# In The Supreme Court of Bermuda

## CIVIL JURISDICTION

**2025: No. 265**

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| **BETWEEN:** | **QUINTON BURGESS** | **PLAINTIFF** |
| | **AND** | |
| | **THE ATTORNEY GENERAL** | **DEFENDANT** |

# JUDGMENT

*Application for a stay of an order of a co-ordinate judge and an injunction to restrain the co-ordinate judge from hearing a matter pending in another case before the court by reason of claims of breach of the plaintiff's constitutional rights to a fair hearing under sections 6 and 15 of Schedule 2 to the Bermuda Constitution Order 1968*

**Date of Hearing: 10 December 2025**

**Date of Order and *ex tempore* reasons: 10 December 2025**

**Date of Detailed Reasons: 17 December 2025**

Hearing by zoom link

*Appearances:* *Saul Dismont* of Marshall Diel & Myers Ltd for Mr. Burgess

*Wendy Greenidge* of the Attorney General's Chambers for the Attorney General

**MARTIN J in Chambers**

**DETAILED REASONS**

**Introduction**

1. These are the expanded reasons that relate to an *ex tempore* ruling made by this court on 10 December 2025. An urgent *ex parte* application was made by Mr. Burgess[1] in these proceedings to obtain a stay of a ruling made by Mrs Assistant Justice Wheatley (Wheatley AJ) in ancillary relief proceedings now pending in the divorce jurisdiction of this court. Mr Burgess also applied for an injunction to restrain the learned assistant justice from making any further decisions in the pending ancillary relief proceedings on the grounds of apparent bias.

2. The urgency of the application was that the matter in the divorce jurisdiction was listed for a further hearing before Wheatley AJ the following morning on 11 December 2025. Accordingly, the court proceeded to entertain the application even though proper service of the summons and related paperwork had not been effected on the Attorney General. The hearing was in effect an application that was made '*ex parte* application on notice' to the Attorney General.

3. The court refused the applications and gave brief *ex tempore* reasons which are reproduced below:

*"Court's decision in relation to the application for a stay of order and order prohibiting judge from hearing the matter.*
Court:

> As the matter is pending a hearing before the court tomorrow it seems necessary for the court to issue a decision now, but with its detailed reasons to follow.
> The court is not satisfied that it has jurisdiction under the constitution to interfere with a matter which is pending before another judge. There is no authority advanced for that proposition. Conventionally the only way to set aside a judge's order is by way of an appeal to the Court of Appeal.
> The proviso to section 15 of Schedule 2 to the Bermuda Constitution Order requires the court to be satisfied that the applicant has no other adequate means of redress.
> The court is satisfied that there is adequate means of redress by way of appeal, and that even if the court had power to do what is asked of it today, the proviso would apply to prevent the court from doing so by reason of the mandatory language of the proviso (i.e. "...**shall not** exercise its powers...")
> Further, the court considers that the appropriate course would be for the applicant to make an application to the learned acting judge for a stay of her order pending an appeal, and if thought necessary, to make an application for the learned judge to recuse herself on the grounds of apparent bias.
> Therefore, this court will not accede to the present applications.
> Fuller and more carefully expressed reasons will be provided in due course to expand on and explain the jurisdictional basis for the court's conclusions. This summary is provided now in this form due to the exigencies of time."

[1] Mr Burgess is referred to by name because these proceedings have not been anonymised. It would be pointless to refer to him as Mr. B to preserve anonymity because the title of these proceedings makes it clear who he is.

4. I indicated that I wished to give expanded reasons for the refusal to make the orders requested. This is because I considered it important to ensure that the legal principles that lie behind the decision are properly articulated and explained, both in the context of this case and in relation to other applications which may be made in the future.

**Brief Background and context**

5. Mr. Burgess is the petitioner in divorce proceedings that are pending in the jurisdiction of this court. An ancillary relief application came on before Mrs Justice Stoneham ("Stoneham J") in July 2023 in respect of which she gave her decision on 7 November 2023 ("the Ancillary Relief Judgment").

6. Subsequently an application was made in respect of child maintenance in the same ancillary relief proceedings. This application came on for hearing before Wheatley AJ in September 2024. Wheatley AJ took time to consider her decision. She prepared a draft ruling which addressed the issues in the application, but which do not need to be recited here for the purposes of the present application.

7. Wheatley AJ circulated her reasons in draft to the parties and their counsel on 1 October 2025. In her draft ruling, Wheatley AJ came to the conclusion that in the ancillary relief proceedings before Stoneham J, Mr. Burgess' assets had been substantially mischaracterized and that as a result the relative financial positions of the parties were "inaccurate".

