

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 66/2007

APPLICATION NO. 53/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

BETWEEN:	NORRIS NEMBHARD	APPLICANT
AND:	THE COMMISSIONER OF CORRECTIONAL SERVICES	1ST RESPONDENT
AND:	THE DIRECTOR OF PUBLIC PROSECUTIONS	2ND RESPONDENT

**Frank Phipps, Q.C., Mrs. Jacqueline Samuels-Brown, Wentworth
Charles and Miss Katherine Phipps for the applicant**

**Curtis Cochrane instructed by Director of State Proceedings for the
the 1st respondent**

**Jeremy Taylor, Assistant Director of Public Prosecutions, (Ag.) for the
2nd respondent**

April 28 and May 2, 2008

ORAL JUDGMENT

PANTON, P.

1. The applicant before us is an appellant in proceedings due to be heard next week. The application arises from those very proceedings which took place before in the Supreme Court. The applicant sought the removal of one of the

learned judges from the panel which heard his application for the issue of a writ of habeas corpus. The Court ruled against his wish, heard the matter and refused the application.

2. The applicant filed notice of appeal on June 28, 2007. He followed that up with an application for court orders under the Court of Appeal Rules. That application was heard and refused by a single judge of this Court. In that application, he sought the following:

"That the Office of the Director (sic) Public Prosecutions disclose to the Applicant:

1. The extent of the representation by Counsel Lloyd Hibbert as he then was of the Government of the United States of America relative to extradition requests by the said government.
2. Whether the said Counsel was at any time assigned to or charged with any responsibility relative to such requests and if so the nature and extent of such responsibility.
3. Whether if for any period during his tenure at the Office of the Director of Public Prosecutions the said counsel as a matter of fact or practice dealt with extradition requests from the United States of America and if so for what period, in what manner and to what extent.
4. Whether for any period during his tenure at the office of the Director of Public Prosecutions the said counsel handled any matter relative to the Applicant."

The grounds on which the applicant sought the orders were as follows:

- “(i) The Applicant has a common-law right to disclosure of the material in sight.
- (ii) The Respondent has failed and/or neglected to provide the material.
- (iii) The material is relevant to the Applicant’s appeal.
- (iv) The material is needed to secure a fair hearing for the Applicant on his appeal.
- (v) Such other grounds as are revealed in the Applicant’s Affidavit filed herein and any other Affidavit filed in support.”

Not being satisfied with the ruling of the single judge, he has, as is permitted by the Rules, renewed his application before the Court:

“1. ...

That the Office of the Director (sic) Public Prosecutions disclose to the Applicant:

- a) The extent of the representation by Counsel Lloyd Hibbert as he then was of the Government of the United States of America relative to extradition requests by the said government.
- b) Whether the said Counsel was at any time assigned to or charged with any responsibility relative to such requests and if so the nature and extent of such responsibility.
- c) Whether if for any period during his tenure at the Office of the Director of Public Prosecutions the said counsel as a matter of fact or practice dealt with extradition requests from the United States of America and if so for what period, in what manner and to what extent.
- d) Whether for any period during his tenure at the office of the Director of Public Prosecutions the

said counsel handled any matter relative to the Applicant. ...”

The Grounds on which the order is sought are:

- “a The learned judge erred in refusing to grant the order as sought.
- b. The Appellant/Applicant is as a matter of law and Constitution entitled to disclosure as applied for.
- c. The Respondent has failed and/or neglected to provide the material.
- d. The material is relevant to the Applicant’s appeal.
- e. The material is needed to secure a fair hearing for the Applicant on his appeal.
- f. Such other grounds as are revealed in the Applicant’s Affidavit filed herein and any other Affidavit filed in support.
- g. The information sought is exclusively within the knowledge of the 2nd Respondent.”

3. It is noted that his application before the Court is different from that which was before the single judge, in that he has now added a constitutional flavour to it, by inserting in paragraph (b) of his “grounds” that he is “as a matter of law and constitution entitled to disclosure as applied for.”

4. In support of his application, the applicant has filed an affidavit to which he has attached a list of cases in which Mr. Justice Hibbert participated as counsel. The applicant is not satisfied with his list of nine cases. He wishes the Director of Public Prosecutions (DPP) to conduct extensive research over the entire period of Mr. Justice Hibbert’s sojourn in the DPP’s office to unearth all the

cases. We have not been told how this would enhance the applicant's appeal. After all, whatever point may be made if the number of cases were say twenty may yet be made on the basis of the nine. There is no need for the building of a dossier. We find the request unreasonable, and therefore will not grant it. So, the order sought in respect of paragraphs a, b and c is refused.

5. So far as paragraph (d) is concerned, the applicant wishes to know whether Mr. Justice Hibbert handled any matter relative to the applicant during his tenure in the DPP's office.

We think that it is possible for the judge to have so done without knowing, or remembering same, in the same way that the applicant apparently is not aware of such handling. Nevertheless, it may be of some importance if that occurred. In the circumstances, we grant the request for an order for the DPP to disclose to the applicant whether the DPP is aware of Mr. Justice Hibbert having handled any matter relative to the applicant during his tenure at the DPP's office.

6. We note that the request by the applicant has been before the DPP for some time, so the DPP would not need more than a day or two to respond to the applicant. Finally, we are somewhat surprised that the DPP failed to respond to the several letters written by counsel in this matter.

PANTON, P.

ORDER:

The application is refused in respect of paragraphs (a), (b) and (c). The application is granted in respect of paragraph (d) – The Director of Public Prosecutions is to disclose to the applicant whether the Director of Public Prosecutions is aware of Hibbert, J., having handled any matter relative to the applicant during his tenure at the Director of Public Prosecution's Office.