IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2007HCV02360

BETWEEN	**BARTHOLOMEW BROWN**	**1ST CLAIMANT**
AND	**BRIDGETTE BROWN**	**2ND CLAIMANT**
AND	**JAMAICA NATIONAL BUILDING SOCIETY**	**DEFENDANT**

IN OPEN COURT

Mr. Bartholomew Brown appeared for the Claimants

Mr. Garth McBean instructed by Garth McBean & Company appeared for the Defendants

Heard: April 26, 2012 and May 2, 2012

Civil Procedure – Notice of Motion – Procedural Difficulties – Whether constitutional relief can be sought by way of Notice of Motion – Bias – Whether there were actual incidences of bias – Civil Procedure Rules, 2002, 56.9

PUSEY J

1. The Applicants, Mr. Bartholomew Brown & Mrs. Bridgette Brown (the Browns), started an action against a Building Society in 2007. The chronology of action is set out in the judgment of Harrison JA in the Court of Appeal in **Brown & another v Jamaica National Building Society** Supreme Court Civil Appeal 29, 2009, delivered on 4th March 2010.

2. In that decision the Court of Appeal set aside the order of Bertram Morrison J which had struck out the Browns' statement of case. The matter was sent back to the Supreme Court for trial. A trial started before Evan Brown J in June 2011, but this trial was aborted by the judge after four days.

3. The Browns have now come before the court on a Notice of Motion in the existing suit seeking a constitutional remedy. In the Notice of Motion filed on February 16, 2012 they seek an order that:

> that judges are bias and were sitting in their own cases; it is impossible for the Claimants to get a fair hearing in this matter…

4. The Browns claim in the grounds for the Notice of Motion that:

   i) Their matter has been prejudiced by some judges and some court staff of the Supreme Court and the Court of Appeal.

   ii) They have at no time since the filing of the Claim had an independent and impartial tribunal.

   iii) That judges had conflicts of interest but still sit on the case.

   iv) Judges breached the rules of natural justice and that some named judges were biased and prejudicial.

   v) Applications filed by the Claimants have not been heard.

5. At the hearing of this matter I sought to get clarification of the remedy that the Browns seek. Mr. Brown indicated that he sought the matter to be set before the Constitutional Court for that Court to order that the orders of these judges be set aside.

6. The application before the court presents some procedural difficulties as was pointed out by Mr. McBean for the Respondent. Firstly, the claim is not brought by a Fixed Date Claim Form as required by Part 56 of the Civil Procedure Rules. Secondly, Mr. McBean also points out that the complaints about specific disclosure and an application to strike out the defence enunciated by the Applicants are merely a dissatisfaction with the rulings of judges and not instances where the applications were not considered. Thirdly, Mr. McBean had argued that the Attorney General ought to be served as required by CPR 56.9.

7. Mr. McBean conceded that his objections about obedience of the order for cost of Brooks J may have been subsumed by the order of Harrison JA in the Court of Appeal.

8. I am of the view that the proper way for the Browns to make this application was by virtue of a Fixed Date Claim Form. When an applicant seeks constitutional relief he needs to set out in a clear and comprehensible way, the remedy he seeks. Constitutional reliefs are granted in cases where other means of relief are not readily available. However, despite the procedural deficit of the application in the circumstances of this case, I think it prudent to consider whether the relief sought should be granted.

9. In my view, the relief sought should not be granted for two main reasons.

10. Firstly, the Applicants have failed to show that the judges mentioned had some financial or other interest in the matter before the court or have pre-judged the matter in some way due to bias. The Browns have complained about demeanour of the judges who have ruled against them, and that some of these judgements are wrong in law. However, those complaints are not an indication of bias. For example, the Applicants have heavily criticized Harrison JA in his decision in this matter. They have said that his decision is wrong in law. However, the result of Harrison JA's decision is that it sets aside the order striking out the claim. Similarly, the criticism of the Master and Panton JA in the Court of Appeal is merely innuendo and suspicion and do not rise to the level of any bias for the Court to consider.

11. For a court to consider whether bias exists there must be an evidential basis. In this case there is no evidential basis. The test of bias as set out in **Porter v Magill** (2002) 1 ALL ER 465 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"

12. Secondly, the Applicants have indicated that there are some judges that have dealt with them fairly. That means that it is possible to have a fair trial in this matter. In their

affidavits, the Browns have commended Cooke JA (now retired), Sykes J and Sinclair-Haynes J among those who gave the matter a fair hearing.

13. In fact, they mention that Sykes J indicated a real concern of an appearance of bias disclosing his mortgage holder and also that he knew the Managing Director of Respondent's Company.

14. In conclusion, it is clear that the issues that the Browns complained of are really in relation to the judges' view of the law and not in relation to actual incidences of bias.

Therefore, the application fails.