IN THE HIGH COURT OF FIJI AT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBC 287 of 2022

BETWEEN: **ATTORNEY GENERAL OF FIJI ON BEHALF OF THE MINISTRY OF LANDS**

PLAINTIFF

AND: **PETER BOTT**

DEFENDANT

For the Plaintiff	**:**	**Mr Chauhan V. and Ms Naicker N.**
For the Defendant	**:**	**Ms Deo M.**
Date of Decision	**:**	**7 August 2025**
Before	**:**	**Waqainabete-Levaci, S.L.T.T, Puisne Judge**

R U L I N G

(APPLICATION FOR RECUSAL OF JUDGE AND APPLICATION FOR ADJOURNMENT OF TRIAL)

PART A - BACKGROUND

1. This matter is affixed for trial today and tomorrow. The Claim stems from an allegation of unpaid rent arising since 2016 for Government Quarters leased out by

the State to interested members of the public. Prior to this leasing, the Government Quarters were only rented out to civil servants.

2. Both parties had appeared when the matter was first called before me in April 2025, agreeing to affix the matter for Trial for two days, today and tomorrow.

3. On 2nd June 2025 a Summons was filed by the Defendants seeking to vacate the Trial on the basis that the Counsel in carriage was unavailable.

4. The Court heard the parties on first call, Mr. Nagin submitting to Court that initial verbal discussions between Counsels was that an adjournment was to be sort. However this discussion did not eventuate as Mr Chauhan submitted into court he had obtained instructions to object to adjournment. The Court thereafter allowed for parties to file their responses.

5. On 23 July 2025, when the matter was called up, the Court enquired as to the reasons on why the Defendant sort for adjournment, given that there was no medical report filed an annexure on the Affidavit and informed the parties to be prepared, in the event the Court determines that the matter can proceed to trial.

6. On the 4th of August 2025, the Court granted an abridgment of a Summons by the Defendant seeking that the Court Recuse on the basis that there was a perception of biasness. Directions for filing Affidavits were made and the matter is now affixed before me for hearing of both the application for recusal and the application for adjournment.

7. The Affidavit of the Defendant deposed:

8. This made me question my solicitor on who the judge was. I told Ms Lynette, that her Ladyship, Justice Levaci, was a former employee of the Office of Attorney General office. That the Plaintiff in this matter is her former employer. Not only this but that Ms Lynette was also her Ladyships former colleague and was employed by the office of the attorney general from 2013-1016.

9. This to me is an apparent and obvious bias to have a judge preside over a matter where her employer is the plaintiff.

10. I looked up her Ladyship on the internet and found that her Linkedin profile states that she is a ‘’legal officer at the attorney general, government of fiji’ and it also clearly states she was in the plaintiffs employ for 17 years. There is no other information on her LinkedIn page’

11. The Court thereafter, gave directions to the parties on filing their responses.

12. In their submissions, Counsel for the Defendant had sort that the recusal application be dealt firstly by the Court, although it was filed later, a few days prior to trial and that on recusal, the adjournment and trial proper be dealt with by another judge.

13. The Respondents deposed that they denied that there was any perception of biasness for the matter before the Court, that the Court had acted fairly in dealing with the matter, that the Court had dealt with other matters as well where the Attorney General was a party and that there was no biasness at all.

14. The Respondents also argued that there was no proper explanation for the adjournment and that the Court had not predetermined the adjournment but had informed Counsels to be prepared for trial in the event the Court did not grant an adjournment.

15. When sort for clarity, the Court asked Counsel for Defendant whether her submissions were based both on recusal as well as adjournment. She admitted she did make submissions on both, in the event the court did not grant recusal.

Application for Recusal

16. Given the urgency and the pressing matter before this Court, the matter on recusal will be determined first.

17. Recusal is an application seeking for the judge or counsel to remove themselves from dealing with any applications on the said matter before the court. The grounds and principles for recusal arises from the principles of judicial integrity and independence. That the rule of law is independent. Therefore in doing so the law requires the court to be accountable and transparent in the procedures it adopts.

18. The case of **Citizen Constitution Forum -v- Attorney General** 2 FLR 127, cited by both counsels which I acknowledge, a two part test was adopted. The first stage was whether there was actual circumstances for which a direct bearing on a suggestion that the judge was biased. The second stage was whether the circumstances would lead a fair minded observer to reasonably apprehend that the judge may not bring an impartial mind to the resolution of the case.

