

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Cr. App. No. 75 of 2006

BETWEEN

BASDEO PANDAY

Appellant

AND

WELLINGTON VIRGIL

Respondent

PANEL:

M. Warner, J.A.
I. Archie, J.A.
P. Weekes, J.A.

APPEARANCES:

Appellant: Mr. Alan Newman S.C.
Mr. Jagdeo Singh
Mr. Annand Beharrylal
Mr. Ravi Rajkumar
Ms. Mickela Panday

Respondent: Mr. Timothy Cassel Q.C.
Mr. Wayne Rajbansee

DATE OF DELIVERY: 4th April 2007

Delivered by P. Weekes, J.A.

1. On 24th April 2006, the appellant, Basdeo Panday, was summarily convicted under the Integrity in Public Life Act No. 8 of 1987 of three charges of knowingly making a declaration false in a material particular. The presiding Magistrate, Chief Magistrate Sherman Mc Nicholls, ordered that on each offence the appellant be imprisoned for a term of two years (the maximum sentence); pay a fine of \$20,000 or, in default, serve a term of three years imprisonment; and forfeit to the State in total the equivalent of £110,752.08.

2. Oral notice of appeal was immediately given and on the 25th April 2006, a notice providing grounds were filed in respect of each conviction. These grounds did not include bias/apparent bias.

3. With leave of this Court, the appellant subsequently amended the grounds of his notice of appeal to include the following

“(c) that the Magistrate was personally interested in the case, such as to give rise to actual bias, alternatively a perception of apparent bias, in that during the pendency of the trial, and immediately thereafter: (emphasis added)

- (i) he was involved in financial transactions with persons/companies closely associated with CL Financial Limited, whose executive Chairman is Mr. Lawrence Duprey, an important witness called by the Appellant. Such transactions included paying into his own account a cheque for \$400,000 drawn on Caribbean Money Market Brokers Limited, a company in which a subsidiary of CL Financial Limited had a 49% shareholding, and of which Mr, Andre Monteil, Treasurer of the PNM, is a Director.

- (ii) he had conversations with the Attorney General about such financial transactions, who decided to suspend taking any action until the Chief Magistrate had delivered his judgment.
- (iii) such financial transactions, and the prospect of further post-judgment enquiries by the Attorney General (which would inevitably draw attention to those financial transaction) hanging over his head, caused the Chief Magistrate to bend over backwards in his judgment to demonstrate that he was not biased in favour of the Appellant
- (iv) furthermore, the Attorney General spoke over the telephone with Mr Fifi, Chief Executive Officer of Home Construction Limited (a subsidiary of CL Financial Limited) and interceded on behalf of the Chief Magistrate seeking to persuade Home Construction Limited to purchase the Chief Magistrate's land".

BACKGROUND

4. After the appellant's conviction certain matters came indirectly to his attention and as a result counsel, on his behalf, on the 21st September 2006 wrote to the Director of Public Prosecutions requesting the "full and frank disclosure" of certain particularised matters. He ended his letter with the words "My client is of the view that the above information is necessary as it goes to the very root of the fairness of his trial."

5. Dissatisfied with the response of the Director of Public Prosecutions, the appellant, on 1st November 2006, filed a notice of motion seeking the following orders:

- (1) "i) Full particulars of all conversations, discussions, negotiations, promises, offers and any other matters made between the Attorney General and the Chief Magistrate *before*, during and after the Appellant's trial *insofar as those*

conversations etc. related either directly or indirectly to the Appellant and/or Appellant's trial;

ii) Full particulars of all conversations, discussions, negotiations, promises, offers and any other matter made between the Attorney General and Mr. Andre Monteil before, during and after the Appellant's trial insofar as those conversations etc related either directly or indirectly to the Appellant and/or the Appellant's trial;

iii) Full particulars of all conversations, discussions, negotiations, promises, offers and any other matter made between the Attorney General and Mr. Michael Anthony Fifi before, during and after the Appellant's trial insofar as those conversations etc related either directly or indirectly to the Appellant and/or the Appellant's trial;

iv) A comprehensive log of all visits made by the Chief Magistrate to the Attorney General immediately before, during and after the Appellant's trial;

v) Documents relating to the sale of land by the Chief Magistrate to Home Construction Limited in particular copies of the following (if any):

