

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Claim No. 2021/CLE/gen/01320

Between

DION MILLER

Claimant

AND

ELVIS GRIFFITH

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Halson Moultrie for the Claimant
Mr. Caleb Dorsett for the Defendant

Hearing Date: 28th July, 2025

*Civil Procedure – Recusal Application — Appearance of Bias — Familial Connection via
Former Spouse*

RULING

Darville Gomez, J

The underlying dispute in this action concerns competing claims to title over a parcel of land situated in New Providence (the “subject property”). The Claimant, asserting documentary ownership, alleges that the Defendant has trespassed upon and occupied a storefront located on the subject property, thereby depriving him of its use and enjoyment. He seeks possession, mesne profits, declaratory relief, and damages. The Defendant denies the claim and asserts lawful ownership pursuant to a 2010 conveyance from Mrs. Pauline Bastian, in addition to pleading long-standing possession through his predecessors in title dating back to 1982. The trial commenced in October, 2024, however, before it could be completed the Claimant by his application sought my recusal on the basis of the familial relationship between my former husband, Mr. Damian Gomez and Mrs. Pauline Bastian (now deceased) who is alleged to have sold the subject property to the

Defendant. Mr. Gomez and Mrs. Bastian were cousins. The Claimant contends that this connection gives rise to a reasonable apprehension of bias. The Defendant has opposed this application.

For the reasons that follow, I am satisfied that there is no real possibility of bias. The familial connection is tangential, the parties concerned have no stake in the proceedings, and the transaction at issue is both historic and legally remote. I am therefore able to adjudicate this matter impartially and without recusal.

Background and Pleadings

[1.] The Claimant commenced this action by Writ of Summons (the “Writ”) filed on 4th November 2021, asserting his status as the documentary owner of the subject property. He alleged that the Defendant trespassed upon and occupied a storefront situated on the said property, which was constructed by the Claimant’s late uncle. The Claimant contends that, as a result of the Defendant’s occupation, he has been deprived of the use and enjoyment of the property and has thereby suffered loss and damage.

[2.] The reliefs sought in the Writ were as follows:

- (i) Possession of the said land;
- (ii) Mesne Profits at the rate of B\$1,500 per month until possession is delivered up;
- (iii) A declaration that the Defendant is not entitled to enter or cross upon the Plaintiff’s land;
- (iv) A declaration that the property as contained in the Plan annexed hereto is the property of the Plaintiff and coincides with the description as contained in his title documents;
- (v) A declaration that the Defendant’s parallel title does not constitute a good root of title;
- (vi) An injunction to restrain the Defendant whether by himself or by his servants or agents or otherwise howsoever from entering or crossing the Plaintiff’s said land;
- (vii) Consequential damages;
- (viii) Damages for loss of quiet enjoyment;
- (ix) Damages for unjust enrichment;
- (x) Damages;
- (xi) Costs;
- (xii) Further or other relief as at the Court deems fit.

- [2.] The Defendant filed his Defence on 12th July 2022, denying the claim and asserting that he is the lawful owner of the subject property, having purchased it from Mrs. Pauline Bastian pursuant to a Conveyance dated 2nd November, 2010. He further plead that his predecessors in title were in open, exclusive, continuous, unbroken, and undisturbed possession of the subject property from no later than 1982.

Procedural History

- [3.] This matter was initially assigned to another Judge who had transferred to the Criminal Division of the Court. Accordingly, the file was reassigned to me. At the first hearing before this Court on 12th January 2024, new Case Management Directions were issued, and a one-day trial was scheduled for 13th June 2024.
- [4.] There were two Pre-Trial Reviews held on 8th May 2024 and 23rd May 2024, however, the trial did not proceed as scheduled in June, 2024; it eventually commenced on 23rd October 2024.
- [5.] After the Claimant gave evidence, the trial was adjourned so that a surveyor could be retained. Therefore, the Court gave directions for the surveyors' reports to be filed by the Claimant and Defendant respectively on 31st January, 2025 and 28th February, 2025. The trial was scheduled to continue on 26th March 2025.

