

JERSEY / JUDGMENT

Kubr v Ogier Global Trustee (Jersey) Limited

COURT

Court of Appeal

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Reasons for refusing the renewed application for permission to appeal**[2026]JCA227****Court of Appeal****1 September 2026**

Before :

Mr Roddy Dunlop KC, Single Judge

Between

Thomas Kubr

Appellant/Plaintiff

And

Ogier Global Trustee (Jersey) Limited

Respondent/ Defendant

Advocate M. St J. O'Connell for the Appellant.

Advocate F. Ford for the Respondent.

JUDGMENT

DUNLOP JA:

Introduction

1. This is a renewed application by the Appellant, Thomas Kubr, for permission to appeal the judgment of Commissioner Thompson dated 25 June 2026, reported at Kubr v Ogier Global Trustee (Jersey) Limited [2026] JRC 179 (the “Substantive Judgment”), by which the Commissioner declined to recuse himself from presiding over the Appellant’s breach of trust proceedings against the Respondent (the “Breach of Trust Proceedings”). Permission to appeal was refused by the Commissioner himself in a judgment dated 27 July 2026 Kubr v Ogier Global Trustee (Jersey) Limited [2026] JRC 197 (the “PTA Judgment”). The Appellant now renews his application before me as a single judge of this Court, as expressly contemplated by paragraph 19 of the PTA Judgment.

Background

2. The background is set out fully in the Substantive Judgment and need not be rehearsed at length. In brief, the Appellant brings breach of trust proceedings against the Respondent arising from its former trusteeship of two Jersey law trusts. Those proceedings have progressed in parallel with separate Representation proceedings (the “Blessing Proceedings”) brought by the Respondent seeking, among other things, blessing of its retirement from the trusts and payment of its fees. 3. The recusal application was issued on 28 April 2026 on two principal grounds: (a) the Commissioner’s former partnership in Ogier, the law firm; and (b) the Commissioner’s receipt, in the Blessing Proceedings, of confidential evidence and in camera submissions from the advocate of Ms X, a third party, from which the Appellant was excluded. 4. The Commissioner refused the recusal application and subsequently refused permission to appeal. The order dismissing the recusal application was as a matter of admission, and correctly, identified as interlocutory, such that permission to appeal is required. The applicable test 5. The test for permission to appeal an interlocutory order is that set out in *Crociani v Crociani*

[2014] 1 JLR 426: the applicant must show either (a) a real prospect of success; (b) that there is a question of general principle decided for the first time; or (c) that there is an important question of law upon which further argument in this Court would be to the public advantage. 6. The underlying legal test for recusal is that established in *Porter v Magill*

[2002] 2 AC 357 and confirmed by this Court in *AB v AG* [2020] JCA 094: whether a fair-minded and informed observer, having considered all the facts, would conclude that there was a real possibility that the Judge asked to recuse was biased. The “compelling reason” argument 7. At the outset, the Appellant advances what he describes as a compelling reason, independent of the *Crociani* criteria: that if the Commissioner should have recused himself, the integrity of the Breach of Trust Proceedings is irreparably compromised at every subsequent stage. 8. I agree with the Commissioner’s observation in the PTA Judgment that, if accepted, this argument would mean that leave to appeal must be granted every time a judge rejects a recusal application. That cannot be correct. It would run entirely counter to the general proposition that, unless proper grounds for recusal are made out, it is the duty of a Judge to try the case in accordance with his or her judicial oath. This was made clear in the observations of the Constitutional Court of South Africa in *President of the Republic of South Africa & Others v. South African Rugby Football Union & Others* [1999] (7) BCLR (CC) 725 at 753, cited with approval in *Locabail (UK) Ltd v Bayfield Properties Ltd*

[2000] QB 451: “The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training

and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or pre-dispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves.”(emphasis added) 9. The potential consequences of a wrong decision, while relevant context, do not dispense with the requirement to demonstrate that the Crociani threshold is met on the merits of the proposed grounds. The argument does not constitute a free-standing basis for granting permission. Ground 1: The Commissioner’s prior relationship with Ogier

