

**IN THE CARIBBEAN COURT OF JUSTICE**  
**Appellate Jurisdiction**

**ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS**

**CCJ Appeal No BBCV2018/002**  
**BB Civil Appeal No.6 of 2018**

**BETWEEN**

**EDDY DAVID VENTOSE**

**APPLICANT/INTENDED  
APPELLANT**

**AND**

**CHIEF ELECTORAL OFFICER**

**RESPONDENT**

**Before the Right Honourable:**  
**And the Honourables:**

**Sir Dennis Byron, President CCJ**  
**Mr. Justice A. Saunders, JCCJ**  
**Mr. Justice D. Hayton, JCCJ**  
**Mr. Justice W. Anderson, JCCJ**  
**Mr. Justice D. Barrow, JCCJ**

**Appearances:**

Mr. Elliot Mottley QC, Mr. Leslie Haynes QC, Ms. Faye F. Finisterre, Ms. Kashkha Mottley and Mr. Nicholas Jackman for the Applicant/Intended Appellant

Ms. Jennifer Edwards QC, Solicitor General for the Respondent

**REASONS FOR DECISION**

**of**

**The Right Honourable Sir Dennis Byron, President and the Honourable Justices  
Saunders, Hayton, Anderson and Barrow**

**Delivered by**

**The Right Honourable Sir Dennis Byron**  
**on the 16<sup>th</sup> day of May 2018**

## **Introduction**

[1] The Intended Appellant, Professor Eddy Ventose (‘Professor Ventose’) was urgently seeking special leave to appeal the decision of the Court of Appeal of Barbados rendered on 6 May 2018. Professor Ventose, a Commonwealth citizen who resides in Barbados, wanted to be entered on the Register of Voters ahead of the 24 May 2018 general election date. The Court of Appeal directed the Intended Respondent, the Chief Electoral Officer (‘CEO’), Mrs Angela Taylor, to “make a determination” on his “claim for registration as an elector in Barbados within 24 hours of May 8<sup>th</sup> using only the qualification criteria as set out in sections 7 and 11 of Cap 12”, the Representation of the People Act (‘ROPA’). These criteria include residence in Barbados for three years immediately before the qualifying date, 4 January 2018. By letter personally handed to Professor Ventose dated 8 May 2018 the CEO stated that she was not satisfied that he was so resident. She re-iterated this in her letter of 10 May 2018 to his attorneys in response to their letter dated 9 May 2018.

[2] As will be shown, the CEO’s statements contradicted the factual findings of the Court of Appeal and of the Honourable Sir Marston Gibson, Chief Justice as the judge of first instance. On this basis, Professor Ventose urgently electronically filed an application after office hours on Friday 11 May 2018 to this court for an order directing the CEO to register or cause to be registered his name on the register of electors so that he will be able to vote in the 24 May 2018 General Elections. This court organised a hearing via video-conference at 11:00 am on Sunday 13 May 2018 and made the required orders in favour of Professor Ventose set out at the end hereof, stating that reasons would follow shortly. These are those reasons.

## **Factual Background**

[3] At all material times, Professor Ventose was a St. Lucian national and therefore a citizen of a Commonwealth country, residing in Barbados for more than three years, living in the constituency of St James South since April 2010, over the age of eighteen years old and of sound mind with no criminal convictions. He is the holder

of a Barbados national identification card bearing his photograph and has been legally working, by virtue of a CARICOM Skilled National Certificate, as a Professor of Law at the University of West Indies, Cave Hill Campus in Barbados, where he has been employed since 2006. He thus claims that he satisfies the requirements of section 7 of ROPA so as to be qualified to be registered as an elector for a constituency because on the qualifying date “he

- (a) is a citizen of Barbados; or
- (b) is a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date and
- (c) is 18 years of age or over;
- (d) and has resided in that constituency for a period of at least 3 months before that qualifying date.”

