EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2012/0014

IN THE MATTER of an agreed case stated to refer questions of law to the Court of Appeal pursuant to RULE 22 OF THE HOUSE OF ASSEMBLY (ELECTION PETITION) RULES CAP 1.02 OF THE REVISED LAWS OF SAINT LUCIA 2001

AND

IN THE MATTER of ELECTION PETITIONS disputing and challenging the result of the Returning Officers for the Electoral Districts of Gros Islet and Babonneau in the General Elections of 28th November 2011 in Saint Lucia

BETWEEN:

EZECHIEL JOSEPH

The Petitioner

and

ALVINA REYNOLDS

The Respondent

BETWEEN:

LENARD "SPIDER" MONTOUTE

The Petitioner

and

EMMA HIPPOLYTE

The Respondent

Before:

The Hon. Sir Hugh A. Rawlins	Chief Justice
The Hon. Mde. Janice M. Pereira	Justice of Appeal
The Hon. Mr. Davidson K. Baptiste	Justice of Appeal

Appearances:

Mr. Reginald Armour, SC, with him, Ms. Eugenia Dickson and Ms. Leonne Theodore-John, for the Petitioners
Mr. Anthony Astaphan, SC, with him, Ms. Renee St. Rose and Mr. Leslie Mondesir, for the Respondent Alvina Reynolds
Mr. Anthony Astaphan, SC, with him, Ms. Renee St. Rose and Mr. Thaddeus Antoine, for the Respondent Emma Hippolyte

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2012: May 24;
July 31.

Election Petitions – Referral of questions of law to the Court of Appeal – Rule 22 of the House of Assembly (Election Petition) Rules, Cap 1.02 of the Revised Laws of Saint Lucia, 2001 – Whether the Civil Procedure Rules 2000 are applicable to election petition proceedings – Extent of applicability – Whether rule 26.9 of CPR 2000 applicable for relief from sanctions – Whether disclosure under CPR 2000 available

General elections were held in Saint Lucia on 28th November 2011. On 1st December 2011, the Returning Officers returned the respondents as the elected representatives for the electoral districts of Babonneau and Gros-Islet, respectively. The petitioners challenged the results by way of election petitions filed on 20th December 2011. In response, the respondents filed and served applications to strike out the petitions on the grounds, among others, that the petitioners failed to provide the security required by the **Elections Act** and by the **House of Assembly (Election Petition) Rules**; the petitions contain vague and generalised allegations and disclose no cause of action against the respondents; the petitions make allegations against the Presiding and Returning Officers in their petitions, but failed to join any of these officers as respondents, and that the petitions are not signed by the petitioners as required by the **Election Petition Rules**. With the consent of the parties, the election court judge reserved a number of questions of law that are to be determined by the Court of Appeal pursuant to rule 22 of the **Election Petition Rules**.

In the main, the referred questions invite the Court of Appeal to determine whether the **Civil Procedure Rules 2000** ("CPR 2000") created under section 17 of the **Supreme Court Order** of 1967 (now Cap 2.01 of the Revised Laws of Saint Lucia, 2001) are applicable to elections proceedings. Additionally, the Court of Appeal is invited to determine, whether in any event, in keeping with the ex p Huddleston principle, even if a Returning Officer is required to be joined as a party, where the substantive issue for the determination of the Court concerns objections made to the ballot count, the provisions of CPR 2000 for further information and disclosure apply to create a duty on the Returning Officer to make his record on the objections available to the Court.

Held: remitting the case to the High Court for the hearing of the applications, and ordering the parties to meet their own costs in the referral proceedings:

1. With respect to question 1.1 of the reference, the rules of civil practice and procedure are only applicable to election petition proceedings to the extent that there is an express statutory provision that permits the rules to apply.

   Dictum in by Lewis CJ, in **Duporte v Freeman** (1968) 11 WIR 497, at pages 498 and 499C; in **Ethlyn Smith v Delores Christopher et al and Reeial George et al v Eileene Parsons et al**, Claim Nos. BVIHCV2002/0097 and 0098, High Court of the British Virgin Islands (delivered 23rd July 2003, unreported), at paragraphs 19 and 25; in **Williams v The Mayor of Tenby and Others** (1879) 5 CPD 135 at page 138; and in **Ferdinand Frampton and Others v Ian Pinard and Others**, Claim Nos. DOMHCV2005/0149, 0150, 0151, 0152 and 0154, High Court of the Commonwealth of Dominica (delivered 28th October 2005, unreported), at paragraph 29 applied.

2. Section 39 the Constitution of Saint Lucia confers the jurisdiction to make laws to regulate electoral matters upon Parliament. Section 39(6) provides for the circumstances, the manner in which and the conditions upon which any application may be made to the High Court for the determination of any question under section 39. It also provides that the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament. Parliament enacted the **Elections Act**, in which sections 88, 89 and 90 provide the regime by which the validity of an election may be challenged in court. Neither the Constitution nor Parliament expressly provided for the application of CPR 2000 to election proceedings. However, by section 89(2) of the **Elections Act**, Parliament empowered the Chief Justice to make rules concerning the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and matters related thereto. 'Hearing' refers to practice and procedure during the trial process. The rules, the **Election Petition Rules**, which the Chief Justice made in 1948 have been continued in force under the present **Elections Act**. In rule 26(2), the Chief Justice provided that in any matter not provided for by the **Election Petition Rules**, the practice and procedure of the Court in a civil action shall apply and have effect and the judge may in any such case direct what the procedure shall be. The Chief Justice thereby validly incorporated the civil practice and procedure contained in the rules of court, now CPR 2000, into election proceedings. However, the incorporation could be valid only for the purposes for which Parliament empowered the Chief Justice to make rules under section 89(2) of the **Elections Act** – for the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and related matters.

3. With respect to question 1.2 of the reference, it follows from the above that CPR 2000 applies to the extent that they provide for the deposit of security; the practice and procedure for service, and the practice and procedure for the hearing (actual trial) of election petitions and matters related to this, pursuant to Rule 26(2) of the **Election Petition Rules**. CPR 2000 cannot replace or amend any constitutional or statutory provisions for election proceedings. Ultimately, however, it is the

judge who is hearing the matter who is to direct what actual procedure is to be followed from those aspects of CPR 2000.

4. In response to question 1.3.1 of the reference, a petitioner in election proceedings in Saint Lucia cannot rely on any provision of the CPR 2000 to apply to the court to enlarge the time prescribed for the doing of specific acts and taking of specific steps prescribed by the **Elections Act** or the **Election Petition Rules**. This is because the provisions prescribing the time for the doing of specific acts and taking specific steps in the **Elections Act** are substantive, conditions precedent and peremptory, unless they go to form. If those provisions are not complied with, a petition is rendered a nullity and is subject to be struck out as such. CPR 2000 cannot be relied upon in election petition proceedings to import an interlocutory process, particularly in the pre-trial stages of the proceedings. The Parliament of Saint Lucia has not conferred upon the Chief Justice or any authority a general power to incorporate the rules of civil practice for election petition proceedings.

5. In response to question 1.3.2 of the reference, it follows from the foregoing that a petitioner in Saint Lucia cannot, upon good reason given, rely on any provision of CPR 2000 to apply to the court to vary, modify, amend or perfect the petition notwithstanding that the 21 days prescribed by section 89(1)(a) of the **Elections Act** have expired or apply to extend or enlarge the time for the performance of the obligations or requirements prescribed by sections 88 and 89(1)(b) and (c) of the **Elections Act** or the **Election Petition Rules**. The exception would be in matters that go to form.