8. Wheatley AJ considered that the evidence on which Stoneham J's decision had been based was "unreliable". As a result, Wheatley AJ declined to make a decision in relation to the child maintenance application on the basis of that inaccurate evidence, and directed that the parties should file further submissions as to why the Ancillary Relief Judgment of Stoneham J should not be set aside.

9. For his part, Mr. Burgess did not accept that the Ancillary Relief Judgment should be set aside and launched an application for relief under section 15 of schedule 2 to the Bermuda Constitution Order 1968 ("the Constitution"). On 13 October 2025 Mr. Burgess issued an Originating Summons by why he sought to challenge the legality of Wheatley AJ's Ruling.

10. The Originating Summons seeks (inter alia) declaratory relief that Wheatley AJ's Ruling was *ultra vires*, made in breach of the rules of natural justice, and that the decision should be set aside on the ground that the learned Assistant Justice's Ruling gave rise to an appearance of bias on her part. A further prayer was that the 14-month delay between the hearing of the child maintenance application in September 2024 and the issue of the Ruling in November 2025 also meant that Mr Burgess did not have a trial within a reasonable time.

11. On 6 November 2025, Wheatley AJ issued her Ruling in its final form. In the postscript, Wheatley AJ explained the intervening events since 1 October 2025.

12. By a separate summons dated 5 December 2025 in the Originating Summons proceedings, Mr. Burgess sought an order staying the Ruling of Wheatley AJ and an interim injunction order to restrain Wheatley AJ from having any further conduct of the child maintenance application pending

the trial of the Originating Summons. It is that summons which came before this court in relation to the present application.

13. The application was not supported by an affidavit from Mr. Burgess, but the court was assured that an affidavit was "coming"[2]. The court was told that it had not been filed or served in draft because of the necessity to get before the court before the return date before Wheatley AJ on 11 December 2025.

**The present application**

14. Mr. Dismont urged that the essential facts can be gleaned from Wheatley AJ's Ruling in any event. Because the application had been served without two clear days' notice upon the Attorney General, Ms Greenidge appeared but without instructions and without having had the opportunity to consider any of the relevant issues or prepare to make submissions on the law and accordingly reserved her position. The court considered that it was necessary to hear the application in view of the fact that the ancillary relief proceedings (in respect of the child maintenance application) were due to be heard by Wheatley AJ the following morning. The matter therefore proceeded as an *ex parte* on notice application for a stay and interim injunctive relief, and Mr. Dismont presented his arguments on that basis.

**The arguments**

15. In essence Mr. Dismont argued that Wheatley AJ's Ruling did not give Mr. Burgess a fair hearing in breach of section 6 (8) of the Constitution, which provides:

> *"Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where such proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time."*

16. First, Mr. Dismont criticized the procedure because followed by Wheatley AJ because it did not provide Mr Burgess with the opportunity to be heard before the Ruling was issued. This was said to be both a breach of the right to a fair hearing and a breach of the ordinary rules of natural justice at common law. Second, he criticized Wheatley AJ's Ruling on the basis that she in effect set aside the Ancillary Relief Judgment on her own motion without any party having made an application for it to be set aside, which was beyond her powers as a judge. Third, it was said that by taking these steps, an informed and fair-minded observer would consider that Wheatley AJ Ruling demonstrated that there is a real danger that she was biased in her decision. The court here emphasises that Mr. Dismont did not allege that Wheatley AJ was guilty of actual bias but urged that her decision showed an *appearance of bias* within the test established in **Porter v MacGill**[3].

17. Although Mr Dismont suggested in argument that the learned Assistant Justice had "*taken it upon herself to make an application to set aside the Ancillary Relief Judgment*", in the course of argument he accepted that this may be an unfair characterisation, but maintained that the learned judge should not have gone behind the decision of Stoneham J. It was submitted that the arguments summarised

[2]The affidavit has not been filed as at the date of the issue of these reasons.
[3] [2001] UKHL 67 at paragraph 103 per Lord Hope.

above justified this court in intervening on an interim basis and that the interests of justice required this court to stay Wheatley AJ's Ruling and to make an order preventing her from hearing the child maintenance matter any further (at least pending the trial of the Originating Summons).

18. In the course of argument, Mr. Dismont suggested that the court's powers of intervention in a challenge under section 15 of the Constitution are unlimited and that the court had the power to make any order that was necessary to address the circumstances of the case. Reliance for this broad proposition was placed on this court's decision in **Durham v Attorney General**[4].