[4] According to Professor Ventose, on 8 October 2013, he attended the Electoral Office to apply for a replacement of his Barbados National Identification card. It was there that he made enquiries as to whether he could register as an elector in Barbados. The request was refused on the basis that a holder of a permit to reside and work in Barbados as a CARICOM Skilled National was not entitled to be registered and vote in Barbados. Subsequent to that, counsel for Professor Ventose, Faye Finisterre, wrote a letter to the CEO requesting a statement of the reason(s) for the refusal of her client’s registration as an elector in Barbados. The CEO never responded to that letter or provided reasons for the refusal.

[5] Four years later, in October 2017, Professor Ventose attended the Electoral Office to register and the request was again refused. On this occasion he was told that the only persons entitled to vote were Barbadian citizens or permanent residents.

[6] On 4 January 2018 (‘the qualifying date’), Professor Ventose visited the Electoral office for the third time. This time, he was presented with a form (Form 1) which he submitted in a claim to be registered as an elector in Barbados as prescribed by ROPA. On submission of the claim for registration, the CEO through her agents, advised Professor Ventose that it was the long-standing policy of the Electoral and

Boundaries Commission ('EBC') only to register persons as electors who were Barbadian citizens, permanent residents or holders of permitted immigrant status. Professor Ventose considered this to be a denial of his claim to be registered as an elector as a lawfully resident Commonwealth citizen since he was neither a citizen, permanent resident nor a holder of immigrant status. Until the above letter of 8 May 2018, Professor Ventose had not received a formal response to his application.

[7] On 10 January 2018, Professor Ventose commenced an action for judicial review by Fixed Date Claim Form. The Honourable Chief Justice, Sir Marston Gibson, sitting as a judge of the High Court heard oral arguments on 29 January 2018 and granted the relief sought on 26 February 2018. The CEO appealed against the decision of the High Court on 16 March 2018. The appeal was heard on 16 April 2018 and a decision rendered on 8 May 2018.

[8] On 24 April 2018, the writ of General Elections for Barbados was issued by the Governor General to be held on 24 May 2018. The 19 days following the issuance of a writ of elections is considered a special registration period. This period ends on 15 May 2018. However, section 18(3) of ROPA prescribes that the EBC shall 'no later than 21 days after the issuing of a writ for an election' publish a register of electors or final voters' list. It was submitted that if Professor Ventose is not on the voters list when the final list is published, he will not be able to vote in the General Election.

### **High Court**

[9] Professor Ventose applied to the High Court under the *Administrative Justice Act, Cap 109B* ('AJA') by way of Fixed Date Claim Form on 10 January 2018. He applied for judicial review and sought a declaration that, being a person who had satisfied the requirements for qualifying as an elector under section 7 of ROPA, he was a person entitled *as of right* to be registered as an elector. He also applied for an order mandating the CEO to register him as an elector. He argued that the decision or determination or administrative act of the CEO or her agents was

contrary to law, failed to observe procedures required by law, an abuse of power, in conflict with ROPA and the Constitution of Barbados, an error of law and a breach of or omission to perform a duty under the AJA. The CEO argued *inter alia* that the action filed by Professor Ventose was premature because he failed and/or refused to await a decision and failed to make a written request for information regarding his registration status. As a result, there was no administrative act or omission and his application for judicial review amounted to an abuse of process.

[10] Gibson CJ found that there were three issues to be determined, (i) whether Professor Ventose had locus standi to bring an action for judicial review, (ii) whether he was entitled to judicial review and (iii) what remedies were appropriate in the circumstances. The Honourable Chief Justice found in favour of Professor Ventose.

[11] He pointed out at paragraph [59] of his judgment that the right of Commonwealth citizens to vote in Barbados had existed since 1950 and that, under clause 6 of the First Schedule Part II of the *Representation of the People (Amendment) Act 1969-17*, to be eligible to vote such a person had to be “ordinarily resident” in the relevant constituency. He cited the Prime Minister, the Right Honourable Errol Barrow, in introducing section 7 of the *Representation of the People Act 1971* that forms the basis for the current ROPA, that for Commonwealth citizens to be entitled to vote they had to be “a resident in this country legally for a period of three years.” He further pointed out that what amounts to the requisite “ordinary residence” of a person is now set out in regulations 6 and 7 of the *Representation of the People (Registration of Electors) Regulations 1990*. Essentially, this is the place a person has adopted as the place of his habitation or home where he intends to return, have his meals and sleep, temporary absences not causing the loss of ordinary residence.

