THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2009

Claims No. SKBHCV 2009/0246 to 0256

In the Matter of the National Assembly Elections Act Cap. 162 Of the Laws of Saint Christopher And Nevis (Revised Edition 1961) (As Amended)

And in the matter of the Saint Christopher and Nevis Constitution Order 1983.

In the Matter of a decision made on September 8th, 2009, by a Registration Officer (the Respondent herein) on an objection considered by him under the Act against the inclusion of **TERESA PEMBERTON, TRAVIS WILLIAMS, and TRAVISIA WILLIMS** in the Register of Voters for Polling Division #6 of the Electoral District of St Kitts #8

And

In the Matter of a decision made on September 8th, 2009, by a Registration Officer (the Respondent herein) on an objection considered by him under the Act against the inclusion of **SHAYNE HANLEY, KEISHA HANLEY, KAYE HANLEY, KELLY-ANN HANLEY, DAMION WILLIAMS, CALVIN WILLIAMS, KRISTOL WILLIAMS, CALVIN WILLIAMS, KRISTOL MORTON** and **PETRON MATTHEW** in the Register of Voters for Polling Division #5 of the Electoral District of St Kitts # 8.

BETWEEN

EUGENE HAMILTON
ROBERT CHARLES
And

JOSEPH EDMEADE

Appearances: Mr Vincent Byron for the Appellants
Mr Arudranauth Gossai for the Respondent.

2009: October 15 and 26

JUDGMENT

[1] **BELLE J.** The Appellants filed appeals against the decision of the Registration Officer for Electoral District of Saint Christopher #8 made on 8th September 2009 disallowing the objections of the Appellants against the inclusion of Travis Williams, Teresa Pemberton and Travisia Williams in the register of voters for polling division #6 and his decision on an objection in relation to the inclusion of Shayne Hanley, Keisha Hanley, Kaye Hanley, Kelly –Anne Hanley, Damion Williams, Calvin A Williams, Kristol Morton, and Petron Matthew in the Register of Voters for Polling Division #5 of the Electoral District in Saint Christopher # 8.

[2] In a previous hearing relating to thirteen appeals before the court including the 11 in this matter I ruled that the Registration Officer should conduct his own investigation of the allegations that the voters mentioned above do not reside in Electoral District # 8 pursuant to section 42A (6) of the National Assembly Elections Act and then make his decision. These appeals being herein adjudicated are now brought against the Registration Officer who came to the same conclusions not to remove the names objected to in spite of the results of his own investigations and the evidence tendered by the Applicants.

[3] I have decided to traverse this matter by simply responding to Counsel for the Respondent Registration officer's arguments in relation to his client's refusal to delete the names of the 11 voters from the register of voters for District # 8.

[4] Counsel first argued that the fact of the absence of the persons objected to at the hearing does not mean that their names should be automatically removed from the Register of voters. I agree with this submission and observe however that the Appellants do no rely on the absence of the voters as a ground of their appeal against the Registration Officer's decision. However while no new legal principle is being pronounced at variance with the decision **Terence Henry v Leonard O'Loughlin** (2000) (Unreported Civil Appeal No.12) 1999 nor **Dudley Willims v Laureen James** (Civil Appeal No.16 of 2007) the circumstances of the appeals in this matter are quite different and allow me to distinguish the cases on their facts since evidence adduced

by the Appellants in those cases was much weaker than in the instant cases in these Appeals.

[5] I have dealt extensively with the provisions of Sections 42 , 42 A (1) , 42 A (4), (3) ,(5) and (6) of the National Assembly Elections Act (the Act) in my previous decision involving the same appellants. Nothing submitted by counsel for the Respondent convinces me that any of my previous interpretations of the relevant sections of the Act were incorrect.

[6] I find that the Registration officer 's conclusions in relation to Travis Williams, Travisia Williams & Teresa Pemberton were incorrect and ran contrary to the weight of the evidence before him and as it has been recorded by him and presented to the court. The evidence that these persons reside at Millionaire Street refuted any presumption that they lived at Keys village, since no evidence of residence at Keys Village was presented to the Court.

[7] The Registration Officer seems to rely on the fact that Travis Williams claimed that he and his sisters resided at both Millionaire Street and Keys. But this is just an assertion and nothing further other than the Registration Officer's investigation substantiates this claim.

[8] In a civil proceeding the highest standard of proof would be based on the preponderance of the evidence. It cannot be beyond reasonable doubt. The Registration Officer has not stated which standard he applied in arriving at his conclusions. However it is my view that even if it were the latter the evidence would be sufficient in this case to satisfy that standard of proof.

[9] There is absolutely no evidence before the Court neither was there any adduced at the objection hearing of two residences in existence with the voters choosing one. There was an assertion. The only voter who comes close to presenting evidence of two residences is Travis Williams who attended the hearing and gave evidence that he lived in Millionaire Street and visited Keys. He also said that his sisters also had two residences. He claimed that he had visited his father in Keys about three times for the

year and slept there on 29th July 2009. He knew little or nothing about the length of time his father lived in Keys or when he moved there.

[10] It is my view that those who allege that they have two residences must produce some evidence of this. Visiting a location three times per year certainly cannot be conclusive evidence of maintaining a residence in that location. If this were the case every person who visited a friend in a location in a district other than that in which they are registered and reside could claim a right to be registered in that district which they visit. Such an interpretation would make nonsense of the legislation.