Theberge v Laudry [1876] 2 App Cas 102 (PC), especially from pages 106-108; **Patterson v Solomon** [1960] AC 579 (PC), especially page 589; **Devan Nair v Yong Kuan Teik** [1967] 2 AC 31 (PC); **Browne v Francis-Gibson and Another** (1995) 50 WIR 143 (ECCA), especially per Sir Vincent Floissac CJ, at page 148; **Russell (Randolph) and Others v Attorney-General of St Vincent and the Grenadines** (1995) 50 WIR 127 (ECCA), especially per Sir Vincent Floissac CJ at page 138; **Stevens v Walywn and Another** (1967) 12 WIR 51 (ECCA) applied.
Ferdinand Frampton and Others v Ian Pinard and Others, Claim Nos. DOMHCV2005/0149, 0150, 0151, 0152 and 0154 High Court of the Commonwealth of Dominica (delivered 28th October 2005, unreported); **Lindsay Fitz-Patrick Grant v Glen Fitzroy Phillip et al**, Claim No. SKBHCV2010/0026, High Court of Saint Christopher and Nevis, Saint Christopher Circuit (delivered 4th November 2010, unreported), especially at paragraph 16; **George Prime v Elvin Nimrod et al**, Claim No. GDVHCV2003/0551, High Court of Grenada (delivered 19th March 2004, unreported); **Daven Joseph v Chandler Codrington et al and Paul Chet Greene v Eleston Adams et al**, Claim Nos. ANUHCV2009/0147 and 0148, High Court Antigua and Barbuda (delivered 30th June 2009, unreported), especially at paragraph 59, cited with approval.
Peters (Winston) & Another v Attorney-General & Another (2001) 63 WIR 244 (CA Trinidad and Tobago) and **Jim Miller v Chris Bull (Returning Officer of Herefordshire Council) and Others** [2009] EWHC 2640 (QB) distinguished.

6. In response to question 1.3.2.1 of the reference, a petitioner in Saint Lucia, may not rely on any provision of the CPR 2000 to apply to the court to exercise its power under rule 26.9 of CPR 2000 for relief from the normal sanctions for failure to comply with the provisions of the **Elections Act** and or the **Election Petition Rules** and or election law of Saint Lucia. This is because in the absence of a statutory provision that permits such reliance, the elections laws of Saint Lucia and principles from the cases do not import such an interlocutory process into election petition proceedings.

7. With respect to question 1.4 of the referral, rule 19 of the **Election Petition Rules** provides that where a petition complains of the conduct of a returning officer, that officer is deemed to be a respondent for the purposes of these rules, except where another respondent is substituted for the Returning Officer. Given this provision, the petition is not liable to be struck out on the grounds that the Returning Officer was not joined or served although his conduct was complained of in the petition. It does not require an application for relief from sanctions under rule 26.9 of CPR 2000 as this rule is not applicable in election petition proceedings.

8. On question 1.5 of the reference, where the issue to be determined by the court concerns objections made to the ballot count, in relation to which objections the Returning Officer will have the records, section 70(2) of the **Elections Act** requires the disclosure of all records, papers and documents concerned with an election, rather than the provisions of CPR 2000. Section 70(2) contemplates that the court may order all documents that are related to an election, which are in the custody of the Clerk of the House or in the custody of any electoral officer to be produced or inspected. The court may make such an order where a petitioner pleads, with sufficient particularity, and produces affidavit evidence to put the ballots in issue, and thereupon may examine and count such ballots as may be necessary. This may be done whether the official is joined in the petition or not.

JUDGMENT

[1] **SIR HUGH RAWLINS CJ:** This matter came to this court by reference inviting us to determine stated questions of law on election petitions.

Background

[2] Rule 22 of the **House of Assembly (Election Petition) Rules**[1] permits an election court to reserve questions of law for determination by the Court of Appeal on the hearing of election petitions. The rule states as follows:

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[1] Cap. 1.02 of the Revised Laws of Saint Lucia 2008. Hereinafter, these rules may be referred to as "the Election Petition Rules".

> "If it appears to the judge on the hearing of any election petition or any special case that any question of law requires further consideration by the Court of Appeal, it shall be lawful for the judge to postpone the hearing, … until the determination of such question by the Court of Appeal and for this purpose to reserve any question of law for the determination of the Court of Appeal."

[3] General elections were held in Saint Lucia on 28th November 2011. After various recounts, the Returning Officers finally returned the respondents as the duly elected representatives for the electoral districts of Babonneau and Gros-Islet, respectively, on 1st December 2011. The petitioners challenged the results as returned by the Returning Officers for these districts, and, for this purpose, filed election petitions on 20th December 2011.

[4] Section 89(1)(a) of the **Elections Act**[2] provides that a petition complaining of an undue return or undue election of a member of the legislature shall be presented within 21 days after the return made by a returning officer and within 28 days if the petition alleges corrupt practices. Section 89(1)(b) of said Act provides that security shall be given on behalf of the petitioner within 3 days after the presentation of the petition. This is for the payment of all costs, charges or expenses that may become payable by the petitioner to witnesses summoned by the petitioner or any respondent in the petition. Section 89(1)(c) stipulates the manner in which the security is to be given.

[5] In response to the petitions, on 4th January 2012, the respondents filed and then served applications to strike out the petitions. The respondents allege in these applications that the petitioners failed to provide the security required by subsections 89(1)(b) and (c) of the **Elections Act** and by rule 9(1) of the **Election Petition Rules**. They further allege that the petitioners failed to serve notice of the security in accordance with rule 9(3) of the said Rules. The respondents also allege that the petitions contain vague and generalised allegations and disclose no cause of action against the respondents. The applications state that the petitions

[2] Cap 1.02 of the Revised Laws of Saint Lucia 2008.

make allegations against the Presiding and Returning Officers in their petitions, but failed to join any of these officers as respondents; failed to plead material facts of objections to specific ballots made by or on behalf of the petitioners at the preliminary count; failed to plead material particulars to justify a scrutiny or recount of the votes; failed to identify specific votes which required scrutiny at the final count and failed to plead a prayer requesting a scrutiny or recount. The respondents further allege that the petitions are not signed by the petitioners as required by rule 3(1) of the **Election Petition Rules**, and, additionally, that the petitions are pleaded in vague, generalised and pejorative terms; are frivolous vexatious and a fishing expedition; constitute an abuse of the process of the court and are bad in law.

[6] Notices of security for costs were filed on behalf of the petitioners on 9th January 2012 and served on the respondents on 9th January 2012. On 24th February 2012, the respondents further filed summonses for a case to be stated to the Court of Appeal. The applications and summonses came for hearing in the election court on 15th March 2012. With the consent of the parties, Wilkinson J issued an order which reserved the questions of law that are to be determined by this court and postponed the applications to strike out the petitions until after the questions are determined.

[7] The questions to be determined are stated as follows:

1.1 Whether the **Civil Procedure Rules 2000** ("CPR 2000") created under section 17 of the Supreme Court Order of 1967 (now Cap 2.01 of the Revised Laws of Saint Lucia, 2001) apply in whole or in part to the jurisdiction created or conferred by section 39 of the **Constitution of Saint Lucia**, Cap. 1.01 including proceedings under the provisions of the **Elections Act**.

1.2 Whether and to what extent, if any, can CPR 2000 as amended apply in view of Rule 26(2) of the **House of Assembly (Election Petition) Rules** of Cap 1.02 of the Revised Laws of Saint Lucia, 2001.

1.3 Whether, on the assumption that CPR 2000 may apply in Saint Lucia, can a petitioner upon good reason given rely on any provision of CPR 2000 to apply to the Court to:

1.3.1 Enlarge the time prescribed for the doing of specific acts and taking of specific steps prescribed by the **Elections Act** or **House of Assembly (Election Petition) Rules**;

1.3.2 Vary, modify, amend or perfect the Petition notwithstanding that the 21 days prescribed by section 89(1)(a) of the **Elections Act** have expired; more specifically, extend or enlarge the time for the performance of the obligations or requirements prescribed by sections 88 and 89(1) (b) and (c) of the **Elections Act** or **House of Assembly (Election Petition) Rules; and/ or**

1.3.2.1 Exercise its power under Part 26.9 upon a failure to comply with the provisions of the **Elections Act** and or **House of Assembly Election Petition Rules** and or election law of Saint Lucia.

1.4 If CPR 2000 is found to be applicable, does Rule 26.9 of CPR 2000 apply, upon proper explanation, to relieve the severity of provisions of the **Elections Act** or the requirement in Rule 19 of the **House of Assembly (Election Petition) Rules**, that a petition which complains of conduct of a Returning Officer, but does not make that Returning Officer a Respondent to the Petition, and has not been served on that Returning Officer within the specified time is nevertheless liable to be struck out?