[12] He went on to find that the EBC’s policy that Commonwealth citizens could not be registered as electors unless Barbadian citizens or permanent residents or holders of immigrant status, precluded Professor Ventose and other similarly placed

persons from being registered as electors. He found that the conduct of the EBC and its CEO in giving effect to this policy constituted an administrative act under section 2 of AJA as it was conduct of a public official purporting to exercise a power or duty imposed by the Act. As such, Professor Ventose had locus standi as he was a person whose interests were adversely affected by an administrative act.

- [13] As to the substantive matter, Gibson CJ noted that an analysis of the legal framework revealed that there were two requirements which must be met in order for an applicant to be entitled to vote, (i) the applicant must qualify to be an elector and (ii) the applicant must be registered in the register of electors. So even though an applicant may qualify, it is still necessary to make an application in the prescribed form in order to be registered on the register of electors.
- [14] Gibson CJ found that the assertion of the CEO and the EBC that, as a precondition to being registered, a Commonwealth citizen (other than a Barbados citizen) who has been resident in Barbados for a period in excess of three years must have the additional status of being either a permanent resident or a permitted immigrant is in violation of the language of the Act and sought to insert conditions in the statute that did not exist. In his view, only the Parliament of Barbados was empowered to insert such conditions. In support, he cited *George Rick James v Ismay Spencer and Lorna Simon*<sup>1</sup> where Saunders JA, giving the judgment of the Eastern Caribbean Court of Appeal, held that where statutory requirements are prescribed (e.g. for registration as an elector) no discretion exists on the part of a public body to add extra requirements (e.g. the setting out of the applicant's occupation).
- [15] The Chief Justice rendered his decision on 26 February 2018. He declared that the decision not to register Professor Ventose was unlawful as it violated the provisions of the Act. He made an Order of Mandamus directing the CEO to register Professor Ventose as an elector to vote in Barbados within 14 days of the date of the Order

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<sup>1</sup> Civ App No 27 of 2004.

“as he satisfied the conditions precedent under section 7 of ROPA”<sup>2</sup>. He ordered that Professor Ventose was entitled to costs to be agreed or taxed. On that same date, the CEO sought and was granted a stay of the Order of Mandamus for 14 days.

[16] It is to be noted that the Chief Justice’s decision was based upon the requirements of section 7 of ROPA having been found by him to have been satisfied, including the requirements of section 7(b) and (d), namely, that Professor Ventose had resided in Barbados for a period of at least three years immediately before the qualifying date and had resided in the constituency of St James South for a period of at least three months before that date. Indeed, the truth of these matters was sworn to by Professor Ventose in paragraph 2 of his affidavit of 10 January 2018 in support of this claim for judicial review. This was not challenged in any affidavit by the CEO, it, perhaps, being thought that his claim would founder on his reliance on his Commonwealth St. Lucian citizenship when not having permanent residence in Barbados or immigrant status therein.

### **Court of Appeal Decision**

[17] On 16 March 2018, the CEO appealed against the decision of the Chief Justice. The appeal was certified as urgent and it was heard by the full Court of Appeal on 16 April 2018. On 8 May 2018, the Court of Appeal ordered the following in relation to Professor Ventose’s appeal:

- (i) The declaration ordered in the Ventose appeal is quashed;
- (ii) The order for mandamus in the Ventose appeal is quashed;
- (iii) An order of mandamus in the Ventose appeal directing the appellant to make a determination on the respondent’s claim for registration as an elector in Barbados within 24 hours of today’s date using only the qualification criteria as set out in sections 7 and 11 of Cap. 12.
- (iv) Each party to bear its costs in this appeal and in the court below.

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<sup>2</sup> At trial, counsel for the CEO conceded that Professor Ventose would be entitled to an order of Mandamus.

