

# SUPREME COURT OF QUEENSLAND

CITATION: *Amos v Amos* [2010] QSC 314

PARTIES: **LEONARD RALPH AMOS** as executor of the will of  
**CHARLES EDWARD AMOS** late of Wynnum in this  
**State, deceased**  
(Applicant)

v

**EDWARD AMOS**  
(Respondent)

FILE NO: 4763 of 2000

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 27 August 2010

DELIVERED AT: Brisbane

HEARING DATE: 13 May 2010

JUDGE: McMurdo J

ORDER: **This application be adjourned back to the Applications List with the costs of the hearing of 13 May 2010 reserved to the judge determining the application.**

CATCHWORDS: PROCEDURE – COURTS AND JUDGES GENERALLY – JUDGES – DISQUALIFICATION FOR INTEREST OR BIAS – PARTICULAR RELATIONSHIPS OR CIRCUMSTANCES – OTHER MATTERS – where at the commencement of the hearing the judge stated that as a barrister he had acted against the respondent and each of the present parties stated that they had no objection to the judge hearing the matter – where the application was heard and the judge reserved his decision – where the respondent later objected to the judge determining the application, claiming that at the commencement of the hearing the judge had said that he had previously acted *for* the respondent which is why he consented to the judge hearing the application – where in fact the judge had acted against the respondent in litigation which had given rise to an apprehension that documents had been forged – whether it could be fairly perceived that the judge could not bring an unprejudiced mind to the resolution of the present application.

COUNSEL: L A Stephens for the applicant  
M Cooke for the respondent

SOLICITORS: Ian K Fry & Company Solicitors for the applicant  
Keller Nall and Brown for the respondent

- [1] On 13 May 2010 I heard an application by Mr L R Amos for vexatious proceedings orders to be made against his brother, Mr Edward Amos. The application was extensively argued and I reserved my decision.
- [2] At the commencement of the hearing, I said that as a barrister I had acted against Mr Amos. Each of the present parties, through his counsel, informed me that there was no objection to my hearing the matter. Counsel for Mr Edward Amos simply said that he thought that both judges in the Applications List on that day would have had “some involvement over the years, almost 30, 40 years of Mr Amos’s involvement in the Court system”.
- [3] On 1 August 2010, whilst I was on long leave, Mr Edward Amos wrote to my associate, for the first time raising an objection to my determining this application. He claimed that at the commencement of the hearing, I had said that I had acted *for* him when I was at the Bar. He claimed that because he had always conducted his business affairs with honesty and integrity, he had thought that, as his former barrister, I could have no adverse view of him from the experience. He wrote that he had since checked his old files and discovered that I had acted against him, in litigation in which my then client was investigating the possibility that certain documents then relied upon by Mr Amos had been forged. He enclosed some correspondence from that litigation. He claimed that had he understood on 13 May that I had acted against him and in that litigation, he would have instructed his counsel to object to my hearing the matter.
- [4] Page 2 of the transcript of the hearing on 13 May demonstrates that Mr Amos is incorrect in his recollection of what then occurred. The parties were informed that I had acted against Mr Amos, not for him. I said nothing about the particular litigation because I had no immediate recall of it as this hearing was commencing. The question now is whether a fair-minded observer might perceive that I am biased against Mr Amos. Clearly, the litigation in which I acted as counsel had nothing to do with the litigation from which the present application arises. However, I am reminded by Mr Amos’s letter and its enclosures of the circumstances of that litigation which had given rise to an apprehension that documents had been forged. I think it could now be fairly perceived that from my experience in that litigation, I would have such an adverse view of Mr Amos’s character that I could not bring an unprejudiced mind to the resolution of the present application, where that would require a consideration of, amongst other things, his motives in the proceedings of which his brother complains.
- [5] The circumstances upon which Mr Amos objects to my hearing the matter, it is to be expected, would not exist with at least most other judges of the Court. It is also relevant that pending the outcome of this application, Mr L R Amos is protected by undertakings previously given by Edward Amos which restrict him from bringing further proceedings against his brother. The preferable course is for the application to be determined by another judge, as it could have been by a hearing on 13 May 2010. In all the circumstances, this application will have to be adjourned back to the Applications List with the costs of the hearing of 13 May 2010 reserved to the judge determining the application.