1.5 Whether, notwithstanding the absence of any provision of the Elections Act or Rule made by the Chief Justice (under the **House of Assembly (Election Petition) Rules** and on the assumption that the Returning Officer is not required to be joined as a party, where the substantive issue for the determination of the Court concerns objections made to the ballot count in relation to which objections the Returning Officer will have his Record, the provisions of CPR 2000 in respect of (further information and disclosure) apply so that there exists a duty on the part of the Returning Officer to make available that record to the Court (ex p Huddleston principle)?

[8] The hearing of these questions was scheduled further to directions which this court issued on 30th March 2012. Upon those directions, the parties filed an agreed statement of case on 23rd April 2012, and their written submissions subsequently. An outline of the essential constitutional and statutory framework which governs the issuing of election petitions in Saint Lucia would be a helpful precursor to a discussion on the issues which this reference raises.

Essential constitutional and statutory framework

[9] In my view, it is beyond contravention that section 39 of the Constitution of Saint Lucia, Part 7 of the **Elections Act**, and sections 88-90, in particular, are the bedrock for the essential constitutional and statutory framework which governs the issuing of election petitions in Saint Lucia.

[10] Section 39 of the Constitution of Saint Lucia states as follows:

> "39.–(1) The High Court shall have jurisdiction to hear and determine any question whether–
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> (a) any person has been validly elected as a member of the House;
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> …
>
> (6) The circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for

the determination of any question under this section and the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament."

[11] Section 88 of the **Elections Act** states as follows:

"88. PETITION AGAINST DISPUTED ELECTION

A petition complaining of an undue return or undue election of a member of the House in this Act called an election petition, may be presented to the High Court by any one or more of the following persons, that is to say—

(a) a person who voted or had a right to vote at the election to which the petition relates;

(b) a person claiming to have had a right to be returned at such election;

(c) a person alleging himself or herself to have been a candidate at such election."

[12] Section 89 of the **Elections Act** states as follows:

"89. PRESENTATION OF PETITION AND SECURITY FOR COSTS

(1) The following provisions apply with respect to the presentation of an election petition—

(a) the petition shall be presented within 21 days after the return made by the returning officer of the member to whose election the petition relates, unless it concerns an allegation of corrupt practices upon the making of the return of election and specifically alleges a payment of money or other reward to have been made by any member, or on his or her account, or with his or her privity, since the time of such return, under or in furtherance of such corrupt practices, in which case the petition may be presented at any time within 28 days after the date of such payment;

(b) at the time of the presentation of the petition, or within 3 days afterwards security for the payment of all costs, charges, and expenses that may become payable by the petitioner—

i. to any person summoned as a witness on his or her behalf, or

ii. to the member whose election or return is complained of, or to any other person named as a respondent in the petition,

shall be given on behalf of the petitioner;

(c) the security shall be an amount not exceeding $1,200 and shall be given by recognizance to be entered into by any number of sureties not exceeding 4 approved by the Registrar of the High Court, or by deposit of money in the High Court, or partly in one way and partly in the other.

(2) **Rules, 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**. (My emphasis).

[13] Section 90 of the **Elections Act** states as follows:

"90. TRIAL OF ELECTION PETITION

(1) **An election petition shall be tried before the High Court in the same manner as a suit commenced by a writ of summons**. At the conclusion of the trial, the judge shall determine whether the member of the House whose return or election is complained of or any and what other person was duly returned or elected, or whether the election was void, and shall certify such determination to the Governor General and upon such certificate being given such determination shall subject to section 39(7) of the Constitution be final and the return shall be confirmed or altered or a writ for a new election shall be issued as the case may require in accordance with such determination.

(2) **At the trial of an election petition the judge shall have the same powers, jurisdiction and authority, and witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances will admit, as in a trial of a civil action in the High Court, and shall be subject to the same penalties for perjury**." (Mr. Armour's emphases).

[14] Although they were made in 1948, the **Election Petition Rules** have been continued in force as if made pursuant to section 89(2) of the **Elections Act**. The parties have not raised the issue of the vires of these rules. It suffices to state here that rule 3 provides for the broad form and content of a petition. Rule 4

precludes the statement of evidence in a petition; rule 5 requires a petitioner to give an address for service. Rule 6 provides for the manner of presentation of the petition and the time within which it must be presented. Rule 7 provides that on presentation, the Registrar must cause the petition to be published in the Gazette and in a newspaper published in Saint Lucia at the expense of the petitioner. Rule 8 provides for the manner in which the petition is to be served. Rule 9 makes extensive provision for security for costs. Rule 10 makes provision for the removal of objection where the security is declared to be insufficient, and, by rule 11, the petition is at issue once there is no objection on the ground of insufficiency of security when the time for objection passes. Rule 12 deals with amendment of a petition.

[15] Mr. Armour, SC, learned counsel for the petitioners, invoked rule 26 of the **Election Petition Rules**, and relies upon it to aid his basic submission on this reference that CPR 2000 should be applicable in election petitions proceedings, particularly to provide an interlocutory process. I shall therefore set out rule 26 fully at this juncture. It states as follows:

> "**26. FORMS AND MATTERS NOT PROVIDED FOR**
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> (1) In proceedings regulated by these Rules the forms contained in Schedule 2, or forms to the like effect, shall be used as the documents described by the headings thereof.
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> (2) **In any matter not provided for by these Rules the practice and procedure of the Court in a civil action shall apply and have effect and the judge may in any such case direct what the procedure shall be**." (Mr. Armour's emphasis).

The jurisprudence on the essential statutory provisions

[16] A plethora of cases decided over the years in the courts for this jurisdiction, have consistently held that election proceedings invoke a very peculiar and special jurisdiction of the court. According to that jurisprudence, the provisions that are made and the time limits prescribed in elections legislation enacted by Parliament,

in particular, provide a comprehensive and exclusive statutory scheme, with mandatory procedural rules for challenging the validity of an election or the return of a candidate as the elected representative in an election. Election petitions must therefore be brought strictly in accordance with the requirements of the statutes. Failing this, a petition would be a nullity and would be struck out as such.

[17] Our courts have consistently adopted this strict approach to election petitions, drawing upon the jurisprudence from the Judicial Committee of the Privy Council in cases such as **Theberge v Laudry**,[3] **Patterson v Solomon**[4] and **Devan Nair v Yong Kuan Teik**.[5] **Theberge** was on appeal from a judgment of the Superior Court for the Province of Quebec, Canada. **Patterson** was on appeal from a judgment of the Supreme Court of Trinidad and Tobago and **Nair v Teik** was on appeal from the Federal Court of Malaysia.

[18] In adopting the strict approach, our courts have stated that the jurisdiction of the election court is a very peculiar jurisdiction one, which is not the ordinary civil jurisdiction of the court. It is seen essentially as a parliamentary jurisdiction assigned to the judiciary by the various Constitutions and by legislation. It has been stated that it not a jurisdiction to determine mere ordinary civil rights. Thus, in **Browne v Francis-Gibson and Another**,[6] in which this court extensively reviewed the jurisprudence of the Privy Council and the House of Lords in the foregoing and other cases, Sir Vincent Floissac CJ stated as follows:[7]

> "The Judicial Committee of the Privy Council has repeatedly affirmed that the jurisdiction conferred on local courts of a British Colony or former British Colony to determine questions as to the validity of elections and appointments to the local legislature is a peculiar and special jurisdiction in at least five respects. Firstly, constitutionally the jurisdiction is essentially a parliamentary jurisdiction conveniently assigned to the judiciary by the Constitution or by legislation. It is not a jurisdiction to determine mere ordinary civil rights. Secondly, the parliamentary

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[3] [1876] 2 App Cas 102. See especially from pp. 106-108.
[4] [1960] AC 579. See especially p. 589.
[5] [1967] 2 AC 31.
[6] (1995) 50 WIR 143.
[7] At p. 148.

> questions which the local courts are constitutionally or statutorily authorised to determine are expected to be determined expeditiously so that the composition of the legislature may be established as speedily as possible. Thirdly, the legislature must have envisaged that the parliamentary questions would be determined either on their merits or purely on procedural grounds and without hearing evidence. Fourthly, because of the urgency of the parliamentary questions, the legislature is presumed to have intended that the decisions of the local original and appellate courts would be unappealable to Her Majesty in Council. Finally, the presumption against appeals to Her Majesty in Council is usually confirmed by imperial or local legislation declaring the decisions of the local courts to be final and unappealable. In any event, the presumption is rebuttable only by specific imperial or local legislation unequivocally authorising such appeals."

