ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0147

BETWEEN

DAVEN JOSEPH

Petitioner

And

CHANDLER CODRINGTON
DAVIDSON BENJAMIN
PAULINE SIMON
LORNA SIMON

Respondents

AND

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2009/0148

BETWEEN

PAUL CHET GREENE

Petitioner

And

ELESTON ADAMS
WIGLEY GEORGE
SHOY GREGORY ATHILL
CORA HUGGINS
LORNA SIMON

Respondents

Appearances:

Mr. Douglas Mendes SC with Mr. Kendrickson Kentish and Mr. Leon Chaku Symister for the No.1 Respondents/Applicants in the Joseph and Greene matters.

Mr. Russell Martineau SC with Ms. Emily Simon-Forde for the No.3 and No.4 Respondents/Applicant in the Joseph matter and for the No.4 and No.5 Respondents/Applicant in the Greene matter.

Mr. Hugh Marshall Jr. for the Petitioners/Respondents

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2009: June 02
June 30
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JUDGMENT

[1] Blenman J: General Elections are always a matter of great national importance and so they are in Antigua and Barbuda.

[2] On the 12th March, 2009, General Elections were held in Antigua and Barbuda. The two main parties that contested the elections are namely: the Antigua Labour Party (ALP) and the United Progressive Party (UPP). In Barbuda, the Barbuda People's Movement (BPM) contested the election against the ALP.

[3] Mr. Chandler Codrington was the UPP candidate and he ran in the All Saints West constituency against Mr. Daven Joseph who was the candidate for the ALP. The elections having been held, Mr. Codrington was declared the winner (and was duly elected). In the St. Paul's constituency, Mr. Paul Chet Greene was the ALP candidate and he ran against Mr. Eleston Adams who was the UPP candidate. Mr. Adams was declared the winner in that race.

[4] Ms. Lorna Simon is the Supervisor of Elections. Ms. Pauline Simon and Ms. Cora Huggins were the Returning Officers/Election Officers.

[5] It appears as though the elections were hotly contested and some of the ALP candidates seem to be dissatisfied with the manner in which the elections were conducted. Several petitions were filed in relation to the General Elections seeking to have it declared void. In fact, a total of six petitions were filed. However, on the first day of the hearing, the Court, having listened to the submissions of all learned Counsel, ordered that the first four petitions were to be consolidated and heard together and the applications in those four petitions were to be dealt with together. The other two petitions were similarly ordered to

be consolidated (the Joseph and Greene petitions) were dealt with together. Indeed, both Mr. Joseph and Mr. Greene have filed Elections petitions in which they seek to challenge the results of the elections in relation to a number of alleged breaches. There are no allegations of fraud or corruption in the petitions. The Joseph and Greene petitions were each filed on the 23rd March, 2009 and each has a first affidavit in support thereof.

[6] The winning candidates, Mr. Adams and Mr. Codrington, have each filed applications seeking to have the petitions dismissed. The grounds of their applications include that the petitions were not filed within the mandated period of 7 days. Mr. Adams also complains about the service of the petition. He says that Mr. Greene did not serve him with the petition within the stipulated 5 day period and therefore the petition should be struck.

[7] Ms. Lorna Simon, the Supervisor of Elections has also filed an application in each petition and contends that both the petitions should be dismissed in so far as they were not filed within the time stipulated by section 45(2) of the Representation of People Act (as amended) Cap 379 Laws of Antigua and Barbuda.

[8] Issue

The issue that arises for the Court to resolve is whether the Court should dismiss both of the petitions, that have been brought by Mr. Joseph and Mr. Greene respectively.

[9] Mr. Daven Joseph's Petition

The Court will first address Mr. Daven Joseph's petition. Mr. Joseph has filed a petition together with the First Affidavit in Support. Mr. Carl Andrew, the process server has filed an affidavit of service in which he states that he served Mr. Chandler Codrington with the petition and the first affidavit on the 26th March, 2009.

[10] Mr. Chandler Codrington's application

Mr. Codrington seeks to have the petition dismissed on the ground that it was not presented within 7 days after the return, neither was he served within the stipulated time.

[11] Mr. Codrington stated in his affidavit as follows:

> "I was nominated as the candidate for the United Progressive Party at the General Election for the Constituency of All Saints West held on March 12th 2009. On the night of the said March 12th 2009, the Returning Officer declared that I was duly elected as the Representative of the All Saints West Constituency.
>
> On March 13th 2009, the Returning Officer returned me as the said Representative to the Electoral Commission by endorsing such return of the Writ of election for the said constituency. A true copy of the said return is hereto attached and marked "CC1".
>
> On March 13th 2009, the Governor General of Antigua and Barbuda appointed Mr. Baldwin Spencer as the Prime Minister of Antigua and Barbuda, having determined that Mr. Spencer was the leader of the political party in the House of Representatives, namely the UPP, which had won the majority of seats in House of Representatives at the said General Elections. The UPP was declared to have won 9 seats, the BPM one seat, whilst the Antigua Labour Party was declared to have won 7 seats.
>
> On the 26th day of March 2009, I was served with documents which purported to consist of a Notice of the presentation of a petition challenging the validity of my election as the representative of All Saints West, a notice of the nature of the proposed security and a copy of the petition. The petition appears to have been filed in court on March 23rd 2009."