Recusal Request and Former Counsel's Withdrawal

- [6.] After the commencement of the trial on 23rd October 2024 nothing further occurred until the Court received a private letter dated 20th January, 2025 from the Claimant. This letter would detail how he was approached on 30th November, 2024 by a male who had identified himself as a family member of Mrs. Bastian and "*who gave him certain information that he was able to check and confirm*".
- [7.] The letter went onto state, inter alia:
- Mrs. Bastian is related cousin to Damian Gomez the presiding judge's ex-husband. Therefore, making it highly unlikely to rule impartially in this case because of the close relation she might be divorced from Mr. Gomez however she likely still has an attachment to other family members.
 - Also one of the daughters is married to a Justice who is presently serving in the Court of Appeal.
 - This male would have also given me some other additional disturbing information pertaining to this case that I am not willing to say at this time.

- He would like to request that his case against the Defendant be transferred to another court so that it may be heard and adjudicated by another Justice of the courts that can rule impartially without prejudice;

[8.] Upon receipt of the correspondence, I contacted the Claimant's then Counsel, Mr. Williams, who confirmed that he had no prior knowledge of the letter. Mr. Williams subsequently made an application filed on 19th March, 2025 to be removed from the record as Counsel for the Claimant. I acceded to that application on 27th March, 2025.

Recusal Application

[9.] Following the withdrawal of Mr. Williams, Mr. Moultrie came on record as Counsel for the Claimant. Upon his appearance, he similarly by private letter invited the Court to recuse itself from further hearing of the matter. I refused.

[10.] Subsequently, by Notice of Application filed on 17th July 2025, supported by an affidavit sworn by the Claimant, the Claimant formally sought the Court's recusal from continuing to preside over the action. The basis of the application was the alleged relationship between Mr. Gomez—my former husband—and Mrs. Pauline Bastian, who were cousins. Mrs. Bastian has since passed away. The Claimant contended that this familial connection gave rise to a reasonable apprehension of bias.

[11.] I set out the affidavit in its entirety:

1. That I am the Claimant and owner of the subject property in the matter herein.
2. That on 19th March, 2025, I terminated the services of my former Attorney and upon attending to his Chambers to collect my file I was passed a letter titled "Termination of Legal Representation" back dated to 13th March, 2025. There is now produced and shown to me a true copy of my letter and the subsequent letter from Attorney, Ashley D Williams marked "**Exhibits DM I(a) and I(b)**".
3. That on 26th March, 2025 I retained the services of the Law Chambers of Country Talk Law Firm. A Notice of Change of Attorney was uploaded and filed on 31st March, 2025.
4. That with respect to my application for recusal, in late November, 2024, I was approached by a male who identified himself as a relative of Pauline Estelle Bastian (deceased) who gave me certain information regarding involvement in my property dispute and her connection to Madam Justice Camille Darville-Gomez.
5. That armed with this information I proceeded to make inquiries and conducted

an investigation to determine the veracity of the gentleman's assertions. My investigations produced confirmation of the assertions contained in the Obituaries published on 25th January, 2024 in The Tribune and in the Funeral Booklet of the late Pauline Estelle Bastian. There is now produced and shown to me a true copy of The Tribune's Obituaries and the Funeral Booklet of Pauline Estelle Bastian marked "**Exhibits DM 2(a) and 2(b)**".

6. That upon review of the Obituaries and the funeral Booklet and seeing the family connection and relationship between the Honourable Madam Justice through her ex- husband Damien Gomez, coupled with the warnings and assertions which forced my investigations, I became concerned that there was a real possibility that the learned Judge ought not to continue carriage of these proceedings.
7. That being convinced of the possible conflicts and appearance of bias I discussed the matter with my former Counsel who seemed prepared to file the application for recusal pursuant to my instructions but was only concerned that I make a payment prior to him doing so.. There is now produced and shown to me a true copy of my WhatsApp Chat and conversation with Attorney Ashley Williams marked "**Exhibit DM 3**".
8. That my former Attorney did nothing so on 20th January. 2025 I wrote a letter to Madam Justice Camille Darville-Gomez detailing my discoveries and asked her to have my matter transferred to another Judge. There is now produced and shown to me a true copy of my letter marked "**Exhibit DM 4**".
9. That I am satisfied that as a result of the learned justice's family relationship there is a real conflict and appearance of bias in her adjudicating my matter, I have no confidence in receiving a fair hearing before her court.
10. That this Affidavit is made in support of my Application for the recusal of Her Ladyship the Honourable Madam Justice Camille Darville-Gomez.

