

SAINT CHRISTOPHER AND NEVIS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim No. SKBHCV2010/0026

In the matter of the National Assembly
Elections Act, Cap. 162 of the Laws of
Saint Christopher and Nevis

And in the matter of the Constitution of
Saint Christopher and Nevis

And in the matter of an Election for the
Electoral District/Constituency 4 held on
25 January 2010

BETWEEN

LINDSAY FITZ-PATRICK GRANT

Respondent/Petitioner

-and-

GLEN FITZROY PHILLIP

Applicant/1st Respondent

LEROY BENJAMIN

Applicant/2nd Respondent

HESKITH BENJAMIN

3rd Respondent

WILLIAM DORE

4th Respondent

MYRNA WALWYN

5th Respondent

Appearances:

Mr. Terrence Byron, Mr. Vincent Byron and Mr. Delara McClure Taylor for the Respondent/Petitioner

Dr. Henry L.O.S. Browne for the Applicant/1st Respondent

Mr. Anthony Astaphan S.C. and Mr. Sylvester Anthony instructed by Mr. Arudranauth Gossai for the
Applicant/2nd Respondent

Mr. Arudranauth Gossai for the 3rd, 4th and 5th Respondents

2010: July 21, 22 August 26

2010: November 04

Catchwords

Election Petition – allegations of bribery, treating and corruption and other illegal practices – applications to strike out petition under statutory and inherent jurisdiction –no election rules in St. Christopher & Nevis – whether English rules of practice and procedure apply –whether Civil Procedure Rules 2000 apply

Form and contents of petition – material facts must be pleaded for bribery – Jacqui Quinn-Leandro and Others v Dean Jonas referred to-

Part V of National Assembly Elections Act, Cap. 162 –Election Petitions, sections 82-87 referred to - Section 36 of the Constitution

Headnote

General elections were held in the Federation of St. Christopher & Nevis on 25 January 2010. The petitioner and Glen Fitzroy Phillip (“the 1st respondent”) were rival candidates for the Constituency known as Saint Christopher #4 (“Constituency #4”).

On 26 January 2010, the Returning Officer in Constituency #4 declared that the 1st respondent had obtained 1185 votes and the petitioner 1156 votes. Accordingly, the petitioner lost the candidacy in Constituency #4 to the 1st respondent who was declared the winner by 29 votes.

On 13 February 2010, the petitioner filed this election petition citing breaches of the National Assembly Elections Act¹ (“the Elections Act”) and of the St. Christopher and Nevis Constitution (“the Constitution”). He prayed that *“it may be determined that the said Glen Fitzroy Phillip was not duly elected and that the election was void”*.

On the 15th March 2010, the 1st and 2nd respondents applied to strike out the Petition in its entirety on a number of general and specific grounds.

HELD:

- (1) The election jurisdiction is such a “special and peculiar” jurisdiction: **Patterson v Solomon** [1960] AC 579 that “election proceedings” do not fall within the definition of “civil proceedings” under CPR 2.2. Accordingly, without express application by the Election legislation, the Civil Procedure Rules 2000 do not apply.
- (2) Paragraphs 16, 22 and 23 (c) alleged misconduct against the Government. Accordingly those paragraphs are struck out for failing to join the Attorney General: **Ethlyn Smith & Others v Delores Christopher and Others** BVIHCV2003/0097 (Rawlins J) Judgment 23rd July 2005 (unreported) applied.
- (3) Dishonesty in any civil case, electoral or otherwise, must be clearly and specifically pleaded with a level of precision that is not required in pleading a mere irregularity; and there is no material difference

¹ Cap. 162 (Revised Edition 1961).

between pleading bribery and treating: See Rawlins CJ in **Jacqui Quinn-Leandro and Others v Dean Jonas and Others** HCVAP 2010/018 (CA) Judgment 27th October 2010 (unreported) and **Ferdinand Frampton** DOMHCV 2005/0149, 150, 151, 152 and 154 (Rawlins J) Judgment 28th October 2005 (unreported) followed. The petitioner pleads general allegations of bribery and treating which are insufficient to meet the requisite standards for material facts and particulars. Consequently these allegations are struck out for failing to disclose a reasonable cause of action.

- (4) Paragraphs 1 - 23 are not paragraphs jointly or severally which could result in the avoidance of an election.
- (5) An illegal practice must refer to a practice defined as such in section 99 of the Elections Act, alternatively, it may refer to an election irregularity or offence during the conduct of the election which could have affected the result of the election: **Radix v Gairy** (1978) 25 WIR 553 followed. The allegations of making false statements about the petitioner's nationality and the allegations of illegal practices, misconduct or irregularities against the 2nd to 5th respondents, namely issuing illegal instructions prior to polling day failing to allow access to National ID cards, failing to require an oath from voters objected to, and failure to record objections to voters on polling day are struck for failing to constitute illegal practices under the Elections Act, or failing to constitute election irregularities or offences during the conduct of the election which could have affected the result of the election.
- (6) The allegations of procuring prohibited voters and persons to vote, failure to implement adequate arrangements to hear and determine objections to the Voters List, and the illegal registration policy are struck out for failure to disclose an irregularity during the conduct of the election which could have affected the result. There is a comprehensive statutory regime to address these matters which should have been challenged before the election: **Radix v Gairy** (above) and **Frampton** (above) followed.

Introductory

- [1] This is an application to strike out in its entirety an election petition instituted by Lindsay Fitz-Patrick Grant ("the petitioner") on 13 February 2010.
- [2] The petition arose out of the General Elections that were held in the Federation of St. Christopher & Nevis on 25 January 2010. The petitioner and Glen Fitzroy Phillip ("the 1st respondent") were rival candidates for the Constituency known as Saint Christopher #4 ("Constituency #4").
- [3] On 26 January 2010, the Returning Officer in Constituency #4 declared that the 1st respondent had obtained 1185 votes and the petitioner 1156 votes. Accordingly, the petitioner lost the candidacy by 29 votes to the 1st respondent. The 1st respondent was therefore declared the winner.

- [4] On 13 February 2010, the petitioner filed this election petition citing breaches of the National Assembly Elections Act² ("the Elections Act") and of the St. Christopher and Nevis Constitution ("the Constitution"). He prayed that *"it may be determined that the said Glen Fitzroy Phillip was not duly elected and that the election was void."*
- [5] The remaining respondents were various election officials. Leroy Benjamin ("the 2nd respondent") was the Supervisor of Elections whose duty was to exercise general supervision over the registration of voters in elections of parliamentary representatives and over the conduct of such elections.³ The 3rd to 5th respondents were the Chairman and the Members of the Electoral Commission respectively whose function was to supervise the 2nd respondent in the exercise of his functions in supervising the registration of voters and the conduct of the election in Constituency #4⁴. To be succinct, the 3rd to 5th respondents played no active role in these proceedings.
- [6] The election petition was duly served upon each of the respondents as well as the Returning Officer for Constituency #4 and the Attorney General. However, neither the Returning Officer nor the Attorney General has been joined as parties to these proceedings.
- [7] On 15 March 2010, the 1st respondent and the 2nd respondent (whom I shall refer to together as "the respondents") filed virtually identical applications seeking to strike out the election petition in its entirety.

Applicable legal principles

The court's powers to strike out

- [8] The applications to strike out the election petition were made pursuant to the statutory and inherent jurisdiction of the court. The court can strike out a statement of case or part of it if it discloses no reasonable grounds for bringing or defending a claim or where the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings.
- [9] Striking out is often described as a draconian step, as it usually means that either the whole or part of that party's case is at an end. So, the power to strike out pleadings at a preliminary stage will be

² Cap. 162 (Revised Edition 1961).

³ See section 34 of the Constitution.

⁴ See section 33 of the Constitution.

exercised very sparingly and only in the clearest circumstances. A court will err in favour of having cases tried on their merits.⁵

[10] In **Citco Global Custody NV v Y2K Finance Inc**,⁶ Edwards JA dealing with an application to strike out made pursuant to the Civil Procedure Rules, 2000 (“the CPR”) stated that “on hearing an application made pursuant to CPR 26.3 (1)(b), **the trial judge should assume that the facts alleged in the statement of case are true.**

[11] In **Dean Jonas and others v Jacqui Quinn Leandro and Others**,⁷ Blenman J. in dealing with similar applications to strike out parts of election petitions stated as follows:

General Observations: Jurisdiction to strike

[95] The jurisdiction of the Election Court is special and exclusive in the determination of questions as to elections: see **Gladys Petrie et al v Attorney General et al** 14 WIR 290, 293 per Bollers CJ. In fact, it is a parliamentary jurisdiction that is conveniently assigned to the judiciary by the Constitution and the Legislature: see **Randolph B Russell et al v The Attorney General for the State of Saint Vincent and the Grenadines** 50 WIR 127 at 137.

[96] It is the law that a petition or a pleading would be struck out if it discloses no reasonable cause of action. The Court in deciding whether to strike out a petition or parts thereof is mindful of the fact that it should be slow to drive persons from the seat of justice except in cases in which the pleaded claim has no prospect of success or is bound to fail: see **Drummond-Jackson v British Medical Association [1970] 1 All ER 1094**. In the case at bar, the Court in reviewing the application must determine whether the election petition have [sic] some chance of success. More importantly and since it is only specific paragraphs of the petition that are sought to be struck, it behoves the Court to ascertain whether or not those paragraphs do not disclose any corrupt or illegal practice which suffices for voiding an election. In so doing, the Court has to examine the pleading and ascertain whether the threshold required by section 65(1) of the Representation of People Act has been met in order to justify the matter going forward.

[97] Indeed, the Court’s jurisdiction to strike out a pleading or a petition is sparingly exercised. It is imperative for the Court to carefully examine each paragraph of the petitions in order to determine whether any of the paragraphs of the respective petitions should be struck. Should the Court conclude that any of the allegations or

⁵ See **Frampton and Others v Pinard and Others** DOMHCV2005/0149, 150, 151, 152 and 154 - (Rawlins J) Judgment 28th October 2005 (unreported).

⁶ HCVAP 2008/022, (CA) Judgment delivered on 19th October, 2009, paragraph 13.

⁷ ANUHCV2009/0141, ANUHCV2009/0143 and ANUHCV2009/0144 (Blenman J) Judgment 30th June 2009 (unreported) at paragraphs 95-97 of the Judgment

contentions that are made are inadequate to establish either the ground of corrupt practice or illegal practice which can result in an election being voided. The Court would have no alternative but to strike that paragraph out. The Court has no doubt that it is only if the pleaded matters can properly form the basis a cause of action that can void an election, and then they can proceed to trial. See **Civil Appeal No.12 of 2006 Saint Vincent and the Grenadines, Eastern Caribbean Flour Mills Limited v Ormiston Ken Boyea at paragraphs 43 and 44** on the matters of pleadings and witness statements."

Petition must be presented and "perfected" within 21 days

- [12] Section 83 (1) (a) of the Elections Act stipulates the time limits within which an election petition may be presented. It states that an election petition shall be presented within 21 days of the election unless there is complaint of corrupt practices. In **Ferdinand Frampton and Others v Ian Pinard and Others**,⁸ Rawlins J (as he then was) states:

"The general principles state that the 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** [emphasis added]. The petitioner must enter security for costs in the manner and within the time prescribed. A petition must be served within the prescribed time. An elections court has no power to extend time, or to permit amendment of process, after the time limited for filing and perfecting the process has expired, unless these powers are expressly conferred in the elections legislation."

- [13] Rawlins J. went on to state that the normal civil procedure rules, in our case, the CPR, are not applicable, for example, to join new parties after the time for the presentation of the petition, unless the election statutes provide for it. He referred to the Privy Council case of **Devan Nair v Yong Kuan Teik**,⁹ where their Lordships stated, at page 45B:

"In contrast, for example, to the Rules of the Supreme Court in this Country, the rules vest no general power in the election judge to extend the time on the ground of irregularity. Their Lordships think that this matter was a matter of deliberate design. In cases where it was intended that the judge should have power to amend proceedings or postpone the inquiry it was expressly conferred upon him."

- [14] At paragraph 16, Rawlins J added:

"The rationale for the foregoing statements is that provisions for the litigation of election petitions are a matter of substantive law and, like the Statute of Limitation, cannot be

⁸ DOMHCV2005/0149 [above fn.5], paragraphs 14 -16.

⁹ [1967] 2 AC 31.

dispensed with by the court. **The statutory time limits provide a rigid timetable to ensure that everything is done, in a timely manner, to bring these petitions to trial** [emphasis added] because the public interest requires it. The persons who are returned as legislators should know quickly whether they have been lawfully elected. The country needs to know who the elected representatives are with certainty. Election challenges should be mounted before a new legislature sits and begins its work, or as soon as possible thereafter, in order that the legislature might be definitively lawfully constituted. It goes to the issue of legitimacy. Electoral laws and their interpretation by the courts are intended to facilitate this."

[15] I respectfully adopt this dictum by Rawlins J.