**Analysis**

19. Section 15 of the Constitution provides (so far as material):

> *"(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.*
>
> *(2) The Supreme Court shall have original jurisdiction (a) to hear and determine any application by any person in pursuance of subsection (1) and (b) to determine any question arising in the case....and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled."*

20. The court pointed out, and Mr. Dismont accepted, that the court's powers under section 15 of the Constitution are subject to a proviso which states:

> *"Provided that the Supreme Court **shall not** exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law."*
>
> (Emphasis added)

21. This means that there is a limitation on the power of the Supreme Court to give relief if there are or have been adequate means of redress available to Mr Burgess. The usual and most obvious of these forms of redress is a right of appeal. Mr. Dismont accepted that Mr. Burgess has a right of appeal against the decision of Wheatley AJ and if exercised successfully the Court of Appeal would be able to give adequate redress in respect of all of Mr. Burgess' complaints. Mr. Dismont did say that an appeal would not be convenient or easy, and urged that it would be preferable for the court to intervene under section 15. In my judgment that is not the appropriate approach: the relevant questions are whether the means of redress is available and adequate.

22. An appeal is the conventional way for a person who is dissatisfied with a ruling of the Supreme Court to seek redress. In the **Durham** case the court was satisfied that there was no right of appeal that could be exercised by the Durhams because under the Court of Appeal Act 1964 there can be no appeal until there has been a conviction. Although they had been indicted, the Durhams' trial

[4] [2025] SC (Bda) 66 civ (23 June 2025)

had not commenced, so there was no right of appeal against the court's decision to refuse a stay of the criminal proceedings. In those circumstances, the court was satisfied that there were no other adequate means of redress that were currently available to the Durhams to appeal the decision. That meant that there was no available means to seek to set aside the judge's decision to refuse a stay on the grounds of apparent bias. Accordingly, it was not an abuse of process for the Durhams to make their application for relief under section 15 of the Constitution.

23. By contrast, in this case the child maintenance proceedings are ongoing and, in those proceedings, Mr. Burgess can appeal a final Order and has a right to seek leave to appeal in respect of an interlocutory order. The Court of Appeal has the power to set aside or vary any Order made by the Supreme Court and so the redress available to Mr. Burgess is both "available" and "adequate". The proviso to section 15 (2) of the Constitution requires a person to exhaust those means of redress before seeking relief from this court under section 15 of the Constitution. This means that unless Mr. Burgess can satisfy the court that those remedies have been exhausted, this court has no jurisdiction to entertain Mr. Burgess' application in these proceedings. It is clear that Mr. Burgess cannot satisfy that requirement.

24. In response to a question by the court in argument, it was suggested by Mr. Dismont that there is no case that says that one judge of the Supreme Court does not have power to order another judge of the Supreme Court not to hear a case. He offered no authority for this bold proposition.

25. It is a basic principle central to the concepts of judicial independence and judicial immunity that judges are not subject to interference by other judges of equal rank. This principle exists (*inter alia*) in order to ensure the impartiality and integrity of the judicial process. The general rule is that one judge cannot intervene in, overrule, or otherwise interfere with a case that is actively before another judge of the same rank or authority, except through the exercise of rights of appeal.

26. Sometimes a proposition of law is so well established that it is difficult to find a judicial statement of authority to support it. This is not such a case. It turns out that one does not need to search Blackstone's Commentaries on the Laws of England to find authority for the fundamental and cardinal principle of the English judicial system (which is followed in Bermuda) that one superior court judge cannot interfere in the conduct of a case by another superior court judge of the same rank.

27. To take a recent example, in **Aamir Mazhar v The Lord Chancellor**[5] the English Court of Appeal addressed the circumstances in which a decision of a High Court judge (the equivalent to a judge of the Supreme Court of Bermuda) can be set aside by another High Court judge. These circumstances are very limited. In particular, the English Court of Appeal stated[6]

> *"If the attack on the order is based entirely on a submission of an error of law, the appropriate course is to appeal the order to the Court of Appeal and ask for it to be set aside."*

[5] [2019] EWCA Civ 1558. See also **(Dean Gregory) R v Judicial Conduct Investigations Office** [2025] EWHC 201 (admin)

[6] At paragraphs 58-50 (in the combined judgment of Baker LJ, Sir Terence Etherton and Singh LJ).

28. The challenges made by Mr. Burgess in this case are exclusively legal challenges. To provide some context for **Mazhar** decision, in that case the issue turned on whether it is possible to lodge a complaint against a court that it has breached the Human Rights Act 1996; that Act expressly provides that a judicial act can only be challenged by way of appeal[7].