10. The Appellant submits that the Commissioner erred in his application of the apparent bias test in relation to his former partnership in the Ogier law firm. The principal sub-arguments are: (a) that the Commissioner pre-determined this ground before hearing argument and demonstrated judicial irritation at the point taken; (b) that the Commissioner asked the wrong legal question by confining his analysis to a current financial relationship with Ogier Global specifically; and (c) that a former senior partner of Ogier law firm is not an appropriate judge to determine allegations that Ogier Global acted in breach of trust by, among other things, instructing Ogier law firm to act against the Appellant.
11. As to pre-determination, the Commissioner communicated on 7 May 2026 that he was “satisfied that my historical connections with Ogier are not a basis for me to recuse myself.” The Appellant characterises this as a concluded view formed before hearing argument. However, the Commissioner explained in the Substantive Judgment that providing an informal response to a party’s enquiry is not the same as determining a formal application. The purpose of such a response is to enable the enquiring party to decide whether to proceed with a formal application. The Commissioner did, in fact, hear the application in full and produce a detailed reasoned judgment addressing all arguments. I do not consider that the fair-minded observer would conclude from the 7 May email that the Commissioner had irrevocably closed his mind to argument on this point. There is nothing wrong with a Judge providing a preliminary view on a point, as long as other considerations do not demonstrate that he had closed his mind to the arguments. I see nothing so suggesting here, and on the contrary the judgment on the application for permission shows that full and fair consideration was given to the points made in favour of recusal.
12. As to the Appellant’s complaint about the Commissioner’s expressions of irritation at the hearing, the fair-minded observer would distinguish between a judge expressing the view that a particular line of argument is unmeritorious — which judges routinely do — and a judge who has closed his mind to persuasion. *Locabail, cit.sup.* makes clear that mere criticism of an argument is not a ground for recusal. That will only be required where the criticism has segued into something unjudicial, such as of itself to indicate the appearance of bias. I see nothing of that nature here.
13. As to the legal question asked, the Commissioner did not confine his analysis solely to whether he had a current financial relationship with Ogier Global. He addressed his broader historical relationship with the Ogier Group, explained that all payments ceased before Ogier Global was incorporated in June 2017, confirmed he had no social interaction with

current partners, and considered the question through the lens of what the fair-minded observer would conclude. The Substantive Judgment also addressed the nature of the issues to be tried and explained why, in the Commissioner's assessment, the test was not met. I see no error here. It is commonplace in smaller jurisdictions – such as Jersey and, of more familiarity to myself, Scotland – for former partners in law firms to sit in judgment in matters relating to or presented by those firms after their retirement. To hold otherwise would be to ignore the force of the judicial oath, as well as causing real difficulties in the identification of appropriate judges.

14. The most substantial point under this ground is the Appellant's argument that the Commissioner will be asked to determine whether it was a breach of trust for Ogier Global to instruct Ogier law firm to act against the Appellant, who was a client of that firm. The Appellant submits that a former partner of Ogier law firm should not determine that issue.
15. I have given this point careful consideration. The Commissioner retired from the Ogier Group in 2013. Ogier Global was not incorporated until
2017. The allegation concerns a decision by Ogier Global's management to instruct Ogier law firm, which took place during the Appellant's dispute with Ogier Global – that is to say, years after the Commissioner's departure from any involvement with the Ogier Group. The Commissioner would not be judging the conduct of colleagues during a period of his own tenure; he would be judging a decision taken by others, long after he had left. While I accept that the fair-minded observer would note the historical connection, she would also note the temporal distance and the absence of any continuing interest. In a small jurisdiction such as Jersey, where the pool of qualified judges is limited and many have histories of private practice, the authorities emphasise the need for robust common sense.
16. In *Taylor v Lawrence* [2003] QB 528, Lord Woolf CJ considered the argument that an appearance of bias arose from the judge's professional relationship with the solicitors for one of the parties, saying: "61. The fact that the observer has to be "fair-minded and informed" is important. The informed observer can be expected to be aware of the legal traditions and culture of this jurisdiction. Those legal traditions and that culture have played an important role in ensuring the high standards of integrity on the part of both the judiciary and the profession which happily still exist in this jurisdiction. Our experience over centuries is that this integrity is enhanced, not damaged, by the close relations that exist between the judiciary and the legal profession. Unlike some jurisdictions the judiciary here does not isolate itself from contact with the profession. Many examples of the traditionally close relationship can be given: the practice of judges and advocates lunching and dining together at the Inns of Court; the Master of the Rolls's involvement in the activities of the Law Society; the fact that it is commonplace, particularly in specialist areas of litigation and on the circuits, for the practitioners to practise together in a small number of chambers and in a small number of firms of solicitors, and for members of the judiciary to be recruited from those chambers and firms.