[16] It is not in dispute that the time limits set in elections legislation are mandatory and therefore, a petitioner **must** present and perfect his petition within the time prescribed in the Elections Act, in this case, 21 days. This means that (1) all necessary parties must be joined; (2) the petitioner must enter security for costs; (3) the petition must be served; and (4) "sufficient" material facts and particulars must be pleaded in order to disclose a cause of action, and not to take the respondents by surprise. A judge trying an election petition has no power to allow alterations, changes or amendments. But, the petitioner insists that he is not and will not be seeking to join any parties nor make any amendments to his petition.

Principles of pleadings

[17] Some of the issues which are vociferously argued by the parties at the hearing before me have been simplified as a result of the recent ruling by the Court of Appeal in the Antiguan appeals of **Jacqui Quinn-Leandro and Others v Dean Jonas and Others**.¹⁰ This judgment, delivered on 27th October 2010, is enlightening and timely. The judgment re-stated and adopted some of the basic principles on pleadings.¹¹ Rawlins CJ said:

"As in civil cases, generally, the purpose of pleadings is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise.

...[C]ases in which an election is challenged must be heard expeditiously. The pleadings must be precise and disclose a cause or causes of action. Unless statute otherwise provides, an election petition, and any amendments thereto, must be perfected within the time limited for filing the petition. The rationale is that it would otherwise defeat the underlying virtue of the mandatory nature of elections legislation, which is intended to ensure that the validity of the election of a member of the legislature is dealt with expeditiously, in the public interest. Voters need to know who their lawfully elected representatives are as soon as possible after an

¹⁰ HCVAP 2010/018 (CA) Judgment 27th October 2010 (unreported).

¹¹ See *ibid.* paragraphs 31 to 36 of the Judgment.

election. These principles were stated, for example, in **Ethlyn Smith and Others v Delores Christopher and Others**¹² in **Ferdinand Frampton**¹³ , in **George Prime v Elvin Nimrod and Others**.¹⁴

[18] His Lordship was referred to his own judgment in **Ferdinand Frampton** in which he stated:

“There is now a general principle of practice in civil proceedings, which is also applicable to election petitions, that a person who institutes an action should plead sufficient material facts to create a cause of action. A respondent must know what the case against which he or she must defend. **Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.**”¹⁵

[19] What is clear from **Jacqui Quinn-Leandro** and the kindred of local as well as English cases is that pleadings, particularly in election petitions, have to be precise, specific and unambiguous so that a respondent knows what case he has to meet. In fact, this is true of civil matters generally as the function of pleadings is to give fair notice of the case which has to be met and to define the issues on which the court will adjudicate in order to define the matters in dispute between parties.¹⁶ A party must so state his case that his opponent is not taken by surprise.

[20] It is an elementary rule that every pleading shall contain only a statement in a summary form of the material facts on which the party pleading relies...” What constitutes material facts? The word “material” means necessary for the purpose of formulating a complete cause of action; a cause of action is the group of facts, or a ‘factual situation’ which, if proven, will entitle a claimant to obtain a remedy from the court against another person.¹⁷

The Petition

[21] The petitioner complains of the undue election of the 1st respondent. He makes five principal allegations. First, the petitioner charges all of the respondents with carrying out a policy of illegal voter registration which encouraged persons to register, and, on election day, allowed them to vote, in

¹² BVIHCV 2003/0097 (Rawlins J) Judgment 23rd July 2005 (unreported), at paragraph 44.

¹³ DOMHCV2005/0149 [above fn 5] at paragraphs 14, 16, 28, 29 and 30.

¹⁴ GDVHCV2003/0551 (Pemberton J) Judgment 19 March 2004 (unreported).

¹⁵ DOMHCV2005/0149 [above fn 5] at paragraph 62.

¹⁶ Halsbury’s Laws of England 4th ed. Vol. 36: Pleading, para. 4: “Function of pleadings.”

¹⁷ Per Lord Diplock, **Letang v Cooper** [1965] 1 QB 232, 242-3.

Constituency #4 in which they did not reside, contrary to the constitutional qualification for voters and contrary to the registration provisions of the Elections Act.¹⁸

[22] Secondly, the petitioner charges that the 1st respondent or his agents engaged in the corrupt practice of bribery of 32 named persons registered to vote in Constituency #4 by arranging air-transportation from various countries so that they could come to the Federation and vote in the election.¹⁹

[23] Thirdly, he charges that the 1st respondent or his agents engaged in the corrupt practice of treating 32 named persons;²⁰

[24] Fourthly, he makes two charges that the 1st respondent by himself or his agents²¹ engaged in the illegal practice of inducing or procuring prohibited persons to vote, alleging in one charge that the 1st respondent's wife acting as his agent was responsible for transporting 3 prohibited persons (names and voter's number provided) to the polls, and citing in the second charge, the names and addresses of 39 persons whom the petitioner alleges were not residents of Constituency #4.²²

[25] Finally, he alleges that the election should be avoided for general corruption because illegal practices for the purpose of promoting or procuring the election of the first respondent prevailed to the extent that they [illegal practices] may be reasonably supposed to have affected the outcome of the election.²³ The petitioner complained that the 1st respondent or his agents made false statements about the petitioner's nationality in the lead up to the election.²⁴ In addition, that a number of alleged irregularities took place on election day;²⁵ that 39 named persons to whom timely objections had been made during the registration process had voted in Constituency #4 because under the supervision of the 2nd - 5th respondents, no adequate arrangements were made to hear and determine the objections to their inclusion on the voters list, and, that overall, a total of 59 persons not ordinarily resident in Constituency #4 (name and polling station provided) voted, despite objections made by the petitioner's agent on

¹⁸ See Petition, para. 22 - 23.

¹⁹ See Petition, para. 25.

²⁰ See Petition, para. 26.

²¹ See Petition, para. 24.

²² See Petition, para. 27.

²³ See Petition, para. 28.

²⁴ See Petition, para. 28 (a) - (k).

²⁵ See Petition, para. 28 (l) - (s).

polling day and this number was greater than the number by which the petitioner lost the election and could reasonably be supposed to have affected the result.²⁶

Respondents' grounds for striking out

[26] Both respondents advance a litany of general and specific grounds to strike out the election petition.²⁷ For purposes of this judgment, it is unnecessary to reproduce them fully. In essence, the respondents' case is that the election petition is improperly pleaded and it should be struck out in its entirety because it suffers from:

- (1) **Failure to join necessary parties:** The petitioner makes wide ranging and vague allegations of fraud, perversion, collusion and conspiracy against a number of persons, elections officers and the State. The allegations extend to the improper use of the executive and legislative powers of the State. These charges, notwithstanding, the petitioner failed to join the Attorney General in respect of the allegations implicating Governmental misconduct;²⁸ and failed to join the presiding officers and returning officer to the allegations of elections day misconduct.²⁹

- (2) **No reasonable cause of action:** The respondents allege that the petitioner failed to plead the necessary material facts, with the result that several allegations in the petition disclose no reasonable cause of action.³⁰ For example, failure to plead the 1st respondent's knowledge, consent or ratification of the alleged illegal registration policy,³¹ or the alleged elections day irregularities,³² or the procurement of persons to vote.³³ Also, the respondents' assert that the petition makes charges against the 1st respondent "by himself or by his agent ..." but in each case fails to plead particulars of the alleged agency and further, fails to plead necessary

²⁶ See Petition para. 28 (ee).

²⁷ See Tab. 4 and Tab. 6 of the Bundle of Documents filed on 18 June 2010.

²⁸ 1st Respondent's Application to Strike, para. 2.1, 2.12(a) and 2.13(b); 2nd Respondent's Application to Strike, para. 2.1, 2.7 (a) and 2.8(b).

²⁹ 1st Respondent's Application to Strike, para. 2.3, 2.13 (c); 2nd Respondent's Application to Strike, para. 2.2, and 2.8(c).

³⁰ 1st Respondent's Application to Strike, para. 1.1 (c); 2nd Respondent's Application to Strike, para. 2.1, 2.7 (a) and 2.8(b).

³¹ 1st Respondent's Application to Strike, para. 2.2.

³² 1st Respondent's Application to Strike, para. 2.4.

³³ 1st Respondent's Application to Strike, para. 2.6(a).

material particulars of the alleged procuring of persons to vote,³⁴ alleged bribery,³⁵ alleged treating,³⁶ and alleged corruption.³⁷

- (3) **Prolix, vague and duplicitous pleadings:** The respondents allege that the petition is “drafted in emotive and pejorative terms, highly political language,”³⁸ and “is prolix, confusing, frivolous and vexatious”.³⁹ The respondents’ further allege that the petitioner’s use of the phrase “the 1st named respondent ... and/or other prominent members of the St. Kitts-Nevis Labour Party” and the phrase “before, during and after the General Elections” in the formulation of his pleadings has made charges which are duplicitous, impermissibly vague, and bad in law.⁴⁰ Also, that the important allegation of general corruption is improperly pleaded as an expression of intent or a political statement, not a material fact, and does not therefore disclose a cause of action.⁴¹
- (4) **Irrelevant, unknown or ineffective allegations:** The petition contains allegations which are irrelevant, unknown, or incapable of avoiding an election;⁴² for example, the charges of “procuring prohibited persons to vote”⁴³, making false statements against a candidate,⁴⁴ and charges of elections day irregularities.⁴⁵
- (5) **Abuse of Process:** The respondents’ contend that the petition “is and constitutes an abuse of the process of the court”⁴⁶ in that the petitioner sought to mislead the court with the allegations

³⁴ 1st Respondent’s Application to Strike, para. 2.6(b)-(d), and 2.10.

³⁵ 1st Respondent’s Application to Strike, para. 2.7; 2nd Respondent’s Application to Strike, para. 2.3.

³⁶ 1st Respondent’s Application to Strike, para. 2.8; 2nd Respondent’s Application to Strike, para. 2.4.

³⁷ 1st Respondent’s Application to Strike, para. 2.12(c) and 2.12 (e) - (j); 2nd Respondent’s Application to Strike, para. 2.7(c) and 2.7 (e) - (j).

³⁸ 1st Respondent’s Application to Strike, para. 1.1(b); 2nd Respondent’s Application to Strike, para. 1.1(b).

³⁹ 1st Respondent’s Application to Strike, para. 1.1(e); 2nd Respondent’s Application to Strike, para. 1.1(e).

⁴⁰ 1st Respondent’s Application to Strike, para. 1.2 and 1.3; 2nd Respondent’s Application to Strike, para. 1.2 and 1.3.

⁴¹ 1st Respondent’s Application to Strike, para. 2.11; 2nd Respondent’s Application to Strike, para. 2.6.

⁴² 1st Respondent’s Application to Strike: see under General Grounds, para. 1.1(a) and 1.1(d). Under Specific Grounds, para. 2.12(b); 2nd Respondent’s Application to Strike: see under General Grounds, para. 1.1(a) and 1.1(d). Under Specific Grounds, para. 2.7(b).

⁴³ 1st Respondent’s Application to Strike: see under Specific Grounds, para. 2.5 and 2.9. The 2nd Respondent’s Application to Strike, see under Specific Grounds para. 2.5.

⁴⁴ 1st Respondent’s Application to Strike: see under Specific Grounds, para. 2.13(a) and 2.13(d). The 2nd Respondent’s Application to Strike, see under Specific Grounds para. 2.8(a) and 2.8(d).

⁴⁵ 1st Respondent’s Application to Strike: see under Specific Grounds, para. 2.13(c) and 2.13(f). The 2nd Respondent’s Application to Strike: see under Specific Grounds, para. 2.7(j) and 3.8(c).

⁴⁶ 1st Respondent’s Application to Strike, para. 1.1(f); 2nd Respondent’s Application to Strike, para. 1.1(f).

that adequate arrangements were never made by the 2nd - 5th respondents to hear and determine the petitioner's timely objections to the 39 impugned persons registered on the voters list when in fact arrangements were made.⁴⁷

- (6) **Absent Allegations:** Failure to plead that the petitioner objected to votes on the count and failure to pray for a scrutiny of votes.⁴⁸

The issues

[27] The above abbreviated grounds raise the following issues namely:

- (1) Whether the petitioner should have joined the Attorney General, the registration officers, the presiding officers and returning officer as respondents to these proceedings.
- (2) Whether the petition in its entirety or parts thereof should be struck out for failure to disclose relevant material facts within the 21 days prescribed by law and, therefore, discloses no reasonable cause of action.
- (3) Whether the petition or part thereof should be struck out as impermissibly vague, generalized and pejorative and therefore discloses no cause of action.
- (4) Whether the petition contains allegations which are irrelevant, unknown, or incapable of avoiding an election and thus disclose no cause of action.
- (5) Whether the petition is and constitutes an abuse of the process of the court and,
- (6) Whether there was a failure to plead that the petitioner objected to votes on the count and failure to ask for scrutiny.

[28] Issues (2) and (3) overlap and will be dealt with together.

