THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMONICA

DOMINICA HIGH COURT CIVIL CLAIM NO. 6 OF 2010

IN THE MATTER OF THE HOUSE OF ASSEMBLY (ELECTION) ACT CAP2:01

AND

IN THE MATTER OF A PARLIMENTARY ELECTION FOR THE CONSTITUENCY OF LA PLAINE HELD ON THE 18TH DAY OF DECEMBER 2009

BETWEEN:

RONALD A.K.A. "RON" GREEN

Petitioner

V

PETTER SAINT JEAN

MERINA WILLIAMS

MARCELLA AUGUSTINE

EARL BLACKMORE

GERALD BURTON (Chairman of the Electoral Commission)

ALICK LAWRENCE (Member of the Electoral Commission)

KONDWANI WILLIAMS (Member of the Electoral Commission)

DON CHRISTOPHER (Member of the Electoral Commission)

DOMINICA BROADCASTING CORPORATION

ATTORNEY GENERAL OF DOMINICA

Respondents

AND

DOMINICA HIGH COURT CIVIL CLAIM NO. 7 OF 2010

IN THE MATTER OF THE HOUSE OF ASSEMBLY ELECTION FOR THE CONSTITUENCY OF VIEILLE CASE HELD ON THE 18TH DAY OF DECEMBER 2009.

AND

IN THE MATTER OF THE COMMONWEALTH OF DOMINICA CONSTITUTION ORDER (1978) SECTIONS 31, 32(1) (a), 40 AND 103.

AND

IN THE MATTER OF THE HOUSE OF ASSEMBLY (ELECTION) ACT CHAPTER 2.01.

BETWEEN

MAYNARD JOSEPH

AND

ROOSEVELT SKERRIT

THERESA ROYER (Returning officer for the constituency of Vieille Case)

GERALD BURTON (Chairman of the Electoral Commission)

ALICK LAWRENCE (Member of the Electoral Commission)

KONDWANI WILLIAMS (Member of the Electoral Commission)

DON CHRISTOPHER (Member of the Electoral Commission)

BERNIE DIDIER (Member of the Electoral Commission)

DOMINICA BROADCASTING CORPORATION

ATTORNEY GENERAL OF DOMINICA

Respondents

Appearances: Mr. Douglas Mendes S.C., Mr. Stuart Young and Mr. Geoffrey Letang for the Petitioners.

Mr. Anthony Astaphan S.C. and Mrs. Heather Felix-Evans for first Respondents.

2011: September 5, 6, 7
2012: January 10

RULING

[1] THOM, J: On September 7, 2011, I made an order setting aside subpoenas issued against Mr. Petter Saint Jean and Mr. Roosevelt Skerrit and struck out part of the witness statement of Mr. Ron Green. I indicated then that the reasons for my decision would be delivered at the same time as the judgment in the substantive matter. I do so now.

[2] On January 8, 2010, the Petitioners filed Election Petitions against the Respondents.

[3] After preliminary matters were determined by the Court the Election Petitions were scheduled to be heard on September 5, 2011. An Order was made for witness statements to be filed on or before August 12, 2011.

[4] On 12th August 2011, both the Petitioners and the Respondents filed witness statements.

[5] On 22nd August 2011, on the application of the Petitioners the Deputy Registrar of the High Court issued subpoena duces tecum and subpoena ad testificandum against the Respondents.

[6] On August 31, 2011 the Petitioners filed 13 additional witness statements.

[7] On September 2, 2011, the respondents made application to the Court for the following reliefs:

(a) That the subpoenas issued to the Respondents be set aside.

(b) The 13 witness statements filed on the 31st August 2011 not be admitted into evidence.

(c) All hearsay evidence be struck out.

(d) All material facts or particulars which have not been pleaded or perfected in the Petitions within 21 days be deemed inadmissible and struck out.

[8] The grounds on which the applications were made can be summarised as follows:

A. <u>SUBPOENAS</u>

(i) The Registrar or Deputy Registrar of the High Court had no jurisdiction or authority under the House of Assembly (Election) Act to issue the subpoenas.

(ii) The subpoenas are oppressive and an abuse of the process of the Court for the following reasons:

(a) Delay

(b) They seek to discover documents, disclosure of which has already been refused.

(c) The Petitioners seek to coerce evidence in relation to matters which have not been pleaded in the Petitions.

(d) No factual basis for the subpoena

(e) Self-incrimination.

