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**NOTICE TO PARTIES OF THE COURT'S  
MEMORANDUM OF REASONS FOR DECISION**

**SUPREME COURT CIVIL APPEAL NO COA2023CV00062**

**BETWEEN FRITZ PINNOCK**

**APPELLANT**

**AND HIS HONOUR CHESTER CROOKS  
CHIEF JUDGE OF THE PARISH COURTS**

**RESPONDENT**

**AND FINANCIAL INVESTIGATIONS DIVISION**

**INTERESTED PARTY**

**TAKE NOTICE** that this matter was heard by the Hon Miss Justice P Williams JA, Hon Mrs Justice Dunbar Green JA and Hon Mrs Justice G Fraser JA (Ag) on 24 and 25 February 2025, with Hugh Wildman and Shemar Bryan instructed by Hugh Wildman and Company for the appellant, Miss Lisa White instructed by the Director of State Proceedings for the respondent, and Richard Small and Ms Shawn Steadman for the interested party.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court on 28 February 2025 by the Hon Miss Justice P Williams JA, is as follows:

[1] This is an appeal filed on 10 August 2023, initially by Dr Fritz Pinnock ('the appellant') and Mr Ruel Reid ('Mr Reid'), against the decision of the Full Court, which refused the orders sought on judicial review of a decision made by His Honour Mr Chester Crooks, Chief Judge of the Parish Courts ('the learned CJPC') and The Financial

Investigations Division ('FID') (that had been permitted to be joined as an interested party to the claim on 26 January 2022), contained in a written judgment **Fritz Pinnock and Ruel Reid v His Honour Chester Crooks Chief Judge of the Parish Courts and the Financial Investigations Division** [2023] JMSC Full 03. On 26 March 2024, Mr Reid filed a notice of discontinuance and, on 9 April 2024, he filed a notice of withdrawal of his appeal.

[2] A synopsis of the relevant facts sufficient for a background is as follows. On 10 October 2019, the appellant and other persons including Mr Reid, first appeared in the Kingston and Saint Andrew Parish Court (Criminal Division). They were before the court having been charged with several breaches of the Proceeds of Crime Act, the Corruption Prevention Act, and other common law offences in relation to "financial irregularities" at the Caribbean Maritime University and within the Ministry of Education. The police officers who carried out the investigation and charged the persons were designated as "authorised officers", pursuant to section 2 of the Financial Investigations Division Act, 2010. The appellant sought to challenge the police officers' authority to institute charges, which meant that the charges laid against him were a nullity. Having failed in attempts to secure a declaration to that effect through several applications at all levels of the court, the matter was listed before the learned CJPC in July 2020. An application was pursued before him for the charges to be dismissed. Before the application, the learned CJPC indicated that he had a potential conflict of interest. From the evidence of the learned CJPC, along with the Clerk of Court and counsel for FID who were in attendance, Mr Hugh Wildman ('Mr Wildman') who was then appearing for the appellant, without awaiting the learned CJPC explanation of the nature of the potential conflict, indicated there was no objection to the learned CJPC dealing with the matter. As recalled by the learned CJPC, Mr Wildman indicated that he had "every confidence in [his] dealing fairly with the matter".

[3] After hearing submissions between October and December 2020, the learned CJPC gave his decision on 4 February 2021, refusing the application, and ruled that the matter was properly before the court and ought to proceed to trial. At that time, the learned CJPC indicated his intention to recuse himself from presiding over the trial. He gave two reasons for this decision. He again referenced the potential conflict of interest and then revealed that one of the defendants was known to him. He also indicated that in hearing the application he had become privy to certain information.

[4] On 10 February 2021, the appellant filed a notice of application for leave to apply for judicial review by way of i) a declaration that the statements by the CJPC in making his ruling, that the application is refused and that the matter was properly before the court, and that he could no longer continue in the matter because he had a conflict of interest, is unlawful, null and void and of no effect; and ii) an order of *certiorari* quashing the decision of the CJPC in refusing the application to dismiss the said charges against the applicant. On 19 May 2021, the application was heard by Daye J by which time the learned CJPC had filed an affidavit revealing that the conflict of interest was that both Mr Reid and himself attended the same high school namely Munroe College in the parish of Saint Elizabeth, with Mr Reid being a senior to the learned CJPC and head boy at one point. Daye J, on finding of facts he described as provisional, found that there were facts and circumstances for a reviewing court to determine in light of the standard of the fair-minded, reasonable, and informed observer, and ultimately granted leave to apply for judicial review (see **Fritz Pinnock and Ruel Reid v His Honour Chester Crooks Chief Judge of the Parish Courts** [2021] JMSC Civ 107).