- [18] In disposing of the appeal, the Court of Appeal considered three main issues: (i) whether Professor Ventose had locus standi to bring his application for judicial review, (ii) whether there was any basis to quash the declaration of Gibson CJ and (iii) whether there was any basis to quash the mandamus order of Gibson CJ.
- [19] The court first held that Professor Ventose did not have locus standi under section 6(a) of the AJA as he failed to show that his interest was adversely affected by an administrative act or omission since his claim for registration had not been formally refused in the prescribed form. However, the court did find that he had standing under section 6(b) as the application for judicial review raised issues which were justiciable in the public interest.
- [20] Second, the court held as follows: “The uncontroverted evidence is that Professor Ventose not only satisfied the qualification requirements listed in section 7, but more crucially, also complied with the provisions of Cap 12 and the regulations relating to the registration of electors. According to s 11, he therefore became a person ‘qualified to be registered.’ However, there is nothing in section 7 or section 11, or, for that matter, any other provision in Cap 12 or the regulations, which entitles a person ‘as of right to be registered as an elector.’” Thus, the Court held that Professor Ventose was entitled only to a declaration that ‘he is a person qualified to be registered as an elector’.
- [21] Since the court considered neither section 7 nor section 11 imposes any duty on any EBC officer to do anything, the court quashed the mandamus order of the Gibson CJ compelling the CEO to register Professor Ventose. The court did, however, acknowledge the power to grant another remedy under section 5(3) of AJA and found that Professor Ventose was entitled to an order of mandamus pursuant to section 16(1) of the Act which imposes a duty on the appropriate registration officer to determine claims for registration and ordered the EBC to make the determination on Professor Ventose’s claim within 24 hours [of the day on which the judgment was given] using only the qualification criteria in sections 7 and 11 of the Act.



[22] Finally, the court prohibited the EBC from using the purported ‘long-standing policy’ to register Commonwealth citizens as electors only if they were either citizens of Barbados or in possession of a Permanent Resident Permit or an Immigrant Status Permit. The court held that the policy was *ultra vires* and void and the EBC must only apply the qualifications set out in sections 7 and 11 of the Act.

### **Appeal to CCJ: Grounds of Appeal**

[23] Professor Ventose is now appealing to this Court on a number of grounds, namely that he had standing under s 6(a) of the AJA and, having satisfied the requirements under section 7 of ROPA, he was entitled to be registered as an elector, so that an order of mandamus should be issued to ensure his registration in time to be on the register of electors entitled to vote in the 24 May 2018 General Election.

### **Discussion**

[24] There are three main issues for this Court’s consideration:

- (i) Does Professor Ventose have standing in accordance with s 6 (a) of the AJA as adversely affected by an administrative act or omission?
- (ii) Do persons have a right to be registered if they satisfy the requirements for registration as an elector in the Act and the regulations?
- (iii) Costs.

### **Locus Standi**

[25] Pursuant to section 3(1) and section 6(a) of AJA, an application to the court for relief from an administrative act or omission may be made by way of an application for judicial review and the court may grant relief to a person whose interests are adversely affected by an administrative act or omission. The CEO argued, and the Court of Appeal agreed, that Professor Ventose had no standing to bring a claim for judicial review as there was no administrative act or omission as required by section 6 of AJA. Counsel for the CEO argued that the claim had yet to be

determined and that the action was premature as Professor Ventose had failed and/or refused to await a decision from the EBC regarding his application and failed to make a written request for information regarding his registration status. As a result, no decision had been made before Professor Ventose brought his case, though, as seen above in [1], decisions were made on 8 May 2018.

[26] Despite the CEO's purported position that there had been no administrative act or omission before the claim was brought, there is sufficient evidence on record to the contrary. For example, on his visit to the EBC in January 2018, Professor Ventose was advised that his claim to be registered as an elector would be subjected to the longstanding policy that prejudiced Commonwealth citizens. Paragraphs 106 and 107 of the CEO's submissions in the Court of Appeal are instructive<sup>3</sup>:

“In response to a request from the Respondent, the aforementioned Form 1 Application was provided to the Respondent, filled out and returned by him, prior to him being referred for consultation regarding the processing of the said Application. The Respondent was informed of the existing policy to register as electors, commonwealth citizens who are either citizens of Barbados or who are in possession of a Permanent Resident or Immigrant Status Permit.

