

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of The High Court of Solomon Islands (Faukona J)
<b>COURT FILE NUMBER:</b>	Civil Appeal Case No. 58 of 2023 (On Appeal from High Court Civil Case No.513 of 2015 and Civil Case No. 541 of 2022)
<b>DATE OF HEARING:</b>	13 October 2025
<b>DATE OF JUDGMENT:</b>	16 October 2025
<b>THE COURT:</b>	Muria P Gavara-Nanu JA Morrison JA
<b>PARTIES:</b>	THE ATTORNEY GENERAL  -V-  LEVERS SOLOMON LIMITED
<b>ADVOCATES:</b>	
<b>APPELLANT:</b>	B. Pitry
<b>RESPONDENT:</b>	G. McDonald with A. Willy
<b>KEY WORDS:</b>	
<b>EX TEMPORE/RESERVED</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	DISMISSED
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## JUDGMENT OF THE COURT

1. The respondent has applied for the President to recuse himself from the forthcoming appeal in this matter.
2. The essential basis for the application is that the Attorney-General (the appellant) is the son of the President. For various reasons it is contended that a fair-minded member of the public might entertain a reasonable apprehension that the President might not bring an impartial and unprejudiced mind to the resolution of the issues on the appeal.
3. The application has come before the Full Court where the President is able to receive independent guidance from the considered judgment of two other judges.
4. Because of the exigencies of time, with the appeal only a few days from the application, this short-form judgment must suffice to decide the application. This is the joint judgment of Gavara-Nanu and Morrison JJA, who have been able to agree on the judgment for this application. It has been considered and prepared independently from the President, Sir John Muria. A copy, after finalisation was supplied to the President for his information.

### **Background**

5. Some short background is necessary:
  - (a) on 2 November 2017 a consent order was made in 513 of 2015, in which the claimant was the current applicant, and the Attorney-general was the defendant;
  - (b) judgment was entered for the applicant, and orders 2 and 3 were:
    - “2. The Defendant procure that all persons occupying the lands subject of these proceedings be removed permanently.
    3. The Defendant is to pay to te Plaintiff a sum of \$50,000,000...”
  - (c) the lands mentioned are Hells Point, on which stands an Explosives Ordinance Disposal Facility to deal with explosives that remain stored on the lands;

- (d) the applicant applied for enforcement orders in each year since 2017, and the orders were renewed; in 2024 the debt in paragraph 3 was about \$65m;
  - (e) the debt has not been paid, nor have the persons on Hells Point been removed permanently;
  - (f) in October 2023 the applicant took possession of Hells Point by taking control of the access to or from the front gate, but the people there were not removed;
  - (g) the Attorney-General responded with advice that if the applicant had taken possession it could only do so with appropriate licences under the Explosives Act, which it did not have;
  - (h) as a result, the applicant abandoned its control of access to Hells Point;
  - (i) on 1 November the President ordered a stay of the enforcement orders; and
  - (j) the money judgment under the orders has not been paid and the people in Hells Point have not been removed.
6. Ms Willy, solicitor for the applicant has deposed:

“22. In my opinion, there will be criticism made the Attorney-general ... by my client during the course of this appeal, that there are genuine prospects that the Appeal Court will need to consider his evidence and conduct and further than there are prospects that the Appeal Court will need to comment or rule upon that evidence and his conduct.”

7. Ms Willy also deposes that the Attorney-General has spoken publicly on the issue, and she has annexed a number of newspaper articles recording what is alleged to have been said by the Attorney-General. In each case the Attorney-General said: (i) that the Government did not say it would not pay, (ii) rather the Government would pay the judgment debt, and (iii) that the applicant and the Government were in settlement negotiations.
8. We pause to note that in one of the articles, the negotiations between the applicant and the Government is referred to, and the applicants' representatives in the negotiations are

noted to include Ms Willy and Mr McDonald of Counsel, each of whom appears on this application for the applicant.

