

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR 2025/0017

BEWTEEN:

THE KING

and

RENARDO PHIPPS

Appearances :

Mr. Cedric Dyer, Counsel for the DPP's Chambers
Mr. Andrew Okola, Counsel for the Defendant

2026: July 17th, 21st.

DECISION

Background

- [1] **SMITH, J.:** The DPP filed an application for the recusal of this Court, dated 21st May, 2026. The application was supported by an affidavit which was filed on the ECSC Portal. Counsel for the defendant Mr. O’Kola filed his response on the portal along with relevant authorities on 19th July, 2026.
- [2] The affidavit filed by the DPP set out his position and has been read and noted. In the affidavit the DPP set out the factual background and his grievances. He indicated that on 21th January, 2026 a tentative trial date was set. He went further to say that on the 26th January, 2026 the Court was unavailable and the trial date was vacated. Subsequently, Counsel for the defendant reminded the DPP that he had written to him requesting 1) copies of correspondence 2) certain unused material (which he categorized as having “no legal foundation and/or was nothing other than a fishing expedition”. At the next Case Management Conference Defence Counsel again raised the issue of not receiving the courtesy of a response from the DPP to which the DPP retorted that the request was ingenuous, as for almost a year, no requests were made for the other disclosure and any correspondence between himself and witnesses were not subject to disclosure.
- [3] This Court then asked to view the correspondence between the parties. Having read the correspondence I indicated to defence Counsel that he should make a formal application for the contents of said contents. The DPP then requested that I recuse myself from the hearing of the matter.

The Law on Recusal

- [4] I set out the law in relation to recusal in **Goldteam Group Ltd v Qin Hou et al**¹ as follows:-
- “It was Freeman J in **Surrey Heath Borough Council v Robb**², who said It is of fundamental importance that judicial decisions should be made free from bias or partiality. It has long been recognised that justice must not only be done, it must also be seen to be done **see R v Sussex Justices, ex parte McCarthy**³
- [5] The classic statement in respect of the legal test for apparent bias is not in dispute. It is taken from... the speech of Lord Hope in **Porter v Magill**⁴ whether:-
- “the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”
- [6] Lord Hope in **Helow v Secretary of State for the Home Department**⁵ set out the characteristics of the notional fair-minded and informed observer as follows:-
- ‘2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in **Johnson v Johnson**⁶ 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 complainant 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.’
- [7] ‘Then there is the attribute that the observer is ‘informed. It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political, or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment’.
- [8] In **Locabail (UK) Limited v Bayfield Properties Ltd**⁷, it was stated by Lord Bingham CJ, Lord Woolf MR and Sir Richard Scott V-C in a joint judgment at paragraph 25 that:-

¹ BVIHC (COM) 2019/0180

² [1924] 1KB 256

³ [2001] UKHL 67, [2002] 2 AC 357 at para 103

⁴ [2000] EWCA Civ 350, [2001] 1WLR 700

⁵ [2008] UKHL 62

⁶ (2000) 201 CLR 488 at para 53

⁷ [199] EWCA Civ 3004

‘...By contrast, a real danger of bias might well be thought to arise if.... on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see **Vakauta v Kelly**); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one-way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. 7(2000) 201 CLR 488 at para 538[1999] EWCA Civ 3004.[2000] QB 451.9(1989) 167 CLR 568’.

- [9] Mr. O’Kola in his submissions at paragraph 6 indicated that “recusal is highly fact sensitive and ought not to be lightly done. A judge would be as wrong to yield to a tenuous or frivolous objection as to ignore an objection of substance. He went further to say “rulings adverse to a party including interlocutory and case management rulings and including previous judicial decisions said to have been wrongly made, are not without more capable of founding an apprehension of bias. The case of **Locabail** at paragraph 25 noted “an erroneous ruling does not with more establish apparent bias; any distinct complainant about the manner in which it was made, including the adequacy of the opportunity to be heard, remains part of the assessment of the circumstances as a whole”.
- [10] The general rule where a judge deals with the successive stages of the same proceedings, is that the judge should not be recused and there must be substantial evidence of actual or imputed bias before that general rule can be overcome.

Decision

- [11] The Court is reminded that on 20th March, 2026 Mrs. Gittens appearing for the Crown indicated that the recusal application had been abandoned although it had been couched in an informal conversation with the Court Clerk. This form of informal conversation is to be discouraged.
- [12] Turning now to the merits of case at bar, the Court is not the place for pettiness and irrational conduct. The Court is a place where claimants and defendants alike can feel that their matters will be heard in a fair and safe environment. Clashes with Counsel and clashes with the bench are to be expected, however such clashes must at all times be conducted in a balanced and fair manner and the recusal weapon is not to be bandied about just because of hurt feelings or misplaced apprehensions.
- [13] Having said all of the above, this Court will recuse itself from this matter. The docket for Court One has numerous matters which it can be occupied with.

[14] Finally, the orders previously made in relation to the matter stand. For avoidance of confusion that Order is that the disclosure order made on 20th March, 2026 remains in force.

Ann Marie Smith
High Court Judge

By the Court

Registrar