B. WITNESS STATEMENTS

(a) No provision was made in the order for the filing of additional witness statements.

(b) They contain hearsay evidence which is inadmissible.

(c) They contain material facts and particulars which were not pleaded in the petitions.

JURISDICTION

[9] Learned Senior Counsel Mr. Astaphan submitted that the Registrar or Deputy Registrar had no jurisdiction to issue the subpoenas. Learned Senior Counsel referred the Court to Section 67 of the House of Assembly (Election) Act and submitted that a Respondent was not a witness within the meaning of Section 67. He is a party to the proceedings. Sections 65 and 68 make reference to members of the House of Assembly while Section 67 makes no mention to members, therefore Parliament did not intend for the Respondent to be included in the term witness in Section 67.

[10] Learned Senior Counsel also referred the Court to the text Powers Duties and Liabilities of an Election Agent and of a Returning Officer at a Parliamentary Election in England and Wales p 711 where the Learned Author stated:

"Witnesses are subpoenaed and summoned in the same

> manner as at nisi prius (31 & 32 Vict. C. 125, S.31) and are subject to the same penalties for perjury. The Judges at the trial may by order, compel the attendance of a witness, under penalty of a contempt of Court, and may themselves examine such witnesses who may afterwards be cross-examined by the Petitioner and Respondent. "

[11] Learned Senior Counsel submitted that the above passage shows that witnesses do not include the Respondents to an election petition since a Respondent would have to cross-examine himself.

[12] Learned Senior Counsel for the Petitioners in response submitted that in determining whether the Respondent to an Election Petition is included in the term witness in Section 67, the Court must consider what witness can be subpoenaed in a civil action. Learned Senior Counsel referred the Court to Section 4 of the Evidence Act which provides that parties to civil proceedings are both competent and compellable witnesses. Learned Senior Counsel submitted that in a civil action a party to the proceedings could be subpoenaed to produce documents and also to testify - see Adelaide Steamship Company case; and Mcllwain v Ramsey Food Packaging [2005] KCA p. 123. further the passage in the text Powers Duties and Liabilities of an Election Agent and of a Returning Officer at a Parliamentary Election in England and Wales referred to by the Respondents does not in any way exclude a Respondent as a witness who can be subpoenaed. Learned Senior Counsel also referred the Court to Phipson on Evidence 13th ed. p. 677, Paragraph 30:02 where under the rubric "Subpoena ad Testificamdum" it is stated:

> "The process may be used for the purposes of hearings before an arbitration or official referee; as well as to the trial of election petitions."

[13] Learned Senior Counsel also referred the Court to Halsbury Laws of England 4th ed, Vol 17paragraph 244 and submitted that in civil proceedings before the High Court a writ of subpoena is issued by the Court office. Therefore the Registrar or Deputy Registrar can issue the subpoena - see Soul v Inland Revenue Commissioner [1963] 1 W.L.R. 112.

FINDINGS

[14] Section 67 on which the Petitioners rely gives the Election Court the same power, jurisdiction and authority as in a trial of a civil action in the High Court. A subpoena may be issued for witnesses in the same manner as in a trial of a civil action in the High Court. Who may issue a subpoena for a witness in an election petition is the same as in a trial of a civil action. In Halsbury Laws of England 4th ed Vol 17 paragraph 244 the Learned Author stated:

> "The attendance of witnesses in proceedings in the High court is enforced by the writ of subpoena ad testificandum issuing out of the Central Office, the Crown Office and Associates Department, a departmental registry or a district registry. Issue of a writ of subpoena takes place upon its being sealed by an Officer of the office out of which it is issued."

[15] This issue was also considered in Soul v Inland Revenue Commissioner [1963] 1 WLR where under Section 51 of the Income Tax Act 1952, the Commissioner had power to summon a person to give evidence but not to produce documents, so a subpoena duces tecum was issued out of the Crown Office. Lord Denning in holding that the subpoena was properly issued stated at page 113:

> "When the powers of an inferior tribunal as to obtaining evidence are incomplete, the Queen's Bench has always from

> time immemorial had power to grant its aid to those tribunals by itself issuing subpoenas. It seems to me that that course was perfectly justifiable in the Crown Office in this case. It never has been the practice as far as I know, for actual leave to be obtained from a Master or a Judge for the issue of those subpoenas. They are issued as of course out of the Crown Office. Nor is it the practice in a subpoena duces tecum."