- a. The returned cheque to H.C.L.,
- b. Any and all other cheques and/or other financial instruments used to facilitate this transaction,
- c. Any mortgages and/or other loan documents used to facilitate this transaction,
- d. The rates of interest of any and all loan(s) sought and obtained for this transaction, to include any details of securities and/or collateral,
- e. An amortization schedule of the loan payments, and
- f. All the supporting documents supplied to the bank in the application to process any and all loan(s) or mortgage(s);

vi) The tax records of the Chief Magistrate Mr. Sherman Mc Nicholls;

- vii) Any and all statements (whether given to the police or otherwise) by Mr. Anthony Maharaj;
- viii) Any and all signed agreement(s) for sale between the Chief Magistrate and Mr. Maharaj;
- ix) Any and all statements (whether given to the police or otherwise) of Mr. Anthony Fifi;
- x) Any and all statements (whether given to the police or otherwise) of Mr. Andre Monteil;
- xi) The report prepared by the Honourable Mr. Justice Humphrey Stollmeyer of his investigation into the complaint made by the Chief Justice against the Chief Magistrate to the Judicial and Legal Services Commission;
- xii) The statements of any and all witnesses considered and/or interviewed (whether relied upon for the findings or not) in pursuance of the investigation of the complaint by the Chief Justice;
- xiii) Any and all documentation gathered by all investigators during the course of the investigation of the complaint by the Chief Magistrate;
- xiv) Any and all speeches, statements, press releases etc made by the Attorney General, which directly or indirectly relates to this matter;
- xv) Any and all speeches, statements, press releases etc made by the Prime Minister, which directly or indirectly relates to this matter;
and
- xvi) Any and all speeches, statements, press releases etc made by the Director of Public Prosecution, which directly or indirectly relates to this matter.

(The material of which disclosure was sought represented a repetition and enlargement of what was requested in the letter of 21st September 2006. The enlargements are reflected in the emphases).

- (2) That the Applicant/Appellant be allowed to adduce written and/or additional evidence at the hearing of the appeal herein.
- (3) An Order that the Honourable Court of Appeal hear and determine the issue of jurisdiction of the Chief Magistrate before embarking upon a hearing of the substantive appeal”.

6. He relied on the following grounds in support of the application

- (1) “The Chief Magistrate committed a grave and serious error of law in failing to apprise the Appellant and Respondent in open court as to the events, which may have caused him concern and/or triggered his visit to the Attorney General regarding the Appellant’s trial;
- (2) The Chief Magistrate committed a grave and serious error of law when he failed to recuse himself from adjudicating upon the trial of the Appellant after he had come to the conclusion that attempts were being made to improperly influence his decision in the trial of the Appellant;
- (3) The Chief Magistrate committed a grave and serious error of law when he held a meeting with the Attorney General to report concerns that attempts were being made to compromise him. And further that he reached an agreement with the Attorney General that the situation warranted an investigation but, that the investigation will not commence until after he had given his decision in the trial of the Appellant;
- (4) *The material sought herein will provide the Appellant with material necessary to properly pursue and/or conduct his appeal before the Court of Appeal so as to afford the court and parties an opportunity to closely examine all the facts and circumstances of the conduct of the Appellant’s trial by the Chief Magistrate and;*

- (5) *The Court of Appeal should hear and adjudicate upon this application for disclosure prior to embarking upon a full hearing of the substantive appeal, because this appeal raises addition points of law of great general and public importance relating to the conduct of the trial of the Appellant.*
- (6) Where the issue of bias is raised the Court must first ascertain all the relevant circumstances in order to apply the test to determine whether there ought to have been automatic disqualification of the tribunal or whether there was apparent bias in the tribunal.
- (7) The allegations and statements which have been made in this matter and which are in the public domain require the Court to ascertain the relevant circumstances in order for it to determine whether there was actual bias and/or apparent bias in the Court.
- (8) The question arises as to whether the Chief Magistrate had a personal interest in the outcome of the trial of the applicant/appellant having regard to the principles decided in the case of *R-v-Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet (No.2) [2000] 1 A.C. 119* and the question also arises whether there was apparent bias in the Chief Magistrate on the principles decided in *Re: Pinochet* (supra) and in the case of *George Meerabux –v- The Attorney General of Belize (P.C. No.9 of 2003 decided on the 29th March 2005)*.
- (9) *In order to determine these questions and in order for the Court to ascertain the relevant circumstances in respect of the allegations it is necessary for the prosecution to discharge its duty to make full disclosure in respect of these matters. If it refuses the Court ought to make an order for the information to be supplied to the Court and to the applicant/appellant. The allegations and statements which are in the public domain state among other things that the Chief Magistrate had grouses against a company with which he had a land transaction. Mr. Lawrence Duprey who is a substantial owner of that company was a material witness for the defence and whose evidence was promoted by the defence to show that the applicant/appellant was not guilty. The Chief Magistrate whilst the trial*