[19] Mr. Armour, SC, and Mr. Astaphan, SC, both noted that election courts in the Eastern Caribbean have regarded the election jurisdiction as different from the civil or purely constitutional jurisdiction of the court. Our courts have held, for example, that whereas the constitutional jurisdiction is available to any person with a relevant interest, the parliamentary or election jurisdiction is available only to the Attorney General and candidates and voters. This seems to be clear from section 88 of the **Elections Act**. And whereas the constitutional jurisdiction is regulated by procedural rules made by the Chief Justice, the parliamentary or election jurisdiction is stated as regulated by laws made by Parliament pursuant to constitutional power. Thus, for example, in **Russell (Randolph) and Others v Attorney-General of St Vincent and the Grenadines**[8] Sir Vincent Floissac CJ agreed with the statement by Lord Upjohn who delivered the opinion of the Privy Council in **Nair v Teik**[9] that elections legislation was enacted to regulate election litigation proceedings, which legislation brought certain strictures.

[20] In keeping with the strict approach, our courts have generally insisted that the provisions in elections legislation must be strictly complied with because the paramount public interest is that election petition challenges should be determined as quickly as possible so that the assembly and the electors should know their

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[8] [1995] 50 WIR 127 at p. 138.
[9] [1967] 2 All ER 34 at p. 36.

rights at the earliest possible time. Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirements. Accordingly, the consistent result is that failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form. The jurisprudence in our courts states that time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory. The election court has no power to extend time or allow amendments filed out of time unless election legislation so provides.

[21] It was on the foregoing bases that the Dominica election court stated, in **Ferdinand Frampton and Others v Ian Pinard and Others**,[10] that a petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. 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 election court has no power to extend time or to permit amendment of the process after the time limited for filing and perfecting the process has expired, unless those powers are expressly conferred in the elections legislation enacted by Parliament. This reasoning was rationalized in **Frampton** as follows:[11]

> "The rationale … is that provisions for the litigation of election petitions are a matter of substantive law and, like the Statute of Limitation, cannot be dispensed with by the court. The statutory time limits provide a rigid time table to ensure that everything that is necessary is done, in a timely manner, to bring these petitions to trial 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."

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[10] Claim Nos. DOMHCV2005/0149, 0150, 0151, 0152 and 0154, High Court of the Commonwealth of Dominica (delivered 28th October 2005, unreported).
[11] At para. 16.

[22] This was applied in other cases in the Eastern Caribbean Supreme Court. In **Lindsay Fitz-Patrick Grant v Glen Fitzroy Phillip et al**,[12] for example, the court stated that inasmuch as election legislation are mandatory and must be strictly construed, a petitioner **must** present and perfect his petition within the time prescribed in the **Elections Act**, in this case, 21 days. The result is that all necessary parties must be joined; the petitioner must enter security for costs; the petition must be served; and "sufficient" material facts and particulars must be pleaded in order to disclose a cause of action, so that a respondent is not taken by surprise. A judge trying an election petition has no power to allow alterations, changes or amendments. Similar statements were made by the Supreme Court of Jamaica in **Stewart v Newland and Edman**,[13] applying the case of **Stevens v Walywn and Another**.[14] The Grenada Court held, in **George Prime v Elvin Nimrod et al**,[15] that an amended petition filed out of time offended section 100(1) of the **Representation of the People Act** and did not attract the jurisdiction of the court.

CPR and election petition proceedings

[23] Our courts have also consistently stated that the normal civil procedure rules are not applicable to join new parties after the time for the presentation of the petition, unless the election statute provides for it. Our courts have consistently referred to and applied **Nair v Teik**, in which the Privy Council stated[16] that it was a matter of deliberate design that the Rules of the Supreme Court are not applicable to these cases. It was additionally stated that where it was intended that the judge should have power to amend proceedings, it was expressly conferred upon him.

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[12] Claim No. SKBHCV2010/0026, High Court of Saint Christopher and Nevis, Saint Christopher Circuit (delivered 4th November 2010, unreported) at para. 16.
[13] (1972) 19 WIR 271.
[14] (1967) 12 WIR 51.
[15] Claim No. GDVHCV2003/0551, High Court of Grenada (delivered 19th March 2004, unreported).
[16] At p. 45B.

[24] The jurisprudence maintains that our courts have no recourse to the rules of civil practice to ameliorate the consequences of the strict application of electoral statutes. Accordingly, in **Daven Joseph v Chandler Codrington et al and Paul Chet Greene v Eleston Adams et al**,[17] Blenman J stated as follows:

> "… CPR 2000 is not applicable to election petitions for the sole reason that there are specific election rules that are provided in relation thereto. Further, there are provisions in the Representation of [the] People Act that cannot comfortably coexist with the CPR 2000, some of these are akin to those found in criminal procedures."

[25] In **Patterson v Solomon**[18] and in **Grant v Phillip et al**[19] the Privy Council and the High Court respectively found, in effect, that the special election jurisdiction of the court is such that "election proceedings" do not fall within the definition of "civil proceedings" under rule 2.2 of CPR 2000. The conclusion on this issue, in **Grant v Phillip**,[20] for example, was that CPR 2000 is not applicable in election petition proceedings unless there is express provision in the Election legislation. The true principle is not that the civil procedure rules are not applicable in these proceedings. Rather, it is that they are not applicable in the absence of express legislation that provides for their application.

Mr. Armour's case for the petitioners

[26] Mr. Armour, SC, noted that there are no provisions expressly permitting CPR 2000 to apply to election petition proceedings. He however insisted that this does not preclude the application of CPR 2000 by way of interpretation from a perspective of affording width and latitude to the constitutional right to vote, fairness and access to the court.

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[17] Claim Nos. ANUHCV2009/0147 and 0148, High Court Antigua and Barbuda (delivered 30th June 2009, unreported), at para. 59.
[18] Supra.
[19] At paras. 55-57.
[20] At para. 61.

[27] Mr. Armour noted that CPR 2000 is made by the Chief Justice and 2 other judges of the court. In tracing the bases for this rule making power, he pointed out that the **Eastern Caribbean Supreme Court (Saint Lucia) Act**[21] provides for the making of rules of court. He stated that the ultimate authority for this rule making power is section 6 of the **West Indies Act 1967** [UK], and section 17 of the **Eastern Caribbean Supreme Court Order**,[22] which establishes the Eastern Caribbean Supreme Court.

[28] Section 17(1) of the **Supreme Court Order** states as follows:

> "17. **RULES OF COURT**
>
> (1) Subject to the provisions of this Order and any other law in force in any of the States, the Chief Justice and any other 2 judges of the Supreme Court selected by him or her may make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court in relation to **their respective jurisdiction and powers** in respect of any of the States." (Mr. Armour's emphasis).

[29] Section 19 of the **Supreme Court Act**, which confers jurisdiction on the Eastern Caribbean Supreme Court, provides for the making of rules of court as follow:

> "19. **RULES OF COURT**
>
> (1) The power to make rules of court conferred on the Chief Justice and any other 2 judges of the Supreme Court by the Court's Order shall be deemed to include the power to make rules for regulating proceedings in inferior Courts, and to add to, vary or annul any existing rules of court or articles of the Code of Civil Procedure.
>
> (2) The Chief Justice and any other 2 judges of the Supreme Court may also make, add to or annul any rules of court for the more effectual carrying out of any of the provisions of the Civil Code or **of any other statute**, and any such rules may repeal any provisions of the said Civil Code or of any other statute and substitute other provisions in lieu thereof." (Mr. Armour's emphasis).

[21] Chap. 2.01 of the Revised Laws of Saint Lucia 2008. Hereinafter "the Supreme Court Act".

[22] Chap. 2.01 of the Revised Laws of Saint Lucia 2008. Hereinafter "the Supreme Court Order".