62. It is also accepted that barristers from the same chambers may appear before judges who were former members of their chambers or on opposite sides in the same case. This close relationship has not prejudiced but enhanced the administration of justice...
63. The informed observer will therefore be aware that in the ordinary way contacts between the judiciary and the profession should not be regarded as giving rise to a possibility of bias. On the contrary, they promote an atmosphere which is totally inimical to the existence of bias. What is true of social relationships is equally true of normal professional relationships between a judge and the lawyers he may instruct in a private capacity.”
17. Those comments were made over twenty years ago, and a short while after Porter had settled a long-running debate as to the precise test for apparent bias. The comments remain apposite, and moreover have stood the test of time. No one who has practised law at any of the Bars of the United Kingdom or Channel Islands could sensibly disagree with the proposition that “in the ordinary way contacts between the judiciary and the profession should not be regarded as giving rise to a possibility of bias. On the contrary, they promote an atmosphere which is totally inimical to the existence of bias”. That is the common experience of practitioners, and reflected in more recent authority such as *Ameyaw v McGoldrick* and others [2020] EWHC 1787 (QB). The fair minded observer would have this firmly in mind.
18. The Appellant also relies on the Deputy Bailiff’s recusal in *Millard v Stone* as an analogous case. However, that case is not before me, no reasoned judgment on the recusal is available for analysis, and recusal decisions are highly fact-specific. An unreasoned or conceded recusal in one case cannot establish a principle applicable in another.
19. I do not consider that Ground 1 demonstrates a real prospect of success. Ground 2: The in camera hearing
20. The Appellant submits that the Commissioner erred in concluding that receiving confidential evidence and in camera submissions from Ms X’s advocate on 19 November 2025 would not cause the fair-minded observer to conclude that there was a real possibility of bias in the Breach of Trust Proceedings.
21. The Commissioner found that the in camera submissions concerned Ms X’s concerns about the Foundation being appointed as new trustee; that Ms X is not referred to in the Order of Justice or Amended Order of Justice; that none of the confidential information related to the Appellant’s criticisms of the Respondent or the Respondent’s defence; and that the Appellant saw every piece of evidence filed by the Respondent relevant to the allegations in the Breach of Trust Proceedings.
22. The Appellant advances four arguments in response. I address each in turn.
23. First, the Appellant relies on the overlap between the two sets of proceedings, noting that Master Cadin expressly identified such an overlap. However, the question of the Foundation’s appointment has been resolved: the Foundation is now the trustee of both

trusts. The Appellant's breach of trust claims against the Respondent as former trustee are distinct from the question of who should succeed it. The Commissioner was entitled to conclude that the resolution of the trusteeship question did not bear upon the Appellant's right to pursue his claims against the former trustee for its alleged conduct during its trusteeship.

