THE HIGH COURT
JUDICIAL REVIEW

[2018 No. 807 J.R.]

BETWEEN

ANTHONY J. FITZPATRICK

APPLICANT

AND
PAUL M. BEHAN (IN HIS CAPACITY OF TAXING MASTER OF THE HIGH COURT)

RESPONDENT

AND
MYLES CARBERRY

NOTICE PARTIES

JUDGMENT of Ms. Justice O'Regan delivered on the 20th day of December 2018

Issues
1. Following two separate sets of proceedings three orders for costs were made in favour of the notice party as against the applicant, namely, an order of the Court of Appeal of 24th August 2016 and two High Court orders respectively dated 10th May 2017 and 20th October 2017. Following the issue of three separate summonses on 16th May 2018 the matter was heard by the respondent on 12th July 2018 and subsequently three certificates of costs issued on 2nd August 2018.

2. Leave was afforded to the applicant to maintain the within judicial review proceedings in respect of the certificates of 2nd August 2018 on the basis that:

> (a) "Behan and Associates" was the name used by the accountant for the notice party and this name is registered to the name of the respondent. Accordingly, it is argued there is ongoing goodwill in favour of the respondent associated with the name and his ownership of the name could be encashed thereby giving rise to a perception that the respondent has a direct or indirect interest in that accountancy business;
>
> (b) The respondent ought not to have determined the taxation on 12th July 2018 as it offends the *nemo judex in sua causa* principle and lacked basic fairness of procedure;
>
> (c) The respondent unreasonably exercised his discretion not to accede to the applicant's application for an adjournment and therefore the applicant did not have an opportunity to instruct cost accountants;
>
> (d) Insofar as the refusal of the application for the adjournment is concerned no adequate reasons were furnished and to the objective observer such observer would believe that the adjournment was refused to facilitate an early taxation and higher reward and faster fee collection making a net gain directly or indirectly to the respondent.
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> (e) No comparators were open to the respondent while the applicant's solicitor and counsel were present accordingly the respondent's methodology was not in compliance with O. 99 principles of natural and constitutional justice and fairness;
>
> (f) That the applicant would have requested the respondent to recuse himself on grounds of objective or perceive bias or unfairness if the respondent has disclosed that he had a former professional relationship with the notice party's cost accountant and was presently the owner of the business name used by such accountant's firm.

3. The application is grounded on the affidavit of the applicant and of his solicitor both dated the 8th October 2018.

Adjournment
4. In the affidavit of Mr. Kilcoyne solicitor on behalf of the applicant it is recorded that the 12th July 2018 the matter was listed before the respondent and an application for an adjournment was made on behalf of the within applicant for reasons that the applicant was in hospital for some of the time since the bill of costs was received. At that date the applicant had not instructed a cost accountant to deal with the matter on his behalf. The application for an adjournment was refused following which Mr. Kilcoyne and his counsel left. It appears that the taxation took place after Mr. Kilcoyne and counsel had left.

5. Mr. Kilcoyne exhibits an email from him to Mr. Paul Conlon who was the tax accountant acting on behalf of the notice party who had written to Mr. Kilcoyne with the certificates for taxation on 16th May 2018. Mr. Kilcoyne referred to that letter and in his response email of 28th May 2018 requested an adjournment from the 12th July 2018 to enable the applicant to retain his own cost drawer. On the same day Mr. Paul Conlon responded that consent to an adjournment would not be forthcoming and eight weeks (between the date of service of the summons and the date of hearing) was said to be more than enough time to instruct legal cost accounts. In a further letter of 14th June 2018 Mr. Conlon enquired of Mr. Kilcoyne as to the identity of the applicant's legal cost accountants however there was no response to this communication. On 26th June 2018 the notice party's solicitors indicated that any adjournment application would be opposed.

6. At a date undisclosed following the certificates of the 2nd August 2018 the applicant retained a legal cost accountant Mr. Michael Ryan. Mr. Ryan completed his report on 4th October 2018.

7. In Para. 4 of the affidavit of the applicant it was indicated that Mr. Paul Conlon opposed the application for an adjournment and was most anxious to proceed.

8. The foregoing comprises the basis for suggesting that the respondent acted unreasonably in refusing the adjournment.

9. It is noted that:

> (1) The detail in relation to when and for how long the applicant was in hospital was not afforded.
>
> (2) Mr. Kilcoyne had instructions to apply for an adjournment on 28th May 2018 and it was not until the 12th July 2018 that any difficulty was raised, namely, the applicant had been in hospital.

