered on 24 October 2008 and have it set aside. And further, to interpret the fundamental principle of CPR rule 30.4(3) 2002, the Justice [sic] of the Peace Jurisdiction Act [79] and the Justice [sic] of the Peace Official Seal [sic] Act section 9-1 (a & b) on some serious fundamental points. Pursuant to rule 30.4(3) of the Jamaica Civil Procedure Rules 2002 that avers thus:
>
> > '(3) No affidavit may be admitted into evidence if sworn or affirmed before the attorney-at-law of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such attorney-at-law'."

[38] A brief history of this case shows that Mr Byron Ward, who was legal counsel employed to JNBS, swore to an affidavit on 15 April 2008, witnessed by Mr Earl Jarrett, general manager of JNBS. This affidavit was relied on by JNBS in its application to extend time to file a defence. The Master granted the application on 8 May 2008. The Browns sought to challenge the Master's order. However, an application for an extension of time to appeal the order was refused by this court on 24 October 2008.

[39] By their application, the Browns are asking this court to determine the following issues.

> (1) What is the correct interpretation of rule 30.4 (3) of the Civil Procedure Rules.

(2) Whether the Master erred in ruling that the affidavit of Mr Byron Ward was admissible.

(3) Whether section 79 of the Justices of the Peace Jurisdiction Act and section 9 (1) (a) and (b) of the Justices of the Peace (Official Seals) Act are relevant in this matter.

(4) Whether the Browns have satisfied the criteria for the Court to grant an award for interim payment in their favour.

(5) Whether there is any basis on which the Browns can seek an order from the Court disqualifying Mr McBean, attorney-at-law and by extension Garth McBean & Co from appearing on behalf of JNBS.

[40] Mr McBean, for JNBS, in a preliminary objection, submitted that there is no appeal pending before this court from which this application has originated and as such, this court has no jurisdiction to hear and consider the application filed herein by the Browns.

[41] The first applicant, Mr Brown, submitted that this court is a court of equity and that the court has the power to review the matter. He submitted that there was a conflict of interest in Mr Jarrett signing the affidavit which breached the Justices of the Peace Jurisdiction Act. He further submitted that he was entitled to an interim payment of at least $5,000,000.00.

[42] We are of the view that the preliminary objection made by Mr McBean must succeed. The Browns, in our view, have no prospect of succeeding on the application. There is no indication that there is an appeal pending before this court from which the

application has emanated. The issues for determination on this application are, therefore, not properly before us and, therefore, this court has no jurisdiction to hear and determine this application. The application is, accordingly, refused.

**SUPREME COURT CIVIL APPEAL NO 14/2014**

[43] This is yet another instalment in the long running saga between the Browns and JNBS. Although the Browns' action against JNBS is still to be tried, several aspects of its progress through various interlocutory stages have already attracted the attention of this court.

[44] By notice of application dated 10 February 2014 filed in the Supreme Court, the Browns sought several orders, including an order permitting them to amend their witness statements; an order for further specific discovery; an order striking out JNBS' defence as an abuse of the process of the court; an order for "summary assessment of damages for the Claimant on the issue of liability with damages to be assessed"; and an order for an *ex gratia* payment.

[45] When the application came on for hearing before Daye J in chambers on 28 February 2014, the Browns asked the judge to recuse himself and for the matter to be adjourned. Daye J denied both requests, whereupon the Browns withdrew and took no further part in the proceedings. The judge then proceeded to make an order granting the application to amend the witness statements as prayed, but refusing all the other orders sought.

[46] By notice of appeal filed on 6 March 2014, the Browns challenged Daye J's orders on a number of grounds, the main burden of which being that the judge was biased and ought, therefore, to have recused himself and adjourned the matter at their request. The Browns refer in particular to their earlier application for specific disclosure on 26 May 2011, the outcome of which had been, as the minute of order signed by the judge himself indicated, as follows:

> "Judge recuses himself from further hearing of matter on the grounds that applicant Mr Bartholomew Brown has made repeated accusations the judge is 'hijacking' him in the presentation of his application, which the judge advises him is improper."