[5] The Full Court (Brown Beckford, Palmer Hamilton, and Hutchinson Shelly JJ) heard submissions over two days in May 2023 and handed down their decision on 28 July 2023. In the judgment, the learned judges identified the seminal issue for them to be “whether the statements made by the learned CJPC pertaining to a potential conflict of interest on his part portrayed an unconscious bias for or against one or both of the Claimants [the

appellant or Mr Reid]" (see para. [24]). They further determined that the principles emanating from the plethora of cases examining the issue of judicial bias that were relevant to the application could be considered under five headings: the rule, the legal test, disclosure, waiver, and context. Having completed the consideration under the headings, the Full Court then made findings of facts. It was acknowledged that there had been a significant number of submissions on whether the learned CJPC used the word 'potential'. It was further acknowledged that the evidence regarding what was said prior to the hearing was provided by the learned CJPC in an affidavit filed on 13 May 2022, as well as by Mr Hansurd Lawson, the Clerk of Courts, and Ms Cheryl-Lee Bolton, an attorney-at-law and senior legal officer of FID. The Full Court noted that this evidence was largely consistent and observed that the more detailed account was from Ms Bolton, which was found to be unsurprising given her role as counsel for the agency bringing the charges (see para. [44]). The Full Court recognised that there was no challenge to this evidence, from the appellant, who gave the only affidavit in support of the application. The Full Court expressed the expectation that if there were inaccuracies or falsehoods, the opportunity to put correct information before the court would have been taken. It was further noted that the evidence as to what was said by the learned CJPC on the occasion he delivered his decision came from Ms Bolton and the appellant. The Full Court accepted the evidence of Ms Bolton which appeared to be a *verbatim* account of the statements. The learned CJPC indicated "I am recusing myself for more than one reason. Apart from having hearing [sic] the arguments, there is a possible conflict of interest... at least one of the defendants is relatively well known to me so I don't think I ought to be the person who will try the matter".

[6] The Full Court acknowledged the particulars of the potential conflict (as set out in para. [4] above) and accepted the account, recognising that it was not contradicted. The next questions of fact determined by the Full Court were a) whether the right to further disclosure had been waived; and b) whether the right to object to the learned CJPC

hearing the application had also been waived. After reviewing the evidence from the learned CJPC and Ms Bolton which was uncontested, and in the absence of any indication from the appellant of any action taken on his behalf when the statements were made, the Full Court accepted that no objection was taken by or on behalf of the appellant to the learned CJPC continuing to hear the matter on any occasion nor did any party seek any further information from him concerning his indication of a potential conflict of interest.

[7] The Full Court, in applying the law to the facts, began by acknowledging that it is the duty of a judge to disclose any information in his possession that could arguably be said to give rise to a real possibility of bias. It was noted that while the learned CJPC had the duty to disclose, Mr Wildman had “stopped the [learned CJPC] in his tracks thereby forestalling any further flow of information” (see para. [54]). The Full Court was satisfied that, in all the circumstances, the appellant must be taken to have unequivocally waived his right to further disclosure from the learned CJPC and could not be permitted to go back on that election. The Full Court further found that it was immaterial to that issue whether the learned CJPC used the word “potential conflict of interest” or “conflict of interest”. The Full Court was similarly satisfied that the right to object to the learned CJPC hearing the matter was also waived. Consideration was given to the timeline of events, which the Full Court considered of importance (namely, the date the application was filed, the date the submissions were made, and the date the ruling was announced). The Full Court found that it was not open to the appellant to wait and see how the application to dismiss the charges turned out before pursuing the complaint of bias.