29. It is also the consistent approach of the courts to require litigants to raise any relevant constitutional points within the proceedings themselves, rather than to issue separate proceedings seeking constitutional relief. This policy avoids multiplicity of proceedings, ensures efficient use of court resources and avoids the risk of inconsistent rulings between judges of co-ordinate jurisdiction.

30. The case of **Durham** was a notable exception to the application of this general policy, for the reasons set out in that decision and briefly described above. In that case, the relevant proceeding had come to an end and there was no right of appeal from the judge's decision, so separate proceedings to enforce a constitutional right were not an abuse of process.

**Refusal of Stay**

31. In this case, the challenges taken by Mr. Burgess are legal issues that go to the power of Wheatley AJ to make the decision she did, or the principles of law to be applied in the situation that Wheatley AJ felt she needed to address. The complaints do not relate to Wheatley AJ's conduct outside the performance of her judicial functions. Therefore, applying the **Mazhar** *dictum* set out above, the only proper course is to appeal against her decision, not to attempt to attack her Ruling by some other means.

32. Accordingly, it would therefore be wrong in principle for this court to grant a stay of Wheatley AJ's Ruling. In my judgment, Mr. Burgess must seek a stay from Wheatley AJ and if she refuses it, then Mr. Burgess can seek redress from the Court of Appeal.

**Refusal of injunction**

33. Where a person alleges that a judge has a conflict of interest or ought for some other reason to recuse himself or herself from hearing a case (for example as a result of an appearance of bias), the proper course is to apply to the judge concerned and explain the circumstances that support a recusal. If the judge declines to recuse him/herself, then the litigant can seek leave to appeal against that decision, or if that is refused, the litigant may subsequently exercise a right of appeal against the ultimate decision that is made in the case.

34. These principles are reflected in the Guidelines for Judicial Conduct for Judges of the Supreme Court and the Magistracy Rules 70-78[8]. Rule 78 (iv) contemplates an opportunity for parties to make submissions and clearly provides that the judge will make the ultimate decision as to disqualification. Intervention by another judge plays no part in the process.

[7] It is important to note that no such equivalent provision exists under the Bermuda Human Rights Act 1981. The references to the provisions of the English Human Rights Act 1996 are simply to explain the context in which the judicial statement quoted above was made.

[8] These are available on the government web portal at www.gov.bm/supreme-court

35. In the light of the legal principles cited above, it would be wrong as a matter of law, and not in the interests of the administration of justice, nor otherwise necessary to preserve the balance of justice between the parties, to grant the interim injunction sought.

**Conclusions**

36. Accordingly, in my judgment, it was entirely inappropriate to ask the court to intervene in the proceedings that are pending before Wheatley AJ either to stay the Ruling or to restrain her from continuing to hear the matter. I considered that the proper course was for Mr. Burgess (through his attorneys) to apply to Wheatley AJ for a stay of her Ruling and/or to recuse herself and therefore dismissed the applications and gave those directions.

**Other matters**

37. There are cases in which the urgency of the situation means that counsel is unable to devote the necessary time to preparing legal submissions fully supported by research and analysis of the relevant case law, so that the case can be presented with the appropriate case law and other materials to assist the court in reaching its decision. Those cases are rare.

38. In this case, there does not appear to have been any good reason why the relevant materials could not have been presented fully and with supporting authorities and served on the Attorney General's Chambers 2 clear days before the hearing. No real explanation was offered for the failure to do so. The draft Ruling was issued on 1 October 2025, the Originating Summons was issued on 13 October 2025, the final Ruling was issued on 6 November 2025, and the present Summons was issued on 5 December 2025. There was sufficient time.

39. In my view, the matter could easily have been managed so that the Attorney General's Chambers would have had enough time to take instructions and prepare for the hearing on an *inter partes* basis. The court would have benefitted from submissions from both parties.

40. In the circumstances, the court had no choice but to hear the application on an '*ex parte* on notice' basis. The duty of counsel on an *ex parte* application is to present the case fully and fairly; this includes making reference to any authority which is against the applicant's case and addressing points that may be fairly taken against the applicant. That did not happen in this case. A judge should not be placed in the position of playing goalkeeper. These principles ought to be kept firmly in mind by counsel when deciding whether it is appropriate to proceed with an *ex parte* application.

Dated this 17th day of December 2025


**THE HON. MR. JUSTICE ANDREW MARTIN**

**PUISNE JUDGE OF THE SUPREME COURT**