

ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.27 OF 2004

BETWEEN:

GEORGE RICK JAMES

Appellant

and

[1] ISMAY SPENCER

[2] LORNA SIMON

Respondents

Before:

The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC
The Hon. Mr. Hugh Rawlins

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ralph Francis for the Appellant
The Attorney General, Mr. Justin Simon, QC for the Respondent

2005: March 18;
April 4.

JUDGMENT

[1] **SAUNDERS, J.A.:** This appeal was heard and dismissed by the Court on 18th March, 2005. Counsel for the Appellant urged us to reduce our reasons into writing and we now take the opportunity so to do. In truth, the judgment at first instance of Madame Justice Ollivetti was so comprehensive and clear that we hardly consider ourselves able to add anything that would further enhance it.

[2] Mr. James, the Appellant, is the Secretary of a body called The Free and Fair Election League ("the League"). The First Respondent, Ms. Spencer, is the Registration Officer in the electoral constituency of St. John's Rural East. Ms.

Simon is the Chief Registration Officer. In his capacity as Secretary of the League, Mr. James had lodged with Ms. Spencer a number of objections to persons appearing on the list of electors registered to vote in the constituency of St. John's Rural East. The essence of Mr. James' objections was that in respect of some 451 persons, no occupation was listed. Mr. James maintains that the failure to include in the list the occupation of these individuals rendered them ineligible to vote. The trial Judge disagreed and Mr. James has appealed.

- [3] Section 40(2) of the Antigua and Barbuda Constitution addresses entitlement to vote. The sub-section states:

"Every Commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Antigua and Barbuda as parliament may prescribe shall, unless he is disqualified by any law from registration as a voter for the purpose of electing a member of the House, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf ... "

- [4] This provision sets out the basic requirements for eligibility to be registered as an elector. However, the Constitution allows Parliament to prescribe more precisely the qualifications to be so registered. Parliament has done so, most recently, by the Representation of the People (Amendment) Act No. 17 of 2001. Section 16(1) states:

"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 Antigua and Barbuda
- (b) is a Commonwealth citizen (other than a citizen of Antigua and Barbuda) who has resided in Antigua and Barbuda for a period of at least three years immediately before the qualifying date; and
- (c) is 18 years of age or over; and
- (d) has resided in that constituency for a period of at least one (1) month immediately preceding that qualifying date."

A person who fulfills these criteria is entitled to be registered and nowhere in these provisions is it stated that one's occupation must be stated on the Register. There is however, in the said Representation of the People (Amendment) Act a section

that speaks to the Register of Electors. Section 21(2) states that the Register of Electors to be prepared shall contain the name, address, occupation, and electoral number of qualified electors. In light of this section, Counsel for the Appellant has suggested that this section makes it mandatory that the occupation of the elector must be listed and that therefore, if the occupation is not listed the person is disentitled from voting. Counsel relied on the Jamaican case of **Thompson v Forrest**¹.

[5] In **Thompson v Forrest**, Mr. Thompson was defeated by Mr. Forrest at a general election by 125 votes. Earlier, the Chief Electoral Officer had omitted from the official lists of electors the names of more than 125 persons because they had not been photographed nor did they have their thumb prints taken. Mr. Thompson petitioned the Court claiming that there had been no real election in the constituency. He contended that the provisions of the law requiring photographs and thumb prints were in conflict with the Constitution of Jamaica. That constitution, like the Antigua and Barbuda Constitution, had set out certain basic provisions as to entitlement to vote. The Judge dismissed Mr. Thompson's petition and held that the Constitution was not intended to be a complete statement of the law governing the registration of electors.

[6] In my view **Thompson v Forrest** has to be distinguished from the instant case. In Jamaica, Parliament had, in 1963, made it a condition of being registered that a person should be thumb printed and/or photographed. That requirement was a condition precedent to being registered. The same cannot be said of the listing of a person's occupation in Antigua and Barbuda. Justice Ollivetti had opined:

"I am of the view that "occupation" is part of the description of the person and that his eligibility to vote is not dependent on his occupation. The purpose of listing an elector's occupation is to assist with identifying him. Therefore, it follows that if an elector's occupation is omitted from the List because he has no occupation or because his occupation cannot be ascertained or is left out inadvertently ... this does not affect his right to be an elector..."

¹ (1967) 11 W.I.R. 296

We are in complete agreement with that statement of the law.

- [7] During the course of the proceedings before Ollivetti, J. several procedural issues were raised by Counsel for Mr. James. These issues were not really canvassed before us but in any event it is our view that the trial Judge properly dealt with them all. In the circumstances we would dismiss the appeal but make no order as to costs.

Adrian Saunders
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Hugh Rawlins
Justice of Appeal [Ag.]