⁴⁷ 1st Respondent's Application to Strike, para. 2.12(d) and 2.13(e); 2nd Respondent's Application to Strike, para. 2.7(d) and 2.8(e).

⁴⁸ 1st Respondent's Application to Strike, para. 1.4, 2.14 and 2.15; 2nd Respondent's Application to Strike, para. 1.3, 2.9 and 2.10.

Failure to join necessary parties

- [29] This is a discrete issue. Mr. Astaphan SC submits that if the respondents succeed on this issue, the entire election petition ought to be struck out as the court cannot add any parties in election petitions after 21 days.
- [30] Both respondents raise identical general and specific grounds. They specifically say that the petitioner makes wide ranging and vague allegations of fraud, perversion, collusion and conspiracy against a number of persons, elections officers and the State. The allegations extend to the improper use of the executive and legislative powers of the State. These charges, notwithstanding, the respondents maintain that the petitioner failed to join the Attorney General in respect of the allegations implicating Governmental misconduct;⁴⁹ and failed to join the presiding officers and returning officer to the allegations of elections day misconduct.⁵⁰
- [31] The respondents submit that in light of the petitioner's confirmation that the election petition indicts the Attorney General, he was under an obligation to join him as a party. The respondents assert that section 36(4) of the Constitution confers a discretion on the Attorney General to intervene if he wishes to do so, but it is no excuse whatsoever for the failure of the petitioner to join the Attorney General since it is a settled principle of public and constitutional law that in proceedings where allegations are made against the Crown or any part of the State, the proper party is the Attorney General and he ought to be joined. Learned Senior Counsel, Mr. Astaphan further asserts that the Attorney General is under no obligation whatsoever to accommodate the petitioner or, to assist him in remedying a fatal omission in the petition by applying to be joined as a party. In this regard, he cited **Ferdinand Frampton**⁵¹ as authority.
- [32] However, earlier in his submissions, Mr. Astaphan SC maintains that the petitioner's affidavit sworn on 27 May 2010 is inherently bad since it is drafted in argumentative and pejorative terms and completely devoid of material facts or evidence. He seeks an order that the affidavit be struck out as it is "forensically useless." I agree with Mr. Astaphan SC so I will strike out that affidavit. Having struck it

⁴⁹ 1st Respondent's Application to Strike, para. 2.1,2.12(a) and 2.13(b); 2nd Respondent's Application to Strike, para. 2.1, 2.7 (a) and 2.8(b).

⁵⁰ 1st Respondent's Application to Strike, para. 2.3, 2.13 (c); 2nd Respondent's Application to Strike, para. 2.2, and 2.8(c).

⁵¹ Above fn 5.

out, can Mr. Astaphan SC rely on it? This is a rhetorical question. Therefore, the fact that the petitioner confirmed that the election petition indicts the Attorney General is of no moment.

[33] I now turn to Ground 2.1 of the 2nd respondent's specific grounds⁵² which is identical to Ground 2.1 of the 1st respondent's specific grounds. Ground 2.1 states that despite the fact that serious allegations are made in the Petition –(a) against a Governmental Policy purportedly made by the St. Christopher and Nevis Government; (b) an alleged targeting of constituencies by the Government of St. Christopher and Nevis; (c) against an SRO and Act passed into law by the Parliament of the Federation of St. Christopher; (d) in relation to alleged acts or statements by the Honourable Prime Minister of the Federation; (e) in relation to the alleged calling out of the Army; and (f) in relation to the attempts to change the boundaries as recommended by, among others, the Commonwealth Assessment Mission, the Attorney General is not joined as a party to this petition.”

[34] Concisely, Mr. Astaphan SC submits that the petitioner has, in his petition, expressly and/ or impliedly, indicted the Executive and Legislative Branches of the State. The gist of this indictment is that the Executive concocted this “perverted policy”; devised an SRO which was passed by the Parliament; the Parliament acted in bad faith when it amended the law in 2007 and 2008, and that these branches of the State colluded or conspired with registration and other election officers including the 2nd and other respondents to subvert the election. Despite these allegations, the petitioner failed to join the Attorney General as a party which is fatal to the petition.

[35] The respondents further allege that learned Counsel for the petitioner seems to suggest, at paragraph (35) of his submissions, that no allegations are made against the returning officer. No similar suggestion appears to be made in relation to the registration and presiding officers. However, the 2nd respondent contends that the petitioner's suggestion in relation to the returning officer flies in the face of the petitioner's multiple allegations of collusion and conspiracy, which either expressly or implicitly, impugn the bona fides of the registration, presiding and returning officers in the most insidious of ways: see, for example, paragraph (28) (l) to (t) of the petition.

⁵² Identical grounds have been relied upon in the 1st respondent's Notice of Application on behalf of the First Respondent filed on 15 March 2010.

[36] The 2nd respondent contends that in view of the serious allegations made against election officers including the registration, presiding and returning officers; the petitioner was obliged to join them as parties to the petition. That this is the law is undeniable. A person ought not to be condemned in a petition where serious allegations of personal if not criminal misconduct are made against him. The 2nd respondent emphasises that the allegations are not simply of non-compliance with the law or rules. The allegations are deeply rooted in collusion, conspiracy, fraud and corruption.

[37] The simple answer to this issue resides in the respondents' own submission and authorities. Mr. Astaphan SC says that the attack on the Government, executive and legislative acts, permeates the entire petition, (which I do not agree with) but in particular, paragraphs 16, 22, 23(c), and 28. In **Ethlyn Smith**,⁵³ Rawlins J had this to say [para. 45]:

"If the conduct of the Returning Officer is complained of, and he or she is not joined as a respondent within the statutory time for bringing the petition, those parts of the petition that complain of his or her conduct, or the conduct of persons for whom they are responsible, are to be struck out."

[38] The petitioner has not complained that the Returning Officer is guilty of any misconduct of any kind. There is, therefore, no reason to make him a party hereto. The principle is that a returning officer must be joined only where there is complaint about his conduct of the election: **Ribeiro v Simmonds**.⁵⁴ However, there is no such complaint in this petition. The case of **Ferdinand Frampton** upon which the respondents so heavily rely can be distinguished because none of the declarations or amendments sought in that case is being sought in this election petition.

[39] The petitioner has not named the Supervisor of Elections as a party in his official capacity, but has joined him by his proper name Leroy Benjamin. The petitioner has not named the Electoral Commission as a party in that designation, but has joined each of the Members as having a supervisory capacity over the Supervisor of Elections in his or her proper name.

[40] As I see it, paragraphs 16, 22 and 23 (c) ought to be struck out and I so find. Paragraph 28 will not be struck out but will be further considered under the broad heading of: General Corruption.

⁵³ BVIHCV 2003/0097 [above fn. 12]

⁵⁴ Vol 2 OECS Law Reports, 179.

No Reasonable Cause of Action

[41] In summary, the respondents contend that the petitioner failed to plead necessary material facts, with the result that several allegations in the petition disclose no reasonable cause of action,⁵⁵ for example, failure to plead the 1st respondent's knowledge, consent or ratification of the alleged illegal registration policy,⁵⁶ or the alleged elections day irregularities,⁵⁷ or the procurement of persons to vote.⁵⁸ Also, the respondents' assert that the petition makes charges against the 1st respondent "by himself or by his agent..." but in each case fails to plead particulars of the alleged agency and further fails to plead necessary material particulars of the alleged procuring of persons to vote,⁵⁹ alleged bribery,⁶⁰ alleged treating,⁶¹ and alleged corruption.⁶²

[42] The main thrust of the respondents' contention is that the jurisdiction of the High Court to hear and determine election petitions is a "special and peculiar" one and it is not the usual existing jurisdiction for the determination of mere ordinary civil rights. Consequently, the charges in an election petition should be properly formulated within the statutory time-limit,⁶³ the pleadings are required to be precise, specific and unambiguous⁶⁴ and should suffer no vagueness⁶⁵ or they are liable to be struck out.⁶⁶ Mere repetition of statutory provisions is insufficient.⁶⁷ Vague, duplicitous or multiple charges are inapplicable.⁶⁸ The respondent is entitled to know with certainty the precise charge alleged with all the material facts and particulars.⁶⁹

⁵⁵ 1st Respondent's Application to Strike, para. 1.1 (c); 2nd Respondent's Application to Strike, para. 2.1, 2.7 (a) and 2.8(b).

⁵⁶ 1st Respondent's Application to Strike, para. 2.2.

⁵⁷ 1st Respondent's Application to Strike, para. 2.4.

⁵⁸ 1st Respondent's Application to Strike, para. 2.6(a).

⁵⁹ 1st Respondent's Application to Strike, para. 2.6(b)-(d), and 2.10.

⁶⁰ 1st Respondent's Application to Strike, para. 2.7; 2nd Respondent's Application to Strike, para. 2.3.

⁶¹ 1st Respondent's Application to Strike, para. 2.8; 2nd Respondent's Application to Strike, para. 2.4.

⁶² 1st Respondent's Application to Strike, para. 2.12(c) and 2.12 (e) - (j); 2nd Respondent's Application to Strike, para. 2.7(c) and 2.7 (e) - (j).

⁶³ 2nd Respondent's Speaking Note para. 62; **Lancaster Division of the County of Lancaster** (1896) 5 O'M&H 39.

⁶⁴ **Sahu v Singh** [1985] LRC (Const) 31.

⁶⁵ **Agarwal v Gandhi** (1987) Supp SCC 93.

⁶⁶ **Worcester**, Day's Election Cases 1892-3, 85 at pg 88; **Eugene Hamilton v Cedric Liburd and Others** SKBHCV 2004/0183 (Baptiste J) Judgment 27th July 2005, at para. 6.

⁶⁷ **Frampton and Others v Pinard and Others** DOMHCV 2005/0149 [above fn. 5].

⁶⁸ **Shemilita Joseph v Bowen and Others** Antigua and Barbuda Suit No. 40 of 1999 (Benjamin J) Judgment 1999.

⁶⁹ **Eugene Hamilton v Cedric Liburd and Others; Lindsay Fitzpatrick Grant v Rupert Herbert and Others** St. Kitts and Nevis Civ App Nos. 11 and 11A (CA) Judgment 27th July 2005; **Bhagwan v Chester** (1977) 25 WIR 187.

- [43] The respondents further submit that the law requires full particulars for each of the allegations so that the respondents may know the case they are required to meet at trial. Since some of the charges such as bribery are in the nature of criminal charges, the 1st respondent is entitled to the constitutional protection of a fair trial and the legal protection of *autrefois acquit*. The respondents also contend that a plethora of the petitioner's charges are rooted in allegations implying dishonest or fraudulent conduct, and, are therefore, subject to the 'ancient principle' that fraud must be particularly pleaded.
- [44] They say that without full material particulars, the petition must fail because in the absence of rules made pursuant to the Elections Act, (it is common ground that no such rules have been made by the Chief Justice) there is no power in the court to order particulars after the expiry of the 21 days fixed by law. Since the election court is possessed of a "special jurisdiction" which is not the ordinary civil jurisdiction, the respondents contend that the general CPR powers to make orders for disclosure, particulars and amendments are not available to the petitioner.
- [45] The petitioner, on the other hand, submits that the petition is sufficient in form. He says that the respondents have failed to cite any local rule or statutory authority for the propositions that full particulars are required within 21 days and that the court has no power to order particulars after that time. The petitioner also asserts that the authorities relied on by the respondents either turn upon a statutory provision that is inapplicable in this jurisdiction, or consist of decisions embracing an erroneous conflation of bribery and fraud, which were made *per incuriam*, and should not be followed by this court in these applications.
- [46] Learned Counsel Mr. Byron submits that only general allegations are required in an election petition and that there is no rule or principle properly supported by authority that the respondents cannot apply for and receive particulars at any time. He submits that the form and contents of this petition are sufficient when tested against English practice and procedure on the drafting of petitions. He refers to **Beal v Smith**,⁷⁰ **Atkins Court Forms**,⁷¹ **Halsbury's Laws of England**, bribery precedents in **The Launceston Case**,⁷² **The Kidderminster Case**,⁷³ **The Berwick on Tweed Case** and **The Boston**

⁷⁰ (1869) LR 4 CP 145, 38LJCP 145.

⁷¹ Vol. 18, Form 10.

⁷² (1874) 2 O'M & H 129.

⁷³ (1874) 2 O'M & H 170.

Case⁷⁴ from **O'Malley and Hardcastle's Election Cases 1869 - 1929** and from **Rogers on Elections and Registration 1869**. Learned Counsel submits that this guidance is applicable because there are no provisions dealing with the form and contents of the petition in Saint Christopher and Nevis. Accordingly, he says, the court may follow and adopt the practice and procedure of England as provided in the reception clause of **section 11** of the **Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act, 1975** (the "Supreme Court Act 1975").