[12] The Supervisor of Elections' application

Ms. Lorna Simon, the Supervisor of Elections has also applied to have the petition dismissed on the ground that it has been filed in breach of section 45(1) of the Representation of People Act since it was not presented within 7 days after the return was made in respect of Mr. Codrington. In her affidavit of support she states:

> "Following the General Elections held in Antigua and Barbuda on March 12, 2009, the Returning Officer for the Constituency of All Saints West in those elections delivered to

me the writ with the certificate endorsed thereon for the election in that constituency on March 13, 2009.

On the same March 13, 2009 I entered the name of Chandler Codrington from the certificate on the writ returned to me in the "Return" book kept by me at my office. The book is and has always been open to the public for inspection at reasonable times. There is exhibited "LS1" a true copy of the writ with the certificate endorsed thereon. There is also hereto exhibited and marked "LS2" a true copy of the entry of the name of Chandler Codrington in the Return book on March 13, 2009."

[13] Mr. Daven Joseph's opposition

Mr. Joseph opposes both of the applications to have his petition dismissed and has filed an affidavit to that effect. He says as follows:

"That I am advised by Counsel and do verily believe that pursuant to Section 45 of the Representation of People Act Cap 379, the period specified for the filing of an Election Petition is seven (7) days after the return has been made in respect of the member to whose Petition the Election Petition relates.

I am further advised by Counsel and do verily believe that a Return can only be made in the prescribed manner specified at Section 57 of the Election Rules appearing as Schedule 1 under the Representation of the Peoples Act and incorporated as Law by reason of Section 12 thereof.

That there is no evidence of an "endorsement on the Writ of Election" for the relevant Constituency presented to the Court to determine the actual date that the Return was made, if at all, accordingly in the absence of a Return we are unable to calculate the expiration of the prescribes seven (7) days for filing the Election Petition.

Without prejudice to the aforesaid, and on the unsubstantiated assumption that the return was made on the 13th March, 2009 my Election Petition was filed with the prescribed time on the basis of the following.

Firstly, the Election was held on Thursday the 12th day of March, 2009. The Return was being assumed on Friday the 13th day of March, 2009. Between the 13th March and the day of filing the Petition which was the 23rd March, 2009 there were ten (10) calendar days, inclusive of both days. During that period, there was one public holiday being the 13th March, 2009. There was also two (2) Saturdays being the 14th and the 21st March, 2009 and two (2) Sundays, being the 15th and the 22nd March, 2009.

That I am advised by Counsel and do verily believe that in computating time as set out in Section 45 of the Representation of the Peoples Act, regard must be had to Section 63 of the said Act which governs the Jurisdiction and Procedure to be adopted in Election Petitions. This Section stipulates that the 'High Court shall have the same powers, jurisdictions and authority with respect to an Election Petition and proceedings thereon as if the Petition were an ordinary action within its jurisdiction".

I am advised by Counsel and do verily believe that this Section of the Act incorporates the Civil Procedure Rules of 2000. These are the rules applicable to all Civil Proceedings in the High Court by reason of Part 2.2 of those rules.

Counsel further advised me that the computation of time is set out at Part 3.2. By this, the day on which the period begins and ends, public holiday, Saturday and Sunday would be excluded from the computation of the seven (7) day period. In fact, no day that the Registry is closed would be included. The said period would therefore run from 16th to 24th March, 2009."

[14] Mr. Paul Chet Greene's Petition

The Court now examines Mr. Greene's petition. Mr. Greene's petition is supported by a first affidavit in support, together with exhibits. The Process Server, Mr. Carl Andrew has filed an affidavit of service in which he stated that he served Ms. Lorna Simon with the petition and the first affidavit in support of the petition on the 26th March, 2009. Mr. Andrew

has also filed an affidavit of service in which he states that he served Mr. Adams with the petition and the First Affidavit in Support of the Petition on the 6th day of April, 2009.

[15] Mr. Eleston Adams' application to strike

For his part, Mr. Adams seeks to have the petition struck out on the basis that the return was made on the 13th March, 2009 but the petition was presented ten days later on the 23rd March, 2009. His second complaint is that the notice of the presentation of the petition and of the nature of the proposed security and a copy of the petition were not served on him within five days as required by the Act.

[16] In support of his application, Mr. Adams stated in his affidavit in support as follows:

> "The facts and matters deposed to are within my own personal knowledge true and correct. I was nominated as the candidate for the United Progressive Party at the General Election for the constituency of St. Paul held on March 12th 2009. On the night of the March 12th 2009, the Returning Officer declared that I was duly elected as the Representative of the St. Paul constituency.
>
> On March 13th 2009, the Returning Officer returned me as the Representative to the Electoral Commission by endorsing such return on the writ of election for the constituency. A true copy of the return is annexed and marked "EA1".
>
> On March 13th 2009, the Governor General of Antigua and Barbuda appointed Mr. Baldwin Spencer as the Prime Minister of Antigua and Barbuda, having determined that Mr. Spencer was the leader of the political party in the House of Representatives, namely the UPP, which had won the majority of seats in the House of Representatives at the General Elections. The UPP was declared to have won 9 seats, the BPM one seat, whilst the ALP was declared to have won 7 seats.
>
> On the 6th day of April 2009, I was served with documents which purported to consist of a notice of the presentation challenging the validity of my election as the

Representative of St. Paul, a notice of the nature of the proposed security and a copy of the petition. The petition appears to have been filed in Court on March 23rd 2009."