[12.] The application is opposed by the Defendant.

Claimant's Submissions

- [13.] Mr. Moultrie, submitted that the familial connection between me as the adjudicator and Ms. Pauline Bastian—cousin to my former spouse, Mr. Damian Gomez—engaged the constitutional safeguard enshrined in Article 20(8) of the Constitution of the Commonwealth of The Bahamas. While he acknowledged that Ms. Bastian divested her interest in the subject property in 2010 and died in 2024, he argued that her role as vendor

in the conveyance central to this dispute, coupled with her familial tie, gave rise to a legitimate apprehension of bias.

- [14.] He did not allege actual bias but invoked the principle that “*justice must not only be done but must manifestly be seen to be done.*”
- [15.] Mr. Moultrie contended that the Claimant’s allegations of fraud and trespass, and the Defendant’s assertion of bona fide purchase, render delay prejudicial to both parties—but that the pursuit of justice must take precedence. He relied on **Porter v Magill [2002] 1 All ER 465**, submitting that the applicable test is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. In support, he cited **Taylor v Lawrence [2003] QB 528** and the **Caribbean Court of Justice’s Code of Judicial Conduct**, particularly sections 3 (“Integrity”) and 4 (“Impartiality”), which enumerate grounds upon which a judge may be asked to recuse herself.
- [16.] Counsel further submitted that the decision to recuse is not a discretionary case management matter, relying on **Morrison v AWG Group Ltd. [2006] EWCA Civ 6**. He emphasized that efficiency and convenience are not determinative legal values where judicial impartiality is properly invoked, referring in particular to paragraphs 5 and 6 of the **Morrison** case, which affirm that inconvenience, cost, and delay are subordinate to the principle of impartial adjudication.
- [17.] Finally, Mr. Moultrie submitted that the adjudicator must possess a state of mind that is disinterested in the outcome and open to persuasion by the evidence and submissions. He concluded that fairness and impartiality must be both subjectively present and objectively demonstrated, while acknowledging that recusal should not be used as a tool for forum shopping or delay.
- [18.] For these reasons, he invited the Court to accede to the application.

Defendant’s Submissions

- [19.] Counsel for the Defendant, Mr. Caleb Dossett, opposed the application for recusal.
- [20.] He submitted that the pleadings contained no allegation of fraud and that the action is confined to a determination of superior title. He emphasized that the late Pauline Bastian, the vendor of the subject property, divested her ownership well before her death in 2024 and holds no current economic interest in the property. Mr. Dossett argued that the familial relationship between Mrs. Bastian and Mr. Gomez is too remote to give rise to a reasonable

apprehension of bias. Neither individual is a party to the proceedings, and the conveyance relied upon was executed in 2010—long before the commencement of this action.

- [21.] Counsel further submitted that the Claimant’s application was speculative and unsupported by objective evidence, and that the Court has acted transparently throughout. He contended that the application does not meet the threshold established in **Porter v Magill** and should therefore be dismissed.

Court’s Analysis

- [22.] I accept the authorities cited by both Counsel starting with the seminal case of **Porter v Magill** which was relied on in the Bahamian case of **Richard Anthony Hayward et al v Striker Trustees et al 2010/CLE/GEN 01137** where the Honourable Madam Justice Indra Charles (as she then was) had to consider whether to recuse herself on the grounds of actual or apparent bias against a litigant’s counsel due to her alleged relationship with a Judge whose husband was a senior attorney who often appeared before her. She refused.

- [23.] Similarly, in **Raymond Rolle v Michael Preuss SCCiv App No. 70 of 2020** the Court of Appeal heard an appeal from the dismissal of a recusal application by the Honourable Madame Justice Diane Stewart (now retired) on the grounds of apparent bias due to her former employment at the law firm where she was previously a partner prior to becoming a judge. She refused and the Court of Appeal agreed. They referred to what she had to say:

“**Would the reasonable and fair-minded observer, who is neither complaisant or unduly suspicious conclude that I am biased or would be biased because I made a statement 10 years ago that I loved the firm and that someone who is appearing before me is suing that firm and that action is not before me? I think not.**”

- [24.] The familial relationship between Mr. Damian Gomez—my former husband—and Mrs. Pauline Bastian, now deceased, is acknowledged. However, neither individual is a party to the proceedings, and the relationship is indirect. The Court has disclosed this connection transparently and afforded the parties an opportunity to respond. There is no evidence that the relationship has influenced, or could reasonably be perceived to influence, the Court’s impartiality.