19. Defendant has submitted the case of **Locabail (UK) Ltd -v- Bayfield Properties Ltd & Anr** [1999] EWCA Civ 3004 where the Chief Justice had stated:

> The other members of the House agreed that the rule should be extended to the extent indicated and Lord Hutton (at page 293) observed that:
> ''…There should be cases where the interest of the Judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as shareholding (which might be small in public company involved in litigation''

20. Therefore, the Defendants, relying on their affidavit deposed and argued that the Court had inquired the reasons for Mr. Nagin being overseas apart from travels and had informed counsel that she was to be prepared for trial. In their argument the Defendants submit that this was perceived biasness.

21. The Defendant then argued that the manner in which the Court had pre-determined the matter, given that the Court was previously employed by the Plaintiff, rendered a perception of biasness on the Court as there was an alleged association.

22. The Defendant also argued, that even if the Court were to determine that there was no evidence to establish recusal, that the Court transfer the matter to the Chief Justice which was done by Justice Fatiaki citing:

> ' ….and mindful of the Applicants deposed belief (however misguided) that I might unconsciously succumb to the human temptation to exact revenge, for their calls for an enquiry with a view to my removal. I have decided to refer the file back to the Chief Justice for reassignment to another judge for the hearing of the substantive Originating Summons as he sees fit."

23. The Plaintiff, in their submissions argued otherwise. They relied on the same case cited **Citizens Constitutional Forum -v- Akuila Yabak**i (Supra) and stated that there was no evidence to substantiate that the Judge had predetermined the interlocutory application nor any evidence to establish perception of biasness by the Judge just because the judge was previously employed with the Plaintiff. That former employment and social media information by itself does not establish any evidence of perceived of biasness.

24. The Plaintiff relied upon the case of **Justin Ho -v- State Misc Case No 67 of 2025** where Justice Aluthge also dealt with the application of recusal on several grounds and stated:

‘He must be a well-informed person, who had followed the proceeding throughout and watched the conduct of the judge, watched the conduct of the defence, watched the conduct of the accused persons. A claim that the judge is biased, means that the accused would not get a fair trial, requires more than mere feeling of biasness. It needs evidence of objective grounds to doubt the judge’s impartiality. This includes actual bias (unlawful intent) or apprehended bias (where the judges conduct creates an unreasonable apprehension of bias)’

Analysis

25. Having considered the submissions and affidavits, the Court will adopt the two pronged test. Firstly the Court must consider whether there was any perceived biasness.

Actual circumstances had a direct bearing that the judge was bias

26. The Court has bore its mind to the fact that the Defendant was represented by Counsel throughout the proceedings and in the interlocutory applications. The Defendant had never attended any of the mention or trial dates and is unaware of the proceedings in Court nor the actions or conduct of the Court. The deposed Affidavit and perception of the deponent arose from the information and advise by Counsel.

27. The Defendant submitted that the perceived biasness by the Applicant was gathered from the Courts conduct before Counsels and thereafter gathered from the search on digital media on previous employment of the judge, from which he then formed his opinion.

28. However when the Court considered the deposed affidavit relied upon as well as their submissions, the Defendant’s argument of the conduct of Court did not create any circumstances that it had a direct bearing of biasness.

29. The Court had sort clarifications on the second mention date of the Application for Adjournment why the Counsel was travelling on the dates of Trial for which on record, Counsel for Defendant admitted was not verified in the Affidavit.

30. The Court’s directions for parties to prepare for trial in the event that adjournment was not granted was in no way a determination by the court. There was no decision about whether adjournment would be granted or not.

31. The Defendants therefore have failed to establish the first stage of the grounds to establish recusal i.e. that there were circumstances that would have a direct bearing at all.

32. The Court must however consider the second stage of the test as to whether the circumstances created a perception of biasness that any right minded person would have observed.

33. Defendants raised arguments that when replying to the Affidavit of the Plaintiff, they alleged that the Court had again directed Counsel instructed not to appear for trial or adjournment application at all as she was implicated in the Affidavit of the Defendant.

34. Plaintiff again argued that this of itself was not sufficient to establish biasness.

35. The Court again analyzed this with an open mind, bearing in mind the objective test and applying both the stages one after another.