[30] Mr. Armour, SC, referred, additionally, to section 89(2) of the **Elections Act**. It would be recalled that this sub-section empowers the Chief Justice to make rules as to the deposit of security and the practice and procedure for the hearing of election petitions and matters incidental thereto. Mr. Armour submitted that the **Election Petition Rules** are incorporated under section 89(2) of the **Elections Act**, and that rule 26(2) expressly allows reliance on CPR 2000 where the rules are deficient.

[31] Rule 26 states as follows:

> "26. **FORMS AND MATTERS NOT PROVIDED FOR**
>
> (1) In proceedings regulated by these Rules the forms contained in Schedule 2, or forms to the like effect, shall be used as the documents described by the headings thereof.
>
> (2) In any matter not provided for by these Rules the practice and procedure of the Court in a civil action shall apply and have effect and the judge may in any such case direct what the procedure shall be."

[32] Mr. Armour, SC, contended that rule 26(2) expressly incorporates CPR 2000. He submitted that unlike in Antigua, Dominica and St. Kitts where there is no express provision for the application of the CPR, in Saint Lucia, rule 26(2) expressly provides for the "practice and procedure of the Court in a civil action" to apply in any matter not provided for by the **Election Petition Rules**. Accordingly, he submitted that the decisions denying the applicability of CPR 2000 in other Eastern Caribbean jurisdictions can be distinguished from Saint Lucia on their respective legislative schemes. Mr. Armour contended that all other reasons contained in these decisions, including the special nature of the election court's jurisdiction, do not justify a denial of the application of CPR 2000. He insisted that even if there is a special and peculiar elections jurisdiction, this does not warrant treating it as separate from the court's civil jurisdiction. To this end, he asked us to note that rules of civil practice apply to election petitions in other jurisdictions, Trinidad and the United Kingdom, for example, without diminishing the 'special'

nature of the court's jurisdiction. I partially agree with Mr. Armour's submissions in relation to rule 26(2), for reasons that are given later in this judgment.

[33] As authority for the United Kingdom position, Mr. Armour referred to **Halsbury's Laws of England – Elections And Referendums**.[23] The following is stated under the rubric, Irregularities, Offences And Legal Proceedings/(3): Questioning Elections And Referendums/(i): Method and Regulation of Procedure/765.

> "765. Election petition rules
>
> …
>
> Subject to the provisions of the Representation of the People Act 1983 (and, in relation to a Welsh Assembly election, the rules provided as to the conduct of elections for the return of Assembly members and, in relation to a European parliamentary election, the European parliamentary elections rules) and subject to the rules governing the procedure for petitions, the practice and procedure of the High Court apply to a petition as if it were an ordinary claim within the High Court's jurisdiction, notwithstanding any different practice, principle or rule on which the committees of the House of Commons used to act in dealing with such petitions."

[34] Mr. Armour also referred to section 90(1) of the **Elections Act**, which provides that an election petition shall be tried before the High Court in the same manner as a suit commenced by a writ of summons. He highlighted section 90(2) of the Act which states as follows:

> "(2) At the trial of an election petition the judge shall have the same powers, jurisdiction and authority, and witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances will admit, as in a trial of a civil action in the High Court, and shall be subject to the same penalties for perjury."

[35] Mr. Armour, SC, further referred to rule 27 of the **Election Petition Rules**, which provides for the application of the **Interpretation Act**.[24] It states as follows:

> "27. **INTERPRETATION ACT APPLIED**
>
> The Interpretation Act applies for the purpose of the interpretation of these Rules in like manner as it applies for the purpose of interpreting an Act."

[23] (Volume 15(3) (2007 Reissue) paras. 1-343; Volume 15(4) (2007 Reissue) paras. 344-907)/7.

[24] Cap. 1.06 of the Revised Laws of Saint Lucia 2008.

Mr. Armour further asked us to note section 24 of the **Interpretation Act**, which provides as follows:

> "24. **DEVIATION IN FORMS**
>
> Where a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead shall not invalidate the form used."

[36] Mr. Armour insisted that the foregoing statutory provisions in the electoral laws of Saint Lucia expressly incorporate CPR 2000 and make the civil procedure rules generally applicable to electoral proceedings. He referred to **Naim Ahmed v Anthony Paul Kennedy**,[25] as authority that Clarke LJ recognised that the English equivalent to the section 90 powers, to wit, section 157(3) of the **Representation of the People Act 1983** [UK] includes the powers contained in the English Civil Proceedings Rules including the power to extend time. Clarke LJ had stated as follows:[26]

> "The only power which the court might otherwise have had to extend that period is contained in section 157(3), which provides that 'subject to the provisions of the Act' the High Court has the same powers in these proceedings (which to my mind are 'proceedings on the petition') as if the petition were an ordinary action within its jurisdiction. Those powers include the powers contained in the CPR, including of course rules 3.1(2)(a) and 3.10, which Simon Brown LJ has quoted. Rule 3.1(2)(a) contains a power to extend time."

[37] Mr. Armour, SC, stated that it is noteworthy that in 1979, this court foreshadowed the **Ahmed v Kennedy** approach on the basis of the section 90 powers in **Anthony Theophilus Ribeiro v Kennedy Alphonse Simmonds**.[27] According to Mr. Armour, it was on that basis that, in **Ribeiro**, this court refused to overturn the trial judge's decision to carry out a scrutiny where no particulars for such a scrutiny were properly pleaded and where that scrutiny is not an automatic exercise in

[25] [2003] BLGR 161.
[26] At para. 49.
[27] Saint Christopher and Nevis High Court Civil Appeal No. 2 of 1979 (delivered 10th July 1979, unreported).

every election petition. This court noted that, in **Ribeiro**, the equivalent section of the House of Assembly Elections Ordinance, gave the election judge the same powers, jurisdiction and authority as in the trial of a civil action in the Supreme Court. He said that this court found those powers to be "very wide", and Sir Maurice Davis CJ, stated it as follows:[28]

> "Satisfied as I am of the fairness and accuracy of the Judge's count, ought the Court to say in these circumstances that the appeal should be allowed because of certain technicalities which were not observed and which may be said to have resulted in a comedy of errors? I think not. **I do not think that the intention of the law is that an election should be won or lost on technicalities in Court, but rather that the wish of the people, expressed through the ballot box, should prevail. The Court should put first and foremost in my view the intention of the electorate**. At the heart of the matter, as I see it, was the question whether or not all or any of the 99 rejected ballots could be said to have been lawfully cast, and for whom. The Judge has in the final analysis answered this question with fairness and with accuracy, and his determination should in my opinion be allowed to prevail." (Mr. Armour's emphasis).

[38] Mr. Armour, SC, insisted that even apart from the foregoing provisions of the **Election Act** and the **Election Petition Rules**, section 17(1) of the **Supreme Court Order** and section 19 of the **Supreme Court Act**, which provide for the making of rules of court to regulate the practice and procedure of the Court of Appeal and High Court, apply to the complete jurisdiction of these Courts, original and special. He insisted that when the rule making authority is empowered to make "any rules of court for the more effectual carrying out of any of the provisions of the Civil Code or **of any other statute**", there is no exception in the case of statutes providing for the hearing of election petitions, which do not encompass a "special" or "peculiar" jurisdiction separate from that of the High Court.

[39] Mr. Armour also referred to rule 2.2 of CPR 2000, which provides as follows:

> "**<u>Application Of these Rules</u>**

[28] At p. 6.

2.2 (1) Subject to paragraph (3), these Rules apply to all 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) family proceedings;

(b) insolvency (including winding up of companies);

(c) non-contentious probate proceedings;

(d) proceedings when the High Court is acting as a prize court; or

(e) any other proceedings in the Supreme Court instituted under any enactment **in so far as Rules made under that enactment regulate those proceedings** …" (Emphasis mine).

[40] As I understand it, Mr. Armour submitted that under rule 2.2(e), CPR 2000 is applicable to the election jurisdiction of the High Court. CPR 2000 only does not apply to that jurisdiction insofar as election proceedings – which are "any other proceeding" instituted under an enactment – are regulated by the enactment (election legislation). I am afraid that I am not attracted to this assertion. I agree with the consistent statements in our election courts that election petition proceedings do not fall under rule 2.2 inasmuch as elections proceedings are not civil proceedings. They are a special specie of proceedings whose jurisdiction is created or conferred by section 39 of the Constitution of Saint Lucia and kindred election statutes.

