



Civil Appeal Nos. 40, 41, of 2022

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS
ORIGINAL CIVIL JURISDICTION
BEFORE THE HON. ASSISTANT JUSTICE SOUTHEY
CASE NUMBER 2021: No. 29**

Dame Lois Brown Evans Building
Hamilton, Bermuda HM 12

Date: 22/11/2024

Before:

**THE PRESIDENT, THE RT HON SIR CHRISTOPHER CLARKE
JUSTICE OF APPEAL, THE HON GEOFFREY BELL
and
JUSTICE OF APPEAL, THE RT HON DAME ELIZABETH GLOSTER DBE**

CIVIL APPEAL No. 40 of 2022

BETWEEN:

**LEYONI JUNOS
(Civil Advocacy Group)**

1st Appellant

CIVIL APPEAL No. 41 of 2022

BETWEEN:

MYRON ADWIN PIPER

2nd Appellant

- and -

(1) THE PREMIER OF BERMUDA

1st Respondent

**(2) COMMISSION OF INQUIRY INTO HISTORIC LOSSES
OF LAND IN BERMUDA**

2nd Respondent

Decided on the papers:

Date of Judgment:

22 November 2024

JUDGMENT

SIR CHRISTOPHER CLARKE, P

1. These are our reasons for declining to grant the appellants leave to appeal to the Privy Council from the decision of Justice of Appeal Geoffrey Bell to decline to recuse himself from acting in these proceedings.
2. These proceedings are two out of five appeals in relation to which the Court of Appeal sat to consider a myriad of matters between 15 and 17 November 2023. At the beginning of the proceedings all three members of the Court - the President (Sir Christopher Clarke), Justice of Appeal Bell and Justice of Appeal Kawaley - were invited to recuse themselves. After hearing argument, the Court informed the parties that none of the three Justices of Appeals intended to recuse themselves and that reasons would be given later when the judgment in the five appeals with which the hearing was concerned was given.
3. The judgement of the Court in relation to the five appeals was dated 22 February 2024. It sets out the reasons why it was said that Justice Bell should recuse himself in paragraphs [7] - [10]. Justice Bell's reasons for declining to do so appear at paragraphs [94] - [100].
4. In reaching their decision the members of the Court applied the well established test, namely whether a fair minded and fully informed observer would conclude, on the facts,

that there existed a real possibility of bias: **Porter v Magill** [2002] UKHL 77; **Helow v SOS for the Home Department** [2008] UKHL 62.

5. This is not, therefore, a case where the question involved in the putative appeal would be one which, by reason of its great general public importance or otherwise ought to be submitted to the Board. It raises no question as to the correct test to apply.
6. The Notice of Motion was filed by the appellants on or about 6 December 2023 in order not to be out of time. The Appellants reserved their right to respond more fully and more specifically to the written reasons for the refusal of their application when they were made available by the Court. Those reasons were contained in the judgment of 22 February 2024.
7. In the light of what seemed to him to be largely favourable decisions in favour of the appellants contained in the decision of February 22 2024 the President inquired of Ms Junos, at the end of a hearing in another matter on 7 March 2024, whether she wished to proceed with her appeal to the Pricy Council, given that Justice Bell would not be sitting in the next session at which it was then thought that the appeals would be heard.
8. By emails of the same date the Court asked Ms Junos to confirm that she would not be seeking leave; Ms Junos replied the same day to say that the appellants would respond to the court in the near future once they had fully reviewed the recently released judgment. No response was in fact received until on or about 15 May 2024 a Notice of Motion was filed by Ms Junos, Mr Piper and Mr Moulder for a review by a fully constituted Court of Appeal of Bermuda of the judgment of 22 February 2024 pursuant to Order 2/28 and 2/35 of the Rules of the Court of Appeal of Bermuda.
9. Those orders call for the application of the English Rules about re-opening judgments contained in Order 52 Rule 30 of the Civil Procedure Rules and Section VII of Practice Direction 52 A. These provide, *inter alia*, that the application for permission shall be determined by a single judge.
10. The Court of Appeal has agreed to conduct a rolled up hearing after which it will decide whether permission should be given to review the judgment of February 22 2024. Prior to the hearing of that application Ms Junos filed a new request for the President, Justice Bell and Justice Kawaley to recuse themselves. That application was refused for reasons which have yet to be given.