24. Secondly, the Appellant argues that the Commissioner cannot reliably assess the effect of one-sided confidential submissions on his own mind — the “self-referential difficulty.” This argument has a superficial attraction. However, as the authorities make clear, a judge considering a recusal application is required to ascertain the facts pertinent to the allegation of apparent bias: see *AB v AG* at paragraph 12 and *Stubbs v The Queen* [2019] AC 868 at paragraph 16. The Commissioner did so and identified what the in camera submissions concerned. If the doctrine of apparent bias rendered it impermissible for a judge ever to assess the significance of material he has seen, then any receipt of any confidential material in any proceedings would automatically require recusal from all related proceedings. That is not the law. The question for the fair-minded observer is whether, given the nature of the confidential material and its relationship (or lack thereof) to the issues in the proceedings from which recusal is sought, there is a real possibility of bias. The Commissioner addressed that question, and I discern no error in his analysis thereof.
25. Thirdly, the Appellant contends that refreshing his memory of the confidential material compounded the problem. I agree with the Commissioner that this argument is somewhat circular: the judge is criticised both for not having a full note of the in camera hearing and for refreshing his memory by re-reading the confidential affidavits. The authorities require the judge to ascertain the facts. The Commissioner did so and explained what he found. I do not consider that the act of reading confidential affidavits — which he had already seen at the original hearing — in order to assess their relevance to the Breach of Trust Proceedings, itself creates a real possibility of bias.
26. Fourthly, the Appellant relies on the *Kanda* principle (*Kanda v Malaya* [1962] AC 322) and submits that it was engaged because the Commissioner received one-sided submissions on live issues immediately before making substantial orders against the Appellant at the same hearing. This is the strongest sub-argument under Ground 2. The Appellant points to the fact that at the hearing on 19 November 2025, orders were made requiring him to pay over £2 million into court, provide undertakings, and pay security of £120,000.
27. However, the Commissioner found — and this finding has not been shown to be wrong — that the in camera submissions concerned Ms X's concerns about the Foundation's appointment, not the Appellant's breach of trust claims or the question of security for the Respondent's fees. The orders for security and undertakings were made after hearing submissions from all parties on those matters. The Appellant was present and represented for all submissions concerning the Respondent's fees and the terms of any transfer. The *Kanda* principle, to the effect that a party has the right to know the case made against him, is engaged where confidential material is used to the disadvantage of a party who has not seen

it. The Commissioner found that the confidential material was not relevant to the issues in the Breach of Trust Proceedings. The Appellant has not demonstrated a real prospect of showing that finding to be wrong.

28. I do not consider that Ground 2 demonstrates a real prospect of success. Ground 3: Differences between the draft judgment and the final judgment
29. The Appellant relies on material differences between the draft judgment circulated on 9 June 2026 and the final judgment handed down on 25 June 2026, principally: (a) the date of the in camera hearing was corrected from December 2025 to November 2025; and (b) the characterisation of what was said changed between the two versions.
30. The Appellant submits that these differences reveal that the Commissioner was uncertain or mistaken about the core factual matrix, undermining confidence in the reliability of his analysis.
31. The purpose of circulating a judgment in draft is precisely to enable errors, including factual errors, to be identified and corrected before the judgment is finalised. Both parties were invited to comment and did so. The Commissioner accepted the correction about the date. A judgment is not final until it is handed down.
32. The Appellant's argument proves too much. If the correction of a factual error in a draft judgment were itself a ground of appeal, the practice of circulating drafts would be rendered hazardous and there would be a clear disincentive to correct errors. The relevant question is whether the facts demonstrate apparent bias. Ultimately, the complaint is that the draft contained an error that was subsequently corrected. That cannot sensibly be a ground for recusal.
33. The Appellant further argues that the corrected version is more adverse to the Commissioner's conclusion than the draft, because placing the in camera hearing in November (when the Foundation's appointment was undecided) makes the receipt of one-sided submissions more serious than if it took place in December (when matters were further advanced). I accept that this is an intelligible observation. However, the Commissioner addressed this in the final judgment: he noted that at the November hearing, matters were still being explored and the Foundation had not yet been appointed. His analysis of the significance of the in camera submissions did not depend on their having taken place after the key decisions: it rather depended on their subject matter and its irrelevance to the Breach of Trust Proceedings. The correction of the date does not, in my judgment, undermine the reasoning.
34. I do not consider that Ground 3 demonstrates a real prospect of success. Ground 4: Pre-determination of issues