[11] The section is obviously intended to provide for persons who may have left a particular residence to reside with a friend or relative but still maintain a residence with parents where they were born or lived for most of their lives or a considerable period of time. Travis Williams gave no such evidence to substantiate the position that he resided in Keys even though he may have had a reason to visit there because his father lived there. The evidence of Travis Wiiliams who found it difficult to recall basic things about his father's residence in Keys is unreliable and should have been rejected.

[12] The evidence is that Travis Williams and his siblings resided with their mother in Millionaire Street in a house owned by their uncle who resides in Tortola. Travis Williams was born in Tortola and moved to St Kitts to reside in Millionaire Street.

[13] Counsel for the Appellants conceded that there was no evidence on the record that Teresa Pemberton was a Teacher at Washington Archibald High School. However there was evidence that it was known that she resided at Millionaire Street drove a car to work and was a teacher. This clearly rebuts the presumption that she still lived in Tortola, Virgin Islands. But even is she did still live there, this could not qualify her to have a second residence in Keys without more. The evidence is that her known residence in St Kitts is at Millionaire Street.

[14] I view with some suspicion the conclusion of the Registration Officer that Travis Williams, Travisia Williams and Teresa Pemberton reside in both Keys Village and Millionaire Street. He says that this is based on conversations with persons in both areas, but none of those persons came to the objection hearing to give evidence. Why

is the Registration Officer so willing to rely on what these persons say when not on oath but willing to reject what others say on oath? In my view the Registration Officer should have given more convincing reasons for his conclusions which because of their unsubstantiated and unreliable nature cannot outweigh the evidence of persons who knew these voters and who appeared before him and gave evidence on oath that they relevant voters did not live in Keys but in Millionare Street Millionare Street is not in District 8. I therefore hold that the Registration officer's conclusion in the circumstances cannot be relied upon and I therefore reject it.

[15] In the cases of Shane Hanley; Keisha Hanley; Kaye Hanley; Kelly-Anne Hanley; Damion Williams; Calvin Williams; Kristol Morton and Petron Matthew, the evidence was that they lived in Shadwell for the past six (6) years. Shadwell is not in District #8. The Registration Officer did his investigation and found that the voters reside in Shadwell. The Registration Officer seems to be assuming that these voters once resided in District #8. None of them appeared to give evidence at the objection hearing. The Registration Officer claims that based on his investigation they have two residences one District #8 and the other in Shadwell. The Registration Officer assumes that if they once lived in District #8 that is sufficient based on **Dudley Williams v Laureen James** for him to hold that they still reside in District # 8 unless they have abandoned such a residence.

[16] The fact is that there is no evidence that these persons ever resided in District #8 other than their registration there. Registration is not conclusive in the face of evidence to the contrary, other than for the purpose of an election when a date has been set. No date has been set for such an election and the voters' names can be removed from the register for District #8 based on the preponderance of the evidence. There is no reliable basis on which the Registration Officer can hold that they have not abandoned their residence in District # 8. He has not shown the basis for this conclusion other than stating that it is based on his enquiries.

[17] The evidence of the Appellants has not been contradicted on oath at the objection hearing. Contrary to the submission of counsel, evidence that the voters resided at Shadwell for at least six years and an assertion that they have never lived in District #8 are not conflicting statements. This kind of evidence, which is common in civil

proceedings before the court just, shows that the witness is willing to state on oath that the period of residence at Shadwell is six years. There is no basis for rejecting the evidence on this ground.

[18] An assertion that a person never lived in a particular district followed by evidence of knowledge of where they lived for the last six years constitutes a statement that reveals uncertainty about where the voters resided outside of District #8 prior to the last 6 years. It is not contradictory evidence to the extent that it should be deemed unreliable. Neither can it be used as a basis of saying that the voter resided in District # 8 more than six years prior to the objection.

[19] The Registration Officer continues to err on the basis that he implies in his decision that an assertion of residence at the time of registration is such strong evidence that the person resided at that location at the time of registration and that they still reside in that location until they qualify to reside in a different location, that it cannot be rebutted by evidence to the contrary. I find that the statement of residence at the time of registration implies neither if rebutted by other evidence. However the assertion is treated as correct for the purpose of an election if called while they remain registered in the address they identified on registration. This is the true import of Section 42A of the Act.

[20] The Registration Officer seems to presume that there is an assertion of two residences in existence. The new section 42 A (6) now makes it possible for the registration officer to satisfy himself of the true residency status of voters. If the voter cannot pursuant to 42A (5) demonstrate the existence of two residences there is no basis for such a presumption. However if the voter never asserted that they had two residences I cannot see how it can be presumed based on the evidence of a third person that they do have two residences especially if that third party is not prepared to state this fact on oath. This is the situation with the Shadwell residents who have been objected to.

[21] On both the reasoning and the facts I reject the conclusions of the Registration Officer. I therefore find in favour of the Appellants on all 11 appeals against the decision of the Registration Officer disallowing the objections. The evidence of the Appellants coupled

with the finding of the Registration Officer of the true places of residence was strong and could not be refuted by rumour or the unreliable evidence of Travis Williams. The Appeals are consequently upheld. I therefore hold that the following names: Travisia Williams, Teresa Williams, Travis Wiliams, Shayne Hanley, Keisha Hanley, Kaye Hanley, Kelly- Anne Hanley, Damion Williams , Calvin A. Williams, Kristol Morton and Petron Matthew should all be removed from the register of voters for District #8. The first three are to be removed from the voters list for polling division #6 and the others are to be removed from the voters list fro polling division #5.

[22] The registration officer is to pay the costs of the Appellants in this matter, such costs to be assessed if not agreed.

Francis H.V. Belle
High Court Judge