was pending before him and after he had reserved decision in the matter went to the office of the Attorney General and held a meeting with the Attorney General in which he discussed with the Attorney General his land transaction and the difficulties he was having with the company. The Attorney General is in substance a party to the trial which was before the Chief Magistrate. The Chief Magistrate also discussed at the meeting with the Attorney General the suspicions he had about the company and about monies which were paid to him in respect of the land transaction by an official of that company. The Attorney General promised to investigate the matter after the Chief Magistrate had given his decision in the trial of the applicant/appellant. The Chief Magistrate had earlier in the meeting mentioned that he was having the meeting with the Attorney General having regard to the importance of the decision, which he had to give in the trial of the applicant/appellant. The Chief Magistrate found the applicant/appellant guilty and imposed the maximum penalty and he summarily refused the applicant/appellant to be admitted on bail pending the hearing and determinations of his appeal. These and other matters contained in the allegations and statements published by the media and in particular those relating to the allegations which the Chief Magistrate made against the Chief Justice in relation to the trial of the applicant/appellant mandate the Court to ascertain all the relevant circumstances in order for the Court to determine whether the Chief Magistrate had a personal interest in the outcome of this case and/or whether the relevant circumstances to be found by the Court of Appeal in respect of the allegations would lead a fair minded and informed observer to conclude that there was a real possibility that the Chief Magistrate was biased". (Emphasis ours).

7. The disclosure issue was, with the agreement of counsel on both sides and consent of the Court, taken as a preliminary point in the appeal. At the outset counsel for the appellant, Mr. Newman, indicated that he would not be pursuing items (vi) and (xi) of the Notice of Motion.

8. He submitted that the mere fact that there was a meeting between the Chief Magistrate and the Attorney General, who can be considered a political foe of the appellant, before the Chief Magistrate gave his decision gives rise to a reasonable apprehension of bias on the part of the Magistrate against the appellant and the same could be said of the meeting between the Chief Magistrate and the Chief Justice.

9. Mr. Newman indicated that the matters of which he sought disclosure pertained to the ground of bias/apparent bias (later confined to apparent bias) and that he based that ground on the revelations emanating from press releases by the Attorney General and Chief Justice which post-dated the decision of the Chief Magistrate. He said that it was the appellant's case that "because of fear that he might be implicated in wrongdoing (namely financial transactions with a party closely involved to the defence's principal witness Lawrence Duprey) there is at least a public perception that the Chief Magistrate may have bent over backwards to show that he was not in fact affected." He argued that it would be preferable for his submission on bias/apparent bias to be made "with a certain substance behind it" i.e. the documents for which disclosure was sought, rather than bald press releases. Acknowledging that an allegation of bias was a serious one, counsel opined that it should not be dealt with by way of generalised mud-slinging but should incorporate as much detail as possible and that such allegations would be "much more cogent and fairer" if based on disclosed documentation. It was in this light that he sought disclosure of the information particularised in his application.

10. In general support of his application counsel for the appellant relied on the authority of *R v H; R v C*¹ which provides that "*Fairness ordinarily requires that any material held by the prosecution which weakens its case or strengthens that of the defendant, if not relied on as part of its formal case against the defendant, should be disclosed to the defence. Bitter experience has shown that miscarriages of justice may occur where such material is withheld from disclosure. The golden rule is that full disclosure of such material should be made.*"

¹ [2004] UKHL 3

11. In R v H; R v C reference is made to R v Ward² in which a defendant's right to disclosure is expressed as incidental to his right to a fair trial. Ward goes on to propound relevance as the test of whether disclosure is appropriate and provided that the obligation to disclose only arises in relation to evidence which is or may be material in relation to the issues which are expected to arise, or which unexpectedly do arise. What therefore the prosecution is required to disclose is any material matter that would affect the prosecution case whether by way of strengthening or weakening it or assisting the case for the defence. Ward also emphasizes the continuous nature of the duty of disclosure from pre-trial throughout the trial and counsel for the appellant argued that this would continue after the evidence has been closed and extend to the time when sentence is passed.