35. The Appellant submits that at the hearing on 17 February 2026, the Commissioner raised the prospect that the Respondent might challenge certain parts of the Amended Order of Justice by reference to orders already made in the Blessing Proceedings, thereby pre-signalling a conclusion favourable to the Respondent.
36. The Commissioner addressed this at paragraph 102 of the Substantive Judgment: he was identifying an issue he could foresee the Respondent might raise, not expressing a concluded view upon it. As noted in Stubbs at paragraph 16-17, prior involvement in the course of litigation will not ordinarily require a judge to recuse himself. Such a concern arises only where the prior involvement suggests to a fair-minded observer that the judge's mind is closed on a relevant issue.
37. Active case management frequently involves a judge identifying issues likely to arise and inviting the parties to address them. That is not the same as expressing a concluded view. The Appellant has not identified any specific language used by the Commissioner that would convey to the fair-minded observer that a concluded view had been formed, as distinct from a potential issue being flagged. I do not consider that Ground 4 demonstrates a real prospect of success. Cumulative effect
38. The Appellant invites me to consider the cumulative effect of all four grounds, submitting that the fair-minded observer considers the full picture rather than assessing each factor in isolation.
39. I accept the legal proposition that the fair-minded observer looks at the totality of the circumstances. However, I do not accept that factors which individually fall well short of the threshold can, by aggregation, cross it — at least not in a case such as this where each individual ground, upon analysis, does not disclose a properly arguable basis for apparent bias. As is often said, nought plus nought plus nought still equals nought. The Commissioner's approach on this point in the PTA Judgment was expressed somewhat broadly, but the substance of it was correct: the fair-minded observer, having considered each factor and found that none, either individually or in combination, gives rise to a real possibility of bias, would not reach a different conclusion simply by considering them together when none adds anything of substance to the analysis.
40. I have nonetheless stood back and considered the overall picture as the Appellant invites me to do. I see a Commissioner who retired from the Ogier Group in 2013; whose financial connections ended before the Respondent was incorporated; who made appropriate disclosure at the first hearing; who received brief in camera submissions on a matter unrelated to the breach of trust claims; who corrected a factual error in his draft judgment when it was identified; and who engaged in active case management by identifying likely future issues. Taken together, I do not consider that this picture would lead the fair-minded and informed observer to conclude that there was a real possibility of bias. The point made at the outset remains: one should have faith in the judicial oath, and absent compelling circumstances showing that the fair-minded observer would no longer have such faith, the

duty of a judge is to continue to try the case. The third limb of *Crociani*: guidance for small jurisdictions

41. The Appellant submits that how judges in small jurisdictions should manage historic relationships with local law firms is an important question of law upon which further argument would be to the public advantage, and relies on paragraph 18 of the PTA Judgment where the Commissioner stated: “I do not consider it appropriate for me to determine whether such an issue is of interest to the Court of Appeal. That is therefore a question for the Plaintiff to pursue with a single judge of the Court of Appeal should the Plaintiff choose to do so.”
42. The Commissioner’s observation was appropriately modest: he declined to express a view on whether this Court would consider the question to be of sufficient public importance to warrant granting permission on that basis alone. That is not, however, the same as endorsing the proposition that the third limb of *Crociani* is satisfied.
43. As the Commissioner noted in the Substantive Judgment, the applicable principles on recusal have already been considered by this Court in *AB v AG*. Those principles are of general application. The question of how they apply to judges with former connections to law firms in small jurisdictions is a question of application of settled principles to particular facts, not a new question of law. Furthermore, this case does not provide a suitable vehicle for any such guidance: the Commissioner’s financial connections ended before the Respondent existed; there is no continuing financial, professional, or social relationship; and the factual matrix is therefore too remote to generate principles of wider utility.
44. I do not consider that the third limb of *Crociani* is satisfied.

Conclusion

45. For all the reasons set out above, I am not satisfied that any of the proposed grounds of appeal has a real prospect of success, nor that there is a question of general principle decided for the first time, nor that there is an important question of law upon which further argument in this Court would be to the public advantage. The renewed application for permission to appeal is accordingly refused.
46. If any party seeks an order for costs, short written submissions should be filed within 14 days of the hand-down of this

judgment.

Authorities *Kubr v Ogier Global Trustee (Jersey) Limited* [2026] JRC 179. *Kubr v Ogier Global Trustee (Jersey) Limited* [2026] JRC 197. *Crociani v Crociani* [2014] 1 JLR 426. *Porter v Magill*

[2002] 2 AC 357. *AB v AG* [2020] JCA 094. *President of the Republic of South Africa & Others v. South African Rugby Football Union & Others* [1999]

(7) BCLR (CC) 725. Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451. Taylor v Lawrence [2003] QB 528. Ameyaw v McGoldrick and others [2020] EWHC 1787 (QB). Stubbs v The Queen [2019] AC 868. Kanda v Malaya [1962] AC 322.

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