[17] The Supervisor of Elections Ms. Lorna Simon's application to strike

As stated earlier, Ms. Lorna Simon, the Supervisor of Elections has filed an application seeking to have Mr. Greene's petition dismissed on the ground that it was filed in breach of section 45(1) of the Representation of People Act since it was not presented within 7 days after the return was made of Mr. Adams. In her affidavit in support of the application, Ms. Simon said:

"Following the General Elections held in Antigua and Barbuda on March 12, 2009, the Returning Officer for the Constituency of Saint Paul in those elections delivered to me the writ with the certificate endorsed thereon for the election in that constituency on March 13, 2009.

On the same March 13, 2009 I entered the name of Eleston Adams from the certificate on the writ returned to me in the "Return Book" kept by me at my office. The book is and has always been open to the public for inspection at reasonable times. There is exhibited "LS1" a true copy of the writ with the certificate endorsed thereon. There is also hereto exhibited and marked "LS2" a true copy of the entry of the name of Eleston Adams in the Return book on March 13, 2009."

[18] Mr. Paul Chet Greene's opposition

Mr. Greene opposes both of the applications to strike out his petition and he has filed an affidavit in response to the allegations that have been made both by Mr. Adams and Ms. Simon. He says that the time for filing the petition is 7 days **after** the return has been made. Further, Mr. Greene stated in his affidavit as follows:

"I am further advised by Counsel and do verily believe that a return can only be made in the prescribed manner specified at section 57 of the election rules appearing as Schedule 1 under the Representation of the Peoples Act and incorporated as Law by reason of section 12 thereof.

There is no evidence of an "endorsement on the Writ of Election" for the relevant constituency presented to the Court to determine the actual date that the return was made, if at all, accordingly in the absence of a return we are unable to calculate the expiration of the prescribed 7 days for filing the election petition".

[19] Further, he deposes in his affidavit as follows:

"Without prejudice to the aforesaid, and on the unsubstantiated assumption that the return was made on the 13th March 2009, my election petition was filed with the prescribed time on the basis of the following.

Firstly, the election was held on Thursday the 12th day of March 2009. The return being assumed on Friday the 13th day of March 2009. Between the 13th March and the day of filing the petition which was the 23rd March 2009 there was 10 calendar das, inclusive of both days. During that period, there was one public holiday being the 13th March 2009. There was also 2 Saturdays being the 14th and the 21st March 2009 and 2 Sundays, being the 15th and the 22nd March 2009.

I am advised by Counsel and verily believe that in computating time as set out in section 45 of the Representation of the Peoples Act, regard must be had to section 63 of the Act which governs the jurisdiction and procedure to be adopted in election petitions."

[20] Mr. Hugh Marshall Jr.'s submissions

On the issue of whether the petitions should be struck, learned Counsel Mr. Marshall Jr. said that there are two issues that arise. Firstly, whether there has been a return within the prescribed manner at all. That is, whether or not the Election Writ has been endorsed. The second issue is how do you compute the seven (7) days specified in the legislation?

[21] Mr. Marshall Jr. learned Counsel referred the Court to the case of Ethlyn Smith BVIHCV2003/0097 and said that it is authority for the proposition that provisions within the

legislation must be strictly complied with. That is, the election court has little or no discretion to waive non-compliance with rules and the law.

> 57. (1) The returning officer shall return the name of the member elected by endorsing on the writ a certificate in Form 1 in the Appendix hereto.

[22] Mr. Marshall Jr. learned Counsel said that the person who endorsed the writs has not given any evidence, to the court, as to when it was so endorsed and Ms. Lorna Simon not being the person who carried out the endorsement has not given evidence as to who endorsed it and when. Therefore a determination of the date of endorsement requires an assumption on the part of the court. That assumption being firstly, that the Returning Officer endorsed the Writ and secondly that it was endorsed on 13th March, 2009.

[23] Next, learned Counsel Mr. Marshall Jr. said that the second issue raised is the computation of time. He referred the Court to section 63 of the Representation of the Peoples Act which states:

> "The High Court shall, subject to the provision of this Act, have the same powers, jurisdiction and authority with respect to an election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction."

In laying the foundation for his arguments, Mr. Marshall submitted that the computation of time is similar to an ordinary action within the jurisdiction. By Part 2.2 of the Civil Procedure Rules of 2000, the rules apply to ordinary actions within the jurisdiction. Learned Counsel Mr. Marshall urged the Court to accept that the Civil Procedure Rules 2000 (CPR 2000) are applicable to the computation of time for presentation of the petitions.