### **Principles**

9. In *Governor-General v Wales*,<sup>1</sup> this Court considered the test to apply in an application of this kind. After consideration of authorities from various jurisdictions, the Court accepted the following general propositions as applicable:<sup>2</sup>
- a. the question is whether a fair-minded and informed lay observer, having considered the circumstances, would conclude that there was a real possibility that the judge was biased;
  - b. when applying the test the Court is required to ascertain the relevant circumstances then have regard to those circumstances;
  - c. the conclusion of apprehended bias must be based on evidence;
  - d. first, it requires the identification of what might lead to a judge to decide a case other than on its legal and factual merits;
  - e. secondly, there must be a logical connection between the matter and the feared deviation from the course of deciding the case on its merits; a bare assertion that the judge has an “interest” in a party to the litigation is of no assistance unless the asserted connection with the possibility of departure from impartial decision-making is articulated;
  - f. if a party objects to a particular judge sitting, that objection should not prevail unless it is based upon a substantial ground for contending the judge is disqualified;
  - g. the connection needs to be based on evidence;

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<sup>1</sup> SICOA – CAC 44/2024.  
<sup>2</sup> *Governor-General v Wales* at [44].

- h. the fair-minded observer is presumed to be intelligent and to view matters objectively; they are neither sensitive or suspicious, nor complacent about what may influence a judge's thinking; the observer must be taken to be reasonably informed about the workings of the judicial system, as well as the nature of the issues in the case, and about the facts pertaining to the situation which is said to give rise to an appearance of apprehended bias;
  - i. the observer must be taken to understand that a judge is expected to be independent in decision-making, and has taken an oath to do so.
10. In *SMM Solomon Ltd v Axiom*,<sup>3</sup> the Court adopted a slightly different test from that laid down in *GG v Wales*. The Court stated the test as whether a fair-minded and informed lay observer might entertain a reasonable apprehension that the judge might not bring an impartial and unprejudiced mind to the resolution of the issues.
11. Any difference in the two tests is presently immaterial.

### **Consideration**

12. The Attorney-General is a party to the appeal by virtue of his role established by Article 42 of the Constitution as he is the principal legal advisor to the Government. The Attorney-General is required to advise the Government and appear on its behalf when appropriate. He is personally a party.
13. For a number of reasons, we do not consider that the test is satisfied in this case.
14. First, at the centre of the applicant's contentions is the order that the Attorney-General procure the removal of people from Hells Point. That order was first made in 2017, before the current Attorney-General had assumed that position. Whilst that order has been renewed from time to time, and the obligations under it may be said to have been assumed by the current Attorney-General, there are reasons to doubt that the prospect of a contempt application against the current Attorney-General (a step foreshadowed by the applicant) would be apprehended by the fair-minded and knowledgeable observer to have any

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<sup>3</sup> [2017] SBCA 12 at [9].

impact upon the President's ability to fulfil his oath and deal with the issues in an impartial and unprejudiced way.

15. The fair-minded and knowledgeable observer must be taken to understand that:
  - a. the order was not one that directed the Attorney-General to do anything except as an officer of the government;
  - b. there are statutory provisions that would impact upon the ability to "procure" the removal of persons there, due to the presence of explosives in the area; one such is the Explosives Act;
  - c. the presence of explosives in the area provides a practical obstacle to removal;
  - d. the order would almost certainly be construed as not requiring the performance of something dangerous to the Attorney-General or any other person;
  - e. the Attorney-General would not necessarily be expected to act personally to "procure" removal; that would likely involve other agencies such as the Police, and almost certainly the advice or direction of other arms of government; and
  - f. since 17 March 2021 the land has been the subject of a compulsory acquisition order; even if the applicant only became aware of the compulsory acquisition on 14 November 2022 (the date noted in the reasons of the primary judge) the clear fact is that the Attorney-General is unlikely to be found in contempt for not removing people from 17 May 2021 or 14 November 2022 (even assuming, without conceding, there was a basis to find so before that).
16. Secondly, the applicant threatens that if the appeal is dismissed, there is a real prospect that it will institute civil contempt proceedings against the Attorney-General, at least in relation to the non-payment of the judgment debt. Such action, it says, would likely be against the Attorney-General personally. The applicant accepts it would need to establish, beyond reasonable doubt, deliberate breach of the order on the part of the Attorney-General, and that finding would be against the Attorney-General in his official capacity.