[47] The result of this, the Browns contend, is that Daye J erred in declining to accede to their request for him to recuse himself on 28 February 2014 and in hearing the matter in their absence. They accordingly seek orders reversing the judge's order made on that date and remitting the matter to the Supreme Court for consideration by another judge of that court. In response to this submission, Mr McBean submits that the Browns' complaint of bias cannot be sustained in the absence of any evidence that Daye J had any financial or other interest in the outcome of the matter.

[48] In **Bartholomew Brown & Bridgette Brown v Jamaica National Building Society** [2013] JMCA Civ 15, Harris JA explained the modern law of bias in this way (at paras [18]-[20]):

> "[18] The law of bias is well settled. There are a number of cases which speak to the fundamental principle that a man cannot be a judge in his own cause, see ***R v Gough, R v Bow Street Metropolitan Stipendiary Magistrate (No 2)***, ***Porter v Magill and Medicaments and Related Classes of Goods***

***(No 2)*** [2001] 1 WLR 700. For years a variety of tests have been enunciated in the law of bias. Over the years, as the law developed, the test has continually been redefined. In ***R v Gough*** the 'real danger' test that a decision maker is biased in the conduct of proceedings before him had been accepted as the true test. This test, however, has been modified to be one, in which, a fair minded, impartial observer, who is cognizant of all the facts of the case, would find that a decision maker is biased: see ***Porter v Magill***.

[19] There must be evidence of real bias. Therefore, a party who alleges bias must adduce evidence in proof of such allegation. Mere suspicion on the part of an impulsive or irrational person does not amount to bias see: ***Locabail (UK) Ltd v Bayfield Properties Ltd*** [2000] QB 451. The existence of bias must be obvious to a reasonable man, that is, one who has been classified as a fair minded observer. 'The characteristics of the fair minded informed observer are now well understood:- he must adopt a balanced approach and will be taken to be a reasonable member of the public neither unduly complacent nor naive nor unduly cynical or suspicious,' per Lord Bingham in **R *v Abdroikov*** [2007] 1 WLR 2679.

[20] An examination of the interlocutory proceedings in which the appellants and JNBS were involved, in this court and in the court below, discloses that there is no evidence to show: that Pusey J or any of the judges had an interest in the cause between the appellants and JNBSs; or that they had any financial or proprietary interest in the outcome of the case; or that they had in any way obtained a benefit from the decision in the case; or that they had pre-determined the issues before them. There is no evidence adduced by the appellants to show that, in the applications which came before the learned judge or any of the other judges, they had not made decisions in keeping with the relevant law and the facts before them. The appellants had chosen to embark on a speculative and contumacious exercise to support their baseless allegations against the judges. In all the circumstances, an objective observer, being fully aware of all the facts would not form any reasonable

> apprehension of bias on the part of the judges. The learned judge rightly found that the appellants' complaints did not reveal any evidence of bias."

[49] In our view, the conclusion reached by the court in that appeal is equally applicable to the one now under consideration; there is absolutely no material before the court from which any inference of bias on the part of Daye J can be drawn and on that basis alone the appeal must be dismissed.

[50] In this appeal, the Browns have, as before, represented themselves. As a result, we have been content to approach the matter on the basis that this appeal was properly brought, notwithstanding the clear provisions of section 11(1)(f) of the Judicature (Appellate Jurisdiction) Act, pursuant to which, no appeal lies from interlocutory orders without leave (save in the matters listed, none of which is applicable in this case). The application which was before Daye J having been plainly interlocutory in nature, the Browns ought first to have obtained leave from either the judge or this court as a precondition to filing an appeal. Having not done so, the appeal is not properly before us and therefore falls to be dismissed on that ground as well.

[51] The appeal is accordingly dismissed. JNBS must have the costs of the hearing in this court, to be taxed if not sooner agreed.

**Orders**

1. Application No 26/2014 to vary the decision of the single judge is refused.

2. Application No 99/2014 for the Court to review its order of 24 October 2008 is refused.
3. Appeal against the order of Daye, J is dismissed.
4. Costs of the applications and the appeal to JNBS to be taxed if not sooner agreed.