[47] Furthermore, Mr. Byron submits that careful consideration of the relevant case law and statutory provisions, specifically, section 87 of the Elections Act, sections 6(1)(a), 6(3) and Supreme Court Act, 1975 and the two decisions of the Court of Appeal in **Powell v Payne**⁷⁵ and **Ribiero v Simmonds**⁷⁶ would demonstrate that the court had recourse both to the CPR and English practice and procedure in the determination of those election petitions. The respondents insist that the CPR and English practice and procedure do not apply.

Election Court is a "Special Jurisdiction" therefore the CPR do not apply

[48] Another issue which was hotly contested issue is whether our CPR apply to election petitions. The petitioner answers this question in the affirmative while both respondents maintain that the CPR do not apply to election petitions.

[49] Nothing of substance turns on the applicability or non-applicability of the CPR. However, Mr. Byron submits that, if the CPR apply, then where the Elections Act is deficient procedurally, those rules can be utilised to case manage this election petition in order to bring it to trial. I feel impelled to answer this vexed question.

[50] In his comprehensive written as well as oral submissions, Mr. Byron urges the court to find that the CPR apply.⁷⁷ He refers to section 36(1)(a) of the Constitution which provides that "the High Court shall have jurisdiction to hear and determine any question whether (a) any person has been validly elected as a Representative." He then alludes to section 11 of the Supreme Court Act and Part V, particularly sections 82-87 of the Elections Act dealing with "Election Petitions."

⁷⁴ (1880) 3 O'M & H 151.

⁷⁵ (1978) 25 WIR 546; St. Kitts Civil Appeal No. 7 of 1977 (CA).

⁷⁶ Vol. II, OECS Reports, 179.

⁷⁷ See Petitioner's submissions and Authorities in opposition to the strike out applications, Volume 1 filed on 14 July 2010, specifically paragraphs 1-15.

[51] Section 87 is significant. It provides as follows:

"At the trial of an election petition the Judge shall, subject to the provisions of this Ordinance, have the same powers, jurisdiction and authority, and witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in the trial of a civil action in the Supreme Court, and such witnesses shall be subject to the same penalties for perjury."

[52] Section 83(2) provides that:

"Rules not inconsistent with the provisions of this Act as to the deposit of security and the practice and procedure for the service and hearing of Election Petitions and matters incidental thereto, may be made by the Chief Justice."

[53] Mr. Byron then cites CPR 2.2. It reads:

- (1) "Subject to paragraph (3), these Rules apply to civil proceedings in the Eastern Caribbean Supreme Court in any of the Member States or Territories.
- (2) In these rules "civil proceedings" include Judicial Review and applications to the court under the Constitution of any Member State or Territory under Part 56.
- (3) These Rules do not apply to proceedings of the following kinds-
 - (a)....
 - (e) any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings."

[54] Mr. Byron submits that the foregoing provisions require us to follow the provisions laid down for Election Petitions in the Elections Act and to use the CPR with its provisions for case management in which the Elections Act is deficient procedurally. Attractive though these submissions are, I am disinclined to accept them.

[55] Section 36 of the Constitution created a special and peculiar jurisdiction to hear and determine election petitions and disputes. In **Theberge v Laudry**⁷⁸ Lord Cairns stated:

"These two Acts of Parliament...are Acts peculiar in their character. **They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new and up to that time unknown, jurisdiction in a particular Court of the colony** for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in the Court, that very peculiar jurisdiction which, up to that time, had existed in the

⁷⁸ [1876] 2 AC 102 at pages 106 to 108.

Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. **A jurisdiction of that kind is extremely special...** [emphasis added]

[56] Nearly a century later, in **Patterson v Solomon**,⁷⁹ the Privy Council held that “the Order in Council created an **entirely new jurisdiction in a particular court** ... for the purpose of taking out of the Legislative Council, with its own consent, and vesting in that court **the very peculiar jurisdiction** which had existed in the council itself of determining the status of those who claimed to be members of the council, and the determination of that court was final and no appeal lay from it.” [emphasis added]

[57] In **Russell v Attorney-General**,⁸⁰ Sir Vincent Floissac CJ said (at page 137):

“The jurisdiction to determine questions as to the validity or otherwise of elections to the House of Assembly and other questions referred to in section 36 of the Constitution has been excluded from the jurisdiction conferred by section 96 because the former jurisdiction is a peculiar and special jurisdiction. It is essentially a parliamentary jurisdiction conveniently assigned to the judiciary by the Constitution and by legislation.”

[58] In **Ethlyn Smith**, although the issues which confronted that court are not on fours with these applications, Rawlins J conclusively decided that the CPR do not apply. The learned judge said:⁸¹

These rules could have been particularly helpful to the case for the petitioners because joinder of parties is almost an automatic process, particularly before the case management stage. In normal civil procedure, either the court of its own volition or the application of a party could add new parties, substitute an existing party or remove a party, even at a case management conference. Part 19 of the Rules would resolve all the issues that relate to the joinder or mis-joinder of Parties raised in these cases. The difficulty for the petitioners, however, is that **on the principles enunciated in the election cases, we cannot go to the Rules** (emphasis added).

[59] Mr. Byron insists that Rawlins J reasoned that the CPR are not applicable to join new parties after the time provided for the presentation of the Petition. This is correct but when Rawlins J said that “on the principles enunciated in the election cases, we cannot go the Rules,” it can be inferred that “generally in election cases, the rules do not apply. Even I am wrong to draw such an inference, I go a step further

⁷⁹ [1960] AC 579 at page 589.

⁸⁰ (1995) 50 WIR 127 at page 137.

⁸¹ BVIHCV2003/0097 [above fn 12] at paragraphs 18 - 19.

to cite **Eugene Hamilton v Cedric Liburd v Others**⁸² as another authority to show that the election court jurisdiction is so separate and distinct from the civil jurisdiction that absolutely no recourse to the civil procedure rules is permissible.

[60] Mr. Astaphan SC asked a pertinent question: “if it was the ordinary civil rules which were to apply to election matters, why is it that Parliament sees it fit to confer a specific jurisdiction on the Chief Justice to make rules specially and specifically for the election jurisdiction? Parliament had to presume that the ordinary jurisdiction of the civil court was already in existence.”

[61] I am bound to follow the numerous judicial authorities⁸³ from the Privy Council and our Court of Appeal that the election jurisdiction is a special and peculiar jurisdiction and not the ordinary civil jurisdiction. The “very special and peculiar” nature of the election court jurisdiction is such that without an *express* application of the CPR by the provisions of the Elections Act or “the yet to be made” Rules, “election proceedings” do not fall within the ambit of “civil proceedings” under CPR 2.2.

[62] Consequently, I find that the CPR 2000 do not apply and the correct position to adopt is that held by Baptiste J in **Lindsay Grant v Rupert Herbert (No. 1)**⁸⁴ that the Court will, in the absence of express rules, be guided by its inherent jurisdiction.

⁸² Civ App Nos. 11 and 11A (above fn 69).

⁸³ **The Lancaster Division of the County of Lancaster** (1896) 5 O’ M&H 39, at page 41 and 42 [Vol. 3 Tab 3 of 2nd Respondent’s List of Authorities]; **Maude v Lowley** [1874] IX CP D 165 [Vol. 1 Tab 2 of 2nd Respondent’s List of Authorities]; **Williams v The Major of Tenby** [1879] 5 CP D 135 [Vol. 1 Tab 15 of 2nd Respondent’s List of Authorities]; **Nair v Tek** [1967] 2 WLR 846 at page 855. [Vol. 1 Tab 3 of 2nd Respondent’s List of Authorities]; **Theberge v Laundry** [1876] 2 AC 102 at page 106 to 108 [Vol. 1 Tab 18 of 2nd Respondent’s List of Authorities]; **Patterson v Solomon** [1960] AC 579 at page 589. [Vol. 1 Tab 19 of 2nd Respondent’s List of Authorities]; **Duporte v Freeman** (1968) 11 WIR at page 498 [Vol. 1 Tab 5 of 2nd Respondent’s List of Authorities]; **Browne v Francis-Gibson and Another** (1995) 50 WIR 143 at page 148 to 151. [Vol. 1 Tab 6 of 2nd Respondent’s List of Authorities]; **Russell v Attorney General of St Vincent & the Grenadines** (1995) 50 WIR 128 at page 138 (a) to (b). [Vol. 1 Tab 7 of 2nd Respondent’s List of Authorities]; **Eugene Hamilton v Cedric Liburd and Others** CA Nos. 11 and 11A Judgment 27th July 2005 at paragraph [16]. [Vol. 1 Tab 8 of 2nd Respondent’s List of Authorities]; **Daven Joseph v Codrington and Others** ANUHCV2009/0147 Judgment 30th June 2009 at paragraph [59]. [Vol. 1 Tab 17 of 2nd Respondent’s List of Authorities]; **Lindsay Grant v Rupert Herbert** Claim No. SKBHCV 2004/0182 (No. 1) (Baptiste J) Judgment 11th February 2005.

⁸⁴ SKBHCV 2004/0182 (No. 1) (Baptiste J) Judgment 11th February 2005.

Do English Practice and Procedure apply?

[63] At the heart of this controversy is that the form and contents of the election petition are lacking material facts and particulars. The respondents have jointly and concertedly trawled through the petition and identified the innumerable instances where the petition offends the applicable principles of pleadings.

English Practice and Procedure on the Form and Content of Election Petitions

[64] Under the heading '**Form and contents of the petition**', the learned authors of the most recent edition of **Halsbury's Laws of England**,⁸⁵ referred to the 1869 case of **Beal v Smith**⁸⁶ stating that:

"It is sufficient for the petition **to allege the grounds generally**, and a petition alleging that the respondent and his agents are charged with **bribery**, corruption and undue influence, and also with illegal practices, would in form be sufficient."

[65] Learned Counsel Mr. Byron correctly submits that, pursuant to English practice and procedure, for a bribery charge, it is sufficient to allege the grounds generally. Also, English practice and procedure do not seem to require the inclusion of particulars with the presentation of the petition, or, within 21 days. In the **General Rules made pursuant to the Parliamentary Elections Act 1868**⁸⁷ when the jurisdiction to determine disputed elections was first transferred to the Courts, it says:

"6. Evidence need not be stated in the petition, but the court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial in the same way as in ordinary proceedings in the Court of Common Pleas and upon such terms as to costs and otherwise as may be ordered."

[66] Particulars would be ordered a number of days before trial, according to the judge's discretion.⁸⁸ These rules were not entirely revoked until the passage of the **UK Election Petition Rules 1960**⁸⁹ pursuant to the **Representation of the People Act (UK) 1949**, which continue to be the operative rules at present. Rule 2 (4) provides that:

"Subject to the provisions of the Act and these Rules, the practice and procedure of the High Court shall apply to a petition under these Rules as if it were an ordinary claim within its

⁸⁵ Vol. 15(4) (2007 Reissue) at para. 778.

⁸⁶ Above fn 70.

⁸⁷ Included in Petitioner's Written Submissions Vol. 3 at pages 49 - 59.

⁸⁸ See *The Powers Duties & Liabilities of an Election Agent and Returning Officer* (2nd Respondent's Bundle of Authorities at Tab 9) at pages 697 - 98

⁸⁹ UK SI 1960/543.

jurisdiction, notwithstanding any different practice, principle or rule on which the committees of the House of Commons used to act in dealing with election petitions.”

[67] I note this to show that according to English practice and procedure, it is sufficient for a petition (even in bribery cases) to be generally pleaded, and particulars to be ordered on such terms as the court directs. So, if, for the sake of argument, I accept Mr. Byron’s convincing submissions on the incorporation of English law pursuant to section 11 of the Eastern Caribbean Supreme Court (St. Christopher & Nevis) Act 1975, then it is sufficient to plead generally in bribery cases. However, this court finds it pointless to rule on the issue of the “reception” of English practice and procedure since the petitioner faces another insurmountable hurdle in light of the recent ruling by our Court of Appeal in **Jacqui Quinn-Leandro and Others v Dean Jonas and Others** [supra] which I will come to in a moment.

Specific pleading and bribery

[68] Mr. Astaphan SC contends that the necessity for full material particulars in bribery matters is rooted in the criminal nature of the allegation as well as an “ancient” principle that bribery, like fraud must be specifically pleaded. He cites a plethora of judicial authorities to support his contention namely: **Shemilita Joseph v Sherfield Bowen and Clovelle Gardner**,⁹⁰ **Ferdinand Frampton, Lindsay Fitzpatrick Grant v Rupert Hubert and Others (No. 2)**,⁹¹ **Eugene Hamilton v Cedric Liburd and Others**⁹² and **Thomas v Stout**.⁹³

[69] On the other hand, Learned Counsel Mr. Byron insists that it is erroneous to argue that bribery, a criminal charge, is to be pleaded like a civil fraud. He submits that the cases on civil fraud are not germane to the issues before the court. He also submits that **Spencer v Attorney General**,⁹⁴ which was also relied on by the respondents, was concerned with a civil fraud and had nothing to do with bribery.

⁹⁰ Antigua & Barbuda No. 40 of 1999 [above fn 68].