17. The applicant's failure to foreshadow, let alone take, contempt proceedings over the last eight years would be a fact taken to be known by the fair-minded observer. That observer would likely consider that the threat of such action, if made bona fide, was not necessarily likely to have such prospects that it would impact upon the President's ability to bring and impartial and unprejudiced mind to the issues.
18. In any event, no such proceedings have been instituted, and despite the applicant's threats, one is left to speculate about its form, and even more so its prospects of success. That renders the probable impact on the President's ability to act impartially even more remote in the observer's mind.
19. Thirdly, the other aspect of the orders is the payment of a substantial sum to the applicant. That was first ordered in 2017 and the amount is now about \$62m. The applicant points to the fact that the sum has not been paid notwithstanding the Attorney-General's public statements that the Government intends to pay.
20. The orders plainly never contemplated that the sum would be paid by the Attorney-general personally, but rather by the Government.
21. Fourthly, the applicant refers to what is said to be an implied rejection of the Attorney-General's evidence by the primary judge. This is said to impact upon the credibility of the Attorney-General. That does not necessarily amount to an adverse finding of credit personally. No part of the findings required to be made by the primary judge called for findings of credit, personal honesty or integrity.
22. In fact, a fair reading of the reasons of the primary judge suggest that the validity of the findings on which the applicant relies are to be doubted. The primary judge said:
  - “157. The power to compulsory acquired registered land or to give notice by resumption of a land or part of it, may emerged from a different legal frame work. One from reservation in clause 3 of the grant, and the other from s. 71(1) of the L&TA. The processes may differ but in the end they intent to achieve the same result, that the land is to be returned to the Commissioner to be used for public purposes. The purpose is the ultimate reason for compulsory acquiring of the land.
  158. Whilst the purpose may mitigate for a good course, the ultimate intention was to cease paying the balance of the consent orders and other orders in conjunction

to it. Further it is more obvious the acquisition is to derail execution of any enforcement orders.

159. The land Hell Pint is the land the defendant agreed to pay. By consent orders of 2<sup>nd</sup> November 2017, which the Court had endorsed becomes an order of the Court.
160. On 16<sup>th</sup> September 2022, the SI Government paid \$20 million dollars as part payment of \$50,000.00 it agreed to pay in the consent orders.
161. Why pay 20 million dollars, part of the court order for the same land which was compulsory acquired by declaration on 17<sup>th</sup> March 2021, what would happen to the balance order of Court which the defendant had agreed to pay and had made part payment.
162. Surely the Defendant has changed its position now and again that shows it is inconsistency and un-reconcilable.
163. In the circumstances the continuous failure by the Defendant to honour the orders of the Court of 2<sup>nd</sup> November 2017 and 16<sup>th</sup> August 2022 is eminent.
164. The Claimant further submits that the compulsory acquisition on 17<sup>th</sup> of March 2021, was not raised in the sworn statement of Mr Detana, the PS of Finance and treasury of 31<sup>st</sup> March 2022, one year after the compulsory acquisition.
165. Again the acquisition was not raised in the sworn statement of Mr. Dauara of 4<sup>th</sup> May 2022, filed in support of unsuccessful application to stay enforcement, about 12 and half months after the so called acquisition.
166. Yet still the compulsory acquisition was not raised in the written submission tendered to the Court by the AG, as Respondent/Judgment debtor, on 15<sup>th</sup> June 2022, thirteen months after the so called acquisition.
167. The acquisition was not raised by Mr, Detana, the PS of Finance and Treasury, when he was cross-examined by this Court on 15<sup>th</sup> June 2022, about 13 months after the claim acquisition.
168. The compulsory acquisition was not raised in the hearing before this court on 15<sup>th</sup> June 2022.
169. The compulsory acquisition was not raised in further written submissions filed in this proceeding by the Attorney General, as respondent judgment debtor, on 28<sup>th</sup> June 2022.
170. The compulsory acquisition was not raised in the sworn statement by the Solicitor General of 30<sup>th</sup> September 2022.