[16] I agree with Learned Senior Counsel for the Petitioners that the Registrar/Deputy Registrar has jurisdiction to issue a subpoena. The applicable law is the law as stated in Halsbury Laws of England and the case of Soul v Inland Revenue Commissioner. It has always been the practice for subpoena to be issued by the Registrar or Deputy Registrar of the Court. In some instances subpoenas have been issued by the Court. However the real question is whether the Registrar or Deputy registrar can issue a subpoena ad testificandum and or a subpoena duces tecum to a party to an election petition. If yes whether the subpoenas should have been issued.

[17] Whether the Registrar or Deputy registrar could issue a subpoena to a party to an election petition would depend on whether a party to an election petition falls within the meaning of witness in Section 67. I am of the view that witness in Section 67 is to be given its ordinary meaning. Section 67 does not provide that the Parties to an Election Petition are witnesses at the trial of the Petition. Rather Section 67 gives authority and set out the procedure for the Election Court to subpoena witnesses. They are to be subpoenaed in the same manner as in a trial of a civil action. The passage in Powers Duties and Liabilities states that witnesses subpoenaed may be cross-examined by the Petitioner and Respondent. This clearly deals with persons other than the Parties to the Petition. Mr. Astaphan S.C. quite rightly in my opinion posited

the question whether the Respondent would be able to cross-examine himself. I have not been referred to any case where a Respondent/Defendant was subpoenaed to testify against himself to prove the Claimant's case against him and more specifically a Respondent to an Election Petition. In the case of Halford v Brooks there were two defendants and subpoena was issued for the Second Defendant to testify in relation to matters against the First Defendant. An application to set aside the subpoena by the Second Defendant was refused, it was held not to be oppressive since the second defendant had already given evidence against the first defendant at his trial for murder, and had also made statements to this effect out of Court, it was therefore not oppressive to require him to give evidence on the same matter in the civil case. The present cases are different from the situation in Halford v Brooks here the Petitioners are seeking to have the Respondents testify against themselves to prove the Claimant's case against them. In my opinion there is no rule of law or practice which permits this. As stated earlier I was not referred to any case which stated such principle. I am of the view that witnesses in Section 67 does not include a Respondent to an Election Petition.

ABUSE OF PROCESS

DELAY

[18] Mr. Astaphan S.C. submitted that the delay in issuing the subpoena amounts to an abuse of process - see Diddams Case. Mr. Mendes S.C. in response submitted that Diddams Case is distinguishable from the present case. I do not find that the delay in seeking the subpoenas amount to an abuse of process. The application for subpoenas to be issued was made approximately two weeks prior to the trial, this is unlike the situation in the case of Diddams

referred to by Learned Counsel Mr. Astaphan where the subpoena was sought during the testimony of the witness.

[20] Mr. Astaphan S.C. submitted that the subpoenas were an abuse of the process of the Court in that the issue of disclosure or discovery under the House of Assembly (Election) Act, CPR 2000 and the inherent jurisdiction of the Court was already determined by the Court in its ruling of June 7, 2011 on an application for discovery by the Petitioners. The Petitioners now seek to invoke another mode or procedure to obtain disclosure or discovery of the very documents which were earlier denied by the Election Court. Mr. Astaphan S.C. referred the Court to the cases of Steele v Savory [1891] 8 TLR 94; Diddams v Commonwealth Bank of Australia; Mcllwain v Ramsey Food Packaging FCA 123; and Aziz v Volvo [2006] NSW SC 283.

[21] Mr. Astaphan S.C. further submitted that there is no factual or evidential basis for the subpoenas. The subpoenas must relate to the pleaded issues and not be speculative or a fishing expedition.

[22] Mr. Mendes S.C. in response submitted that the subpoenas are not an abuse of the process of the Court since the Petitioners are simply seeking to invoke Section 67 of the Act. The fact that the Court refused the Petitioners application for disclosure is not a bar to the issue of a subpoena. Mr. Mendes S.C. referred the Court to the Borough of Maidstone Case 1906. Mr. Mendes S.C. also submitted that the case of Diddams v Commonwealth Bank of Australia and Steele v Savory are distinguishable in that the discovery process was available to the parties and they chose not to use it but to use the process of subpoena.