⁹¹ SKBHCV2004/0182 (No. 2) (Baptiste J) Judgment 27th July 2005, at paragraphs 24-26.

⁹² SKBHCV2004/0183 (Baptiste J) Judgment 27th July 2005, at paragraphs 29-34.

⁹³ [1997] 55 W.I.R. 112, 117.

⁹⁴ [1999] 3 LRC 1.

[70] Next, Mr. Byron submits that Benjamin J in **Shemilita Joseph v Sherfield Bowen and Clovelle Gardner**⁹⁵ was led into error in relying on RSC O18 r 12(1)(a) which required particular pleading for fraud in substitution for the guidance provided by statutory provision 83.5 in the Indian Representation of Peoples Act, which is not applicable in this Court.⁹⁶ Learned Counsel further submits that Rawlins J in **Ferdinand Frampton** fell into error when he stated [at para. 76]:

"It is my view that the ancient principle that fraud must be specifically pleaded is also applicable to the pleading of allegations of bribery and treating in election petitions. They are all allegations of dishonest conduct. A petitioner must plead some particulars, either in the petition or in the affidavit in support, to enable the court, and particularly the respondents, to know what acts are complained of. The respondents would otherwise be severely prejudiced in their defence."

[71] Mr. Byron submits that Baptiste J adopted the same principles in the decisions in **Lindsay Fitzpatrick Grant v Rupert Hubert and Others (No. 2)**⁹⁷ and **Eugene Hamilton v Cedric Liburd and Others**⁹⁸ and, he also erred.

[72] Mr. Byron further contends that in the five consolidated Election Petitions of **John Henry Abraham v Kelper Dwight Darroux et al**,⁹⁹ Thomas J also got it wrong. He urges this court to correct the mistake that bribery needs to be specifically pleaded.

[73] But, this court is bound by the most recent decision of the Court of Appeal in **Jacqui Quinn-Leandro**. At paragraph 56, Rawlins CJ stated:

"I merely observe that on present principles, any allegation approaching **dishonesty in any civil case, electoral or otherwise, must be clearly and specifically pleaded** with a level of precision that is not required in pleading a mere irregularity." [emphasis added].

[74] It may be argued that this statement of Rawlins CJ was said in passing as this was not the real issue before the court. But, it will be recalled that Rawlins J in **Ferdinand Frampton** had already pronounced that bribery, like fraud, needs to be specifically pleaded. To my mind, his Lordship was reiterating in a

⁹⁵ Antigua & Barbuda No. 40 of 1999 [above fn 68].

⁹⁶ Petitioner's written submissions after hearing, para. 109 - 112.

⁹⁷ SKBHCV2004/0182 (No. 2) [above fn 91] at paragraphs 24-26.

⁹⁸ SKBHCV2004/0183 [above fn 92] at paragraphs 29-34.

⁹⁹ DOMHCV2010/0003 (Thomas J) Judgment 25th August 2010 (unreported).

superior court what he had already conclusively decided in an inferior court. Be that as it may, bribery, like fraud, has to be specifically pleaded.

[75] I now come to the offending paragraphs in the election petition bearing in mind that (1) pleadings have to be precise, specific and unambiguous so that a respondent must know what case he has to meet; (2) bribery must be specifically pleaded and (3) material facts not evidence have to be pleaded. Evidence will come from the affidavits and cross-examination thereon or by oral evidence at the trial.

Bribery

The offence of bribery is created by statute.¹⁰⁰ The Act prescribes seven circumstances in which a person is deemed to be guilty of bribery. By section 96, bribery is punishable on summary conviction, by imprisonment or a fine.

[76] Section 92(1) of the Elections Act reads as follows:

“The following persons shall be deemed guilty of bribery within the meaning of this Act:

“Every person who, directly or indirectly, by himself or herself or by any other person on his or her behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election.”

[77] The petitioner alleges at paragraph (25) of the petition that:

“The 1st named respondent directly and/or indirectly by himself or by his agent Dr. Denzil Douglas, the leader of the St. Kitts-Nevis Labour Party and/or by other prominent members of the St. Kitts-Nevis Labour Party, arranged or arranged on behalf of the 1st named respondent and paid for the transportation by air of the following persons from various countries to the Federation of St. Christopher and Nevis in order to induce the said following persons, being all persons registered to vote in constituency #4 to vote in the said election, contrary to the common laws and/or to the provisions of section 92 subsection 1 of the National Assembly Elections Act, Cap 162 aforesaid.”

Under particulars of persons bribed, it lists the names of the 39 persons.

¹⁰⁰ See section 92 of the Elections Act.

[78] Learned Counsel for the petitioner submits that all of the ingredients for bribery have been made out in that he has generally pleaded material facts and particulars. The chart below may be helpful to show a comparison of the ingredients of bribery under the statute to what Mr. Byron has submitted.

STATUTE	PETITIONER
• every person who,	<input type="checkbox"/> The 1st named Respondent
• directly or indirectly,	<input type="checkbox"/> directly and/or indirectly
• by himself or herself	<input type="checkbox"/> by himself
• or by any other person, on his or her behalf	<input type="checkbox"/> or by his agent Dr. Denzil Douglas, the leader of the St. Kitts-Nevis Labour Party and/or by other prominent members of the St. Kitts-Nevis Labour Party on behalf of the 1st named Respondent
• gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure	<input type="checkbox"/> arranged and paid for
• any money or valuable consideration	<input type="checkbox"/> the transportation by air from various countries to the Federation of St. Christopher and Nevis
o to or for any voter,	<input type="checkbox"/> of the following (39) persons (names only) being all persons registered to vote in constituency #4
o or to or for any person on behalf of any voter,	
o or to or for any other person	
• in order to induce any voter to vote or refrain from voting,	<input type="checkbox"/> in order to induce the said following persons to vote in the said election
• or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;	<input type="checkbox"/>
	<input type="checkbox"/> contrary to the common laws and/or to the provisions of section 92 subsection 1 of the National Assembly Elections Act, Cap 162 aforesaid.

[79] To demonstrate the defects in the bribery charge Dr. Browne listed 8 “fatalities” namely: (1) the petitioner failed to particularize any particular year, month or day when the alleged act took place; (2) did the alleged acts take place in St. Kitts or Nevis? Or did they take place outside of the jurisdiction altogether because the Court has no extra-territorial jurisdiction¹⁰¹; (3) how often did the 1st respondent meet with the persons allegedly bribed? Where? Were they bribed individually, all together, or in groups of twos and threes? (4) the use of conjunctive and disjunctive language in the charge, “directly and/or indirectly”; (5) failure to plead that Dr. Douglas was the agent of the 1st Respondent, or that the acts complained of were done with the 1st respondent’s consent.¹⁰² And failure to identify the “other prominent members” of the Labour Party; (6) what is the nature of the arrangement alleged? (7) was

¹⁰¹ **Said Musa v Earl Jones** Belize No. 155 of 2009 (Conteh CJ), Judgment 8th June 2009.

¹⁰² **Ramakant Mayekar v Celine D’Silva** [1996] AIR 826 SC.

this arrangement in writing? and (8) the phrase “various countries:” at what point in time? From which place to which place? And when?

[80] Mr. Astaphan SC made extensive submissions on the bribery issue although the charge did not relate to his client. According to Learned Senior Counsel, the petitioner’s allegation of bribery is improperly pleaded and incurably bad and suffers from several incurable defects, namely: (1) the Political Leader of a party, without more, is not an agent of the candidate of the party; (2) the phrase “and/or other members of the St. Kitts-Nevis Labour Party” is impermissibly vague and incurably bad¹⁰³; (3) the petition alleges multiple offences and no material facts or particulars are pleaded to show how the alternative offences were allegedly committed by the persons mentioned in the petition; (4) there is no pleading that the persons allegedly bribed were bribed to vote for the 1st respondent and this is critical in order to disclose a cause of action; and (5) the petitioner was required to plead dates, places, manner and amounts of the alleged “sums of money” paid to each of the named persons and to particularize the nature of the alleged inducement.¹⁰⁴ The place of commission is particularly important because the Election Court has no extra territorial jurisdiction to hear offences committed overseas.

[81] Mr. Astaphan SC further submits that an allegation of bribery under this section required the petitioner, among other things, to plead and perfect material facts **and particulars**¹⁰⁵ [emphasis added] in his petition or affidavit in support filed within 21 days to show that: (1) the 1st respondent; or (2) other persons acting on behalf of the 1st respondent and with their authority and consent, committed the specific offences of bribery (and merely pleading the names of persons and the general nature of the offence is totally inadequate); (3) corrupt bargains were made by the 1st respondent or his agents acting with his authority and consent, and those persons who the petitioner alleges were bribed to vote for the 1st respondent;¹⁰⁶ (4) corrupt bargains were made by the 1st respondent or his agents acting with his authority and consent with the intention to induce the named electors to vote in a manner in which they would not otherwise have voted. In other words, to vote against their respective conscience

¹⁰³ **Agarwal v Gandhi** (1987) Supp SCC 93; **Mayekar v D’Silva** AIR 1996 SC 826; **Sahu v Singh** [1985] LRC (Const) 31.

¹⁰⁴ *The Powers, Duties & Liabilities of an Election Agent and Returning Officer* 3rd ed., Oscar R Parker at pg. 699; *Rogers on Elections* Vol. II, 17th ed. at pg. 200 - 201; **Frampton and Others v Pinard and Others** DOMHCV 2005/0149 [above fn 5]; **Bhagwan v Chester** (1977) 25 WIR 187.

¹⁰⁵ What constitutes “particulars” will be dealt with later in the judgment.

¹⁰⁶ The following authorities are submitted: **Mann v Singh** (1980) 1 SCC 713; **Agarwal v Gandhi** (1987) Supp SCC 93; **Suhmainin v Gunsalam** Election Petition No. 26-8 of 2008, Malaysia; **Schofield’s Election Law** 2nd edition at para. 14:02 and 14:03;

and to vote for the 1st respondent; (5) the dates, times, place and manner of the alleged corrupt bargain;¹⁰⁷ and that (6) the 1st respondent acted corruptly.

[82] All Counsel are agreed as to the standard of particulars required. This is described in **Rogers on Elections** and in **The Powers Duties & Liabilities of an Election Agent and Returning Officer**,¹⁰⁸ submitted by Mr. Astaphan SC, to which Thomas J referred to at para. 50 of **Abraham v Darroux and others** before ruling that the particulars provided by the Petitioners in Dominica were insufficient. It says:

"Where the petition charges specific bribery, treating and undue influence, the petitioner has been ordered to deliver particulars of the names and the last known or present street address, and number (if any) on the register of the agents of the respondent who bribed, treated, or unduly influenced, and of the persons who were bribed, treated or unduly influenced. Also, of the dates when, and the places where, each act of bribery, treating or undue influence took place, also the nature, character and description of each act of bribery, treating or undue influence; and also by which agent, and to which person, each bribe or treat was given, promised or offered, and by which agent, and upon which person, each act of undue influence was exercised or attempted to be exercised."

[83] In my considered opinion, paragraph 25 of the petition is defective in that the petitioner has failed to plead material facts of or in relation to (a) the alleged bribery; (b) names of the alleged agents; (c) the alleged acts of bribery committed by the 1st respondent and persons allegedly bribed by the 1st respondent; (d) the alleged acts of bribery committed by the alleged agents of the 1st respondent and persons allegedly bribed by the alleged agent of the 1st respondent; (e) the alleged corrupt bargain or arrangement made including the dates, place, time, and manner and alleged parties; (f) the alleged inducement, and that (g) the persons were allegedly bribed to vote for the 1st respondent or against the petitioner.

[84] Accordingly, paragraph 25 of the petition is hereby struck out for lack of sufficient material particulars.

¹⁰⁷ *Ibid.*

¹⁰⁸ 3rd Ed. Oscar R Parker; See 2nd Respondent's Bundle of Authorities at Tab 9.

Corrupt practice - treating

[85] A person guilty of treating is guilty of a corrupt practice. Treating intended to secure general popularity, and so to influence votes, is corrupt treating and a corrupt practice. The penalty on summary conviction is imprisonment or a fine.

[86] Section 93 (1) of the Elections Act states:

“The following person shall be deemed guilty of treating within the meaning of the Act-

Every person who corruptly, by himself or by other person, either before, during, or after an election, directly or indirectly, gives, or provides or pays, wholly or in part, the expenses of giving, or providing any food, drink, entertainment or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at said election.”

[87] At paragraph 26 of his petition, the petitioner alleges that:

“The 1st named Respondent corruptly by himself or by his agent Dr. Denzil Douglas, the leader of the St. Kitts-Nevis Labour Party, and/or by other prominent members of the St. Kitts-Nevis Labour Party, before, during and/or after the said election in constituency #4, directly or indirectly gave, provided or paid for, wholly or in part, the expenses of giving or providing, food, drink, entertainment or provision of transportation to the following persons for the purpose of corruptly influencing the said persons to vote in the said election, contrary to common law and/or to the provisions of section 93 subsection 1 of the National Assembly Elections Act, Cap. 162 aforesaid.