171. The CA was not raised in the communications during September and October 2022, between the Claimant and the Defendant's representatives, including the Commissioner of Lands.
  172. All those occasions occurred after the date of the alleged compulsory acquisition to have occurred on 17<sup>th</sup> March 2021, one year and more after the compulsory acquisition was allegedly done.
  173. The Claimant only became aware of the compulsory acquisition on 14<sup>th</sup> November 2022, after the Claimant demanded payment of the balance of \$24,818,808.32. It was sent to it for the first time by the Solicitor General.
  182. In my observation late raising of the compulsory acquisition issue is very suspicious. It could be back dated purposely to assist the defendant cease further payments to honour the consent orders and to derail execution of any further enforcement orders.
  185. With the reasons I narrated above and the case authorities quoted, the compulsory acquisition is tainted with abuse of the Court process. It extends to a point that could have been but was not raised."
23. As is plain from that passage:
- a. in paragraph 150 of the reasons, which preceded the passage set out above, the primary judge recorded that "there is no dispute about the land ... being the subject of the compulsory acquisition"; yet, the primary judge doubted that there was a compulsory acquisition;
  - b. even worse, without any basis the primary judge speculated that the compulsory acquisition was an artifact, referred to it as "so called", and maybe "back dated purposely";
  - c. there is no reasonable basis for the conclusion in paragraph 158 of the primary judge's reasons; none appears from the reasons;
  - d. the applicant became aware of the compulsory acquisition on 14 November 2022; it has taken steps to challenge the compulsory acquisition in separate proceedings No 47 of 2022; any suggestion such as that advanced by the primary judge to base his adverse findings, namely that the compulsory acquisition is bogus, "so called" or deliberately "back dated", is without any apparent foundation of fact; and

- e. the primary judge recognised that the obligation to pay the judgment debt fell on the “SI Government”,<sup>4</sup> not the Attorney-General; when reference was made to the defendant, it was to the Attorney-general as representing the Government.
24. The foregoing is sufficient to demonstrate that there are serious reasons to doubt the veracity of the adverse findings by the primary judge.
25. Furthermore, we do not consider the fair-minded observer would consider that a likely connection to the prospect of the President being unable to bring an impartial and unprejudiced mind to the issues. It is not likely comprehended by the order that the Attorney-General was ever to pay the money personally. Rather, it must always have been the case that it was to be paid by the Government. How the Attorney-general’s credit could be impugned by the Government’s failure to pay the money is not at all clear.
26. Fifthly, no act on the part of the Attorney-General in respect of the issues was likely to rest upon him in a personal capacity, but rather in his official capacity as Attorney-General.
27. Sixthly, there must be a logical connection between the matter in issue in the appeal and the feared deviation of the president from the course of deciding the case on its merits. A bare assertion that the judge has an “interest” in a party to the litigation is of no assistance unless the asserted connection with the possibility of departure from impartial decision-making is articulated. We do not consider that such a logical connection has been shown.
28. Seventhly, one of the things of which the fair-minded observer must be taken to be aware, is that the applicant has publicly stated and re-asserted, that there is no challenge by it to the integrity or professionalism of the President. In other words, the applicant has affirmed its position to be that it is confident the President can bring an impartial and unprejudiced mind to the task in the appeal.
29. The fair-minded observer is presumed to be intelligent and to view matters objectively. They are neither sensitive or suspicious, nor complacent about what may influence a judge’s thinking. Further, the fair-minded observer must be taken to be reasonably informed about the workings of the judicial system. In those circumstances, and where

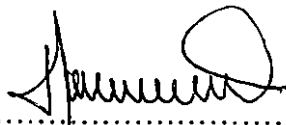
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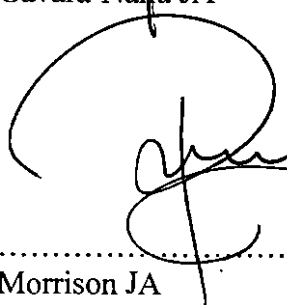
<sup>4</sup> Reasons paragraphs 160, 161.

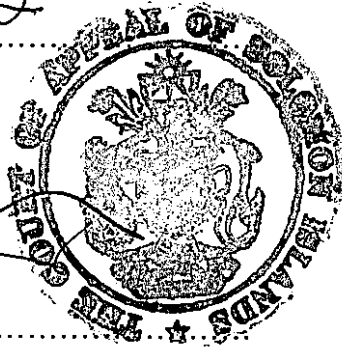
the applicant's own lawyers have reaffirmed their confidence in the President's integrity or professionalism to perform the task in the appeal with an impartial and unprejudiced mind, the fair-minded observer would consider that the party with most reason to complain, does not, and reposes confidence in the President.

**Result**


30. For these reasons, upon which we will expand in due course, the application is dismissed.

  
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Gavara-Nanu JA

  
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Morrison JA



31. I abide by the decision of my brothers Gavara-Nanu JA and Morrison JA.

  
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Muria P