[24] Mr. Marshall Jr. argued that several cases have raised the issue as to whether the Civil Procedure Rules can be used to extend time where the legislation has made the element of time a condition precedent. In the case at bar, there is no invoking of the rules to utilise the power of the court to extend time or to act in any way contrary to the Act. The Rules are being invoked to compute the time specified. There is nothing that prevents the Court

from applying CPR 2000 in the computation of the time within which the petitions ought to be presented.

[25] Alternatively, Mr. Marshall Jr. argued that in the absence of the Civil Procedure Rules 2000 and applying the provisions of the Interpretation Act Laws of Antigua and Barbuda, section 3 thereof, the first day to be counted for filing of the petition would be the 15th March, 2009 if we accept the date of the return being 13th, despite being a public holiday. Section 45 of the Representation of the Peoples Act states "7 days after the return has been made".

[26] By reason of section 44(2) of the Interpretation Act, the day on which it is reckoned from is not counted in the computation. Thus, the 14th March, 2009 is excluded from the computation of the 7 days. The first day of computation would be the 15th March, 2009 or at best the 16th March 2009 taking account of the public holiday. By reason of the Act, the first day for filing would have been the 21st or 22nd of March, 2009 as the case may be which was Saturday or Sunday respectively, when the Registry was closed.

[27] Learned Counsel Mr. Marshall Jr. therefore advocated that based on the totality of circumstances, both petitions were presented within the prescribed time and should not be struck out.

[28] Mr. Russell Martineau SC submissions

Learned Senior Counsel Mr. Martineau stated that the return was made on March 13th 2009. The petition was filed and presented on March 23rd 2009, that is to say, more than 7 days after the return was made. Section 45(1) of the Representation of People Act Cap 379 so far as material provides that an election petition shall be presented within 7 days after the return has been made in respect of the candidate to whose election the petition relates. He asked the Court to accept the unchallenged evidence of Ms. Lorna Simon, the Supervisor of Elections.

[29] Mr. Martineau SC maintained that the petitions were not presented in accordance with section 45(1) of the Representation of People Act and should be struck out. A petition

which is presented too late should be taken off the file, (see Rogers on Elections Vol. 11 25th edition p.187). He referred the Court to Prime v Nimrod GDVHCV 2003/0551, in which the Court considered section 100(1) of the Representation of the People Act of Grenada which was materially similar to section 45(1) of the Antigua and Barbuda Act. Accordingly, Pemberton J held that an amended petition filed out of time offended section 100(1) and did not attract the Court's jurisdiction. In further support of his submission he also relied on Ethlyn Smith v Supervision of Election No. BVINCV 2003/0097 and Reeial George v Eileene Passons No. BHVIHCV 2003/0097. The Court held that the provision must be adhered to strictly since to do otherwise will "defer the underlying virtue of the mandatory nature of the legislation, which is intended to ensure that the validity of the election of a member is dealt with expeditiously."

[30] Next, learned Senior Counsel Mr. Martineau said that Rules 65 and 66 of the Representation of People Act (as amended) provide for the returning of the name of the elected member and the entry recording thereof in the book kept for that purpose. There is no requirement for the return to have the signature or endorsement, as urged by Mr. Marshall. In addition, Learned Senior Counsel Mr. Martineau maintained that the forms that the Supervisor of Elections used were those prescribed by the Rules.

[31] Finally, Mr. Martineau urged the Court to find that both of the petitions in this case offend section 45(1) of the Act and should therefore not attract the Court's jurisdiction.

[32] Mr. Douglas Mendes SC's submissions

Learned Senior Counsel Mr. Mendes said that the undisputed evidence before the Court is that on March 13th 2009, Mr. Codrington and Mr. Adams were duly returned as representatives of the constituencies of All Saints West and St. Paul's respectively. The petitions calling their election in question were both presented to the election court on March 23rd 2009, that is to say 10 days after the return. The undisputed evidence is also that the petition brought by the petitioner Mr. Joseph was served on Mr. Codrington on March 26th 2009, that is to say 3 days after the presentation of the petition. It is also

undisputed that the petition brought by Mr. Greene was served on Mr. Adams on April 6th 2009, that is to say 14 days after the presentation of the petition.

[33] Mr. Mendes SC stated that section 45(1) and (2) of the Representation of the Peoples Act Cap 379 provide that:

> "(1) Subject to the provisions of this section, an election petition shall be presented within 7 days after the return has been made in respect of the member to whose election the petition relates.
>
> (2) If the petition questions the election or return upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by the member or on his account or with his privity since the time of the said return in pursuance or in furtherance of the alleged corrupt practice, it may be presented within 14 days of the payment."

