IN THE COURT OF APPEAL

TURKS & CAICOS ISLANDS

CL/AP NO 8 AND 13/2023

BETWEEN

DUNCANSON & CO. (BERYN DUNCANSON DBA)

APPELLANT

AND

(1) EAST WIND DEVELOPMENT COMPANY LTD

(2) WILLIAM DEAN REEVES

(3) RICHARDSON ARTHUR

(4) JEFFREY HERMAN

(5) RONNIE MOORE

(6) JOHN FLEMING

(7) WILLIAM MADDOX

(8) WB CORPORATE MANAGEMENT LTD

(9) SAUNDERS & CO. (NORMAN SAUNDERS JR, DBA)

AND

(1) THE REGISTRAR OF LANDS

(2) THE ATTORNEY GENERAL OF THE TURKS AND CAICOS ISLANDS

RESPONDENTS

AND

EAST WIND DEVELOPMENT LIMITED

INTERESTED PARTY/ REGISTERED PROPRIETOR

Coram:	The Hon Mr Justice Adderley, JA, President (Ag.) The Hon Mr Justice John, JA The Hon Mr Justice Turner, JA
Appearances:	Mr Beryn S. Duncanson for the Appellants Mr Conrad Griffiths, KC and Devonte Smith with him for the Respondents Clemar B. Hippolyte, Sr Crown Counsel, for the Registrar of Lands
Hearing Date:	17 October 2023
Judgment handed down	27 October 2023

Appeal - Recusal – Bias - Leave to Appeal –Refusal of Stay –Abuse of process- Indemnity Costs

This appeal is a part of a series of five (5) interlocutory appeals pending by the appellant namely, CL AP ***No 8 of 2023*** *which relates to the refusal of a stay by Gruchot J. after dismissing an application for his recusal, CL AP* ***No 11 of 2023*** *whereby Selochan J. refused an application to adjourn sine die* ***CL AP 12 of 2023*** *whereby Selochan J. refused an application to stay proceedings pending an application for judicial review into the validity of the judge's appointment, CL* ***AP No 13 of 2023*** *whereby Selochan J. dismissed an application for a stay pending the appeal against his decision not to recuse himself, and* ***CL AP 14*** *of* ***2023*** *an appeal against Selochan J.'s decision that the Registrar of Lands under the Registered Land Ordinance exercised his discretion wrongly when he removed restrictions placed on registered land 40311/31 &32, East, Middle Caicos.*

Gruchot J. was about to hear the Main Action when the appellants made an application that he recuse himself from that action and generally from any other matters concerning the appellant. Gruchot J. in a comprehensive judgment dismissed the application and refused the stay.

The appellant had made an urgent application to the whole Court for a stay of Gruchot J.'s judgment pending the hearing of the appeal from his refusal to recuse. The application came on for hearing by Zoom on 6 June, 2023. After hearing both sides on the appellant's application for a stay pending the hearing of the appeal the court as an interim measure ruled that the matter was manifestly capable of being heard by any other judge and so ordered that the matter be stayed until its decision on the stay application or until the appeal could be transferred to another judge whichever came first.

The Appellant assured the court that any other judge would be acceptable. The court informed him that another judge had recently been appointed and had been designated by the Hon. Chief Justice as a general-jurisdiction judge. Selochan J. was assigned the matter in short order. At the first hearing the appellant made an application for an adjournment sine die and also made an application for the Selochan J. to recuse himself. In a carefully worded judgment, the learned judge dismissed the application for the adjournment and also dismissed the recusal application as an abuse of the process of the court and ordered indemnity costs.

The appellant through appeals 8 and 13 of 2023 appealed against the decisions of Gruchot J. and Selochan J. respectively on their refusal to recuse. The court is now being asked to decide on the reasonableness of their respective refusal to recuse.

Held:

(1) The appeal against that part of the judgment relating to abuse of process is allowed, and the consequential the indemnity costs award is set aside.

(2) The appeals against each of the Judges to recuse is dismissed. No case has been advanced to support the grant of a general recusal and that application is dismissed. Costs to the respondents to be taxed if not agreed.

Cases considered

1. ***AWG v Morrison [2006] EWCA Civ 6***
2. ***R v Gough [2 ALL ER 727***
3. ***Porter v McGill [2001] UKHL 67***
4. ***Helow v Secretary of State for the Home Department [2008] UKHL 62***
5. ***Resolution Chemicals Ltd v HS Lundbeck A/S [2013] EWCA Civ 1515***
6. ***re L-B (Children) [2011]1 FLR***
7. ***R v Manchester, Sheffield and Lincolnshire Railway Co (1867) LR 2 QB 336***
8. ***(Locabail (UK) Ltd. v Bayfield Properties Ltd & Anor [2000] QB 451***

JUDGMENT

Adderley P Ag.