The Respondent was further advised that his Form 1 Application would be considered in accordance with the relevant Regulations and processes of the EBC. The Respondent queried whether his name would be entered on the Register of Electors for the constituency of Saint James South. He was advised that he would be informed in due course. The Respondent's Barbados Identification Number was recorded on his Form 1 Application and submitted in accordance with the procedures of the EBC.”

[27] We agree with the Chief Justice that the information as to “existing policy” given to Professor Ventose and indicating the futility of his filling in the required application form, is sufficient to illustrate he is a person whose interests were adversely affected by an administrative act. Section 2 of AJA defines an administrative act or omission as meaning “an act or omission of a Minister, public

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<sup>3</sup> Pp 81 and 82 of CCJ Record.

official, tribunal, board, committee or other authority of the Government of Barbados exercising, purporting to exercise or failing to exercise any power or duty conferred or imposed by the Constitution or by any enactment”. We agree with the Chief Justice that application of the policy of the EBC and its CEO by electoral officials constitutes an administrative act within section 2 of the AJA, designed to preclude Mr. Ventose from obtaining registration as an elector despite his meeting the statutorily mandated requirements. Accordingly, Professor Ventose has locus standi under section 6(a) and is entitled to seek relief in his application for judicial review, quite apart from having locus standi under section 6(b) as held by the Court of Appeal.

Right to be entered on Register of Voters

[28] We must acknowledge two concessions before adjudicating on the second issue. The first is that at the Court of Appeal hearing, it was conceded by counsel for the CEO that the long-standing policy to register as electors only those persons who were citizens, permanent residents or holders of immigrant status, so as to exclude resident Commonwealth citizens (other than Barbados citizens) was *ultra vires* and unlawful, as, indeed, the Chief Justice had held. This was an important and wise concession because there is a wider and more important principle at stake here beyond the right of resident Commonwealth citizens to vote at general elections in Barbados. That principle is one that was long fought over in England and which was finally settled as long ago as the Glorious Revolution of 1688-1689. It is that the Crown or the Executive Authority is subordinate to Parliament; that Acts of Parliament must be obeyed by the Executive Authority. This is a fundamental aspect of the rule of law which is at the core of Barbados' constitutionalism. Neither the Executive Authority nor the Electoral Officer is entitled with impunity to establish or implement a policy that is at variance with the Constitution and laws of Barbados. To the extent that this is what is precisely being advanced here, the court must resolutely set its face against it. If there is good reason for the claimed policy to exist, then *before* it can lawfully be implemented the Executive must seek to have Parliament alter the law. Unless the law is altered any such policy is illegal

and void and the courts must say so, which the Chief Justice and the Court of Appeal have done.

- [29] The second concession was made by Ms Alison Burke in her oral arguments before the High Court. Gibson CJ recounted the concession just before he disposed of the action:

“However, in the case of Action 2, counsel for the respondents, Ms. Allison Burke, conceded in argument before me that Prof. Ventose was entitled to the remedy of mandamus. She took the position, however, that since he had only filed his application on 4 January 2018, his suit was premature, and that the respondent was still considering his application, along with the many others filed. Accordingly, it must be ordered that Prof. Ventose should be registered with dispatch.

This is the more urgent because section 13 (1) of the ROPA enacts inter alia that the Commission shall cause to be prepared and shall publish not later than 31 January in every year a register of electors for each constituency. Prof. Ventose’s name likely had not been published in the register of electors in January 2018.”

- [30] Thus, the second issue ultimately concerns whether, having satisfied the conditions set out in section 7 of the Act and having completed the requisite application form, Professor Ventose was entitled as of right to be registered. In his view, having satisfied the requirements, he was a qualified person and entitled to have his name placed on the register of electors. According to him, this entitlement places a corresponding duty on the registering officer to place his name on the register of electors. He submitted that the Court of Appeal ought to have found that the registering officer had a duty to place his name on the register of electors and, particularly, in light of the concession made by counsel for the CEO, the court should have mandated that he do so.