And under particulars of persons treated, it lists the names of 39 persons.”

[88] In **Ferdinand Frampton**, Rawlins J. states: “it is my view that the ancient principle that fraud must be specifically pleaded is also applicable to the pleading of bribery and treating in election petitions. They are all allegations of dishonest conduct.”

[89] Hence, there is no material difference between the pleading relating to bribery and treating except for the use of the word “corruptly” in relation to treating. In my opinion, paragraph 26 suffers from the same defect - lack of sufficient material particulars - as paragraph 25. Accordingly, paragraph 26 is hereby struck out.

Illegal practices

[90] The respondents submit that the allegations raised in paragraphs 24 and 27 are misconceived and incapable of avoiding an election.¹⁰⁹ Further that the allegations raised in paragraphs 28 (a) to (f) are totally irrelevant and the alleged false statements in paragraphs 28 (g) to (j) and the pleaded allegations against the Presiding Officers and Returning Officer in paragraph 28 (l) to (t) and (y) of in the petition do not constitute illegal practices under the Elections Act¹¹⁰ or do not constitute illegal practices capable of avoiding a general election.¹¹¹

[91] Sections 84 and 85 of the Elections Act provide that the election of a candidate may be avoided where he is found personally guilty or guilty by his agents of any "corrupt" or "illegal" practice or where "corrupt or illegal practices or illegal payments or employments" were committed in reference to the election for the purposes of promoting or procuring the election of that candidate have so extensively prevailed that they may be reasonably supposed to have affected the result. Corrupt and illegal practices are not defined by the Elections Act.

[92] The learned authors of **Halsbury's Laws of England** state that "corrupt and illegal practices are technical terms to denote particular offences defined by statute."¹¹² Previously, an illegal practice was constituted by any act forbidden by the Election law which did not require 'corrupt intent' as an essential ingredient.¹¹³ However, the most recent edition of Halsbury's states that:

"certain acts or omissions (mainly but not exclusively made by the candidate or election agent) which contravene controls placed on the election campaign constitute illegal practices... Some illegal practices arise also from the commission of an offence; and a candidate or election agent who is personally guilty of making an illegal payment or employment is guilty also of an illegal practice."¹¹⁴

[93] There are 12 examples of 'practices which are illegal' listed in *Halsbury's* but these are all explicitly identified as 'illegal practices' in the Representation of the People (UK) Act, 1983. Section 99 of the Elections Act provides a penalty for certain illegal practices at elections, namely procuring prohibited

¹⁰⁹ See 1st Respondent's Application to Strike para. 2.13(a); 2nd Respondent's Application to Strike, para. 2.8(a).

¹¹⁰ 1st Respondent's Application to Strike, para. 2.13 (c); 2nd Respondent's Application to Strike, para. 2.8(c).

¹¹¹ See 1st Respondent's Application to Strike para. 2.13(d); 2nd Respondent's Application to Strike, para. 2.8(d).

¹¹² *Halsbury's Laws of England* 4th ed. Vol. 15: Elections, para. 686.

¹¹³ *Halsbury's Laws of England* 4th ed. Vol. 15: Elections at para. 686 citing **Ex parte Forster** (1903) 89 LT 18 at 19.

¹¹⁴ *Halsbury's Laws of England* Vol. 15(3) (2007 reissue) para. 674: Practices which are illegal.

persons to vote, publishing false statements about a candidate's withdrawal, disorderly conduct and conspiracy to engage in disorderly conduct to disrupt a public meeting. Specific offences which may be committed by the Presiding Officer, Returning Officer or other election officers are provided in sections 43M, 73C, 90 and 101 of the Elections Act. None of these offences are identified as corrupt or illegal practices by the Elections Act, and in any event, none of them have been alleged by the petitioner. The question then is whether any violation of the Elections Act may constitute an illegal practice, or only those practices defined as such in section 99.

[94] Our Court of Appeal in **Radix v Gairy**¹¹⁵ held that (1) the election of a candidate can only be avoided upon proof of an election offence or of some other election irregularity during the conduct of the election affecting the results; and (2) the appropriate time to object to the elector's list is sometime prior to its proclamation which renders it conclusive as to those entitled to vote at the next election or by-election as the case may be.

[95] Accordingly, an "illegal practice" must refer to a practice defined as such in section 99 of the Elections Act. Alternatively, it may refer to a breach of the law which could have affected the result of the election.

Allegations incapable of avoiding an election

[96] The respondents say that paragraphs 1 to 23 are not paragraphs severally or jointly which could result in the avoidance of an election.¹¹⁶

[97] By and large, I agree with this submission. Paragraphs 1- 15 excepting paragraph 4 give relevant particulars. Paragraphs 4, 17, 18, 19, 20 and 21 are really submissions and could await trial if there is even one triable issue to be determined. Paragraph 16 speaks to undue election and alleges that (i) there was no real election by ballot, (ii) there was such a substantial departure from the procedure laid down by the Parliament in section 103 of the Elections Act, and (iii) the concept of a free and fair elections enshrined in the Constitution. This paragraph together with paragraphs 22 and 23(c) have

¹¹⁵ (1978) 25 WIR 553.

¹¹⁶ Transcript 21st July, Dr. Browne at page 9.

already been struck out under failure to join necessary parties. Paragraph 23(a) provides relevant particulars but nothing turns on it. Paragraph 23 (b) is dealt with later.

[98] Not until paragraph 24 did the petitioner begin to raise allegations that are capable of determination in respect of avoiding the election. Accordingly, the respondents focused on paragraphs 24 - 28 of the petition.

Irrelevant, unknown or ineffective allegations

[99] The respondents say that the petition contains allegations which are irrelevant, unknown, or incapable of avoiding an election; for example, the charges of “procuring persons to vote”, “making false statements against a candidate”, and “charges of elections day irregularities”.

General Corruption

[100] Paragraph 28 of the petition is entitled ‘**Avoidance of the Election for General Corruption**’ and charges that:

“The Petitioner will prove at the trial of this Election Petition that corrupt or illegal practices committed in reference to the election in constituency #4 for the purpose of promoting or procuring the election of the 1st named Respondent thereat have so extensively prevailed that they may reasonably be supposed to have affected the result, in such a manner as to void the election of the 1st named respondent and so that the 1st named Respondent shall be incapable of being elected to fill the vacancy for which the said election in constituency #4 was held.”

[101] The 2nd respondent contends that the allegations of general illegal practices and corruption and implicitly, of a conspiracy, are improperly pleaded, pejorative and an abuse of the process of the court.¹¹⁷ Further, that insufficient particulars of the allegation of general corruption have been provided.

False Statements

[102] Paragraph 28 (a) - (j) of the petition reads as follows:

Particulars of the Extensive Prevalence of Corrupt or Illegal Practices

(a) The National Assembly Elections (Amendment) Act 2007 was rushed through the Parliament of St. Christopher and Nevis on the 9th day of July 2009. This was an ill-considered, ill-intentioned piece of legislation which had as its object the prevention of the Petitioner and his

¹¹⁷ 2nd Respondent’s Written Submissions, para. 44.

colleague in the People's Action Movement, Shawn Richards, from being duly nominated to stand for the Parliamentary Elections which were to ensue thereafter:

- (b) The said amendment to Cap 162 aforesaid purported to invest the Returning Officer with the unconstitutional power to approve, and hence, to disapprove, proof that any intending candidate who had been a dual-citizen, had renounced his other citizenship;
- (c) The Petitioner and the said Shawn Richards instituted legal proceedings challenging the constitutionality of the said Amendment. The challenge was completely successful and on point, in that it forced the government of Prime Minister Dr. Denzil Douglas and the St. Kitts-Nevis Labour Party to go back into the National Assembly and to repeal the offending sections, which were several, of the said amendment;
- (d) The Petitioner had been a citizen of the United States of America as well as being a citizen of St. Christopher and Nevis. In preparation for standing as a candidate for parliamentary elections in constituency #4, the Petitioner took the decision to make the sacrifice of renouncing his United States citizenship, in order to be qualified for nomination and election as a parliamentary representative of St. Christopher and Nevis;
- (e) This decision of the Petitioner was duly acted upon by him and he renounced his United States citizenship well in advance of standing for nomination in preparation to be elected to the National Assembly as the parliamentary representative for constituency #4;
- (f) This was entirely unprecedented in the history of St. Christopher and Nevis. Despite the fact that several persons who have served full terms as parliamentary representatives from the St. Kitts-Nevis Labour Party have illegally done so as dual-citizens in contravention to the provisions of the Constitution of St. Christopher and Nevis, the Petitioner put Country above Self and renounced as aforesaid.
- (g) Despite this act of selfless commitment to the people of constituency #4 and to the people of St. Christopher and Nevis in general, the Petitioner was subjected by the St. Kitts-Nevis Labour Party platform speakers to a barrage of false statements about his qualification to be nominated and to be elected as the parliamentary representative for constituency #4;
- (h) The said false statement about the Petitioner's candidature and qualification for nomination and elected as aforesaid took the form of the following false and malicious statements, namely:
 - i. That the Petitioner was still a dual-citizen on Nomination day;
 - ii. That the Petitioner was therefore disqualified by reason of his alleged United States citizenship from being nominated and/or elected to become a parliamentary representative in the National Assembly;
 - iii. That a vote for the Petitioner would, therefore, be a wasted vote;

- iv. That the Petitioner was frantically, on Nomination Day itself, telephoning the United States Embassy in Barbados to try, vainly, to push through the renunciation of his United States citizenship;
- (i) The said statements were made by several platform speakers of the St. Kitts-Nevis Labour Party, including Prime Minister Dr. Denzil Douglas and Labour Party candidate for Central Basseterre, Ms. Marcella Liburd;
- (j) The making of the aforesaid false statements is an illegal practice and the statements were uttered with the aid of a public address system and broadcast by radio and internet worldwide. By definition, the said false statements constituted a practice in reference to the said election which extensively prevailed, which was made with the intention of affecting the result of the election, and which could reasonably be supposed to have affected the result of the said election;
- (k) Evidence will be supplied in support of this illegal practice at the trial of this Election Petition.

[103] Learned Senior Counsel for the 2nd respondent surmised two points. First, he questioned the credibility of an allegation that an Act of Parliament passed in 2009 as a law of general application throughout the Federation could have been passed for the purpose of 'promoting or procuring' the election of the 1st respondent, at a time when the 1st respondent was not even a candidate for the election. Secondly, he noted that section 99 (1)(b) of the Elections Act prohibited the publication of false statements with respect to "the withdrawal of a candidate". Accordingly, statements regarding the qualification to run or be nominated were nothing more than 'fair comment' and typical of an election campaign and were not an offence within the meaning of the Elections Act.

[104] Once upon a time, under The Representation of People's Act (UK) 1949 (now repealed) it was considered an illegal practice to make or publish any false statement of fact in relation to the candidate's personal character or conduct, for the purpose of affecting the return of any candidate at the election, unless the maker could show that he had reasonable grounds for believing and did in fact believe the statement to be true.¹¹⁸ Sad to say, no equivalent provision exists in the Elections Act. Accordingly, the respondents are correct that the allegations in para. 28 (a) to (f) are completely irrelevant and do not constitute a cause of action. In addition, paragraphs (g) to (j) of the petition do not constitute an illegal practice within the meaning of the Elections Act and are not capable of grounding a cause of action sufficient to avoid an election. For those reasons, the paragraphs are hereby struck out.

¹¹⁸ See *Halsbury's Laws of England* 4th ed. Vol. 15: Elections at para. 790.

Illegal Instructions

- [105] The petitioner alleges in paragraphs 28 (l) - (n) that illegal instructions were given by the 2nd respondent, and carried out by the presiding officers, to allow all persons whose names appeared on the voters list to vote irrespective of whether objections were made by any inside agents.
- [106] The law provides that it shall be an offence for an election officer to willfully prevent any person from voting at a polling station at which he knows or has reasonable cause to believe is entitled to vote¹¹⁹ and that the register of voters shall be conclusive for the purposes of taking the poll.¹²⁰ Any measures implemented to deal with objections to persons on polling day who present themselves as persons on the voter's list would need to reflect two general principles (1) a person is innocent until proven guilty; (2) the list is conclusive on polling day. Those persons listed are entitled to cast a ballot. Any issue of its validity will have to be dealt with later.
- [107] The appearance of a voter's name on the list is very reasonable cause to believe that person is entitled to vote. An instruction to act in accordance with the Elections Act cannot constitute an illegal instruction. Paragraphs 28(l) - (n) are accordingly struck out.