[34] It is settled law that the failure to present a petition within the period stipulated renders the petition null and void and of no effect. In Stevens v Walwyn (1967) 12 WIR 51, the Court of Appeal of the West Indian Associated States held that the requirement that a petition be presented within a particular time was substantive, not procedural, and the time could not be enlarged in the Court's discretion, making a petition presented out of time liable to be struck out. Mr. Mendes SC also referred the Court to Braithwaite v Edwards (1967) 11 WIR 475 and Duporte v Freeman (1967) 11 WIR 497. The approach taken by the Courts in the above cases is consistent with the general approach of requiring that time limitations in relation to election petitions be observed strictly. Thus, even failure to provide security for costs with the period stipulated will render a petition void. In further support of his proposition, Mr. Mendes SC referred to Drew v Hall (1983) 33 WIR 97; Smith v Christopher (claim No. BVIHCY 2003/0097, July 23rd 2003, per Rawlins J, unreported). See also to the same effect Williams v Tenby Corporation (1879) 5 CPD 135; Allen v Wright (No.2) (1960) 2 WIR 102; Stewart v Newland (1972) 19 WIR 271; Absalom v Gillet [1995] 1 WLR 128; Ahmed v Kenndey [2003] 1 WLR 1820.

[35] Mr. Mendes SC said that there is no provision under the Representation of the Peoples Act giving the Antiguan Election Court power to extend the time for service and in any event no application for an extension has been made in this case.

[36] In further developing his arguments, Mr. Mendes SC said that the petitioners in their affidavit filed in reply, the petitioners answer the application to strike out their petitions on two grounds: firstly, that there is no indication as to date of the return and accordingly no basis upon which to ascertain the date from which time runs; and secondly, that under Rule 3.2(4) Saturdays, Sundays and any day on which the Court offices is closed are not to be taken into account and accordingly the petitions were filed in time. The First Defendants/Applicants respond as follows.

[37] Mr. Mendes SC went on to state that the evidence is clear that the returns were made on March 13th 2009. After all, the Prime Minister was appointed on that date. It is to be assumed, unless the contrary is proved, that his appointment was in order and he could not have been lawfully appointed except after the return had been made. The returns are regularly endorsed and evidence has been presented of the date the return was made. There is accordingly no merit in this argument. He posited that presumption of regularity applies.

[38] Learned Senior Counsel Mr. Mendes next stated that even assuming that the CPR 2000 applies to election petitions, Rule 3.2(1) expressly declares that Rule 3.2 applies to the calculation of "any period of time for doing any act which is fixed (a) by these Rules; (b) by practice direction; or (c) by any judgment or order of the Court." The time period for the presentation of election petitions is fixed by the Representation of the Peoples Act. Accordingly, Rule 3.2(4) does not apply in any event.

[39] Turning his attention to the Interpretation Act, learned Senior Counsel Mr. Mendes SC asserted that section 44(5) of the Act does provide for the exclusion of Sundays and public holidays in the computation of time but only where the period of time in question is six days or less. Section 44(5) provides that:

"Where by an enactment a period of time prescribed for the doing of anything does not exceed six days Sundays and public holidays shall not be included in the computation of the time."

[40] In the case at bar, the undisputed evidence is that the petitions were presented on March 23rd 2009. They were supposed to have been presented within 7 days of the return – section 45(1). Accordingly, section 44(5) of the Interpretation Act does not apply. The seven day period expired on Friday March 20th 2009. The petitions were presented out of time, on March 23rd 2009.

[41] Mr. Mendes SC advocated that there was no basis to exclude the 14th of March 2009 from the period of computation. In support of his proposition, he referred the Court to Re Monger ExParte Atanasoska (2003) WASC 113. The petition brought by Mr. Greene was to be served within five days of the date on which the petition was presented – section 47(3). Accordingly, section 44(5) of the Interpretation Act applied and Sundays and public holidays were to be excluded in calculating the five days period. The petition was presented on March 23th 2009. The five day period accordingly expired on Saturday 28th March 2009. The petition was not served until April 6th 2009. It was served out of time.

[42] Accordingly, Mr. Mendes SC advocated that both of the petitions ought to be struck out.

[43] Court's analysis and conclusions

The Court has given deliberate consideration to the submissions of all learned Counsel and has perused the petitions and affidavits. Having reviewed the petitions, affidavits and the submissions, it is clear that there are some matters that are not in dispute, namely: that elections were held in Antigua and Barbuda on the 12th March 2009 and that Ms. Lorna Simon was the Supervisor of Elections. The petitions that questioned the results were filed on the 23rd March 2009. The Court accepts as undisputed that Mr. Daven Joseph's petition was served on Mr. Codrington on the 26th March 2009. The Paul Chet Greene Petition was served on Mr. Eleston Adams on April 6th 2009. There is no allegation of corruption or fraud in either of the petitions. It is also agreed that the time stipulated for doing any act

must be strictly complied with. See the scholarly judgment of Rawlins J in Smith v Christopher ibid, Allen v Wright ibid and Stewart v Newland ibid.

[44] That said, it is a matter of law that the evidence that is presented in an affidavit is to be accepted as statement of facts, unless controverted. Indeed, once the evidence is accepted as unchallenged the Court can then properly conclude the facts therefrom.

[45] In the present applications, Ms. Lorna Simon has deposed to certain matters, those are statement of facts and are not challenged in the affidavits in response; neither was there any cross-examination on any of the material statements that she has made. Further, to substantiate her evidence Ms. Simon has also exhibited copies of the writ together with the certificates endorsed. In contradistinction, the Respondents have not provided the Court with the evidence that contradicts that presented by Mr. Codrington or Mr. Adams in relation to the matters that are in issue in the applications.

