

24/1/12

IN THE GRANT COURT OF THE CAYMAN ISLANDS

CAUSE NO: D 132 of 2007

BETWEEN SIDNEY ALFARO RODRIGUEZ PETITIONER
AND EVORT EBANKS RESPONDENT

IN CHAMBERS
THE 2ND SEPTEMBER 2011; 24TH JANUARY 2012
BEFORE THE HON. CHIEF JUSTICE

Appearances:

Miss Kate McClymont of Broadhurst Barristers for the Petitioner
Mr. Anthony Akiwumi of Sturats for the Intervenor



**RULING ON APPLICATION
FOR THE RECUSAL OF THE HON. CHIEF JUSTICE**

1. I have been invited by the counsel for the Intervenor to consider whether I should

recuse myself from the continued hearing of this matter.

2. The concern is that, in my capacity as Chief Justice, I referred for disciplinary

enquiry, among many others, a complaint raised by the Petitioner against a former

judge who was, at the time, seized of this action. That referral resulted in the

removal of the judge on the advice of the Disciplinary Tribunal and later

recommendation of the Privy Council.

3. As Chief Justice, I was not required to and made no findings as to the truthfulness

or otherwise of the Petitioner's (nor as to that of any other) complaint. My

function involved the administrative assessment only of whether the complaints,

taken together, justified the referral to the Governor for disciplinary proceedings.

bearing on the suggestion that the judge was biased. It must then ask

“The Court must first ascertain all the circumstances which have a

appropriate test as follows:

case. In Porter v Magill [2002] 2 AC 357 the House of Lords reaffirmed the might perceive that there is a real danger that I may be biased in relation to this to be from the point of view of whether a fair minded and informed observer The objective test by which I decide whether to recuse myself is, however, stated

7.

Northern Spirit [2003] UKHL 35 at paras. 21 and 22.

and the functions of those who play a part in its administration: See Lawal v

The fair minded and informed observer is also expected to be aware of the law

6.

information before coming to a conclusion.”

taken the trouble to acquire full knowledge of all the relevant

nor suspicious yet he is not complacent. He is assumed to have

“The fair minded and informed observer is neither unduly sensitive

[2008] 1 WLR 2416:

As Lord Hope observed in Helow v Secretary of State for the Home Department

5.

be regarded realistically in that way.

from the Intervenor who, because of her partisan interest in the case, can hardly

observer” as that expression has come to be defined in the case law, but it is said,

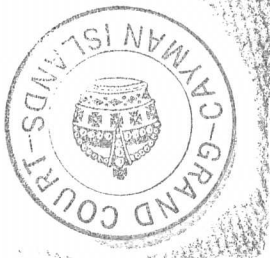
considered, an invitation which comes, not from a “fair-minded and informed

That is the background against which the invitation to consider recusal must be

4.

Governor for the very purpose of conducting that assessment.

Having made that referral, the Disciplinary Tribunal was convened by the



whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility or a real danger, the two being the same, that the tribunal was biased."

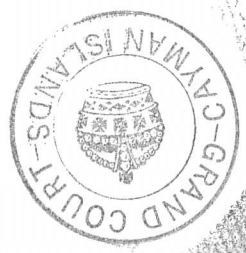
8. The intervenor appears to have conceived of the concern that a danger of bias exists because, by having dealt with the Petitioner's complaint in the context of the disciplinary proceedings against the former judge:

(a) A business association was thus formed between myself and the Petitioner; and

(b) I must have formed an opinion of the credibility of the Petitioner, credibility being an issue for determination in this case.

9. Both of these premises are, in my view, not only factually incorrect, but also so misconceived as not to be attributable to a fair-minded and informed observer of my involvement in the disciplinary proceedings as explained above.

10. They may not, in my view, amount to a basis for concern that there is a danger that I may be biased in favour of the Petitioner, or at all, in relation to this case. They do not present grounds for recusal.



Hon. Anthony Smellie
Chief Justice
24th January 2012