Failure to allow access to National ID Cards

- [108] Paragraph 28 (o) alleges that "an illegal practice of expressly denying the petitioner's agents access to National ID cards of persons entering the polling station to vote was carried out by the Presiding Officers following the instructions of the 2nd respondent that only voters lists with photographs were to be used to identify voters in cases of doubt as to the identity".
- [109] In my opinion, these acts do not fall within the definition of illegal practices under s. 99 of the Elections Act. As a result, this paragraph ought to be struck out. In the event that I am wrong to come to this conclusion, I will consider the alternative position. Section 43J of the Elections Act¹²¹ provides that the Register of Voters prepared under section 43E of the said Act¹²² is the Register that shall be used for any election. Section 43J provides that the register of voters prepared under "**this Act and the**

¹¹⁹ The Elections Act, s.90.

¹²⁰ The Elections Act, (as amended by 16/1983), s.43K.

¹²¹ The Elections Act, (as amended by 16/1983).

¹²² The Elections Act, (as amended by 16/1983).

regulations” shall be conclusive on polling day. Regulation 4¹²³ provides that the form of the Register of Voters shall be Form 3.

[110] The Elections Act was amended to provide for the issuance of National ID cards by the Chief Registration Officer¹²⁴ and the production of a reconstructed register of voters who have been issued with ID cards. The published reconstructed register of voters shall be the register of voters for the purposes of this Act.¹²⁵ By SRO No. 9 of 2008, Part II of the Election Registration Regulations 1984 was repealed and replaced¹²⁶ to provide for a procedure for the issuance of national identification cards. The regulations were amended to make provision for entry of voter information, including capture and storage of a photograph, into an electronic database. The Schedule to the Regulations was also amended by the addition of new forms including a Form 3A for the production of a ‘Voter Verification List’ which is to contain all the information provided on Form 3 along with a copy of the photograph of the registered voter. This ‘Voter Verification List’ is apparently not a public document but shall be restricted to the use of Presiding Officers and political party agents within the polling station on elections day. The petitioner has not complained that he and his agents were denied copies of the photo-lists.

[111] In the 2009 Antigua petitions,¹²⁷ Blenman J was confronted with a complaint that photo lists, instead of the published register, was used in violation of the law. She held at para. [214] that “the law requires that the Register of Elections published under section 24(1) shall be used for any election held in a constituency to which that register relates.” She noted that in the 2004 general elections the Photo Lists were used together with the published Register for Elections but that the law mandates that the Register for Elections should be used and held that use of the photo lists was a breach of the law. On the evidence led, Justice Blenman found that the “photo lists” contained the same information as the register, with the addition of the elector’s ID number and photo, and the court was not satisfied that the use of the photo lists resulted in persons who were entitled to vote, not being able to vote; or persons

¹²³ Election Registration Regulations SRO 5 of 1984.

¹²⁴ Elections Act, s. 42C as amended by SRO No. 22 of 2007.

¹²⁵ Elections Act, s. 108 as amended by SRO No. 22 of 2007.

¹²⁶ SRO No. 9 of 2008.

¹²⁷ ANUHCV2009/0141, ANUHCV2009/0143 and ANUHCV2009/0144 (Blenman J) Judgment 30 June 2009 (unreported) [above at fn 7].

who ought not to have voted being allowed to vote. She opined that the use of the photo-lists did not affect the outcome of the election.

[112] In the instant case, it appears that the Register of Voters prepared in accordance with Form 3, has not been replaced as the official register. Simply put, the law has been amended to provide for the production and additional use of the photo-list or Voter Verification List. The petitioner has not complained that there was a breach of law by failure to use the official register. He has complained that the presiding officers were instructed to rely on the photo-lists as the sole source of voter identification.

[113] Section 71 of the Elections Act was also amended. It appears that the presiding officer is now under a duty to request the voter to produce a National ID card before issuing a ballot paper.¹²⁸ Suffice it to say, an instruction not to perform this duty would amount to an instruction to violate the provisions of the Act. Section 71 was further amended by Act No. 2 of 2008 to provide that a presiding officer may issue a ballot paper to a voter who is unable to produce their National ID card if the presiding officer was satisfied that the voter appears on the photo list in Form 3A and the voter presented some other form of Government picture ID.

[114] In a practical sense, there is no difference between the National ID Cards and the photo-lists because both would have been generated from the same electronic database. But the purpose of the Voter Verification List would seem to be to verify the information when the voter presents his National ID card. The verification list cannot serve that purpose if the voters are not required to produce the ID card. However, as insalubrious as it may have been for the 2nd respondent to issue an instruction to the officers to perform their duties in violation of the Act, if indeed he did, but for the purposes of these applications and I will assume that the allegations are true, it is difficult to see how this instruction would have led to persons voting who were not entitled to vote or prevented persons who were entitled to vote from voting. It has not been pleaded that the petitioner did not have a photo-list, that the presiding officers allowed persons who were not on the list at all to vote, nor that the petitioner suspects that the persons who presented themselves for voting were not actually the persons on the list. Once these persons were on the photo-lists they were included in the register of voters and they were entitled to vote.

¹²⁸ Elections Act, s. 71(1)(a).

[115] Considering the overall legislative scheme, and the fact that the petitioner, in his particulars, complains about less than 3% of the persons who voted, it would be meaningless or frivolous for this allegation of failure to allow access to National ID cards to go to trial. Thus, paragraph 28 (o) is struck out for not constituting an irregularity capable of affecting the result of the election. In other words, it discloses no reasonable cause of action.

Failure to require an oath

[116] Paragraph 28 (p) charges that the 2nd respondent instructed the presiding officers to use their discretion in relation to taking of oaths from voters objected to. The result, says the petitioner, was that in "several polling stations" in Constituency #4 "numerous" voters who had been objected to by the inside agents of the petitioner were not asked by the presiding officers to take the oath. The petitioner insists that this is an illegal practice.

[117] Mr. Astaphan SC submits that the law does not provide for the taking of an oath by anyone objected to by anyone. He says that Act 22 of 2007 which replaced section 71 removed entirely the obligation for an oath to be administered because of the implementation of the National ID card. He further submits that the petitioner's pleading is defective in that it lacks (i) the identity of the polling station; (ii) the basis of the objection to the voter; (iii) the identity of the presiding officer and (iv) the meaning of 'numerous objections'. Mr. Byron concedes that there is no such provision for the taking of an oath as to qualification.

[118] Section 73 (2) of the Elections Act provides:

"A voter, if required by the presiding officer, the poll clerk, one of the candidates or an agent of a candidate, or by a voter present, shall before receiving his or her ballot paper take an oath in the form set out as Form No. 17 in the Second Schedule and, if he or she refuses to take such oath, erasing lines shall be drawn through his or her name on the official list of voters and in the poll book, if such name has been entered in the said book, and the words "Refused to be sworn" shall be written thereafter."

[119] It appears that this subsection has been impliedly repealed by Act No. 22 of 2007 since section 71 as amended, which requires the presiding officer to request the National ID card before issuing a ballot

paper, now provides in subsection (4) that save as is by this section authorized, **no other enquiry shall be permitted** as to the right of any person to vote.

[120] Accordingly, as the law is, there is no legal duty to require a voter to take an oath at any time. This allegation cannot ground even a complaint of violation of the Elections Act, much less an illegal practice that could have affected the result of the election. In addition, the paragraph is not properly pleaded as it lacks particulars identified by Mr. Astaphan SC. Consequently, paragraph 28(p) is struck out.

Failure to record objections on polling day

[121] Paragraph 28(q) of the petition charges the presiding officers upon the instructions of the 2nd respondent of carrying out an illegal practice of not “universally or in some instances not at all” recording in the “official documents in which all objections were required by law to be recorded” the objections to voters made by the petitioner’s inside agents.

[122] Learned Counsel Mr. Byron concedes that there is presently no provision in law to require an official to take an objection. In addition, failure to record an objection is not defined as an illegal offence under section 99 of the Act. That said, paragraph 28(p) ought to be struck out. In any event, section 72(2)(d) only requires the presiding officer to record any objection on behalf of any candidate in the special circumstance where a person applies for a ballot paper after another person has voted as that person. Section 76(5) only requires the returning officer to keep a record on the special form printed in the poll book of every objection, made by any candidate or his or her counting agent or any voter present, to any ballot paper found in a ballot box, and to decide every question arising out of the objection. These appear to be the only two circumstances in which the presiding officer is required to keep a record. Neither of these scenarios has been clearly alleged by the petitioner’s pleading of “the non-recording of numerous objections to voters.” Paragraph 28(p) is hereby struck out for disclosing no cause of action.

[123] Paragraph 28(r) is a submission, conclusion or opinion; not an allegation of fact or a material particular. It discloses no breach of the Elections Act or the Constitution. Hence, it discloses no reasonable cause of action and paragraph 28(r) is hereby struck out.

[124] Paragraph 28(s) states that “the *foregoing illegal practices* so extensively prevailed, on the instructions of the 2nd named respondent as to have amounted to general corruption of the election, and to be reasonably supposed to have affected the result of the said election.” The foregoing paragraphs are struck out so paragraph 28(s) does not disclose a cause of action. In view of that, it is accordingly struck out.

Failure to implement adequate arrangements to hear and determine objections: Abuse of Process

[125] Paragraphs 28 (t) - (dd) charge that, under the supervision of the 2nd - 5th named respondents, there was an infringement of the principle that people should vote where they reside because adequate arrangements were never implemented by officials to hear and determine objections that were made “in a lawful and timely manner as prescribed by the relevant regulations...to the illegal registration of voters in Constituency #4 who do not reside in the said constituency.” The petitioner also alleges that the 3rd and 5th respondents stated that the objections must be heard but this commitment was not honoured in a timely manner. He says that this is evidence of the extensive illegal practice which could reasonably be supposed to have affected the result of the election. The result being, in paragraph 28 (dd), the names of 39 voters whom the petitioner claims to have objected to, in a timely fashion, all of whom voted in the election in a number greater than the number by which the petitioner lost the election.

[126] Mr. Astaphan SC submits, that the allegation amounts to an abuse of process because the affidavit evidence submitted by the 2nd and 5th respondents demonstrates first, that the 5th respondent’s statement was that she “indicated that those objections should clearly be heard and advised one Mr. Hamilton [the leader of the party] that if they were not heard, the People’s Action Movement should advise the Electoral Commission in writing so those concerns could properly be dealt with”. First, Mr. Astaphan SC submits that no letter was ever sent to the Commission, and the petitioner has materially misrepresented the statement of the 5th respondent. Secondly, hearings to determine those objections were held in June 2009 and the petitioner and his agent[s] participated in those hearings. Thus, the allegation that “no adequate arrangements were made” is a sham and incapable of proof.¹²⁹ Mr.

¹²⁹ **Jarvis v Hampshire CC** [2000] 2 FCR 310 Vol. 3 Tab 2.

Astaphan SC also submits that the plea is bad for want of particulars and that the petitioner cannot complain about objections to the list after polling day.

[127] Mr. Byron submits that the 5th respondent has not made any assertion in her affidavit that she knows that the objections were in fact heard or had been heard months before she ever received the complaint. He also says that the evidence submitted by the respondents is not accepted by the petitioner nor is it properly before the court as neither of the affiants claimed to have made the so-called records, no originals have been admitted, and the copies are unsigned. In sum, he submits that the respondents raise a number of factual disputes which can only be settled at trial.

[128] In my opinion, neither the petitioner nor the respondents have adduced sufficient evidence for the court to determine whether or not there was compliance with the requisite statutory regime established by the Elections Act and its Regulations or whether the allegations are incapable of proof. However, one of the issues arising is whether proper notice of hearings was given in accordance with Regulation 22. Despite the provision of affidavit evidence by the 2nd and 5th respondents, Mr. Astaphan's exhortations on insufficient particulars infect the 2nd respondent's own pleadings on this point. He has given one or two examples, but he fails to pellucidly identify the names of **all** the persons allegedly objected to by the petitioner, the dates of the hearings held, the date and notification of the hearing to the petitioner and the person objected to, whether the petitioner and/or his agent were in attendance, whether the person objected to was in attendance, the name of the registration officer dealing with the matter, whether the claim was allowed or refused and then exhibited the notes. He has submitted copies of notes and leaves the court to unearth the evidence; at the same time, he implores the court to strike the petition for lack of particulars. Mr. Astaphan SC has asked the court to conclude on the basis of a few examples where the names are the same that these are the same people that the petitioner says he objected to and if we can show that some of the objections were heard then all of them were heard. This I cannot do. There is conflicting factual evidence which a court cannot determine at this preliminary stage. Thus, the respondents have failed to show conclusively that the allegation is a deception on the court. For that reason, paragraphs 28 (t) - (dd) will not be struck out for abuse of process. Unfortunately, this is not the end of the matter.

[129] Next, the failure to hear and determine objections in accordance with the regulations amounts to a violation of the Elections Act.