[8] The Full Court considered whether a fair-minded and informed observer would apprehend the possibility of unconscious bias in the learned CJPC statements. In rejecting the submission that the statements of the CJPC showed that the learned CJPC harboured an unconscious bias, the Full Court accepted that the actual words used took prominence. As such, the Full Court found that “the learned CJPC was indicating a possible concern as

to how his association with Mr Reid could be viewed by an impartial observer, and not that he was personally conflicted. Of course, if he was, he ought to have recused himself for actual bias” (see para. [58]). The Full Court went on to consider the relevant circumstances that would be known to the fair-minded and informed observer, identifying eleven such, eight of which related primarily to Mr Reid (see para. [59]). Significantly, the Full Court included the fact that the learned CJPC failed to make or give full disclosure to the parties of the nature of his association with Mr Reid.

[9] Ultimately, the Full Court emphasised that it was not the views of the appellant and Mr Reid regarding how this information operated on the mind of the learned CJPC that was of importance, neither, was it important that the learned CJPC’s assertion that his prior knowledge of Mr Reid did not give rise to a real possibility of bias on his part and that he had applied the law objectively and fairly. The Full Court found that it was the opinion of the fair-minded and informed observer in the circumstances that were of significance. The Full Court’s conclusion on this issue was that “[t]he fair-minded and informed observer, who is also sensible and rational, would not, on this evidence of a scant acquaintance, many years ago, reasonably apprehend that the learned CJPC did not bring an impartial mind to bear on the adjudication of the case. Given this position, the non-disclosure of the nature of the Learned CJPC’s knowledge of Mr Reid was of no consequence. In light of the foregoing, the Court finds that [the appellant and Mr Reid] have not satisfied us, on a balance of probabilities, that there was a real danger that the inferior tribunal was biased” (see para. [60]).

[10] During the hearing of the appeal it was noted that, with Mr Reid no longer pursuing his appeal, of the eight grounds initially filed there remained five which could be advanced for the court’s consideration. The grounds were as follows:

“1) The full court erred in law, in failing to appreciate that the [appellant] could not have waived [his] right to the [learned CJPC] adjudicating in the matter if the [learned CJPC] failed to make full

disclosure of what was operating on his mind which gave rise to a potential conflict of interest on his part.

2) The full court erred in law, in failing to appreciate that once there was a concession by the [learned CJPC], that there was no full disclosure made in the matter, there could be no waiver of rights on the part of the [appellant] to object to the [learned CJPC] adjudicating in the matter.

...

4) The full court erred in law, in failing to appreciate that it was not the [appellant] who had expressed disquiet with the judge adjudicating, it was the [learned CJPC] himself who had expressed discomfort in adjudicating in the matter with the [appellant].

5) The full court erred in law, in not appreciating that bias is a state of mind and the only state of mind relevant in this matter was that of the [learned CJPC].

6) The full court erred in law, in failing to appreciate that given the expression of the [learned CJPC] on 4<sup>th</sup> February while handing down his decision, that he had a potential conflict of interest, that gave rise to apparent bias on his part."

[11] Mr Wildman, on behalf of the appellant, in his oral submissions focused on the failure of the learned CJPC to fully disclose the nature of what the learned CJPC described as a "potential" conflict of interest. The main thrust of Mr Wildman's submission was that the finding of the Full Court that the learned CJPC had not made full disclosure of the potential conflict, meant that the ruling of the CJPC was impeachable. The Full Court, having accepted that there had not been full disclosure, then fell into error in finding that there had been a waiver of the right to full disclosure or any subsequent objection to the learned CJPC hearing the application. For there to have been any waiver, there must have been full disclosure. Mr Wildman maintained that the statements by the learned CJPC in and of itself was evidence of his state of mind and was proof of the existence of bias, which must have impacted the decision made. Counsel submitted that the fact that the utterances were made at the time of the ruling meant that the learned CJPC was labouring

under potential bias in making his decision. It was Mr Wildman's strong contention that the absence of full disclosure was fatal and "the end of the matter". Counsel submitted that a fair-minded observer knowing that there had not been full disclosure would not be comfortable with a determination that there had been a fair hearing. In the written submissions Mr Wildman relied largely on the judgment of Daye J.

[12] Miss Lisa White ('Miss White'), for the respondent, countered that the finding that there was no full disclosure was but one issue to be taken in the context of the need for the assessment of whether the fair-minded and informed observer, having considered all the facts, would conclude that the learned CJPC was biased. She noted that, in any event, the potential conflict related to a nature and degree of familiarity and association which was insignificant. This was not sufficient to find that there was a potential for conflict. Further, even if there was a potential for conflict from this relationship in regards to Mr Reid it could not be said to have tainted the decision in regards to the appellant. Miss White urged that it must be remembered that there is a difference between the existence of actual bias and the possibility or appearance of bias. While not accepting that the statements of the learned CJPC could be viewed as an expression of his state of mind, even if it was, it would have been of greater significance if actual bias was being alleged. There was no such allegation raised in this matter.