The Trinidad position

[41] **Peters (Winston) & Another v Attorney-General & Another**[29] is the authority for the decision that in Trinidad and Tobago, the Rules of the Supreme Court are applicable to the hearing of election petitions. In this case, the Court of Appeal of

[29] (2001) 63 WIR 244.

the Trinidad and Tobago considered the High Court's jurisdiction to hear election petitions in the absence of rules of court as provided for by the **Representation of the People Act** ("the Act" or "the RPA"). The issue on appeal was whether the absence of rules made under section 144 of the RPA made it impossible for the High Court to hear and determine a representation petition. It will be recalled that in **Lindsay Fitzpatrick Grant v Rupert Herbert et al (No. 1)**,[30] Baptiste J (as he then was) responded, correctly in my view, with an emphatic no to this last question. He did this on the ground that the essential procedural rules that govern election petition proceedings are contained in the election statute passed by Parliament on the authority of the constitutional provision which authorizes Parliament to make that legislation.

[42] The majority decision in **Peters** is contained in the judgments of the President, Chief Justice de la Bastide (as he then was) and Justice of Appeal Nelson (as he then was). Chief Justice de la Bastide first considered the legislative scheme. He noted, inter alia, that Section 52 of the Constitution confers jurisdiction on the High Court to deal, inter alia, with disputed elections to the House of Representatives. That provision is similar, mutatis mutandis, to section 39 of the Constitution of Saint Lucia. It states as follows:

> "52.- 1 any question whether:-
>
> (a) any person has been validly appointed as a Senator or validly elected as a member of the House of Representatives;
>
> (b) any Senator or member of the House of Representatives has vacated his seat or is required under the provisions of section 43(3) or section 49(3) to cease to exercise any of his functions as a Senator or as a member of the House of Representatives; or
>
> (c) any person has been validly elected as Speaker of the House of Representatives from among persons who are not Senators or members of the House of Representatives, shall be determined by the High Court.

[30] Claim No. SKBHCV 2004/0182, High Court of Saint Christopher and Nevis (delivered 11th February 2005, unreported).

(2) Proceedings for the determination of any question referred to in subsection (1) shall not be instituted except with the leave of a Judge of the High Court.

(3) An appeal shall lie to the Court of Appeal from-

(a) the decision of a Judge of the High Court granting or refusing leave to institute proceedings for the determination of any question referred to in subsection (1);

(b) the determination by the High Court of any such question.

(4) No appeal shall lie from any decision of the Court of Appeal given in an appeal brought in accordance with subsection (3)."

[43] Part VI of the RPA, sections 106 to 155 both inclusive, deals with legal proceedings. Section 106 provides:

"106. (1) The following questions shall be referred to and determined by the High Court in accordance with sections 106 to 129:

(a) where leave has been granted under section 52(2) of the Constitution, any question whether any person has been validly appointed as a Senator or validly elected as a member of the House of Representatives ...

(2) Every such reference shall be by a petition, in this Act referred to as a representation petition ..."

[44] Section 129 provides:

"129. Subject to this Part and of the Rules made thereunder, the principles, practice and rules on which committees of the House of Commons of the Parliament of the United Kingdom used to act in dealing with election petitions shall be observed, so far as may be, by the High Court in the case of representation petitions questioning elections or returns."

[45] Section 143, 144 and 145 provide:

"143. Subject to this Part, the Rules of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the Supreme Court shall in principle and so far as practicable apply to costs of petitions and other proceedings under this Part."

"144. The Rules Committee established by the Supreme Court of Judicature Act may make rules of court prescribing any matter of

> procedure that is necessary or expedient for the purposes of any of the provisions of this Act."
>
> "145. The High Court shall, subject to this Part, have the same powers, jurisdiction and authority with respect to any proceedings brought under or by virtue of this Part as if the proceedings were an ordinary action within its jurisdiction."

[46] Chief Justice de la Bastide noted that in providing how a representation petition is to be instituted and pursued, Part VI of the RPA leaves many matters to be 'prescribed'. They include the form and content of the petition and the manner of its service. He further noted that in the definition section, section 2(1) of the RPA, "prescribed" in Part VI means prescribed by the Rules, and "Rules" is defined to mean 'Rules made under this Act.' The Chief Justice then noted that section 161(1) of the RPA, which does not fall within Part VI, provides as follows:

> "161(1) The President may make rules providing for such matters as may be necessary or expedient for carrying the purposes of this Act into effect and, in particular without limiting the generality of the foregoing, may make rules, adding to, rescinding, varying or amending any such rules."

This is a very wide enabling power, compared with the limited and specific provision of section 89(2) of the **Elections Act** of Saint Lucia.

[47] The Chief Justice noted that by section 161(3) of the RPA, three sets of rules, to wit, the Registration Rules, the Election Rules and the Prescribed Forms Rules which are contained in Schedules to the RPA, are deemed to be made under section 161(1) of the RPA.

[48] Mr. Armour noted that the Chief Justice found that the RPA makes a clear distinction between rules made by the President under section 161(1) and rules of court made by the Rules Committee. The Chief Justice also found that it was Parliament's intention, as expressed in the Act, that the matters to be prescribed under Part VI of the RPA should be prescribed in rules of court made by the Rules Committee.

[49] The Chief Justice stated[31] that section 144 of the RPA made it clear that the primary source of such prescription is to be the Rules Committee and that by this section, a link is expressly made between the matters that are described in Pt VI as 'prescribed' and such provision as is made in relation to them by the Rules Committee. But that it was section 55 of the **Interpretation Act** that empowered the Rules Committee to make rules governing election proceedings. Mr. Armour considered the Chief Justice's assessment of the statutory provisions and stated that it was by the process of statutory interpretation that the Chief Justice found that the making of rules of court by the Rules Committee, pursuant to section 144 of the RPA was not a condition precedent to the exercise by the High Court of the jurisdiction vested in it by section 52 of the Constitution and section 106 of the RPA to hear an election petition. I have noted[32] that Baptiste J arrived at the same conclusion, in **Grant v Herbert**, on the basis of similar constitutional and statutory provisions in Saint Christopher and Nevis. However, Chief Justice de la Bastide went on to find that Order 1, rule 2 of the Rules of the Supreme Court Rules 1975, of Trinidad and Tobago were applicable to election proceedings in so far as those proceedings were not regulated by rules made under the Act. Mr. Armour, SC, urged us to follow this finding because Order 1, rule 2 is almost identical to rule 2.2 of our CPR 2000.

[50] Order 1, rule 2 of the Trinidad Rules states as follows:

> "2(1) Subject to the following provisions of this Rule, these Rules shall have effect in relation to all proceedings in the Supreme Court.
> 2(2) The Rules shall not, except as expressly provided by these Rules, have effect in relation to the following proceedings...
> 6 Any other proceedings in the High Court instituted under any enactment insofar as Rules made under that enactment regulate those proceedings."

[51] Mr. Armour submitted that it followed that in the absence of any rules made specifically with reference to election petitions, it was not only permissible but

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[31] At p. 58 of the judgment.
[32] In para. 41 of this judgment.

necessary to have recourse to CPR 2000. However, I am minded to note that there are specific rules in Saint Lucia, to wit, the **Election Petition Rules**.

[52] Mr. Armour, SC, submitted that since it was evident in **Peters** that numerous gaps were left by the failure of the Rules Committee, it became possible, by recourse to the relevant legislation; the nature of an election petition itself, and the practice adopted in analogous proceedings in Trinidad and Tobago, to fill those gaps. He insisted that, there was equally abundant authority for the proposition that where matters of procedure had not been prescribed in the exercise of a jurisdiction conferred by statute, the court had an inherent jurisdiction to approve or direct the procedure to be adopted. He further submitted that, moreover, the provision of section 129 of the RPA, which permitted recourse to be had to the "principles, practice and rules on which Committees of the House of Commons of Parliament of the United Kingdom used to act in dealing with election petitions," demonstrated an intention by Parliament to provide that where the Rules Committee did not fill all the procedural gaps the court would do so.