(3) No medical report was produced either before the respondent or before this Court.

(4) It is clear that arguments opposing the adjournment were put forward on behalf of the notice party.

(5) A precise date upon which Mr. Ryan was instructed has not been advised nor has any indication been given by the applicant as to why Mr. Ryan was not instructed in good time to deal with the matter on 12th July, 2018, notwithstanding that he had been in hospital for some of the time, on dates unknown.

(6) Mr. Kilcoyne did not respond to the enquiry made by Mr. Conlon as to the identity of the applicant's cost accountant.

(7) The applicant's arguments appear to be premised on an entitlement to secure an adjournment if during the period between the date of the summons and the hearing, the applicant was in hospital for an undisclosed period of time without otherwise indicating how there was difficulty in appointing a tax accountant on behalf of the applicant.

10. In the circumstances the applicant has not disclosed an error of law in the respondent refusing the adjournment sought. The issues as to the objective observer are dealt with below.

Damages
11. Damages have been claimed for breach of the applicant's constitutional rights.

12. In paragraph 7 of the applicant's grounding affidavit it is stated that on 21st August 2018 three judgment mortgages were registered against the applicant and same were published in Stubbs Gazette, reported in the Sunday Business Post and Phoenix Magazine and the notice party reported the matter to the applicant's professional body all of which damaged the applicant's reputational business and staff morale.

13. On 3rd August 2018 when the notice party furnished the orders of taxation on the applicant a request for discharge was made. An indication was furnished that if payment was not made within seven days the notice party would take all steps to enforce the costs personally without further notice. There was no response from the applicant to this communication. On 23rd August 2018 the solicitors for the notice party indicated the registration of the judgment mortgages occurred on 21st August 2018.

14. In my view the judgment mortgage and other disclosure matters referred to in the applicant's affidavit at Para. 7 aforesaid are incidents of the court orders for costs. The applicant did not engage with the communication from the notice party. He did not lodge monies in court or take any other step to avoid the judgment mortgage or any other possible publication of the awards. The applicant has not stated that but for the issues hereinafter mentioned, which by the 21st August 2018 do not appear to have been known to the applicant, he would have paid the tax costs.

15. In the circumstances as aforesaid the applicant has not demonstrated any entitlement to an award of damages.

Main Grounds for Relief
16. It appears that initially the respondent intended not to partake in the proceedings however as a consequence of submissions made on behalf of the applicant dated 20th November 2018 the respondent served a Statement of Opposition dated the 3rd December 2018 in which it was initially set out that because the respondent is a quasi-judicial officer he does not participate in challenges to his decisions. However, insofar as the statement of grounds alleges breach by the respondent of the principles of natural and constitutional justice, a breach of the principle of *nemo judex in sua causa*, lack of fair hearing, objective or perceived bias or unfairness, the respondent was filing a Statement of Opposition.

17. It might be noted that the statement of grounds and the two submissions on behalf of the applicant have internal contradictions :-

(a) In the applicant's first set of submissions of the 20th November 2018 it is argued that the respondent being a taxing master does not perform a quasi-judicial role. However, the second set of submissions the 6th December 2012 appears to accept that the respondent is engaged in a quasi-judicial role.

(b) In the first set of submissions the applicant argues that the issue of impropriety on the part of the respondent is clearly raised in the statement of grounds. During the course of the reply oral submissions to the court on behalf of the applicant it is argued that the only issue raised in the statement of grounds is that of bias and impropriety has not been raised. In my view this last statement is in fact correct although contradicts both the first set of submissions and indeed the opening arguments on behalf of the applicant.

18. Similarly, the statement of opposition and submissions on behalf of the respondent contain internal contradictions. The respondent indicated to the court that he was instructing counsel only because of the allegation of *mala fides* and/or impropriety and therefore this was the issue to be addressed by him before the court. However, in written submissions at pp. 12, 13 and 14 of the 6th December 2018 bias is addressed, and indeed was also addressed in oral submissions to the court, notwithstanding that it was indicated on behalf of the respondent that bias does not equate to *mala fides* or impropriety. Furthermore, in Para. B of the statement of opposition aforesaid it is clear that bias is being addressed by the respondent.