- [31] The Act and the Regulations provide the legal framework relating to how persons who are eligible to vote are to be treated as well as the role of the EBC and the CEO in that regard. The relevant sections and clauses are set out below:

*The Representation of the People Act*

**6.** (1) Subject to this Act, a person is entitled to vote as an elector at an election in a constituency if on polling day he is qualified to be an elector for that constituency and is on that day registered in the register of electors to be used at that election in that constituency.

(2) A person is not entitled to vote as an elector at an election in a constituency unless he is registered in the register of electors to be used at that election in that constituency.

**7.** (1) Subject to this Act and any enactment imposing any disqualification for registration as an elector, a person is qualified to be registered as an elector for a constituency if, on the qualifying date, he

(a) is a citizen of Barbados; or

(b) is a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date and

(c) is 18 years of age or over;

(d) and has resided in that constituency for a period of at least 3 months before that qualifying date,

**11.** Notwithstanding section 7, a person shall not be qualified to be registered as an elector until he has complied with the provisions of this Act and the regulations relating to the registration of electors.

**16.** (1) All claims for registration made by a person whose name does not appear in the register, the revised register of electors or the register for elections and all objections to the registration of persons whose names appear in the registers of electors and the register of foreign service electors, as the case may be, shall be determined in accordance with the regulations by the appropriate registering officer acting with respect to the constituency to which the register in question relates.

(2) Notwithstanding subsection (1), when a claim thereunder has been disallowed, the registering officer may in accordance with the regulations refer the matter to the Commission whose decision shall be final.

**18.** (4) The register for elections must contain the name, address, occupation, if any, and electoral number of every person qualified under this Act to be registered as an elector or a foreign service elector, for the constituency.

*The Representation of the People (Registration of Electors) Regulations 1990*

**9.** (1) Subject to paragraph (2), a person who is qualified to be registered as an elector shall make application in the Form 1 set out in the *First Schedule* to the registering officer of the polling district in which he resides.

**36.** (1) Any person whose name does not appear in a register of electors or revised register of electors and who claims to be entitled to be registered as an elector for the constituency to which the register or list relates may attend at the electoral revising centre in the polling district in which he resides.

(2) The Form 1 set out in the *First Schedule* shall be completed by or on behalf of the applicant and shall be presented to the registering officer or an enumerator.

(3) Where the registering officer or an enumerator is satisfied that the applicant is qualified as an elector for the constituency in which the electoral revising centre is established, he shall upon the applicant being photographed in accordance with these Regulations for the purpose of being issued with an identification card, cause the applicant's name, and address to be entered in the appropriate register or list, as the case may be, for that constituency.

(4) Where the enumerator is not satisfied that an applicant is qualified to be registered as an elector, he shall

(a) issue to the applicant the original of a notice of refusal in the Form 3 set out in the *First Schedule*;

(b) inform the applicant that he may appear before the appropriate registering officer when directed by notice in writing by that officer to do so, if he wishes to justify his claim; and

(c) transmit to the appropriate registering officer a copy of the notice of refusal issued to the applicant pursuant to sub-paragraph (a).

(5) The names of persons whose applications for registration have been refused by the enumerator shall be listed in a form supplied by the Chief Registering Officer, and the list shall be forwarded by the enumerator to the registering officer.

**42.** (1) A claim or objection, which may be in the Form 1 or 12 set out in the *First Schedule*, as the case may be, shall be in writing, shall state the name, occupation and address of the claimant, or, as the case may be, the objector, and, in the case of an objection, of the person objected to, and shall specify the claim or objection and give full particulars in support thereof.

(2) Claims and objections shall be made available for inspection at the address of the registering officer until completion of the determination of claims and objections pursuant to these Regulations.