[53] Mr. Armour stated that what is noteworthy is that Chief Justice de la Bastide rejected the argument that the jurisdiction to hear election disputes was exclusively a parliamentary jurisdiction given his outline that he gave of what he thought were the essential differences of the relevant political history between England and Trinidad and Tobago. In effect, the majority of that Court of Appeal found that the most critical interest is not that of ensuring the speedy resolution of election challenges, but the protection of the constitutionally protected right to vote, access to justice to ensure a democratic process. He buttressed this statement by reference to the following statement made by Tugendhat J in **Jim Miller v Chris Bull (Returning Officer of Herefordshire Council) and Others**:[33]

> "It seemed to me that the major interest at stake in an election petition is not the private right of a petitioner, but the rights of the public. **There is a public interest that there should be free elections held "under**

[33] [2009] EWHC 2640 (QB), at para. 43.

conditions which will ensure the free expression of the opinion of the people"." (Mr. Armour's emphasis).

[54] In conclusion, Mr. Armour, SC, submitted that the decisions of the Eastern Caribbean Supreme Court in other Eastern Caribbean jurisdictions may be distinguished from what the outcome in decision in election petition proceedings should be in the Saint Lucian election court because of the presence of Election Petition Rules in Saint Lucia. In his view, this provides for a regime which is more similar to that of Trinidad and Tobago, on which an election court may rely to fill the gaps in procedure by reliance on the rules of court that regulate the practice and procedure of the High Court in a civil action.

Mr. Astaphan's case for the respondents

[55] Mr. Astaphan, SC, sought to distinguish **Peters**, **Miller** and the English cases upon which Mr. Armour, SC, relied. He insisted that these cases are not applicable law given the different statutory regime for election challenges in Saint Lucia. He noted, first, that section 39 of the Constitution of Saint Lucia is different in substance from section 52 of the Constitution of Trinidad and Tobago. He further observed that section 39 of the Saint Lucia Constitution is unlike section 40 of the said Constitution which confers upon Parliament its general law making power in that section 40 circumscribes the general law making power by the words "subject to the provisions of this constitution". Section 39 does not so circumscribe the power to make election laws.

[56] Mr. Astaphan pointed out that, on the other hand, section 52 of the Constitution of Trinidad and Tobago does not subject the power to make election laws conferred upon Parliament to the provisions of the constitution. He submitted that this omission was deliberate, and was intended to reflect the great latitude given to the Parliament of Saint Lucia under the Constitution to make laws for the determination of membership to Parliament and the jurisdiction of the election

court in these matters. He cited in authority the statements by Bollers CJ, in **Seecomar Singh and Another v R C Butler**.[34]

[57] In **Seecomar Singh**, the Chief Justice stated, in effect, that the absence of the words "subject to the provisions of the Constitution" in the constitutional provision which empowers Parliament to make election laws makes it clear that Parliament was given a *carte blanche* power to pass laws in respect of the circumstances and manner in which and the conditions upon which proceedings for the determination of a question whether a person has been validly elected, for example, may be instituted in the High Court. According to the Chief Justice, provided that Parliament in passing election laws keeps within the limits of those matters mentioned in the enabling constitutional provision, there can be no question of any collision with any other provision of the Constitution. He said, additionally that the doctrine of *ultra vires* cannot be raised to render any election law illegal, null and void and *ultra vires* the Constitution because parliament has been granted a very wide power by the Constitution to make election laws. This, he said, is not the case on section 52 the Trinidad and Tobago, which subjects the purview to make election law to the Constitution.

[58] Mr. Astaphan, SC, submitted that this distinguishing feature was also the subject of statement to similar effect by Benjamin J in **The Attorney-General of Grenada v Peter Charles David and Others**,[35] and in the judgment of the Court of Appeal of Jamaica in **Ian Hayles v Donovan Hamilton**.[36]

[59] The provision of section 39(6) of the **Constitution of Saint Lucia** was the second distinguishing feature to which Mr. Astaphan drew our attention. It would be recalled that this provision states as follows:

> "(6) The circumstances and manner in which and the imposition of conditions upon which any application may be made to the High Court for

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[34] (1973) 21 WIR 34 at pp. 44E to 45A.
[35] Claim No. GDAHCV2006/0018, High Court of Grenada (delivered 12th September 2006, unreported) at paras. 18, 20, 21, 24 and 34.
[36] [2010] JMCA Civ 27 at paras. 29, 30 and 31.

the determination of any question under this section and **the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament**." (Mr. Astaphan's emphasis).

[60] Mr. Astaphan, SC, submitted, in effect, that it was by this provision that the Constitution expressly conferred the power to regulate the practice and procedure to guide election proceedings and that power was conferred only upon Parliament. He noted that there was no similar provision in the Constitution of Trinidad and Tobago.

[61] It is against this background, and based upon the jurisprudential reasoning by the Privy Council and our court that Mr. Astaphan submitted that sections 88 and 89(1), the provisions made by Parliament under the authority of the constitution, are mandatory, and must be complied with before a petition can be held to be valid and the jurisdiction of the court properly is invoked or triggered. He submitted that, on the other hand, rules of court, if at all applicable, would only come into play when the jurisdiction of the court has been properly invoked or triggered, and if not, there is no room or opportunity to apply any rules of court. He cited **Browne v Francis-Gibson and Another**[37] as authority for this statement.

[62] Mr. Astaphan submitted that section 90 of the **Elections Act** deals only with the trial of an election petition. It seems quite clear to me that this section speaks to the actual trial process before the court. Parliament decided that an election petition shall be tried in the same manner as an action commenced by ordinary summons. I agree with Mr. Astaphan that this is not a provision for an interlocutory process, but one which refers to the mode of trial on the petition in the open court trial process during which witnesses are called and evidence is taken. This is quite obvious from the clear terms of section 90, which is reproduced in paragraph 13 of this judgment.

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[37] (1995) 50 WIR 143.

[63] I also agree with Mr. Astaphan that inasmuch as section 90(2) begins with the words "**At the trial of a petition** …" and makes "the powers, jurisdiction and authority" of the judge expressly '**subject to the provisions of this Act**'. The words "**At the trial**" have a specific and limited meaning. They show that Parliament made "the powers, jurisdiction and authority" applicable to a particular stage or point of time namely, "**the trial**" before the judge. I also agree with his further submission that the words '**subject to the provisions of this Act**' imply that the election court or judge exercising this election jurisdiction has no power, jurisdiction or authority to do anything which may infringe or conflict with the obligations imposed by the provisions of the Act.

[64] I further agree with Mr. Astaphan, SC, that inasmuch as there is no express or any other mention of an interlocutory jurisdiction in section 90 of the Act, CPR 2000 cannot be imported under this section to confer such a jurisdiction which Parliament did not expressly confer. I also agree with his further submissions that section 90 of the **Elections Act** cannot be relied on to create an interlocutory jurisdiction in election petition proceedings; to import or incorporate the rules of civil procedure to provide for relief from sanctions or grant extensions of time in these matters; to permit amendments to a petition; to waive the failure to comply with the provisions of the **Elections Act**; to grant extensions of time to comply with the provisions of sections 88 and 89 or, to the extent applicable, the **Election Petition Rules**. In contrast, Section 24(3) of the **Election Petitions Act** of Jamaica; section 145 of the **Representation of the People Act** of Trinidad and Tobago; section 157(3) of the **Representation of the People Act** 1983 of the U.K. and section 63 of the **Representation of the Peoples Act** of Antigua and Barbuda permit some interlocutory processes in election petition proceedings. The process is provided for by express statutory provision. We cannot introduce it into election proceedings in Saint Lucia by reliance upon the cases which were decided on those statutes.

[65] Noteworthily, section 24(3) of the **Election Petitions Act** of Jamaica provides as follows:

> "(3) An election petition *shall* be deemed to be *a* proceeding in the Supreme Court and, subject to the provisions of this Act and to any directions given by the Chief Justice, the provisions *of* the Judicature (Civil Procedure Code) Law and the rules of court shall, so far as practicable, apply to election petitions."

Section 145 of the **Representation of People Act** of Trinidad and Tobago states:

> "The High Court shall, subject to this Part, have the same powers, jurisdiction and authority with respect to any proceedings brought under or by virtue of this Part as if the proceedings were an ordinary action within its jurisdiction."