[1] This appeal is a part of a series of interlocutory appeals pending by the appellant namely, CL AP **No 8 of 2023** which relates to the refusal of a stay by Gruchot J after dismissing an application for his recusal, CL AP **No 11 of 2023** whereby Selochan J refused an application to adjourn *sine die* after dismissing an application to stay proceedings pending an application for judicial review into the validity of the judge's appointment, CL AP **No 12 of 2023** whereby Selochan J refused an adjournment after an application for his recusal, CL AP **No 13 of 2023** whereby Selochan J dismissed an application for a stay pending the appeal

against his decision not to recuse himself, and **CL AP No 14** of 2023 an appeal against Selochan J's decision that the Registrar of Lands under the Registered Land Ordinance exercised his discretion wrongly when he removed restrictions that he had placed on registered land 40311/31 &32, East, Middle Caicos.

[2] The overarching issue in these proceedings is CL Action **No 150 of 2022 (“**the Main Action"). That action which was begun by Originating Summons filed 11 October 2022 ("the Originating Summons") claims against the defendants [the same as in this action] or seeks the determination of the court on a number of questions. The appellant claims that under the settlement agreement which he claims the indebtedness to his firm including compound interest has accumulated to over $12 million dollars.

[3] Those claims or questions include:

1. That there was at all material times a binding written settlement agreement between the parties for legal services to be provided by the plaintiff on terms set out in paragraph 1 of the originating summons.
2. That the terms created at common law a trust for sale and an equitable interest in all future net proceeds of sale and an unregistrable equitable interest in all "Phase II Lands 40311/31&32) of East Wind Development Ltd ("EWD") at all material times EWD was and is trustee of same for the plaintiffs.
3. That any deviation from the settlement agreement without the plaintiff's consent constitutes a breach of trust, and certain other specific allegations.

[4] The plaintiff claims that there have been misrepresentations and fraudulent breaches of the settlement agreement both in relation to him and the public revenue including among other things sales at an undervalue and that the relevant transfers be set aside, and he claims specific performance of the settlement agreement.

[5] He asks that a charging order be made in respect of all those parcels remaining in the name of the 1st defendant within the Phase II parcels of Block 4031, East Middle Caicos including without generality the as listed in the Originating summons.

[6] In the events which happened Gruchot J. was about to hear the Main Action and the appellants made an application that he recuse himself from that action and generally from any other matters concerning the appellant. Gruchot J. in a comprehensive judgment dismissed the application.

[7] The appellant then made an urgent application to the whole Court for a stay of his judgment pending the hearing of the appeal. The application came on for hearing by Zoom on 6 June, 2023. After hearing both sides on the appellant's application for a stay pending the hearing of the appeal the court adjourned overnight. On 7 June 2023 the court announced that it was not able to decide overnight and instead ordered that the matter because of the nature of the claims, breach of contract, specific performance and fraud the subject matter was manifestly capable of being heard by any other judge depending on his calendar.

[8] The court therefore ordered that the matter be stayed until its decision on the stay or until the appeal could be transferred to another judge whichever came first. Mr Duncanson assured the court that any other judge would be acceptable. The court informed him that another judge had recently been appointed and had been designated by the Hon. Chief Justice as a general-jurisdiction judge.

[9] Selochan J. was assigned the appeal in short order. The matter came for hearing before Selochan J. on 24 July 2023 at which time the appellant proceeded with the application for a stay and also made an application for the learned Judge to recuse himself. In a carefully worded judgment, the learned judge dismissed the application for the adjournment but on the face of the

Judgment did not hand down a decision on the recusal until he gave his reasons in in a written judgment dated 28 September 2023.

[10] On 24 July 2023 the appellant made application for the recusal of Selochan J. For reasons given in writing on 28 September 2013 the learned Judge dismissed the recusal application as an abuse of the process of the court and ordered indemnity costs.

[11] There is another judgment in this series of three which deals with the appeals against the dismissal of the applications for adjournment. This judgment only reviews the merits of the judgments dismissing the application for recusal in each case.