[46] It is noteworthy that learned Counsel Mr. Marshall Jr. was content to take issue with the date of the return as stated by Ms. Simon, the Supervisor of Elections even though no evidence was led by the petitioners in contradiction of her statements of fact. In those circumstances, the Court has no choice but to accept Ms. Simon's credible evidence, coupled with the documents exhibited, which indicate that the returns were made on the 13th March, 2009. The Court also accepts Mr. Adams' evidence that Mr. Baldwin Spencer was sworn in as Prime Minister by the Governor General on the 13th March, 2009. In passing, I state that the presumption of regularity arises and is not rebutted.

[47] The ancillary issue of whether the writs were in the prescribed manner brings into focus section 65 and 66 of the Representation of People (Amendment) Act No.11 of 2002. Section 65 states as follows:

> "65. (1) The returning officer shall return the name of the member elected by endorsing on a writ a certificate in Form I in the Appendix hereto.

(2) Any provision of the Constitution, any rule or law or enactment as to the effect of, or manner of dealing with, the return of a member to serve in the House of Representatives shall apply to the certificate.

(3) The returning officer shall deliver the writ with the certificate endorsed thereon to the Supervisor of Elections."

Section 66 provides as follows:

"66. (1) The Supervisor of Elections shall from the certificate on each writ returned to him enter the name of the member in a book to be kept by him at his office.

(2) The Supervisor of Elections shall also enter in the book and declaration of equality of votes, any double return and any alteration or amendment made by him in the certificate endorsed on any writ.

(3) The book shall be open to public inspection at reasonable times and any person may, on payment of a reasonable fee, take copies from the book".

[48] For the sake of completeness, it is noteworthy that the Court accepts that Rule 65 and 66 of the Representation of People Act above provide for the prescribed forms to be used and the endorsement which should accompany the Writ. Having perused section 66 of the Act, and having examined the statutory forms the Court is satisfied that the form that was utilised, in the case at bar, confirms to the dictates of section 65(1) of the Act and there is no reason to impugn it. Further and by way of emphasis, there is no basis on which the Court can impeach the copy of the writ of certificate, together with the endorsements that are exhibited. These documents are consistent with Ms. Simon, the Supervisor of Election's cogent and uncontroverted evidence and serve to buttress her reliable evidence.

[49] For what it is worth, it is clear that the rules make no allowance for a date to be provided in the form. In fact, there is no section on the form that allows for the inclusion of a date. There is clear evidence before the Court that the copy of the writ of certificate had the requisite endorsement on it. As alluded to earlier, the Court is satisfied that the form utilised is that prescribed by the rules.

[50] Accordingly, I accept the arguments urged by learned Senior Counsel Mr. Martineau that the date of return is a question of fact for the Court to determine. In the absence of any evidence that is inconsistent with Ms. Simon's evidence that the returns were made on the 13th March 2009, the Court is unable to hold otherwise and finds as a fact, that the returns were made on the 13th March 2009. Ms. Simon's uncontroverted evidence is that she received the writ with the certificates endorsed thereon from the Returning Officers in each case. In this regard, the Court finds the arguments advanced by learned Senior Counsel Mr. Martineau very attractive and persuasive. It is noteworthy that his arguments were adopted by learned Senior Counsel Mr. Mendes.

[51] Time for presentation

In order to address the issue of the computation of the time when the petitions ought to be presented, the Court must of necessity, examine section 45(1) of the Representation of People Act which clearly provides that the petitions must be presented within 7 days.

[52] In Ferdinand Frampton et al v Ian Pinard et al Claim No.0149-0154 of 2005, Rawlins J as he then was, at paragraph 14 of his erudite judgment quite helpfully enunciated the following:

> "The general principles state that time limits set in elections legislation are conditions precedent, mandatory and peremptory. They must be strictly followed. A petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. A petition must be served within the prescribed time."

I accept and apply those propositions of law.

[53] The Court pauses to note that the wording of the Act says "within" and not "after" as urged by learned Counsel Mr. Marshall Jr. It is clear therefore that in order for the petitions to be held to have been properly presented they, of necessity, must have been filed within 7 days of the return that is within 7 days of the 13th March 2009. These provisions are mandatory and not procedural.

[54] In Ethlyn Smith et al v Delores Christopher et al ibid Rawlins J, as he then was, in his very erudite judgment speaking about the provisions of the legislation which stipulate the times within which a petition (procedural) should be presented had this to say:

> "In his submissions, learned Counsel, Mr. Joseph Archibald, QC, traced the history of the jurisprudence in this area of the law to 1879 and the locus classicus, Williams v The Mayor of Tenby and Others [1879] C.P.D. 135. The legal principles stated in the head note is that it is a condition precedent to the trial of a municipal election petition, that within 5 days after its presentation, the petitioner should serve a notice of the presentation in the manner prescribed by statute, as well as notice of the nature of the proposed security and a copy of the petition, as required by the Municipal Election Act 1872 and related Rules.
>
> This case is interesting because our 1994 Act reproduces some of the requirements contained in the 1872 Act. Both Acts provide, for example, that a petition shall be presented within 21 days of the election, unless there is complaint of corrupt practices. Both Acts also provide for the wording of the provisions in the 1872 Act made them mandatory, and that the requirements for the presentation of petitions are conditions precedent.
>
> This is a strict interpretation of what may appear on the face to be procedural provisions. However, the courts have consistently said that they are substantive provisions. In Williams v Tenby ibid, Grove J. rationalized this approach at page 137. He said that the meaning of the enactment is that a petition should not be kept long hanging over the heads of persons elected, and therefore must be presented within 21 days. During that time, a petitioner should read the Act and ascertain what he or she has to do. He said, further, that the courts find great inconvenience in ordinary cases where there is power to extend the time, because the courts are then occupied with applications for extension of time. The rationale is that, in election petition cases, it is most important that the time of proceedings should be limited, and that persons should know when they are safe."

[55] His Lordship Rawlins J further stated at paragraph 19 that:

> "When a similar issue was raised in Williams v Tenby ibid, the response of the Court of Common Pleas, was clear. It stated, at page 138;
>
> > "If it is [a] matter of procedure, then the judge will have some powers. But if the Act does not give these powers, then he has them not. The question still is whether the provisions of the Act are or are not peremptory. I think they are peremptory, and that the terms not complied with are conditions precedent, which ought to be complied with before the petition could be presented"."

[56] In a very enlightening manner, Justice Rawlins then proceeded to carefully examine a long line of cases including Nair v Teck (1967) 1 AC 31 and he concluded at paragraph 25:

> "Election statutes are therefore to be interpreted stringently and failure to comply with their requirements is fatal to the petition, unless the Court can find that the failure goes to form. This second observation by their Lordships stated, in effect, that unless election rules, or may I add, the Ordinance, confer power upon the court to amend pleadings or to extend the time within which actions are to be done under the Act, the election judge had no power to do these things. This is the general approach in other cases within and outside our jurisdiction."

[57] At paragraph 29, Rawlins J said:

> "In Stevens v Walwyn, our own Court of Appeal held, inter alia, that the provisions that relate to security for costs in the Constitution and Election Petition Ordinance, Cap 162 of the Laws of St. Christopher, Nevis and Anguilla are peremptory. It held that they impose conditions precedent, which must be complied with before a petition can be considered properly presented to the court. In Drew and Others v Scott and Others (1983) 33 W.I.R. 97, the Supreme Court of Bermuda held, inter alia, that failure to give security for costs within 3 days, as required, rendered the petition void. This survey of the general approaches in these cases provides a fitting precursor to the examination of the preliminary objections."

[58] The Court can do no more than adopt the useful pronouncements of Rawlins J referred to above. Accordingly, the Court has no doubt that the time limit of "within 7 days" of the return must be strictly complied with. It is a stringent requirement, as accepted by all sides. It is an uncompromising provision.

[59] Computation of time

In the case at bar, the Court now has to determine when the period of time for the presentation of the petitions expired, or to put another way, whether the Greene and Joseph Petitions were presented within the prescribed period of time. At this juncture, it is convenient to address the ancillary issue of whether the CPR 2000 is applicable to the case at bar. The Court is of the respectful view that CPR 2000 is not applicable to election petitions for the sole reason that there are specific election rules that are provided in relation thereto. Further, there are provisions in the Representation of People Act that cannot comfortably coexist with the CPR 2000, some of these are akin to those found in criminal procedures.

[60] Even if the Court was wrong in holding that CPR 2000 does not apply to election petitions, the Court accepts the submissions urged by learned Senior Counsel Mr. Mendes and holds that in any event, Rule 3(2) of CPR 2000 has no relevance to the petitions at bar. Indeed, Mr. Mendes SC was correct in saying that even if CPR 2000 is applicable to election petitions, it has no relevance to the petitions since Rule 3.2(1) specifically states that it is applicable to the calculation of "any period of time for doing any act which is fixed (a) by these Rules, (b) by practice direction; or (c) by any judgment or order of the Court." With the greatest of respect it, only bears repeating in order to reject learned Counsel Mr. Marshall's submission that Rule 3.2(1) is applicable. The time that is fixed for the presentation of the election petitions is so fixed by an Act of Parliament namely the Representation of People Act. Therefore, the petitioners cannot avail themselves of Rule 3.2(1) of CPR 2000 in so far as the time is not fixed by the Court judgment, neither do the matters touch and concern a practice direction, or do they relate to the Rules.

[61] This brings the Court now to consider whether section 44(5) of the Interpretation Act is applicable. The Court accepts the position advocated by both learned Senior Counsel Mr. Martineau and Mendes that the clear wording of the section is that Sundays and public holidays are excluded in the computation of time but only where the period of time in question is six days or less. It is not open to debate that the petitions were required to be presented within 7 days. It is therefore pellucid that section 44(5) of the Interpretation Act has no relevance to the case at bar. Since section 44(5) of the Interpretation Act speaks to the computation of time in circumstances where the period in question is less than six days; it is only in those circumstances that the section stipulates that Sundays and public holidays are to be excluded.