19. As aforesaid two sets of submissions had been filed on behalf of the applicant the first stated the 6th November 2018. In those submissions the following arguments are raised:

(1) If the respondent enjoyed immunity this is not without limitation. The applicant relied on *Walsh v. The Property Registration Authority* [2016] 2 JIC 1703, paragraph 17, where it is acknowledged that in exceptionally cases where the impugned order was made *mala fides* immunity would not arise. The Judgment also recognises that there is authority to the effect that statutory bodies discharging adjudicatory functions may enjoy a *de facto* immunity from costs where the deciding body in question takes no active part in the proceedings in which the validity of its decision has been challenged however that is not to suggest that such immunity will arise where the relevant body never exercised a power of adjudication in the first place.

(2) The applicant relies on the decision of Mr. Justice Gannon of the 12th February 1981 in *Magauran v. Dargan & Ors* [1981] 2 JIC 1201 where it was held that the taxing master is not presiding over a Court nor exercising a judicial function and the taxing master's function would be described as ancillary to the judicial process - only providing a service of a very limited nature. The applicant argues that the subsequent decision *Smith v. Considine* [2017] IEHC 22 did not consider the

established jurisprudence or set out why an analogy was drawn between a judge and that of a county registrar. *Smith* aforesaid informed the decision of *Hussain v. Taxing Master* [2018] IEHC 280 a judgment of Barrett J. on 17th May 2018 where Barrett J. was satisfied that judicial immunity attached to a taxing master and as there was no contention that the taxing master had acted in bad faith or with impropriety there was no basis on which liability for costs against the taxing master could be supported.

(3) The applicant refers to the judgment of Dunne J. in *Casey v. Private Security Appeals Board & Anor.* [2009] IEHC 547 where it was held that the respondent body did enjoy immunity by reason of performing quasi-judicial functions. The body was set up to control and supervise individuals and firms providing private security services and in this regard the applicant argues that the taxing master's functions are far more limited and therefore could not be equated.

(4) The applicant suggests that the role of the taxing master is that set out in the eight schedule of s. 3 of the Courts (supplemented provisions) Act, 1961 and that there has been no assignment of judicial powers to the taxing master either by statute or rules of court.

(5) The applicant relies on *Miley v. the Employment Appeals Tribunal* [2018] 1 I.R. 787 where the Supreme Court was satisfied that judicial immunity was enjoyed by a statutory body which has not participated in judicial review proceedings however this immunity would be lost if the respondent acted with *mala fides* or impropriety. Therefore, even if the respondent did enjoy immunity this would apply only where there is no mala fides or impropriety.

20. Based upon the foregoing it is argued that in the instant case the grounds for the application for judicial review specifically alleges impropriety on the part of the taxing master on the basis that he may derive a benefit from the business relationship he enjoys with the accountant on behalf of the notice party and this raises doubt as to his impartiality and his propriety. Impropriety is said to arise by the respondent failing to disclose his actual or potential conflict of interest.

21. In the applicant's second set of submissions of 6th December 2018 his arguments are:

(1) No affidavit was filed by the respondent which it is suggested was required by O. 84, r. 22 of the Rules of the Superior Courts.

(2) Thereafter the issue of objective bias is discussed and the test in K*enny v. Trinity College Dublin* [2008] 2 I.R. 40 might be fulfilled when the relevant complaint of bias or is as between the adjudicator and a witness as opposed to as between the adjudicator and a party in the case. Finlay C.J. on behalf of the Supreme Court in that matter indicated that the test demands an appreciation of all of the circumstances followed by a particularly careful exercise of the faculty of judgment. Where the allegation is one of pre-judgment bias the interpretation more favourable to the plaintiff would be appropriate where there is ambiguity and the facts which arose in that case indicated that the court should err on the side of caution to satisfy the principle that justice must not only be done but seen to be done. The question which arises is whether a reasonable observer might have a reasonable apprehension that a judge might find it difficult to maintain complete objectivity and impartiality. Would the objective observer be concerned that the allegations were of a nature to cast doubt on the integrity of *inter alia* the adjudicator so that such adjudicator should not entertain the dispute.

(3) The applicant refers to *Goode Concrete v. CRH* [2015] 3 I.R. 493. Denham C.J. indicated that test in both perceived or objective bias is that of whether there is a reasonable apprehension of a reasonable person who is in possession of all the relevant facts that objectivity and impartiality could not be maintained. It was held that it was the responsibility of a judge to make the necessary enquiry into his holding of shares or to make the necessary assessment as to whether or not he should recuse himself. The test is based upon the principle that no man is to be a judge in his own cause.