DUTY OF THE APPELLATE COURT

[12] The court reminds itself that it is not carrying out the usual appellate function in these cases. As pointed out in **AWG v Morrison**[1] and accepted by the parties in reviewing the refusal of a judge to recuse himself, the court is not reviewing the exercise of a discretion. It must place itself in the position of an informed observer and decide on the facts of the case using the correct test to decide whether or not the judge ought to have recused himself or herself. In other words, the application of the test is fact specific. As Mummery LJ states in that case at [20]

> "…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, and that the appellant court must itself make an assessment of all relevant circumstances and then decide whether there is a real possibility of bias."

THE LAW

[1] [2006] EWCA Civ 6

[13] The applicable law governing recusals was generally accepted by all parties and the test has been settled over a long line of cases in the House of Lords starting with **R v Gough**[2] which speaks to "a real danger" of bias to **Porter v McGill**[3] which speaks of "a real possibility" of bias which is the generally accepted standard for the test. The test is for apparent bias namely, "… having ascertained all the circumstances bearing on the suggestion that the judge was (or would be) biased, the court must ask itself "whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal was biased" (**AWG v Morrison**.)

[14] The fair-minded and informed observer is not unduly sensitive or suspicious, but neither is he or she complacent: ***Helow v Secretary of State for the Home Department [2008] UKHL 62, at [2]****, Lord Hope*. Neither the judicial oath nor judicial experience and training, including the pervasive and persistent ethos of the independence of the judiciary, can wholly insulate even the most rigorous and fair-minded judge from subconscious bias. The fair-minded observer would be aware of that possibility: Helow at [2]. That is not to say, however that the fair-minded and informed observes would wholly discount the matters of judicial training, experience and ethos. (**Resolution Chemicals Ltd v HS Lundbeck A/S**[4]at [46]).

[15] It is accepted that a judge must explain his position in certain circumstances. As stated by Patten J in **in re L-B (Children** [5] "Where a judge is faced with an application that he should recuse himself on the ground of apparent [bias] it is in my judgment incumbent on him to explain in sufficient detail the scale and content of the professional or other relationship which is challenged on the application". The rationale is that "…The parties are not in a position of being able to cross-examine the judge about it and he is likely to be the only source of the

[2]? [2 ALL ER 727
[3] [2001]UKHL 67
[4] [2013] EWCA Civ 1515
[5] [2011]1 FLR

relevant information. Without this, it becomes difficult if not impossible properly to apply the informed bystander test set out by Lord Hope in his speech in ***Helow v Home Secretary [2008] 1 WLR 2416****".*

[16] However, the allegations must be specific and not just part of a fishing expedition casting a wide general net in the hope that something will be caught. The allegations must be "direct and certain, and not remote or contingent,". (**R v Manchester, Sheffield and Lincolnshire Railway Co**[6]), and more than a "tenuous connection" (**Locabail (UK) Ltd. v Bayfield Properties Ltd & Anor** [7])

[17] In fact, in **Locabail** the Lord Chief Justice sitting with a panel comprising himself, the Master of the Rolls, and the Vice Chancellor in the presence 9 QC's representing various parties at the hearing stated at [25]:

> "25. It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra−curricular utterances (whether in text books, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or
> Advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers (KFTCIC v. Icori Estero SpA (Court of Appeal of Paris, 28 June 1991, International Arbitration Report. Vol. 6 #8 8/91)). By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly

[6] (1867) LR 2 QB 336 at page 339

[7] [2000] QB 451 at [50]

> if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or 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 (1989) 167 CLR 568); 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. We repeat: <u>every application must be decided on the facts and circumstances of the individual case</u>. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.
> [**emphasis added**]

[18] Although not a binding authority, because of the persons involved on the panel and the representation by 9 QC's we consider **Locabail** persuasive and will rely on it.

[19] There is no difference between the common law test of bias and the requirements of an independent and impartial tribunal under Article 6(1) of the European Convention on Human rights (per Chancellor Sir Terence Etherton speaking for the panel comprising Lady Justice Hallet and Lady Sharp). (**Resolution Chemicals**[8] at [35].). Accordingly, there is no difference between the test and the requirements of the fair trial provision of section 6(8) of the Turks and Caicos Constitution.

[8] [2013] EWCA Civ 1515

GRUCHOT J.
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[20] The issue of Gruchot J.'s recusal was raised by the appellant in a series of e-mails prior to a scheduled hearing in February 2023. In those e-mails he identified specific allegations on which he would rely to apply *in limine* for Gruchot J.'s recusal. He followed that up with a motion filed 28 February 2023 with a supporting affidavit filed 6 March 2023 which he later amended on 11th March 2023. The documents were served on the parties.