36. The Court does not agree to these arguments and render them misconceived.

37. There was no direction given for the Counsel not to appear at trial nor at the application for adjournment.

38. On the day of Hearing, Ms Deo, appeared and made submissions that Counsel who was to appear and argue on the interlocutory applications was unable to appear because she was barred from the Court, that the Associates of the firm could not proceed to trial as they had served for only 2 years and that the client was adamant that Mr Nagin should appear and act on his behalf at trial.

39. Again the Court finds that the argument misconceived. The court did not bar Counsel from appearing or representing her client in the proceedings. If it were so, then the Court should not have heard Counsel on the first occasion when she appeared without proper instructions, as she was acting contrary to Courts Practice Directions.

40. The Court had merely sort clarifications. It was upon Counsel, being best placed, to decide whether they were acting in the interests of their client to appear and argue on their interlocutory application.

41. When considering these submissions and the conduct of the court, there was lack of evidence to suggest perceived biasness at all. At no time had the Court pre-determined the outcome of the trial that had not yet taken place.

42. Furthermore, there is no perception of bias by any utterances or actions or conduct of the Judge that it had pre-determined the trial proper itself in order for the Defendants to establish that there is a ground for recusal.

43. Counsel has submitted, that in any event, Court should recuse itself just like Justice Fatiaki did.

44. I do not agree that the circumstances of this case call for such. What was done by Justice Fatiaki was done in consideration of the proper administration of justice and in the public interest.

45. In this instance, given that the biasness has not been established, and given that this is a simple matter of equal importance as the other legal matters pending in any court, pursuant to section 15 (3) of the constitution, it is the right of an individual, and the Courts obligation to determine the matter within a reasonable time.

46. It would therefore be unbecoming of this Court to have the matter transferred to another judge where the grounds of recusal have not been established at all.

47. Furthermore, I also find that this application is a tactic to delay proceedings and to circumvent the Courts purpose for a fair trial properly administered. The applications are misconceived and allegations misplaced.

48. Applications for recusal are serious matters and must not be undertaken unless there are solid evidentiary proof of circumstances where, on an objective test, there is perceived biasness.

49. An application such as was made in court this few days, is clearly a tool or weapon that should not be used unsparingly as and when possible to delay proceedings. Counsels are warned that hefty costs will be imposed against them for the manner in which this application has arisen contrary to the very grain and purpose for which recusals principles were created.

APPLICATION FOR ADJOURNMENT OF TRIAL

50. The Defendant had initially applied for adjournment. Today they had sort the Court to recuse itself and thereafter transfer for the Chief Justice to then allocate another judge to determine the application for adjournment.

51. Given that I have found no grounds to establish recusal, I will now determine the adjournment application.

52. In this case before this Court, the Plaintiff has applied for leave to adjourn the matter on the basis that their counsel in carriage is travelling overseas. An affidavit was deposed to this effect.

53. The plaintiff has argued otherwise, deposing that the reasons are insufficient to enable the Court to grant leave to adjourn.

54. Reference was made to the case of **Golden West Enterprises Ltd -v- Timoci Pautogo** CA No ABU 0038 of 2005 which stated that the principle for discretion is whether the granting or refusal will deny the parties a fair hearing and therefore deny natural justice or procedural fairness or whether the refusal will case indefinite or irreparable harm.

55. The matter before me stems from an application for adjournment. The Counsel seeks time to appear and argue for trial with his client. This is the first application for adjournment of trial dates. His Affidavit deposes he is overseas for work purposes. This was only deposed in the subsequent affidavits pertaining to recusal.

56. The Court finds that the Plaintiff would be prejudiced from a fair hearing if counsel was not present. He insisted on Mr. Nagin appearing before him. Although legal representations are not absolute, there must be a proper balance by the Court to be undertaken to ensure that individuals rights to fair trial is not compromised.

57. For the purposes of indefinite or irreparable harm, to not grant adjournment would render the Defendant unable to be properly represented. This would affect the manner in which his case is argued. There are also implications if the final outcome of the case was against him.

58. It would be in the best interest of the Court to grant adjournment.

PART D: COSTS AND ORDERS

59. Given that the manner in which the recusal application was made, the Court finds that it will impose hefty costs against the Defendants.

60. **The Court Orders as follows:**

(a) That the application for recusal has not been established and is dismissed;

(b) The application for adjournment is granted;

(c) Costs of $1000 awarded to the Plaintiff to be paid by the Defendant within 3 months from today.

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Ms Senileba LTT Waqainabete-Levaci

Puisne Judge