[23] Mr. Mendes S.C. further submitted that the subpoena in relation to Mr. Skerrit is asking no more than what is pleaded. However Mr. Mendes S.C. conceded that Mr. Skerrit did not say in the public announcement on December 2, 2009 that he used a foreign passport or that he has one in his possession. In relation to Mr. Saint Jean, Mr. Mendes S.C. submitted that paragraph 9 of the Petition states that Mr. Saint Jean was the holder of a French Passport issued to him in the year 2000-2002 or thereabouts.

FINDINGS

[24] It is not disputed that the documents sought in the subpoenas are the very documents which the Petitioners sought to have disclosed in their application dated 3rd January 2011 and which the Court refused in its ruling given on June 7, 2011. The Petitioners now seek to obtain the very documents by subpoena under Section 67.

[25] The Borough of Maidstone case referred to by Mr. Mendes S.C. is not applicable to the present case since in the Borough of Maidstone case the subpoena was issued to a witness not to the Respondent to the Election Petition. I agree with Mr. Mendes S.C. that in the case of Diddams the Court set aside the subpoena on the ground that the discovery procedure was available to the applicants and they did not make use of it but rather sought to have documents disclosed by subpoena. This was found to be an abuse of process. In Steele v Savory the subpoena was withdrawn when it was pointed out that most of the documents required to be produced by the subpoena were documents discovery of which had been refused. Justice

Remer in ordering the Plaintiffs to pay costs stated that the subpoena was oppressive and an abuse of the process of the Court.

[26] In my ruling on June 7, 2011, I found that the House of Assembly (Election) Act did not include discovery and indeed the interlocutory process in the determination of Election Petitions. The subpoenas in effect compel the Respondents to make disclosure of documents under Section 67 which procedure the Court has already ruled that the Parliament had not included in the determination of Election Petitions. I have found earlier that the Respondents to the Petition cannot be called as witnesses for the Petitioners against themselves, therefore no subpoena can be issued to them pursuant to Section 67 which only provides for subpoenas to be issued to witnesses.

[27] The subpoena against both Respondents is worded in the same terms and reads as follows:

> "We command you to attend at the sitting of the High Court of Justice, Bayfront Roseau in the Commonwealth of Dominica on behalf of the Second petitioner at the trial of this action on Monday the 5th day of September 2011 in Courtroom at 9 o' clock in the forenoon, to give evidence of and to produce any French passports, whether current or cancelled, which are now or have been in your control, including such passports which are or were in your physical possession or which you have or have had the right to inspect or take copies of or which you had or have had a right to possession of."

[28] The process of subpoena is used to compel a person to produce documents which are known to be or have been in the possession of the person. When an Election Petition is filed and allegations are made the Petitioner cannot seek to rely on the process of subpoena to discover whether he has a case.

When the context of the subpoenas in these cases are examined it can be seen that they are wide ranging subpoenas requiring the Respondents to produce passports from birth to present. Certainly passports which may have been issued while the Respondents were children are not relevant to this case. A party is not permitted to use the process of subpoena as a fishing expedition. The Petitioners are in a similar position as the applicants in Diddams case who did not know whether the documents they were seeking were related in any way to the matters in dispute this was one of the reasons for the Court not granting the subpoena.

SELF INCRIMINATION

[29] Mr. Astaphan S.C. submitted that the subpoenas may expose the Respondents to prosecution under Section 48 of the Constitution. Election Petitions are subject to the constitutional and common law protections and privileges afforded to a party to an action. Those protections and privileges include the right not to give evidence or answer any questions. The election legislation also include aspects of the Criminal Law, specifically Part V of the House of Assembly (Election) Act and disclosure or admissions and adverse findings made during election petition proceedings may expose a party to an election petition to the risk of prosecution. Further a party's privilege is not limited to or removed simply because he may not be prosecuted for a specific offence under the House of Assembly (Election) Act. The privileges extend to the risk of prosecution for any offence which exposes them to the penalty of fine or imprisonment in the event adverse findings are made against them by the Election Court. The protections and privileges must prevail unless restricted or modified by statute and in the present cases there are no applicable statutory restrictions on modifications. Learned Senior Counsel

referred the Court to the case of Rank Film Distributors v Video Information Centre [1981] 2 WLR p. 668 at p. 674.