12. Counsel for the appellant also referred to the English Attorney General's Guidelines³. The Guidelines provide "*1. Every accused person has a right to a fair trial, a right long embodied in our law and guaranteed under Article 6 of the European Convention on Human Rights (ECHR). A fair trial is the proper object and expectation of all participants in the trial process. Fair disclosure to an accused is an inseparable part of a fair trial,*" and that "*Disclosure is one of the most important issues in the criminal justice system and the application of proper and fair disclosure is a vital component of a fair criminal justice system. The "golden rule" is that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defence.*"

13. Counsel placed particular reliance on paragraph 10 of the Guidelines which states "*Generally, material which can reasonably be considered capable of undermining the prosecution case against the accused or assisting the defence case will include anything that tends to show a fact inconsistent with the elements of the case that must be provided by the prosecution. Material can fulfil the disclosure test:*

² [1993]2 All ER 577

³ Archbold's Criminal Pleading – 2006 ed. P...

....(b) by its capacity to support submissions that could lead to.....

(iii) a court or tribunal finding that any public authority had acted incompatibly with the accused's rights.”

He argued that the reference to “any public authority” can be substituted by “any judge” and so the principle would be applicable here to the Chief Magistrate’s deliberations.

14. In support of his proposition that the prosecution owed the appellant a duty of disclosure up to the time of his conviction/sentence, counsel for the appellant referred the Court to the Guidelines which provided that there is a continuing duty on the prosecution *“to keep under review at all times the question of whether there is any unused material which might reasonably be considered capable of undermining the prosecution case against the accused or assisting the case for the accused and which has not previously been disclosed. This duty arises after the prosecutor has complied with the duty of initial disclosure or purported to comply with it and before the accused is acquitted or convicted.”* He submitted that the duty even extends post conviction where relevant material is discovered⁴

15. Mr. Newman acknowledged that some of the material of which disclosure was requested might not be in the hands of the prosecution but relied on the Guidelines to argue that this was no limit or bar to the prosecution’s duty. At paragraphs 51 and 52, the issue was addressed and a further duty placed on the prosecution to take the steps necessary to obtain the material from a third party and pass it on to the defence or, in the alternative, subpoena a representative of the third party to produce the material in Court. It was argued on the appellant’s behalf that the guidance to be found in the Attorney General’s Guidelines though grounded in the indictable process has application to summary trials, as was the appellant’s.⁵

⁴Attorney General’s Guidelines para. 54

⁵ para 57 supra

16. Counsel for the appellant conceded that his notice of motion sought fairly extensive disclosure but denied that it was a fishing expedition. In closing his arguments he expressed the view that the Court should not abandon making its own decision on applications for disclosure and that to simply trust the prosecution, as part of the executive, to decide on the paramount issue of relevance was inadvisable. He referred the Court to the judgment of Lord Devlin in Connelly v the DPP⁶ where he said “The fact that the Crown has, as is to be expected, and that private prosecutors have (as is also to be expected, for they are usually public authorities) generally behaved with great propriety in the conduct of prosecutions, has up till now avoided the need for any consideration of this point. Now that it emerges, it is seen to be one of great constitutional importance. Are the courts to rely on the Executive to protect their process from abuse? Have they not themselves an inescapable duty to secure fair treatment for those who come or are brought before them? To questions of this sort there is only one possible answer. The courts cannot contemplate for a moment the transference to the Executive of the responsibility for seeing that the process of law is not abused.”

17. Counsel for the respondent, Sir Timothy Cassel, objected to the appellant’s application and from the outset indicated that his objection was not based on any public interest immunity but rather on the fact that having carefully reviewed all documents and statements involved he has concluded that the material contains nothing that could possibly assist in the allegations of bias on the part of the Chief Magistrate. He argued that the prosecution was ever mindful of its duty as provided in R v Ward adopting the words of Lawton L. J in R v Hennessy⁷ “those who prepare and conduct prosecutions owe a duty to the courts to ensure that all relevant evidence of help to an accused is either led by them or made available to the defence. “We would emphasise that ‘all relevant evidence of help to the accused is not limited to evidence which will obviously advance the accused’s case. It is of help to the accused to have the opportunity of considering all the material evidence which the prosecution have gathered and from which the prosecution have made their own selection of evidence to be led.”