[21] Since the applicant made specific allegations that prima facie were capable of being a source of apparent bias, in accordance with the requirements of **AWG v Morrison** Gruchot J. made a statement dated 28 February 2023. He made the statement public explaining the facts and circumstances surrounding some allegations and denying the others.

[22] These explanations and denials were also repeated in his decision.

[23] As set out in paragraph 22 of the Judge's recusal decision grounds of appeal against Gruchot J.'s dismissal of the Refusal motion can be summarized under procedural grounds (a-e) and others as follows:

> **a.** ***His listing a direction hearing for the Defendants' Summons at short notice at the behest of defence counsel and going ahead with that hearing in the absence of Mr Duncanson*****.**
>
> This arose from the judge setting a directions hearing listed for 23 February 2023 on notice given 22 February 2023 in relation to Duncanson not having filed documents that should have been filed so as not to miss a date scheduled with the Registrar of Lands set for 1 March 2023. Mr Griffiths who had been requesting a date since 12 February, 2023 was pressing for a date. The appellant objected to the date and was not able to make the meeting because he was in The Bahamas and could not file

documents because the portal was not working. However, he had by letter dated 20 February to the court stated “But by all means, if I fail in this endeavour today [filing documents on the portal] you can without my objection proceed to declare a date”. Knowing these facts, a fair-minded observer would not conclude that there was a real possibility of bias.

b. ***Ordering Mr Duncanson to file his affidavit in support of his originating Summons thereby causing Mr Duncanson disadvantage and loss*****.**

Mr Duncanson sent two (2) e-mails on 23 February 2023 which gave notice that he would apply for Gruchot J’s recusal at the first opportunity which was the schedule meeting on 1 March, 2003. Mr Duncanson’s affidavit in support was finalised before the matter went before Gruchot J. It is not clear what disadvantage and loss could have ensued so as to have created a real possibility of bias in the judge**. (Porter v Magill.)**

c. ***Requiring Mr Duncanson to fully particularise in writing the allegations of bias***

Mr Duncanson objected on 22 February 2023 to the 23 February 2023 hearing, said he couldn’t attend and didn’t attend. Therefore, at that meeting the judge ordered the Registrar to write to the appellant asking him to particularizing his request by 27 February, and that the respondents should reply by 27 February 2023. As it would be impossible to defend the claims without particulars clearly on these facts the apparent bias test would not be met. (**Porter v Magill, Resolution Chemicals Ltd v HS Lundbeck A/S, In re L-B (Children)**)

d. ***Quoting Mr Duncanson’s email verbatim in his Recusal Statement [which quotation included the appellants typographical errors*****}.**

As the hearing of 1 March 2023 was imminent the judge’s statement along with the appellant’s e-mail seeking his recusal were published in a rush to meet the 1 March 2023 meeting deadline. However, immediately thereafter the appellant followed up the E-mail by a letter and published

the corrected letter version on the TCI Court's web page. The appellant states that the e-mail was published with all of the typographical errors to make him look bad in the eyes of the public. We think this comes under the principle that the informed observer is not unduly suspicious. ***Helow v Secretary of State for the Home Department [2008] UKHL 62, at [2], Lord Hope*.**

e. ***Dealing with the application for recusal within 2 weeks of the issue being raised.***

When the matter came on for hearing on 1 March 2023 the appellant asked for an adjournment. The judge in fact gave an adjournment of a week. A fair-minded observer on these facts would have expected the judge to refuse the adjournment if there was a real possibility of bias. (**Porter v Magill)**

(f) ***An alleged personal relationship by Justice Gruchot with former Chief Justice the Honourable Margaret Ramsay-Hale*;**

The appellant took out an action against the former Chief Justice alleging bias. The action was dismissed in the Supreme Court and the appeal was also dismissed. Furthermore, the former Chief Justice has been out of the jurisdiction for three years and there is no claim that she is involved in the case.

(g) ***Litigation involving Graham, Thompson & Co the law firm at which the judge was formerly employed. The litigation concerned a Class action against Meridian Trust, Joha McMahan and Trinity Dev Ltd v Belize Bank Ltd, British Caribbean Bank, and Graham Thompson et al CL8/2023; CL52/22 CND v PD***

Graham Thompson has no interest in this case; however the appellant suggests that the judge would be biased in favour of Graham Thompson in order to build goodwill so that they would look favourably on him should he return to private practice. This seems very tenuous indeed. A fair-minded observer would know that there was more likelihood the firm would look favourably on him because he would have served as a judge.