[30] Mr. Mendes S.C. submitted in response that the privilege against self-incrimination is not a ground for setting aside a subpoena. The proper procedure is for the person subpoenaed to take the oath, if incriminating questions are put to the person then he can claim privilege. Learned Senior Counsel referred the Court to the case of National Association of Operative Plasterers and Others v Smithies and Halsbury Laws of England 4th ed. para 241 which reads as follows:

> "When a witness can refuse to answer. A person cannot refuse to be called as a witness on the ground that the only answer he can give will incriminate him; he can only refuse to answer after he has been sworn, or has affirmed, and must then object to answering a particular question. The mere statement by a witness that he believes the answer will incriminate him does not excuse him from answering; before he may be excused the Court must be satisfied that there is a reasonable ground to apprehend danger from his being compelled to answer. The privilege protects both future and past answers and where a witness objects to answering a question, but is improperly compelled to answer, the answer cannot usually be admitted in evidence against him in any subsequent proceedings."

[31] Mr. Mendes S.C. further submitted that the privilege of self-incrimination is not applicable in relation to petty offences. Under Section 48 (1) of the constitution the maximum possible penalty the Respondents could be exposed to is the sum of $100 per day. Learned Senior Counsel referred the Court to the Rank Film Distributors case. Learned Senior Counsel also referred the Court to the case of R v Kearns and submitted that the privilege

against self incrimination is not subject to documents that have an independent existence.

FINDINGS

[32] It is settled law that a person has a right to silence. This right is protected as a fundamental right in the Constitution of Dominica. A person cannot be compelled to produce evidence which may have the potential to incriminate him.

[33] In Halsbury Laws Vol 17 4th ed. at paragraph 240 the Learned Author stated:

> "Incrimination of witnesses; in any legal proceedings other than criminal proceedings, a person may refuse to answer any questions or produce any document or thing if to do so would tend to expose him in proceedings for an offence or for the recovery of a penalty. The privilege applies only as regards criminal offences under the law of any part of the United Kingdom and penalties provided by such laws and includes a similar right to refuse to answer question or produce any document or thing if to do so would expose the husband or wife of that person to proceeding for any such criminal offence or for the recovery of any such penalty."

[34] In R v Kearns referred to by Mr. Mendes S.C. it was recognised that the privilege against self incrimination is not absolute it may be qualified or restricted by statute if there is a proper justification and if the restriction is proportionate. The Court found that Section 354(3) (a) of the UK Insolvency Act 1986 was such a situation, as it was designed to deal with the social and economic problems of bankrupts.

[35] In the present case there is no legislative provision which places any restriction on the right to silence or not to incriminate one self.

[36] In the Rank Film Distributors case the House of Lords held that the defendants were entitled to rely on the privilege against self-incrimination in relation to discovery or by answering interrogatories since if they complied with orders of that nature there was in the circumstances a real and appreciable risk of criminal proceedings for conspiracy to defraud being taken against them. The House of Lords also considered Section 21 of the Copyright Act of 1956. The offences created under Section 21 were ancillary remedies for breach of Copyright. Lord Wilberforce noted that the offences under Section 21 covered almost precisely the same ground as the basis for civil liability under the Act and stated at p. 674:

> "I would be reluctant to hold that in civil proceedings for infringement based on specified acts the defendants could claim privilege against discovery on the ground that those same acts establish a possible liability for a petty offence."

And Lord Fraser stated at p.678:

> "The risk of prosecution under Section 21 of the Copyright Act 1956 is theoretically greater because acts which are infringements of copyright, including the making of unauthorised copied (Section 13(5) and knowingly importing, or selling infringing copies (Section 16(2) and (3)(a) are very likely also to be offences under Section 21(1). But the offences created by Section 21 are only ancillary remedies for breach of copyright as appears from the cross-heading to Part III of the Act, and they are treated as comparatively trivial with a maximum penalty (as amended) of £50. It would in my opinion, be unreasonable to allow the possibility of incrimination of such offences to obstruct disclosure or information which would be of much more value to the owners of the infringed copyright than any protection they obtain from Section 21.

[37] In my humble opinion the House of Lords in the Rank Film Distributors case did not set down a general principle of law as suggested by Mr. Mendes S.C. that the privilege against self incrimination is not applicable where the penalty was a small fine. The case was based on specific statutory provisions. While I agree with Mr. Mendes S.C. that the law as stated in Halsbury Law of England at para. 241 as to the time when a witness can refuse to answer is after the witness has been sworn, I found earlier that the Respondents are not witnesses within the meaning of Section 67 of the Act.