(4) Under a heading of fair procedures, it is argued that the said procedure ensures that pre-judgment or prior involvement or interest would be avoided. The cases cited certainly support the view that an adjudicator should not have an interest in the outcome however the jurisprudence does not support the proposition that there should have been no prior involvement between the adjudicator and the witness.

(5) In order to support the proposition that the objective observer would consider in the instant circumstances that the taxing master would find it difficult to maintain complete objectivity and impartiality it is recorded that the respondent and Mr. Conlon worked in the same firm for a period of approximately ten years ending approximately ten years ago. The respondent retained an interest in the premises where the notice party's accountant firm operated from. In addition the respondent retains a financial or other interest in the name used by the notice party's tax accountant.

22. The respondent's submissions are dated 5th December 2018.

23.

(a) In the first instance it is argued that the respondent enjoys immunity from suit as a quasi-judicial officer. In this regard the applicant relies on *Kilty v. Judge Cormac Dunne & Anor*, Unreported, Court of Appeal decision of the 22nd March 2018 where Hogan J. held that the case law was clear that an order of costs cannot be made against a judge personally in the absence of an express finding of *mala fides* or impropriety on his part. In that case the judge did not defend the application for judicial review. Hogan J. quoted from *Miley v. Employment Appeals Tribunal* [2018] 1 IR 787 and *McIlwraith v. Fawsitt* [1990] 1 I.R. 343, as well as his own prior decision in *Walsh v. Property Registration Authority* [2016] 2 JIC 1703.

In *McIlwraith* Finlay C.J. held that under no circumstances should the High Court in an application for judicial review award costs to a successful applicant in a case where there was no question of impropriety or *mala fides* on the part of the judge and where the judge had not sought to defend the order.

In *Walsh* Hogan J. indicated that personal immunity from costs save in quite exceptional cases is necessary to ensure judicial independence.

In *Miley* the concept of impropriety was addressed and its definition in the Concise Oxford Dictionary was noted including effectively wholly unfit proceedings. Denham C.J. indicated that errors of law or of fact are matters to be dealt with on appeal and not matters of impropriety. In that case although the standard of hearing was wanting and not the type of behaviour the EAT would aspire to nor was the conduct such as participants should be required to accept nevertheless

there was no finding of impropriety although the judgment was set aside.

(b) The respondent relies on *The State (Gallagher, Shatter & Co.) v. De Valera* [1986] ILRM 3 to support the proposition that it was not appropriate for the respondent to swear an affidavit. In that matter McCarthy J. for the Supreme Court stated:

> "I regard it as unfortunate and out of keeping with appropriate practice that the affidavit showing cause should have been sworn by the Taxing Master rather than one of his officers."

(c) In *Casey* aforesaid Dunne J. quoted that the respondent did not participate in the proceedings and there was no allegation of *mala fide* or impropriety and held that the respondent was a quasi-judicial body and therefore it was appropriate that it should be immune from costs.

(d) The respondent argues that *Hussain* was correctly decided. The judgment of Gannon J. should be seen in context namely that it was argued that the Taxing Master presided over a court, effectively requiring solicitor and counsel, and could not be addressed by an accountant.

(e) It is also disputed that the eighth schedule of the 1961 Act comprises the limits of the powers of the Taxing Master as these were supplemented by The Court and Court Officers Act, 1995 and O.99 of the Rules of the Superior Courts.

(f) *Walsh*, the judgment of Hogan J. aforesaid, was distinguished as the court held in that matter that the respondent authority was exercising a purely routine administrative function which did not involve any adjudication in respect of the respective rights of the parties.

(g) It is argued that the statement of opposition addressed only alleged wrongdoings on the part of the respondent which the applicant might seek to characterise as impropriety or *mala fides* however the respondent also argues that objective bias or a breach of the principle of *nemo index causa sua* does not amount to either impropriety or *mala fides*. Insofar as the applicant seeks to assert that the inadvertent retention of a business name constitutes a direct or indirect interest to the respondent the assertion is wrong as a matter of law and the respondent has no proprietary interest in the business name which he has already instructed his accountant to address.

(h) The respondent argues that the assertion of objective bias cannot be sustained and the test for same has been comprehensively dealt with in *Goode Concrete v. CRH* namely the view of the reasonable person possessed of all relevant facts not unduly sensitive and as to whether or not that person would have a reasonable apprehension that there would not be a fair trial from an impartial judge. In that action the judge held shares in the company as opposed to shares in a pension plan over which he or she had no control.