This appears to be **Locabail** exception.

(h) ***Involvement in freemasonry by Justice Gruchot*;**

This appears squarely within the **Locabail** exceptions.

(i) ***An aggregation of all of the above grounds*.**

No authority was drawn to our attention that such a principle exists in relation to apparent bias, and the individual cases did not passed the test.

[24] Mr Griffiths KC expressed the view that the Judge dealt with each of the separate grounds fairly, and accurately, that he properly applied the law to each of these complaints. Ms Hippolyte was of a similar view. That appears to be the case.

[25] The Judge gave his decision refusing the application for recusal in a judgment dated 6 April 2023.

[26] We have reviewed them as summarized above and asked ourselves because of the explanation he gave or for some other reasons they pass the test for apparent or actual bias with the fair-minded informed observer and have found that they do not.

Conclusion

We conclude on a proper examination of the evidence and application of the authorities that an informed and fair-minded observer would not conclude that there is a real possibility that the judge is biased. Accordingly, the judge was right not to recuse. *A fortiori* there is no case for a general recusal.

SELOCHAN J.

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[27] The appointment of Mr Selochan was published in official Government Gazette (Vol.174 No. 34) dated 9 June 2023 as G.N. 387 as taking effect 1 June 2023.

[28] Pursuant to the Decision of this court that the matter could be transferred to any other judge, it was transferred to Selochan J. A hearing for mention was held on 21 June 2023.

[29] At that hearing the appellant made an oral application for an adjournment *sine die* pending the decision of a judicial review action which he had filed.

[30] The judge made an Order filed 21 June 2023 which read as in part as follows:

> "**AND UPON** the Plaintiff making an oral application to adjourn the action *sine die* pending a proposed application for judicial review *inter alia* seeking to challenge the allocation of this matter to His Lordship Justice Selochan and the validity of the appointment of His Lordship Justice Selochan and the validity of the appointment of His Lordship Justice Selochan
>
> **IT IS ORDERED** that…
>
> 2. All matters are adjourned to 1:00 pm on 29th June 2023 for the Court to consider and rule upon the Plaintiff's oral application (emphasis added)

[31] By the written Judgment dated 29th June 2023 the Judge dismissed the application to adjourn *sine die*.

[32] The application for the Judge's recusal was not made until the Motion filed 24 July 2023 headed "Motion for Recusal of Justice Mr Chris Selochan" ("Recusal motion"). This was confirmed by the recital in the Order dated 31 July 2023 which read in part:

> "UPON the court delivering its oral decision on the Plaintiff's Recusal Motion filed 24th July 2023 and dismissing the Recusal Motion with summary oral reasons and fuller written reasons to follow…"

[33] The reasons for dismissing the recusal motion were delivered by judgment dated 28 September 2023. So, the 29 June 2023 judgment as is clear on the face of the judgment did not make a decision on the recusal matter. No appeal from that judgment could have been entertained by us on the ground of the

refusal of the judge to recuse. Therefore, it could not have been an abuse of the process of the court to apply by motion on 24 July 2023 for the relief.

[34] Having said that we must now consider whether the Judge's refusal to recuse himself can stand.

The grounds for Recusal

[35] The grounds in support of the recusal motion may be summarized as follows listed seriatim:

> "1. The live issues pertaining to the judge's appointment and alleged backdating of his appointment and the assignment to this case without prior consultation with him which unreasonably deviates from the spirit of the 7 June 2023 order of the Court of Appeal.
>
> 2. The manner of the judge's appointment to the case.
>
> 3. Considering the judge's reasons in his 29 June 2023 judgment for refusing to adjourn *sine die* pending a judicial review.
>
> 4. Refusal to give disclosure as to his possible historical connections to persons and entities identified in the appellant's letter dated 20 June 2023 which connections would raise the additional spectre of his having both a pecuniary and/or a personal interest indirectly in this matter in terms of the income. See **Resolution Chemicals Ltd v HS Lundbeck A/S**
>
> 5. The judge's refusal to adjourn *sine die* pending a judicial review which decision is unprecedented in the jurisdiction and at common law.
>
> 6. That based on press reports of his curriculum vitae the judge has no prior judicial experience and is being foisted upon the applicant in a multimillion-dollar case.
>
> 7. The invocation of the appellants fundamental rights under sections 6(8) and 7 of the TCI constitution, and enforcement of his fundamental rights under s.21.

The 28 September Judgment

[36] The learned Judge set out the full Recusal Motion in the judgment lettering them a-h to correspond to 1-6 in the Recusal Motion summarized above.