B. WITNESS STATEMENTS

[38] Learned Senior Counsel Mr. Astaphan submitted that the witness statements filed on August 12, 2011 by Ron Green, Edison James and Felix Prosper in the Election petition against Mr. Petter Saint Jean and the witness statements of Maynard Joseph, Edison James, Clement Douglas, Frederick Sylvain and Alexsia Dubois filed in the Election Petition against Mr. Roosevelt Skerrit contain evidence in relation to matters not pleaded and/or are inconsistent with the pleadings, and hearsay evidence.

[39] Learned Senior Counsel also submitted that all of the witness statements filed on August 31, 2011 are inadmissible on the basis of non-compliance with the order of the Court. Alternatively the witness statements of Xavier Jules, Conil Athanaze, Fabien Antoine, Julian Newton, and Marley Hurtault filed in the Election Petition against Mr. Petter Saint Jean and the witness statements of Reynold Jean, Vernice Bellony, Robert LeBlanc, Julien Royer, Jane Giet Bellot, Irvin seaman, Desmond Thomas and Conrad Ettienne filed in the Election Petition against Mr. Skerrit contain evidence in relation to matters not pleaded and/or are inconsistent with the pleading.

THE 13 WITNESS STATEMENT FILED IN 31ST AUGUST 2011

[40] Learned Senior Counsel for the respondents submitted that the witness statements were filed in breach of the Court Order. The Order specified that witness statements were to be filed by August 12, 2011 and the witness statements were not filed until August 31, 2011, less than one week before the trial was scheduled to commence. The witness statements contain material which ought to have been within the knowledge of the Petitioners prior to the filing of the Petitions. It amounts to an abuse of the process of the Court. Further no application was made to the Court for leave to file the witness statements.

[41] Learned Senior Counsel Mr. Mendes in response submitted that the Court ruled earlier that CPR 2000 was not applicable to Election Petitions. The Petitioners could not determine what the Respondents would say until witness statements were filed. A reply to the evidence of the Respondents is therefore permissible. Further the Court order did not provide that no further witness statements should be filed.

FINDINGS

[42] While I agree that the thirteen witness statements were filed outside of the time specified by the Court for the filing of witness statements, the Respondents have not shown that they would suffer any prejudice if the witness statements are admitted. I therefore find that the witness statements are admissible.

HEARSAY EVIDENCE

[43] Learned Senior Counsel for the first respondent submitted that paragraph 9 of the witness statement of Ron Green filed in the Petition against Mr. Petter Saint Jean and paragraphs 9, 10, and 11 of the witness statement of Maynard Joseph filed in the petition against Mr. Roosevelt Skerrit amount to hearsay evidence.

[44] Mr. Mendes S.C. conceded that the second part of Paragraph 9 of the witness statement of Mr. Ron Green is hearsay and therefore inadmissible. In relation to paragraphs 9, 10, and 11 of the witness statement of Mr. Maynard Joseph, Mr. Mendes S.C. submitted that the statements are not relied on as evidence of the truth but merely that they were published and there was no response by Mr. Skerrit.

FINDINGS

[45] I agree that other than the first sentence in paragraph 9 of Mr. Ron Green's witness statement that the remainder of the paragraph is hearsay and is inadmissible. Paragraphs 9, 10, and 11 of Mr. Maynard Joseph's witness statement refer to publications made in various newspapers in the region in relation to Mr. Skerrit's citizenship. I agree with the submission of Mr. Mendes S.C. that Mr. Maynard Joseph's reference to the articles is not evidence of the truth of the contents of the articles but only that they were published and Mr. Skerrit did not respond to them.

MATTERS NOT PLEADED AND/OR ARE INCONSISTENT WITH THE PLEADING

[46] Mr. Astaphan S.C. submitted that the Petitioners are bound by their pleaded case and the evidence cannot go beyond the pleaded case, nor can the Petitioners adduce evidence which conflicts with their pleaded case.

[47] In relation to the petition filed by Mr. Ron Green, Mr. Green pleaded that a French passport was issued to Mr. Petter Saint Jean between 2000-2002 or thereabout. He never pleaded any admission by Mr. Saint Jean that he had a French Passport; he had renewed or travelled on a French passport in any way or at all. Further Mr. Ron Green only makes mention of two meetings in his petition. Mr. Ron Green through his witnesses seeks to go beyond what was pleaded and now seek to lead evidence of admission by Mr. Saint Jean and that notice of Mr. Saint Jean's disqualification was given at a series of meetings.

