IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2010/0221

BETWEEN:

ROGER LEWIS

Claimant

AND

VALMA JESSAMY

Defendant

Appearances:

Mr. Dwight Horsford of Counsel for the Claimant
The Defendant in person

2012: March 29
2012: August 9

DECISION

MASTER V. GEORGIS TAYLOR-ALEXANDER

[1] This is an application by the defendant for an order that the court recuse counsel for the claimant from these proceedings on the basis that he is compromised, he having discussed the details of the substantive proceedings with the defendant prior to him being retained by the claimant.

[2] The defendant is a pro se litigant and an articulate, intelligent and educated person who impressed the court with her understanding of the proceedings and of her ability to ably represent herself. However, there were obvious challenges with her application, stemming from a lack of understanding of evidential requirements applicable to documents filed in the proceedings, and her inability to identify legally what was relevant fact. As a consequence her application which was unsupported

by affidavit evidence contained statements highly prejudicial to the claimant's counsel, and it operated to compromise and embarrass the attorney.

[3] Recognising that the procedural demands of the court could be overwhelming for a pro se litigant I allowed the defendant the opportunity to advance oral submissions to ensure the court gathered a full appreciation of the application of the defendant. I also offered the claimant's attorney, against whom the challenge was brought, an equal opportunity to respond to the application.

[4] At the conclusion of the proceedings I informed the defendant that I had not found a legal basis for her application and that the defendant had not satisfied me of the court jurisdiction to grant the application requested. Accordingly, for the reasons hereinafter set out, I refused the defendant's application.

RECUSAL

[5] The application filed by the defendant was misconceived as she operated on the basis that the court is seized with the jurisdiction to order the recusal of a practitioner in circumstances where it has been established that the practitioner maybe conflicted or there is a likelihood of bias.

[6] A request for recusal is usually made in situations of perceived or actual bias of a judicial officer, and the duty of recusal arises where a judicial officer has an interest in the case or where there is some other reasonable ground for believing that there is a likelihood of bias on the part of the judicial officer such that his impartially is affected. There are two types of bias which invoke the principle. Firstly, bias as a result of a judicial officer having a direct interest in the proceedings or in its outcome. In such a case, disqualification is automatic. Secondly, there may be bias where the judicial officer does not have a direct interest in the case but in some other way his associations or conduct may give rise to a suspicion that he is not impartial. In this second type of case, the disqualification is not automatic.

[7] The principles are best stated in the case R v Bow Street Magistrates, Ex Parte Pinochet No.2 [2000] 1 A.C. 1119 (H.L.) where Lord Browne-Wilkinson said at pages 132-133:

> *"The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be a judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial."*

[8] The defendant's submission is requesting the recusal of the legal practitioner and not the judicial officer. Reformulating the defendant's submissions I am satisfied that her submission is requesting that counsel for the claimant disqualify himself from the proceedings, it being undesirable or perhaps improper for him to offer representation to the claimant, she having discussed the case with him prior to him being retained by the claimant. This obligation on a legal practitioner is normally regulated by statute, or by codified ethics of the profession or as common sense ethics, with the obligation being solely that of the practitioner to determine whether he is conflicted or otherwise compromised such that he should recuse himself from the proceedings.

[9] I am satisfied that the law cannot countenance an application based on alleged conflict or bias of a legal practitioner such that a court can order his recusal. I am also satisfied that in any event the defendant has not shown how a situation of conflict by the claimant's practitioner can compromise the impartiality of the court.

[10] I have combed relevant law including The Legal Profession Act of Grenada No.25 of 2011; The West Indies Associated Supreme Court (Grenada) Act and Order

Cap 336 of Grenada, and I am satisfied that the court has no authority to demand such recusal.

[11] In the circumstances I dismiss the defendant's application and order costs to the claimant in the sum of $500.00.

V. Georgis Taylor-Alexander
High Court Master