- [130] Section 43E of the Elections Act¹³⁰ provides that the Chief Registration Officer shall cause a register of voters to be prepared and published for each constituency by the 31st of January each year. The law also makes provision, in section 43J, for the preparation and publication of a monthly list by the appointed day each month to reflect any changes to the information on the register of voters. Section 43H provides that claims and objections to the names of persons included in the register of voters and the monthly lists for a constituency **shall be determined in accordance with the regulations** by the appropriate registration officer and when a claim has been allowed the registration officer shall transmit a record of his or her determination to the Chief Registration Officer. The register of voters prepared under this Elections Act and the Regulations shall be conclusive for the purposes of taking a poll on the question whether or not any person listed was resident at that address on the date of publication.
- [131] Regulations 13, 15, 22, 24 and 33 provide a comprehensive scheme for the hearing and determination of objections to names which have been included in the register. **Regulation 33** is particularly significant. It provides for the hearing of Claims and Objections. Any person who objects to the inclusion of any name of any person shall appear in person before the Registration Officer to show cause why the name of the person whose inclusion has been objected to should be deleted. The Registration Officer **shall disallow** the inclusion of any person in the list whose inclusion has been objected to if the person has not personally appeared before the Registration Officer for the consideration of the objection. Where the Registration Officer is satisfied from the evidence available to him that any person is entitled to remain registered s/he may determine the matter accordingly. Agents of political parties or the candidate ... shall be entitled to attend any hearing and to make representation.
- [132] The finality of the Voters List is predicated upon the operation of this comprehensive statutory regime.
- [133] In **Radix v Gairy**,¹³¹ our Court of Appeal, held that the appropriate time to object to the Electors List is sometime prior to its proclamation as to those entitled to vote at the next election or by-election as the case may be. Davis CJ stated as page 556 H-I:

“The validity of the list is a separate question and surely the time to raise the issue of the electors list is sometime before it is proclaimed by the Governor-General. When it is so proclaimed, it becomes conclusive as to the persons who are entitled to vote at the next

¹³⁰ Act No. 16 of 1983.

¹³¹ (1978) 25 WIR 553.

election or by-election.... I cannot accept that the legal position is that a candidate who enters the contest on an existing list of electors may be allowed to accept the list as a valid list if he wins but would be allowed to argue the list is invalid when he loses.”

[134] This was further elucidated by Rawlins J in **Frampton**. At para. [40] the learned judge said:

“Where there is a legislative regime, which provides a detailed procedure for registration and for the hearing of claims and objections in relation to the electoral Register, the procedures set out in the legislation must mean something. Candidates and political parties are expected to be ever vigilant. By acting in accordance with the procedures which the regime provides, the would assist elections officials to provide an accurate Register of the persons who are entitled to vote according to law.”¹³²

[135] Rawlins J further held that **Radix v Gairy**¹³³ is qualified by **Hanchell v Skippings**.¹³⁴ He agreed with Ground CJ that the issue of whether persons who are listed on the register are qualified to vote, could attract judicial review on objections which are made before the election. However, the issue is not amenable to challenge by way of election petition after elections are held.

[136] The petitioner was clearly cognizant that these matters need to be addressed beforehand. He says at paragraph 28(z) that during the course of 2009, while the objections to the registration of the following 39 persons were not being heard, similar objections which had been made by Eugene Hamilton, the People’s Action Movement candidate in Constituency #8 had to be heard by the resident judge. Subsequently, these names of 14 persons objected to were ordered to be expunged from the register. The petitioner has not given a reason for failing to take similar legal action.

[137] However, Mr. Astaphan correctly submits that if any registration officers had failed or had refused to act, the petitioner ought to have taken proceedings earlier or appealed, or to have joined the registration officers allegedly responsible as parties in order to give them an opportunity to respond and defend themselves. I agree entirely with this submission. The registration officer for Constituency #4 was directly responsible for implementing the necessary arrangements.

¹³² [above fn 5].

¹³³ [above fn 132].

¹³⁴ **Hanchell v Skippings, Williams and Bowen**, Action CI No. 25/03 (Turks and Caicos Islands).

[138] For all of these reasons, paragraphs 28(t) to (dd) are hereby struck out. In fact, on hindsight, I should have struck out these paragraphs earlier under “failure to join necessary parties” because the conduct or misconduct of the registration officer without more, cannot be imputed to the 2nd respondent.

“Procuring persons to vote”

[139] Paragraph 24 of the petition is headed ‘Illegal Practice - Inducing or Procuring Prohibited Voters to Vote’ and charges:

“That the 1st named Respondent was by his agent, Mellicia Andreacia Phillip, his wife, guilty of the illegal practice of inducing or procuring to vote at the said election several persons to vote, knowing that such other persons were prohibited by the provisions of section 103 of the National Assembly Elections Act, Cap 162 of the laws of St. Christopher and Nevis from voting at such an election.”

[140] In the particulars, it charges among other things, that the said Mellicia Phillip was observed using her motor vehicle to transport persons not entitled to vote in Constituency #4 to the polling station.

[141] Paragraph 27 of the petition is headed ‘Illegal Practice - Inducing or Procuring Prohibited Persons to Vote’ and charges:

“That the 1st named Respondent by himself or his agent Dr. Denzil Douglas, the leader of the St. Kitts-Nevis Labour Party, and/or by other prominent members of the St. Kitts Nevis Labour Party, induced or procured to vote at the said elections the following persons, knowing that such other persons were prohibited by the National Assembly Elections Act, Cap 162 or by the Constitution of St. Christopher and Nevis from voting at the said election in constituency #4.”

[142] Both respondents contend that these allegations should be struck out because the alleged illegal practice of inducing or procuring a person to vote is not a ground to avoid an election since section 99 of the Act provides a specific penalty for the offence.¹³⁵ Further, that the plea is misconceived because the petitioner has misinterpreted the prohibition in section 103 of the Elections Act. Mr. Astaphan SC asserts that **Stowe v Jolliffe**¹³⁶ decided that the prohibitions referred to in this proviso do not include disqualification on the basis of residence. Accordingly, the proviso to the section 103 does not bear the meaning ascribed to it by the petitioner. Consequently, no offence capable of avoiding an election has

¹³⁵ **Tannis v Robertson** (1973) 20 WIR 560 [Vol 3 Tab 10 of the 2nd Respondent’s Authorities].

¹³⁶ [1874] 9 LR CPD 734; See also Transcript 21st July Mr. Astaphan at page 106.

occurred. Persons whose names are on the Voters List are 'qualified' to vote, and on polling day, their the mere fact that their names appear on the Voters List, it is conclusive that they are entitled to vote in a particular constituency. Finally, the respondents submit that the petitioner failed to plead particulars of agency on the part of the wife or the leader of the Party and failed to plead the 1st respondent's knowledge, consent, or ratification of the alleged acts.¹³⁷

[143] Mr. Byron's argument¹³⁸ is that section 103 of the Elections Act creates a control over voter fraud in that the Constitution is a law in force in this jurisdiction since section 29 says that no other person shall vote but someone who is registered possessing the qualifications of residence.¹³⁹ Mr. Byron's then argues that **Stowe v Jolliffe** may be distinguished upon the basis that the doctrine of Constitutional Supremacy is applicable in this jurisdiction as opposed to the doctrine of Parliamentary Sovereignty which was applicable in England at the time the decision was made.¹⁴⁰

[144] It would seem that a decision as to the proper interpretation of 'prohibited persons' under Constitutional as opposed to Parliamentary Supremacy may admit an important legal point within this jurisdiction but it is not a proper question to be decided by this court upon an election petition. The law, as it presently stands, is clear. An election petition is concerned with an election offence or of some other election irregularity *during the conduct of the election* affecting the results. The appropriate time to object to the Voters List would have been prior to its proclamation which renders it conclusive as to those entitled to vote at the next election or by-election as the case may be: **Radix v Gairy**.¹⁴¹ In any event, the petitioner failed to seek a declaration on the interpretation of 'prohibited persons' from this court.

[145] In addition, all the names listed in the particulars under paragraph 27 are listed in paragraph 28(dd) which was struck out. Thus, it is clear that the petitioner knew of these objectionable persons beforehand, should have taken legal action but failed to do so.

¹³⁷ See Applicants submissions at: 1st Respondent's Application to Strike para. 2.5 and 2.9; 2nd Respondent's Application to Strike para. 2.5; 2nd Respondent's Written submissions at 61 - 64, 70 and 72; 2nd Respondent's Speaking Note at para. 21 - 29 and 58 - 60; Transcript 21st July Dr. Browne at pages 33 - 39; Mr. Astaphan at pages 101 to 117;

¹³⁸ See Transcript 22nd July Mr. Byron at pages 99 - 102; Petitioner's Written Submissions After Hearing at para. 176 - 181.

¹³⁹ See Transcript 22nd July 2010 Mr. Byron at pages 99 - 102.

¹⁴⁰ See Transcript 22nd July 2010 Mr. Byron at pages 71 - 76.

¹⁴¹ [above fn 132].

[146] Accordingly, paragraphs 24 and 27 are hereby struck out. Any illegal registration policy should have been challenged before the election. Thus, paragraph 23(b) and the sum total of names of persons disqualified on the basis of residence in paragraph 28(ee) are also struck out.

Failure to object to votes at the count and failure to plead scrutiny

[147] The respondents have also applied generally to strike out the entire petition on the ground that the petitioner did not object to votes at the count and has failed to ask for a scrutiny.¹⁴²

[148] Given the fact that the under-mentioned paragraphs have all been struck out, a resolution of this issue will not change the outcome that the petition will be struck out in its entirety. However, I note, that the court may have had a difficulty in simply declaring the election void even if it could have been shown that the votes of all 59 persons challenged were invalid because of residential disqualification. **Ribeiro v Simmonds** is authority for saying that “it is not the intention of the law that an election should be won or lost on technicalities in court, but rather on the wish of the people expressed through the ballot box.”¹⁴³ In the event that no wrong-doing or illegality is proved against a winning candidate or his agents, it could be unfair for the court to automatically avoid a result. Despite the occurrence of irregularities, a winning candidate may still possess the majority of lawful votes cast. Rules and procedures for this type of scrutiny do exist in other jurisdictions.¹⁴⁴

Conclusions

[149] Accordingly, the following paragraphs are struck out:

- (1) Paragraphs 16, 22, and 23(c) for failing to join the AG in view of the allegations of Government misconduct;
- (2) Paragraphs 25 and 26 for failing to plead material particulars thereby failing to disclose a reasonable cause of action;

¹⁴² 1st Respondent’s Application to Strike, para. 1.4, 2.14 and 2.15; 2nd Respondent’s Application to Strike, para. 1.3, 2.9 and 2.10.

¹⁴³ Vol. 2 OECS Law Reports, 179.

¹⁴⁴ **Gibson v Woodside** Commonwealth of the Bahamas 2007/746 in the Election Court, Judgment 21st January 2008 (unreported) - the Pinewood Election Case; **Bridgewater v Laing and Thompson (Returning Officer)** Commonwealth of the Bahamas 2007/746 in the Election Court, Judgment 11th December 2008 (unreported) - the Marco City Election Case.

- (3) Paragraphs 28 (a) - (f) for being irrelevant;
- (4) Paragraphs 28(g) - (j) on the alleged false statements; 28 (l) - (n) on the alleged illegal instructions; 28 (p) on the alleged failure to require an oath; 28 (q) on the alleged failure to record objections; and consequently paragraphs 28 (r) and (s) for failing to disclose an "illegal practice" under the Elections Act or an election irregularity or offence which could have affected the results, thereby failing to disclose a reasonable cause of action.
- (5) Paragraph 28(o) on the alleged failure to allow access to national ID cards, for failure to disclose an election irregularity capable of affecting the results, thereby failing to disclose a reasonable cause of action.
- (6) Paragraphs 24 and 27 on procuring prohibited persons to vote; paragraphs 28 (t) - (dd) on the alleged failure to implement adequate arrangements to hear and determine objections; paragraph 28 (ee) the alleged total number of persons disqualified on the basis of residence who voted in Constituency #4, likewise paragraph 23(b) on the alleged illegal registration policy are struck for failure to disclose an illegal practice, offence or irregularity capable of avoiding an election. These matters should have been challenged before the election. They disclose no reasonable cause of action on an election petition.

[150] As these paragraphs have been struck out, no operative paragraph remains to disclose a reasonable cause of action. For all of these reasons, I will strike out the petition in its entirety.

Costs

[151] The respondents have asked for costs. However, in matters of this ilk, the court should be hesitant to award costs against the suppliant citizen seeking the sanctuary of the courts. As a result, I do not think that it is fair and reasonable to award costs against the petitioner.

[152] My order will be that each party bears his own costs.

Postscript

[153] This case has highlighted the desperate need for Elections Rules in St. Christopher and Nevis. This, I believe, will alleviate the many insurmountable hurdles which currently face citizens petitioning the court to exercise this “special and peculiar” jurisdiction. Pursuant to section 83(2) of the Elections Act, Rules of Court for Election Petitions may be made by the Chief Justice. The time for the making of such rules is long overdue.

[154] Last but not least, I am grateful to all Counsel for their immeasurable assistance and their patience in awaiting this judgment.

Indra Hariprashad-Charles
Resident High Court Judge
British Virgin Islands