[48] In relation to the petition filed by Mr. Maynard Joseph, Mr. Astaphan S.C. submitted that all that was pleaded was that Mr. Skerrit acknowledged that he was a French citizen and had a French passport in a public pronouncement on 2nd December, 2009. The 'other fact' mentioned in the petition were never pleaded or perfected within 21 days as required by the Act. Further the pleaded case is that oral notice was given on November 30, 2009 to the constituents of Vieille Case of Mr. Skerrit's disqualification and notice of disqualification was published in the Sun Newspaper dated December 16, 2009 and copies of the notices were delivered to constituents before nomination day. Mr. Joseph now seeks through his witnesses to adduce evidence of multiple meetings in the constituency where oral notice of disqualification of Mr. Skerrit was given, also he seeks to lead evidence of the

written notice being posted in the constituency after nomination day. Mr. Astaphan S.C. submitted this is contrary to the principles enunciated in Frampton v Pinard, the decision of the Court of Appeal in Quinn-Leandro v Jonas and others; and Cedric Libird v Eugene Hamilton, and John Abraham v Kelnar Darroux.

[49] Mr. Mendes S.C. in response submitted that the Petitioners were not required to plead the evidence that they intended to lead at the trial of the petition. The evidence contained in the witness statements do not seek to establish any new cause of action. Where evidence conflicts with the pleadings, the Court can take the conflict into account in assessing the reliability of the evidence. In relation to the petition of Mr. Roosevelt Skerrit, there was a typographical error in paragraph 9. It should have read polling day instead of nomination day.

FINDINGS

[50] It is settled law that a party is bound by his pleadings. A Petitioner in an Election Petition is bound by those issues raised in his Petition within the time fixed by statute for the petition to be perfected. A party to an Election Petition is not permitted by way of witness statements or oral evidence to raise any new, separate or distinct case from that pleaded in his Petition. The Court of Appeal in Quinn-Leandro v Dean Jonas No.2010/018 (Antigua and Barbuda) emphasised this principle when the Court held that the Petitioners not having pleaded 'late voting' raised the issue of late voting at the trial of the petitions by way of witness statements. The Court of Appeal decided that the Petitioners could not rely on it as a ground for invalidating the election of the Respondents.

[51] I will deal first with the Election Petition in relation to Mr. Roosevelt Skerrit.

[52] The pleaded case against Mr. Skerrit is that his nomination and election as a member of the House of Assembly was invalid, null and void and of no legal effect because he was disqualified from nomination and election. The facts upon which the Petitioners relied are set out in paragraph 7 of the Petition. They can be summarized as follows:

(a) Mr. Skerrit publicly announced on December 2, 2009 that he was a French citizen since 1972 and he is the holder of a French Passport. Mr. Skerrit further confirmed this in his letter of December 17, 2009.

(b) Prior to nomination Mr. Skerrit falsely declared that he was not under acknowledgement of allegiance, obedience or adherence to a foreign power or State.

(c) Notice of Mr. Skerrit's disqualification was given to the public and the constituents of the Vieille Case constituency on November 30, 2009 by Mr. Edison James orally, and by publication of a notice of disqualification in the Sun Newspaper dated December 16, 2009 and by distributing copies of the notice published in the newspapers in the constituency of Vieille Case.

[53] In relation to the witness statement of Mr. Maynard Joseph, in my opinion paragraph 6 does not raise any new issue. Paragraph 6 relates to the same pleaded issue that Mr. Skerrit is a French Citizen by virtue of his own act.

[54] In relation to paragraphs 15, 16, 17, 18, 19, 20 and 21, these paragraphs all deal with the publication of notices in the constituency prior to polling day. The issue that notice was given to the electors of Vieille Case both orally and in writing prior to the electors voting was an issue raised in the pleadings. It is not a new issue that is being raised.

[55] In relation to paragraph 6 of the witness statement of Edison James, Mr. James stated that between nomination day and Election Day he attended and spoke at, at least three public meetings where he stated that Mr. Skerrit was disqualified and if persons wanted to vote for him the votes would be wasted. This in no way creates a new issue, it is simply evidence that notice that Mr. Skerrit was disqualified from nomination or election, was given to the electors of the constituency of Vieille Case prior to them casting their votes.

[56] The witnesses Clement Douglas, Frederick Sylvain and Alexsia Dubois all stated that on December 13, 2009 they distributed notices of the disqualification of Mr. Skerrit in the constituency of Vieille Case. The notices were put on poles and various buildings. Again this does not raise any new issue.