⁶p. 1354

⁷ (1978) 68 cr App R 419, 426

18. Counsel submitted however that in **R v Brown**⁸ the House of Lords cited with approval a passage of Lord Taylor of Gosforth CJ in **R v Keane**⁹ in which he said “*If the disputed material may prove the defendant’s innocence or avoid a miscarriage of justice, then the balance comes down resoundingly in favour of disclosing it. But how is it to be determined whether and to what extent the material which the Crown wish to withhold may be of assistance to the defence? First, it is for the prosecution to put before the court only those documents which it regards as material but wishes to withhold. As to what documents are “material” we would adopt the test suggested by Jowit J. in **Reg. V Melvin** (unreported), 20 December 1993. The judge said: ‘I would judge to be material in the realm of disclosure that which can be seen on a sensible appraisal by the prosecution: (1) to be relevant or possibly relevant to an issue in the case; (2) to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; (3) to hold out a real (as opposed to fanciful) prospect of providing a lead on evidence which goes to (1) or (2).’”*

19. He stressed that it was for the prosecution to make the judgment call as to the relevance or materiality of the documents in issue. He suggested that the appellant’s application was in the nature of a fishing expedition and that the Court should therefore refuse it. Counsel for the respondent also relied on **R v H; R v C** and referred to the judgment of Lord Hope¹⁰ in which the judge said “*If material does not weaken the prosecution case or strengthen that of the defendant, there is no requirement to disclose it. For this purpose the parties’ respective cases should not be restrictively analysed. But they must be carefully analysed, to ascertain the specific facts the prosecution seek to establish and the specific grounds on which the charges are resisted. The trial is not well served if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that the material may turn up to make them good. Neutral material or material damaging to the defendant need not be disclosed and*

⁸ 1997

⁹ [1994] W.L.R. 746, 751

¹⁰ p 1284 para 35

should not be brought to the attention of the court. Only in truly borderline cases should the prosecution seek a judicial ruling on the disclosability of material in its hands.”

20. Sir Timothy Cassel submitted that the appellant’s case sought to do was exactly what was counselled against in **R v H; R v C**, that is, to make general and unspecified allegations and then seek broad disclosure in the hope of unearthing something that might be of assistance to the appellant. He said that to base the application on reports in the media and then seek to flesh it out via disclosure was plainly to engage in fishing expedition a course which the Court should not condone or allow and urged the Court to decline what he referred to as an invitation by counsel for the appellant to the Court to second-guess the prosecution on the issue of materiality.

21. Counsel for the respondent directed the Court to the Attorney General’s Guidelines where they provide “*Investigators must provide detailed and proper schedules. Prosecutors must not abrogate their duties by making wholesale disclosure in order to avoid carrying out the disclosure exercise themselves. Likewise, defence practitioners should avoid fishing expeditions and where disclosure is not provided using this as an excuse for an abuse of process application rather than ordering disclosure because either it is easier or it would not “do any harm.”*

This disclosure regime must be made to work and it can only work if there is trust and confidence in the system and everyone plays their role in it. If this is achieved applications for a stay of proceedings on the grounds of non disclosure will only be made exceedingly sparingly and never on a speculative basis. Likewise such applications are only likely to succeed in extreme cases and certainly not where the alleged disclosure is in relation to speculative requests for material.”

22. He submitted that the application before the Court was “speculative” and opined that the press releases, which were the basis of the application, disclose no bias/apparent bias on the part of the Chief Magistrate and therefore to say that they are the basis of the application and to seek disclosure on that ground was a spurious argument. In

furtherance of his contention that the appellant was on a fishing expedition, counsel for the respondent referred to Ground 4 of the notice of motion. He argued that the generality of the ground exposes its true nature, since it does not refer to bias at all. He further submitted that the tentative manner in which Grounds 6 and 8 were framed suggested that their allegations of bias were purely speculative.

23. Counsel submitted that the prosecution having fulfilled its duty of examining the material and having come to the conclusion that nothing therein could possibly assist the appellant, the Court should not intervene. While he did not dispute the Court's power to order disclosure he argued that it would be wrong for the Court to do so in these circumstances since it would be contrary to settled law.

24. This might be a convenient point to note that the foregoing argument proved, in hindsight, to be largely academic since the prosecution, before the hearing of the substantive matter voluntarily made extensive disclosure to the appellant. Of the thirty-one documents disclosed three were relied on by the appellant in his arguments on apparent bias.