[37] The Recusal Motion was heard on 27 July 2023 which was the date set for the trial of the Main Action. Oral judgment was given on 31 July 2023 with written reasons to follow. Those written reasons were rendered in the 28 September 2023 judgment.

[38] Among those reasons the judge refused to recuse himself but gave leave to appeal. He also acceded to an application by the respondents to dismiss the Recusal Motion as an abuse of the process of the court and ordered indemnity cost to the respondents.

[39] In his reasons for his dismissing the Recusal Motion as an abuse of the process of the court the judge repeated several passages from his 29 June 2023 judgment to demonstrate that he had dealt with aspects of his recusal, and concluded that it was an abuse of the process of the Court for the appellant to have raised the issue again.

[40] He discussed the law of res judicata to show that if a matter had been adjudicated upon before, it was an abuse of process for the plaintiff to raise it again, and then went on to discuss that as a consequence having regard to the behaviour of the applicant, he could award indemnity costs and did so.

[41] The judge fell into error by concluding that he had adjudicated the issue of recusal in the 29 June 2023 judgment. The only matter adjudicated upon in the 29 June 2023 decision was contained in paragraph 35 of that judgment where he dismissed the application for a stay. There was no decision on the question of recusal. This court could not have entertained an appeal based on the 29 June 2023 judgment on the ground that the judge refused to recuse himself.

[42] Since the issue of recusal was not adjudicated upon in the 29 June 2023 judgment it could not have been an abuse of the process of the court for the applicant to make the Recusal Motion of 24 July 2023 as he did.

[43] The judge discussed the issues raised to justify his recusal. He gave cogent reasons why based on the claims made a fair-minded and informed observer with knowledge of the facts would not conclude that there was a real possibility that the tribunal was biased.

[44] He referred to the letter dated 20 June 2023 referred to in item 4. It raised issues of his competency as a new inexperienced judge and his inadequacy to hear a multimillion dollar case, questioned the date of his appointment as a judge, putting the AG's chambers on notice to arrange affidavits to deal with the facts which he raised in the letter namely he sought disclosure of whether the "newbie"

judge had any present or former associations with certain entities including the Belize Bank and others, associations such as freemasons or others, and persons in the Turks and Caicos Islands including the Registrar or other persons from Trinidad in the judiciary or otherwise.

[45] The applicant made no specific allegations which are capable of forming a prima facie ground, as the judge appropriately put it, for founding a case of apparent bias. As a result, there was no basis upon which a statement mandated by **AWG v Morrison,** and in **re L-B (Children)** (see authorities above) was required.

[46] The judge supplied the information that his appointment had been published in The Gazette (Vol. 174 No.34) dated 9 2023 as G.N. 387 as taking effect from 1 June 2023.

[47] He referred to the decision of the Court of Appeal dated 7 June which had noted that he had been designated as a general jurisdiction judge and that he came within the class of judge that that the Court of Appeal has indicated could hear his case.

[48] He denied any of the associations with persons or entities queried by the applicant, and noted that the claims of apparent bias did not condescend to any specific allegations.

[49] He pointed out that making a finding against an attorney, or failing to give adjournments could not pass the test of apparent bias.

[50] He concluded that the applicant in the Recusal Motion had failed to suggest anything that a fair-minded and informed observer having considered the facts could conclude that there was a real possibility of bias.

[51] Having reviewed the facts and considering what a fair-minded and informed observer would conclude and considering the merits of the views expressed by the judge we agree with the learned judge, and concluded that the applicant did not even come close to reaching the threshold for establishing apparent bias adumbrated especially in **Porter v Magill, Resolution Chemicals Ltd v HS Lundbeck A/S**,**and Locabail** under the discussion of authorities above. As an aside despite our inquiry, no authority was provided to support the view that a judge is obliged to adjourn a matter if requested in a case where an appeal or other proceeding touching or concerning the matter before him is proceeding.

[52] However, having regard to the judge's error with respect to dismissal of the Recusal Motion as an abuse of the process of the court in relation to Selochan J. we allow the appeal against that part of the judgment, and set aside his consequential indemnity costs Order.

CONCLUSION

[53] For all the above reasons and having regard to the authorities we dismiss the appeals against each of the Judges to recuse. No case has been advanced to support the grant of a general recusal and that application is dismissed. Costs to the respondents to be taxed if not agreed.

_____

ADDERLEY JA, PRESIDENT (AG)

_____

JOHN, JA

I AGREE

I ALSO AGREE

_____

TURNER, JA