[62] To put the matter beyond any doubt, the legislature stipulates that the petition, challenging the results, must be presented within seven days after the return has been made. The law is clear that in counting the seven day period the Court is prohibited from including the day of the event. In the case at bar the Court is precluded from including the date of return namely the 13th March, 2009. There is no basis for the Court to exclude the 14th March, 2009 in its computation of time for the presentation of the petitions. The Court is fortified in this view and finds very useful the pronouncements made in the case to which Mr. Mendes SC referred namely, Williams v Burgers (1840) 12 A&E 635 in which it was held that the filing should be within 21 days after execution are to be reckoned exclusively of the day of execution. Accordingly, the Court has no doubt that in computing the 7 day period within which the petitions are to be presented simply means that the day of the return i.e. the 13th March, 2009 is excluded and the time begins to run from 14th March, 2009. At the very latest the petitions ought to have been presented no later than the 20th March, 2009 in order to be valid.

[63] To reinforce the Court's position and with the greatest of respect, the Court finds there is no proper basis for adopting the approach urged by learned Counsel Mr. Marshall Jr. and so exclude the day after the return i.e. the 14th March, 2009 from the period of computation. Neither is the Court of the respectful view that section 44(2) of the Interpretation Act supports the position as contended by the Petitioners, that the 14th

March, 2009 should be excluded from the period of computation. If any support is needed for the Court's position, this is to be found in the judgment of Douglas CJ in Braithwaite v Edwards (1967) 11 WIR 475. In that case, Chief Justice Douglas, as he then was, made some very useful pronouncements at page 480 and 481.

[64] It is pertinent to reiterate that at the very latest, the petitions ought to have been presented on 20th March 2009. In view of the Court's findings and in the face of the undisputed position that both the Greene and the Joseph petitions were in fact presented on the 23rd March, 2009, they were clearly presented out of time and have violated section 45(2) of the Representation of People Act as amended. This is fatal.

[65] Service of the Petition

The Court is similarly of the view that the provision of the Representation of People Act which speak to the service of the petition is to be stringently observed. As with mandatory nature of the statutory provision for presentation of the petition, so too must the petitioner Mr. Greene comply with the strict provision of the Act in relation to service of the petition.

[66] By way of emphasis, the Court finds as a fact that Mr. Greene's petition was served on Mr. Adams 14 days after it was presented. Section 47(3) of the Act mandates that within 5 days after the presentation of the petition the petitioner shall serve on the respondent a notice of the nature of the proposed security and a copy of the petition.

[67] Accordingly, the petition ought to have been presented within five days on which the petition was presented. The Court accepts that since the period is less than six (6) days, section 44(5) of the Interpretation Act is applicable and therefore, Sundays and public holidays were to be excluded in calculating the five day period.

[68] In consequence of the fact that the petition was presented on March 23rd, 2009 the five day period had expired on Saturday 28th March; the Court has no doubt that when the petition was served 14 days after the presentation namely, the April 6th 2009, it was not served in accordance with the mandatory statutory requirement.

[69] Accordingly, the Greene Petition was also served out of time. The Court accepts without hesitation that the law is clear and that the failure to serve the petition on Mr. Adam within the stipulated time has fatal consequences since it infringes section 47(3) of the Act. See Stewart v Newland [1972] 19 WIR 271 where it was held that section 6 of the Election Petitions Law, Cap 107(J) which requires that the documents named therein "shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent" is mandatory and must be strictly compelled with. Also, it was held that the Court therefore had no jurisdiction to extend the time for service of the Stewart's petition.

[70] In the premises, and on this additional ground, the Court holds that the Mr. Greene's petition cannot proceed and stands dismissed.

[71] Conclusion

In view of the foregoing, the Court rules that both of the petitions that were filed by Mr. Daven Joseph and Mr. Paul Chet Greene infringe section 45(1) of the Representation of People Act and are invalid. The Court further rules that Mr. Paul Chet Greene's petition was served in violation of section 47(3) of the Representation of People Act and is invalid.

[72] In view of the foregoing, it is Ordered that both of the petitions filed by Mr. Daven Joseph and Mr. Paul Chet Greene are hereby dismissed, together with the following Orders:

(a) The Applications made by Mr. Chandler Codrington, Mr. Eleston Adams and Ms. Lorna Simon are granted.

(b) Each party is to bear its own costs.

[73] As a general rule, costs follow the event. Since this costs order departs form the general rule that costs follow the event, it is right that I explain the reason for my departure. Firstly, election matters are matters of national and public importance. They are indeed matters in which the public have an interest. These petitions are no different. Therefore, the Court ought to ensure that it does not take steps which will prevent persons who wish to test the validity of election from doing so, once there is compliance with the mandatory rules. In

addition, I am of the considered view that the petitioners in presenting their petitions have not acted in a manner that should attract costs. Accordingly, the justice of this case necessitates that I exercise my discretion and decline to award costs against both petitioners.

[74] It is right that the Court's expresses its appreciation to all learned Counsel for their very lucid and helpful submissions.

Louise Esther Blenman
High Court Judge
Antigua and Barbuda