25. This Court was mindful of the continuing duty of the prosecution to disclose to the defence any material coming into its possession or to its attention that might in any way undermine the prosecution's case or assist the defence. A long line of authority has made these principles clear and settled. We accept, as urged by the appellant, that the duty continues even post-conviction and in the circumstances of the case any relevant material should be made available to the appellant even at this appellate stage.

26. The first issue to be determined is which is the proper authority to determine when disclosure is appropriate, the prosecution or the court? The line of authorities suggest that this is a decision for the prosecution. In **R v H; R v C** it is said that "*neutral material or material damaging to the defence need not be disclosed and should not be brought to the attention of the Court. Only in truly borderline cases should the prosecution seek a judicial ruling on the disclosability of material in its hands.*" While

R v H; R v C is a case dealing with public interest immunity, it is of general application and puts the responsibility squarely in the hands of the prosecution suggesting that the court should become involved only in very limited circumstances.

27. **R v Keane** also provided that it is the prosecution that must appraise what is material for the purpose of disclosure. **R v Hennessey** expresses the prosecution's duty of disclosure as part of its duty to the court and suggests that unless there is reason to think that that larger duty has been neglected, the courts should not intervene.

28. The **Attorney General's Guidelines** (which we accept, as far as they purport to reflect the common law, as being persuasive in this jurisdiction) speak of the need for trust and confidence in the disclosure regime, i.e. that prosecutors will execute their duties properly and with care. The Guidelines further suggest that once the prosecution complies with this duty, applications for disclosure made on a speculative basis are unlikely to succeed.

29. It is therefore clear that it is for the prosecution to decide whether there is need to disclose material coming to its attention and that decision is to be based on the relevance or materiality test.

30. The second issue is the prosecution having made its decision after due consideration, when will a court review that decision? We note that in this case there is no suggestion by the appellant that the prosecution has not reviewed the documents available to it, or that having reviewed the documents, the prosecution has improperly or incorrectly withheld relevant material, in other words, the appellant has provided no basis on which this Court should review the prosecution's decision. It is the appellant's simple argument that the Court cannot and should not trust the prosecution (or executive) to make such decisions.

31. The appellant's arguments on this issue fly in the face of authority. The courts should exercise sparingly their power to second-guess the prosecution on matters of disclosure. The Attorney General's Guidelines warn against the courts ordering disclosure because it "would not do any harm." Where the prosecution has declined to disclose material, the Court should only intervene when there is some substantial and credible suggestion that the prosecution is in clear violation of its duty of disclosure. To do otherwise would be to effectively involve the court in every matter where disclosure is not forthcoming in a potentially time-consuming exercise of examining material to determine its disclosability. This would completely nullify the duty placed on the prosecution in these matters. Another hazard of that approach is that it might well bring to the attention of the court matters to which it ought not to be privy and which at the end of the day turn out not to be disclosable.

32. The broad terms of the disclosure sought in the notice of motion itself suggest little focus in the matters sought by the appellant. They are far more consistent with the view that the scattershot approach suggests the undesirable fishing expedition.

33. The Canadian (British Columbia Court of Appeal) courts dealt with this issue in the case of Hammami v College of Physicians and Surgeons of British Columbia 73 B.C.A.C. 205. Briefly, the appellant doctor had been investigated by the respondent college to determine whether he had adequate skill and knowledge to practise and the respondent concluded that he did not. The appellant appealed on grounds of reasonable apprehension of bias. The decision was set aside and a second investigation was conducted with a differently constituted panel. The result was the same and the appellant appealed again on the same ground and made a preliminary application for full disclosure of all documents concerning him in the files of the respondent. A judge in chambers ruled in favour of the appellant and the college appealed. By a 3:2 majority, it was held that the appellant's allegations of bias were at best speculative and further, that while an allegation of bias in a notice of appeal may make bias a matter in issue, it does not follow that an order for disclosure should be made on mere allegations. As the appellant

produced no evidence of bias, an order to investigate the possibility of bias could not be supported. *Hammamai* bears significant resemblance to the matter before this court

34. In conclusion, we were of the view that the prosecution having carried out an appraisal of the relevant material (a matter not disputed by the appellant) and decided that there was nothing that required disclosure this Court would not, without reason, go behind that decision. In the circumstances the application was dismissed.

M. Warner
Justice of Appeal

I. Archie
Justice of Appeal

P. Weekes
Justice of Appeal