[57] The witness Julien Royer, Conrad Ettiene and Reynold John all stated in their witness statement that Edison James gave oral notice of Mr. Skerrit's disqualification at public meetings in the constituency of Vielle Case and they distributed written notices of disqualification in the constituency. While the witnesses Desmond Thomas, Robert Le Blac, Irvin Seaman, Jane Giet Bellot and Vernice Bellony all stated in their witness statement that Edison James

gave oral notice of the disqualification of Mr. Skerrit at public meetings in the constituency and they saw notices posted on buildings on the constituency.

[58] There is no new issue that is raised in the above mentioned witness statements. They merely contain evidence of oral and written notice given to the constituents prior to the election. The witnesses only gave details of the distribution of the written notices, and where they were posted.

[59] In relation to the Election Petition against Mr. Petter Saint Jean, the pleaded case is set out in paragraphs 9-11 of the petition. The pleaded case against Mr. Saint Jean is that he is disqualified from nomination or election as a member of the House of Assembly because on nomination day he was by virtue of his own act a French citizen and he was the holder of a French passport issued to him between 2000-2002 or thereabouts. Further he falsely declared prior to his nomination that he was not under acknowledgement of allegiance, obedience or adherence to a foreign power or State. Also oral notice was given at public meetings on the 8th and 17th December 2009 in the constituency of LaPlaine by Mr. Edison James that Mr. Saint Jean was disqualified from being nominated or elected as a member of the House of Assembly.

[60] In relation to paragraphs 10 and 17 of Mr. Ron Green's witness statement, Mr. Green simply stated in effect that at two meetings Mr. Edison James gave oral notice of the disqualification of Mr. Saint Jean. I also find that no new issue is raised here; it is merely evidence in support of the allegation that notice was given to the electors that Mr. Saint Jean was disqualified from being nominated or elected.

[61] In relation to the witness statement of Mr. Edison James, he stated at paragraph 5 that at public meetings held in LaPlaine he gave oral notice to the constituents that Mr. Saint Jean was not eligible to be elected. This is not raising a new issue. The pleading mentioned a meeting while Mr. James said meetings.

[62] The witnesses Xavier Jules, Conil Athanaze, Fabien Antoine, Julian Newton, and Marley Hurtault all testified that Mr. James gave oral notice that Mr. Saint Jean was disqualified from being elected because he was the holder of a French Passport. The witnesses other than Mr. Julien Newton all stated that the notice was given at meetings in all three villages in the LaPlaine Constituency, whereas in the petition it is specifically stated that the oral notice was given at one meeting in two of the three villages in the constituency. In my opinion this does not raise a new issue. In paragraph 11 of the petition it is stated that the electors of the LaPlaine constituency were duly informed of Mr. Saint Jean's disqualification. Evidence that oral notice was given in all three villages does not raise a new issue.

CONCLUSION

[63] In conclusion I find that the subpoenas issued to the Respondents should be set aside. The Respondents are not witnesses within the meaning of Section 67 of the House of Assembly (Election) Act. I also find that the procedure of issuing the subpoenas was an abuse of process, they were a fishing expedition by the Petitioners to determine whether they had a case, and further the Court has already ruled that Parliament had not included the discovery procedure in the determination of Election Petitions therefore

discovery could not be obtained by way of subpoena under Section 67 of the Act.

[64] In relation to the 13 witness statements filed on August 31, 2011 I find that they are admissible. In relation to the witness statement of Mr. Ron Green I find that paragraph 9 other than the first sentence is hearsay evidence and inadmissible.

[65] In relation to the paragraphs of the witness statements of the Petitioners and their witnesses which the respondents submitted contained information that were not pleaded or are inconsistent with the pleadings, I find then to be admissible.

[66] It is ordered as follows:

(a) The subpoenas issued to Mr. Petter Saint Jean and Mr. Roosevelt Skerrit are hereby set aside.

(b) The application for the 13 witness statements to be struck out is refused.

(c) Paragraph 9 of the witness statement of Mr. Ron Green other than the first sentence is struck out as being hearsay.

(d) The application for paragraphs of the witness statements of the petitioner and their witnesses as specified by the Respondents on the ground that they contain matters not pleaded or are inconsistent with the pleadings is refused.

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Gertel Thom

HIGH COURT JUDGE