- [25.] Mr. Moultrie referred to the **Caribbean Court of Justice Code of Judicial Conduct adopted on 26 May, 2020** and the principles enunciated particularly, with respect to integrity and impartiality. Similarly, there is a **Code of Conduct for Judicial Officers in the Commonwealth of The Bahamas adopted on 1 July, 2022** which substantially mirrors the principles articulated in that of the Caribbean Court of Justice including,

impartiality, integrity and propriety. I refer to the General Statement under the heading “Impartiality” and “Guiding Principles respectively:

“Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. Judicial Officers must be and must be seen to be impartial in their judicial decision-making.”

“Judicial Officers shall disqualify themselves from participating in any proceeding in which they believe they will be unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might conclude that they are unable to decide the matter impartially,.....”

- [26.] These principles underscore the dual obligation of judges—not only to act impartially, but to maintain public confidence in the impartiality of the judicial process. The test is objective: whether a reasonable, fair-minded and informed observer, apprised of the relevant facts, might conclude that the judge is unable to decide the matter impartially.
- [27.] The central issue in the present matter concerns the superiority of title to the subject property, which was sold in 2010 to the Defendant by the late Pauline Bastian, a cousin of my former husband. Neither my former husband nor the deceased vendor had or has any interest in the litigation or its outcome; and why would they? Even if Ms Bastian were alive today having already divested her interest in the property, the question becomes what economic or other interest would she or could she continue to have in these proceedings?
- [28.] Accordingly, the question arises: would a fair-minded and informed observer, having considered the facts, conclude that there is a real possibility of bias by reason of this familial connection? The familial connection is tenuous, and neither my former husband nor the deceased vendor stands to gain or lose from the outcome of these proceedings. The transaction in question occurred over a decade ago and the vendor has since passed away.
- [29.] This is the test articulated in **Porter v Magill [2002]** and affirmed in **Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451** and as those authorities make plain, there exists a strong presumption of judicial impartiality, and absent credible evidence to the contrary, that presumption must prevail.
- [30.] The Court must also guard against the misuse of recusal applications as a means of delay. The doctrines of necessity and duty to sit are engaged where the interests of justice require continuity. The trial of this action commenced in October, 2024 and the Claimant has already testified, save for the surveyor’s evidence, he would have already closed his case.

[31.] The Court further observed that the Claimant's application was not accompanied by any evidence of actual prejudice or improper influence. Thus, I must reiterate the point that the mere existence of a distant familial tie, without more, does not meet the threshold required for recusal.

[32.] Accordingly, for these reasons, I am satisfied that I can continue to adjudicate the matter impartially and without favour.

Conclusion

[33.] The Court does not overlook the fact that, to a layperson such as the Claimant, most types of familial relationships may understandably raise concern as to whether the judge can remain impartial. However, in small communities—such as ours—some degree of connection between the judiciary and the parties is often inevitable. The applicable legal standard is not whether any relationship exists, but whether the connection gives rise to a **real possibility of bias** in the eyes of a **fair-minded and informed observer**. (My emphasis added)

[34.] This test was authoritatively established in **Porter v Magill [2001]**.

[35.] The Court must therefore distinguish between mere acquaintance or distant familial ties and relationships that are sufficiently close or economically entangled so as to compromise impartiality. Not every familial relationship or social connection will justify recusal. The observer is presumed to be informed of the realities of life in close-knit communities and of the professional obligations of judges to act independently and without favour.

[36.] Therefore, my Order is as follows:

- (i) The application for recusal is refused.
- (ii) A Case Management Conference shall be convened on a date agreed between the parties to address the readiness of the matter for continuation of the trial including the status of the surveyors' reports.
- (iii) Costs to the Defendant to be paid by the Claimant in the sum of \$750.

Dated the 1st October, 2025



Camille Darville Gomez

Justice