**43.** (1) If the registering officer is of the opinion

(a) that the particulars given in a claim or objection are insufficient, he may ask for further information and take no further action until such information is supplied; and should such further information not be received by the registering officer by the last date for the receipt of claims and objections specified in the notice referred to in regulation 40(2), no further action need be taken in respect of it;

- (b) that a claim may be allowed without its being referred to the Chief Registering Officer, he may allow the claim provided that no objection is made thereto, and shall so inform the person making the claim;
  - (c) that the objector is not entitled to object, he may disallow the objection and shall so inform the objector by notice in the Form 3 set out in the *First Schedule*;
  - (d) that a claim or objection cannot be allowed because the particulars given in the claim or objection do not entitle the claimant or objector to succeed, he shall refer the matter to the Chief Registering Officer and send a notice in the Form 13 set out in the *First Schedule*, in the case of a claim, to the person making a claim, and, in the case of an objection, to the objector and the person objected to, stating the time and place at which the Chief Registering Officer proposes to hear the claim or objection; and the notice sent to the person objected to shall also state the name and address of the objector and the grounds of the objection.
- (2) The time fixed for the hearing of a claim or objection shall not be earlier than the third day after the date of the notice referred to in paragraph (1)(b).
- (3) The registering officer shall make lists of claims and objections available for inspection at his address until completion of the hearing of claims and objections, together with the time and place at which the Chief Registering Officer proposes to hear any claim or objection.

**44.** (1) On the hearing of a claim, the person making the claim and any person who has duly made an objection, and, on the hearing of an objection, the objector and the person objected to, and, on the hearing of either, any other person who appears to the Chief Registering Officer to be interested, shall be entitled to appear and be heard.

(2) The right to appear and be heard includes the right to make written representations.

(3) Any person entitled to appear and be heard may do so either in person or by any other person duly authorised in writing in that behalf.

**45.** (1) For the purposes of the discharge of their functions under the Act or these regulations, the Chief Registering Officer, a registering officer or an enumerator may, in relation to a person claiming to be registered or against whose inclusion in a register of electors or revised register of electors an objection has been made, if he thinks necessary

(a) require that person either to produce a birth certificate or to make a sworn declaration as to the date of his birth;

(b) require that person either to produce a certificate of naturalisation or a document showing that he has become a Commonwealth citizen by virtue of registration, or to make a sworn declaration that he was a Commonwealth citizen on the qualifying date;

(c) enquire into, examine and investigate the qualification of that person to be registered and take such evidence as may be necessary to have it proved to his satisfaction that that person is qualified to be registered.

(2) Any declaration made pursuant to paragraph (1) shall be made available for inspection at the address of the registering officer.”

[32] The legal framework is instructive and unambiguous as it relates to the registration of electors. The qualifications under section 7 must be satisfied and Form 1 must be completed and submitted. Once these steps are taken, regulation 36 expressly gives the enumerator or registering officer two options. One, if satisfied that the applicant is qualified as an elector, he or she, upon the applicant’s photograph being taken, is to cause the applicant’s name and address to be entered in the appropriate register or list or two, where the enumerator or registering officer is not satisfied that an applicant is qualified, he shall issue to the applicant the original of a notice of refusal in the Form 3 set out in the First Schedule.

[33] None of the above options has been undertaken by the CEO or her agents. In the courts below, her contention was that the process was ongoing and that Professor Ventose’s grievance was premature as his claim had yet to be approved or refused. At paragraph 114 of the CEO submissions in the Court of Appeal, she went on to state that<sup>4</sup>:

“On the 23rd day of March 2018, the Respondent attended at the EBC to query the status of his Application. He was duly informed that the Application is being processed. To date the Application continues to be processed in spite of all efforts made by the EBC in this regard, as the Decision of the learned Trial Judge has had far reaching implications in relation to verifying and authenticating the three (3) years residence criteria.”

[34] It is puzzling, that in March the determination of the claim was deemed ‘ongoing’, despite the clear concession at trial two months prior that the Professor was entitled to a remedy of an Order of Mandamus by virtue of him satisfying the requirements, including the residence requirements. Even more concerning is the Court of Appeal’s holding that, although finding Professor Ventose was qualified to be registered, neither section 7 nor 11 nor any other provision in the ROPA or the

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<sup>4</sup> Ibid at p 83.



regulations compelled the CEO to register him or create an entitlement or right to be registered. In its view, section 16 of the Act, headed Claims and Objections, regulates the procedure to be followed and the CEO still had to determine the claim.