[13] On behalf of the interested party, Mr Richard Small ('Mr Small') firstly reminded this court that it is always open to the appellant to renew the application before the judge that will ultimately conduct the trial, who will not be the learned CJPC. Mr Small proceeded to commend to this court a careful consideration of the approach of the Full Court, which he submitted was unassailable. In so doing, Mr Small drew attention to the fact that the assertions of the learned CJPC remained unchallenged and unanswered. Counsel also pointed out that from the judgment of Daye J, it was apparent that the issue of actual bias was what was advanced at that hearing for leave to apply for judicial review, rather than potential bias, and that must have impacted the decision to grant leave. Further, Mr



Small submitted that the only unchallenged evidence was that the learned CJPC did not say that there was, in fact, a conflict of interest hence, any contention that he was labouring under any such conflict must be summarily rejected.

[14] We have considered the evidence, the reasons for the judgment of the Full Court, and the helpful submissions of all counsel. We have also considered the authorities the parties relied on and the comments made in relation to one authority, **Taylor and Another v Lawrence and Another** [2002] 2 All ER 353 on the invitation of this court. We are satisfied that the Full Court appreciated that full disclosure was a precondition to the valid exercise of the waiver of the right to object to a judge hearing a matter. The Full Court properly considered and accepted the unchallenged evidence that the learned CJPC had stated that he would rather not deal with the matter because of a potential conflict of interest, but if there were no objections, he would have no problem dealing with it at the case management level. The Full Court accepted that Mr Wildman interjected and prevented what the Full Court described as a further flow of information and further disclosure and affirmed his confidence in the ability of the learned CJPC to deal with the matter impartially. While the learned CJPC admitted that he did not make full disclosure at the initial stage, the reason for him not doing so cannot be ignored. There is no challenge to his explanation. Neither was there any evidence of any effort to ascertain the nature of the conflict, rather, there was what could only be viewed as an acceptance that the learned CJPC dealt with the matter regardless of what the conflict could be. The Full Court did not err in concluding that, in these circumstances, the appellant through his counsel must be taken to have waived their right to further disclosure. Although it was suggested before this court that the affirmation of the ability of the learned CJPC's to be impartial was intended to relate only to case management, the appellant proceeded to make the application before the learned CJPC, fully aware of his prior indication without seeking any clarification. There is no merit in any complaint relating to the approach of

the Full Court in concluding that the appellant had waived his right to object to the learned CJPC adjudicating the matter. Hence, grounds 1 and 2 fail.

[15] There is nothing in the judgment that indicates that the Full Court failed to appreciate that it was not the appellant who had expressed disquiet with the judge adjudicating the matter. It is clear that the Full Court, again accepting uncontroverted evidence, found that the learned CJPC had stated that he would rather not be the judge who dealt with the matter because there was a potential conflict of interest. This hardly qualifies as an expression of discomfort in adjudicating the matter, which the Full Court failed to appreciate. In any event, the judicial review was in relation to the application to dismiss the charges, and the learned CJPC is not alleged to have said anything about his dealing with this. There is no merit to ground 4, which accordingly fails.

[16] There is and can be no challenge to the fact that the Full Court demonstrated an appreciation of the law and the relevant test for the determination of judicial bias. Significantly, as it relates to apparent bias, the Full Court appreciated that the test is an objective one and the question to be answered is whether the fair-minded, and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. As such, the Full Court was entirely correct in expressly recognising that “in applying the objective test, using the standard of the fair-minded observer meant that neither the views of the judicial officer, nor the complainant is determinative of whether bias exists” (see para. [33]). The complaint that the Full Court erred in law in failing to appreciate that the expression by the learned CJPC while handing down his decision that he had a potential conflict of interest gave rise to apparent bias on his part, is based on an incorrect premise and is entirely without merit.

[17] In the circumstances, we make the following orders:

(1) The appeal is dismissed.

(2) Costs to the respondent and the interested party to be taxed, if not agreed.