(i) The respondent argues that there is no rule of law that a judge is automatically disqualified (save where the adjudicator has a financial interest in the outcome) and each case is analysed on its own facts. The respondent refers to the fact that it is the applicant that has a burden of proof. The test has evolved subject to the overarching need to have a properly functioning system of justice.

(j) In oral submissions the respondent referred to the fact that in the summons of the 16th May, 2018 for taxation the respondent's name appears on the summons and same was received by the applicant from Paul Conlon accountant on behalf of the notice party.

(k) The respondent also refers to s. 27 (3) of the Courts & Court Officers Act, 1995 and O.99 r.14 et seq. and in particular r.34 as to the comprehensive nature of the Taxing Master's role and the binding effect of his decision.

(l) The respondent also referred to the purpose and provisions of the 1963 Act and quoted from Clarke on intellectual property as to the impact of the registration of a business name.

(m) The respondent also referred to O.84 of the Rules of the Superior Courts which in effect does not require a verifying affidavit save in respect of facts mentioned in the statement of opposition and these facts have been verified in the affidavit of Mr. Magill accountant on behalf of the respondent.

Reply

24. In the applicant's reply oral submissions it was argued that even if the respondent did have immunity at the outset of the proceedings same has now been lost by partaking in the proceedings and the statement of grounds does not contain a claim of *mala fide* or impropriety notwithstanding that the applicant's submissions do make such an assertion and indeed such an assertion is also made in the affidavit evidence of the applicant not least his affidavit of the 6th December, 2018, Para. 8 thereof. The applicant argues that the respondent ought to have enough confidence in the court to deal with the matter on the basis of the statement of grounds in circumstances where impropriety is not pleaded and insofar as a pleading of improper is concerned this goes to objective bias only. The applicant seeks to distinguish the judgment of Baker J. in *S.M. v. Dermot Simms Solicitors*, Court of Appeal judgment of the 5th December 2018 and the decision of Kearns J. in *Superquinn Ltd v. Bray Urban District Council (No.2)* [2001] 1 I.R. 459. Although in opening submissions the applicant argued that the value to the respondent increases every time the tax accountant on behalf of the notice party used the notepaper with the name registered to the respondent under the 1963 Act, in reply submissions it is suggested that the applicant did not have to show that the respondent has a pecuniary interest in the outcome. The applicant refers to the judgment in *Kenny* aforesaid where there was no suggestion of *mala fides* nevertheless at Para. 17 thereof objective bias was found.

Discussion

25. I am satisfied that having perused the statement of ground in detail that in fact there is no assertion of *mala fides* or impropriety on the part of respondent.

26. The Registration of Business Names Act, 1963 was introduced for the purposes of registration of persons carrying on business under business names other than their given surname. Under s.3(1)(b) every individual having a place of business in the State

carrying on business under a business name which does not consist of his true surname requires to be registered and under s.8(1) upon registration a certificate of same issues. Under s.12(1) if a person registered under the Act in respect of a business name ceases to carry on business under that name it is the duty of that person within three months thereafter to deliver to the register a statement in the prescribed form *inter alia* for the purposes of removal of the name from the register. Under s.14 (1) it is possible to refuse to permit the registration under the Act of a name which is considered undesirable although an appeal will lie.

27. Clarke and others on *Intellectual Property Law in Ireland* 4th ed. at Para. 26.04 discussed the 1963 Act and opines that the registration of a business name does not confer any propriety rights in the name with s.14 (3) specifically stating that registration shall not be construed as authorising use of the name if apart from such registration the use thereof could be prohibited. No powers are vested in the registrar to refuse registration save in respect of a name that is considered undesirable by the Minister. The authors state that a multiplicity of different or unconnected persons can and often do hold identical or confusingly similar business name registrations.

28. Given the foregoing I am satisfied that the applicant has not made out a case that the respondent has any interest whatsoever in the notice party's tax accountants' business because they use the name Behan and Associates.

29. In *Superquinn* aforesaid Kearns J. held that where powers are expressly conferred on the Taxing Master by statute it must follow that he also has a duty to examine the nature and extent of the work in any particular case and make as a rule fair and reasonable assessment of the merits accordingly. Kearns J. indicated that the Act of 1995 has clearly conferred on the Taxing Master, who has specialist expertise in the area, all the attributes of a specialist tribunal.