[35] Both the CEO and the Court of Appeal seemingly subscribe to the view, that the CEO or other registering officer has an implied discretion to determine a claim for registration even when the requirements under the Act have been met. We do not agree. The legal framework is very specific as to the procedure to be followed if the relevant officers are satisfied or dissatisfied with a claim. There is no discretion to add extra criteria to statutory criteria as stated by the Eastern Caribbean Court of Appeal in *George Rick James v Ismay Spencer and Lorna Simon* where it was held unlawful to require an applicant for registration as an elector to state his occupation on the application form.

[36] Section 6 of the Act states that ‘a person *is entitled to vote* (emphasis added) as an elector at an election in a constituency if on polling day he is qualified to be an elector for that constituency and is on that day registered in the register of electors to be used at that election in that constituency’. Section 7 provides the qualifications which allow an individual to be registered and section 8 sets out the grounds for disqualification. Once a person is qualified, section 11 requires procedural steps to be taken in order that the qualified person can become registered. An application form must be duly completed supported by a photograph of the applicant. Under section 16 the appropriate registering officer takes steps to check the details supplied in the application form to determine if the applicant is duly qualified and if so registers the applicant, or, otherwise disallows the application. In the present circumstances, however, no steps needed to be taken to determine that Professor Ventose was duly qualified as the Court of Appeal had determined that “the incontrovertible evidence is that Professor Ventose not only satisfied the qualification requirements, but more crucially, also complied with the provisions of Cap 12 and the regulations relating to the registration of electors.”

- [37] Section 16 defers to the procedural requirements in the Regulations which state that, a registering officer, if satisfied that an individual is qualified, shall cause his or her name to be entered on the register (regulation 36(3), or if the individual is not qualified, a notice of refusal is issued and a very specific process ensues (regulation 36(4). A registering officer was duty-bound to cause Professor Ventose's name to be entered on the register as a result of the Court of Appeal's determination that Professor Ventose was qualified to be registered because this meant it was not open to the CEO or a registering officer to investigate the details on his application form and determine that he was not qualified.
- [38] Accordingly, we ordered the Chief Electoral Officer and/or her agents must cause Professor Ventose's name and address to be entered on the register in accordance with regulation 36 by noon on Monday 14 May 2018.

**Disposition**

- [39] The Court ordered and declared that:
- (i) The Application for Special Leave to Appeal filed on the 11<sup>th</sup> day of May 2018 is granted.
  - (ii) The application to treat this hearing as urgent is granted.
  - (iii) The Application for Special Leave to appeal is treated as the substantive hearing of the appeal.
  - (iv) The appeal is allowed, and the orders of the Court of Appeal are set aside.
  - (v) The Court is satisfied that the Appellant has locus standi under sections 6 (a) and (b) of the Administrative Justice Act Cap. 109B to bring a judicial review application under section 3 of the Act.
  - (vi) The long-standing policy of the Electoral and Boundaries Commission in relation to Commonwealth citizens to register as electors only those persons who were Barbadian citizens, permanent residents or holders of immigrant status, is unlawful and ultra vires.

- (vii) The Court is satisfied that on the basis of the judicial findings pronounced in this matter, which have not been appealed, the Appellant has satisfied the necessary legal and regulatory conditions for registration as an elector as he has satisfied the conditions precedent under section 7 of the Representation of the People Acts.
- (viii) Ms Angela Taylor, Chief Electoral Officer shall register or cause to be registered the Appellant as an elector before 12:00 noon on Monday the 14<sup>th</sup> day of May 2018
- and if you the within named Angela Taylor, Chief Elector Officer, do not comply with this order you may be held to be in contempt of Court and imprisoned and/or fined.
- (ix) Costs are awarded to the Appellant in this Court and in the courts below certified fit for two Counsel to be taxed if not agreed.

*/s/ CMD Byson*

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**The Rt. Hon Sir Dennis Byron (President)**

*/s/ A Saunders*

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**The Hon Mr Justice A Saunders**

*/s/ D Hayton*

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**The Hon Mr Justice D Hayton**

*/s/ W Anderson*

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**The Hon Mr Justice W Anderson**

*/s/ D Barrow*

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**The Hon Mr Justice D Barrow**