30. In *Sheehan v. Corr* [2017] IESC 44 Laffoy J. stated that in review a court should show deference to the expertise of the specialist Taxing Master.

31. In *Miley v. The Employment Appeals Tribunal* aforesaid, at Para. 36, Denham C.J. indicated that it was apparent that the EAT was a tribunal which had a function of decision making on a conflict and at Para. 38 stated that as a matter of public policy arising from its function, the EAT should not primarily be liable for an order of costs when it has not participated although immunity would be lost if it acted with *mala fides* or impropriety (see Para. 39). In that matter it was held that *mala fides* involved an intention on the part of the respondent so the concept goes to intent and motive with impropriety addressing wholly unfit proceedings or improper conduct, indecency or unfitness. The Supreme Court was satisfied that the hearing before the EAT was wanting and was not the type of behaviour that the EAT aspired to and indeed which a litigant should be obliged to accept nevertheless the court was satisfied that behaviour did not amount to *mala fides* or impropriety.

32. I am satisfied therefore that the case law aforesaid demonstrates that the Taxing Master who has specialist expertise with the function of decision making on a conflict is therefore entitled to the limited immunity available to judges, that is, when they do not partake in proceedings and the possibility of impropriety or *mala fides* has not been made out.

33. In *Kenny* aforesaid the Supreme Court in the judgment of Fennelly J. at Para. 18 et seq. dealt with the test of objective bias and it was noted that it is whether a reasonable person in the circumstances would have a reasonable apprehension that the applicants would not have a fair hearing from an impartial judge on the issues. It was noted that the test is expressed in general terms as its application demands an appreciation of all the circumstances of the individual case followed by a particularly careful exercise of the faculty of judgment. In Para. 23 of his judgment Fennelly J. indicated that a real danger of bias might well be thought to arise where there was a personal friendship or animosity between the judge and any member of the public involved in the case or if the judge was closely acquainted with any member of the public involved particularly if credibility was significant. At Para. 24 Fennelly J. indicated that the test was whether a reasonable observer might have a reasonable apprehension on hearing the matter that the adjudicator might find it difficult to maintain complete objectivity and impartiality. In that case the court held that the test was satisfied however it should be borne in mind that the court applied the most favourable interpretation of the facts from the plaintiff's point of view bearing in mind that the court should be especially careful where it is considering one of its own judgments.

34. In *Goode Concrete v. CRH*, at Para. 24 of the judgment of Denham C.J., it was indicated that where the adjudicator has a proprietary or some other definite personal interest in the outcome there is a presumption of bias without further proof.

35. It is also clear from the case law aforesaid that where there is ambiguity it should be reviewed in the light most favourable to the applicant.

36. In the instant circumstances the reasonable observer would know:

1. The respondent and Mr. Paul Conlon worked together for a period of ten years which terminated in 2008 when the respondent retired.

2. As and from the 16th November, 2010 the respondent disposed of his shares in one of the two companies associated with Mr. Paul Conlon and thereafter was not a director or had any involvement with same.

3. By the 1st May, 2014 the respondent did not retain any shares or have any involvement in either company – at that time his holding in trust ceased.

4. The respondent disposed of his interest in the property from which the notice party Tax Accountants operated in December 2017.

5. The respondent was appointed as Taxing Master on 24th April 2017.

6. There is no proprietary interest in the name of Behan and Associates vested in the respondent and indeed from 2008 the respondent was obliged to ensure that his registration was removed from the register.

7. In his adjudication a Taxing Master would in ordinary course be dealing with and hearing submissions from tax accountants.

8. The respondent had no interest in the outcome of the decision.

9. In dealing with the relevant costs there was no allegation arising against anyone – the hearing was limited to measuring costs due.

10. Friendship and associations will inevitably arise between cost accountants.

11. A multiplicity of different and unconnected persons can and often do hold identical or confusingly similar business name registrations.

37. In the light of the foregoing I am satisfied that a reasonable observer who is not unduly sensitive would not form the view that the respondent had difficulty in maintaining complete objectivity and impartiality or that the circumstances cast doubt on the integrity of the respondent in or about the discharge of his functions. Nor would the reasonable observer be apprehensive that the applicant would not have had a fair hearing from an impartial judge on the issues (had the applicant attended for the full hearing).

Conclusion

38. For the reasons aforesaid I am satisfied that the applicant has not discharged the burden required to secure an order of *certiorari* or any of the ancillary relief and therefore all of same are refused.