Section 157(3) of the **Representation of the People Act 1983** [UK], provides:

> "The High Court has, subject to the provisions of this Act, the same powers, jurisdiction and authority with respect to an election petition and the proceedings on it as if the petition were an ordinary action within its jurisdiction."

[66] In Dominica, which, like Saint Lucia, lacks statutory authority for an interlocutory process for election petition proceedings, the High Court highlighted the distinction between the Antigua and Barbuda and the Dominica statutory position, in **Frampton and Others v Pinard and Others**,[38] as follows:

> "In **Shemilita Joseph**, Benjamin J held that particulars were obtainable in election petition procedure in Antigua and Barbuda. His finding was based on section 63 of the **Representation of the Peoples Act of Antigua and Barbuda**, which permitted the Court to advert to the civil practice rules. His Lordship therefore held that particulars could be granted under Order 18, Rule 12(1)(a) of the 1970 Rules (now repealed). **There is no provision in the election statutes of Dominica, which is similar to section 63 of the Antigua Act**." (Mr. Astaphan's emphases).

[67] With respect to section 89(2) of the **Elections Act**, Mr. Astaphan submitted that it provides for the Chief Justice to make rules for specifically prescribed matters, namely, for the deposit of security; for the procedure for the service; and for the hearing of petitions and matters incidental thereto. This seems to be the clear and

[38] At para. 60.

ordinary purport of section 89(2). Mr. Astaphan insisted that there is no statement in this subsection that provides for an interlocutory process. He also insisted that in any event, no rules were made under section 89(2), because the present rules were made in 1948 under the 1939 Ordinance. He admitted that the 1948 rules were continued in force under the **Elections Act**, but the 1939 Ordinance had no provisions similar to those contained in the 1951 Ordinance or sections 88 and 89(2) of the **Elections Act**. Therefore, he submitted, whatever may have been the position under the 1939 Ordinance, since 1951 the Chief Justice would not have had any jurisdiction to confer a jurisdiction not created or conferred by Parliament. He insisted that the Chief Justice could not make rules for any other matter not specifically required or prescribed by the 1951 Ordinance or 1979 **Elections Act**.

[68] Mr. Astaphan, SC, denied that rule 26(2) of the **Election Petition Rules** can be relied on to incorporate CPR 2000. He submitted that this follows, first, because the 1948 Rules are existing laws which must be read subject to the 1967 and 1979 Constitutions of Saint Lucia and the provisions of the **Elections Act**. In the second place, he submitted that CPR 2000 cannot be incorporated, and does not apply unless expressly incorporated, by Parliament in the election statutes. Mr. Astaphan submitted, alternatively, that to the extent there are no inconsistencies between the Act and Rules; the CPR 2000 may, as a matter of construction, apply but only in relation to the matters prescribed by Parliament and in limited circumstances. He insisted, however, that it is seriously doubted that CPR 2000 is applicable to election petition proceedings because the Parliament has asked the Chief Justice to make rules for specifically prescribed matters.

[69] I am inclined, in part, to the alternative submission which is restated in the foregoing paragraph of this judgment. The first submission on this point, which is captured in the first sentence of that paragraph of this judgment, is attractive but strained, in my view. As I see it, section 39 of the Constitution confers the power to make election laws, including those by which the validity of an election is to be determined, upon Parliament. Pursuant to that power, Parliament enacted

sections 88, 89 and 90 of the **Elections Act** to govern the institution of election petition proceedings for the court to determine that validity.

[70] It seems clear to me, that if in section 89(2) of the **Elections Act** Parliament conferred upon the Chief Justice the power to make rules concerning the deposit of security; the procedure for the service, and the hearing of petitions and matters incidental thereto, then the Chief Justice can validly make rules for those limited purposes. The Chief Justice cannot validly make rules for any other purpose. Parliament conferred that power upon the Chief Justice incidental to the power which the Constitution entrusted upon Parliament by section 39 to make election laws. In my view, it does not matter that the rules were made by the Chief Justice in 1948 under a previous election statute. Inasmuch as those rules were continued under the present **Elections Act** and are existing laws under the present Constitution of Saint Lucia, they remain in force as if made pursuant to the present Act, and, accordingly, are to be read with such modification as would cause them to be in conformity with the present constitution. The 1948 **Election Petition Rules** are therefore in force to this extent and insofar as they so conform and are in accordance with the purposes for which Parliament enabled them to be made under section 89(2) of the **Elections Act**.

[71] Mr. Astaphan further insisted that the words "In any matter not provided for ..." in rule 26(2) were intended to be restrictive and exclude any application where a matter is provided for by the rules. He said that, in any event, when a matter is provided for under the rules, such as amendments in however limited a form, the rules of court would not apply. Therefore, he submitted, there can in any event be no amendment to add particulars or material facts, additional relief, or join additional parties to the Petitions, so that any jurisdiction to exclude or excuse non compliance, which is not expressly conferred by Parliament in accordance with section 39(6) of the Constitution, would conflict with the express provisions and mandate of the **Elections Act**. He submitted that the incorporation of CPR 2000 including the Part dealing with relief from sanctions would be wholly incompatible

with the regime and timetables prescribed by Parliament pursuant to section 39 of the Constitution and with the provisions of the **Elections Act**.

My assessment

[72] Whether the rules of civil practice are applicable for the purpose of election petition proceedings is a function of interpretation. That is the essential exercise that is required by this court, in order to determine whether rules of civil practice apply in election petition proceedings, and, if they do, to determine the width of the power or the purpose for which the rules may be lawfully made and applied.

[73] In Commonwealth Caribbean countries, the ultimate authority for the creation of a statutory regime to govern these proceedings flows from our constitutions. In Saint Lucia this is section 39. It is section 52 of the Constitution of Trinidad and Tobago. These provisions empower the Parliaments of these countries to legislate the regulatory regime for proceedings challenging the outcome of elections.

[74] It is apparent to me that the legislative scheme that was considered in **Peters** is structurally similar to that here is in Saint Lucia. Section 52 of the Constitution of Trinidad and Tobago confers jurisdiction on the High Court to determine disputed elections, as does section 39 of the Constitution of Saint Lucia. Section 52 of the Constitution of Trinidad and Tobago however requires leave to institute the proceedings.

[75] Pursuant to these constitutional provisions, the Parliaments of Saint Lucia and Trinidad and Tobago have enacted legislation, among other things, for the procedure for challenging elections. This is provided in PART II of the RPA in Trinidad and Tobago. Section 106 of the said Act provides that the procedure for determining the validity of an election should be commenced by petition, as does section 88 of the **Elections Act** of Saint Lucia. The authority for making rules to

govern elections proceedings is section 144 of the RPA of Trinidad and Tobago. I think that it is sufficiently important to reproduce it here again, with section 145 of the Act. They state as follows:

> "144 The Rules Committee established by the Supreme Court of Judicature Act may make rules of court prescribing any matter of procedure that is necessary or expedient for the purposes of any of the provisions of this Act."
>
> "145. The High Court shall, subject to this Part, have the same powers, jurisdiction and authority with respect to any proceedings brought under or by virtue of this Part as if the proceedings were an ordinary action within its jurisdiction."

[76] I previously observed that the Parliament of Trinidad and Tobago conferred very wide rule making discretion on the Rules Committee to prescribe matters of Procedure. It is a jurisdiction that is much wider than that which is conferred upon the Chief Justice to make rules under section 89(2) of the **Elections Act** of Saint Lucia.

[77] Section 89(2) of the **Elections Act** of Saint Lucia merely permits the Chief Justice to make rules "as to the deposit of security and the practice and procedure for the service and hearing of election petitions and matters incidental thereto." This is a very precise enabling rule making power, which prescribes the exact purposes for which the Chief Justice may make rules to regulate election petition proceedings. It is not a rule making power that is all permissive as is section 144 of the RPA Act. This latter statute permits rules to be made generally to regulate the practice and procedure to be followed in all aspects of election proceedings. The Saint Lucia rules making power permits rules to be made for three specific purposes. These purposes are for the deposit of security; for the practice and procedure for the service of election petitions and, third, for the practice and procedure for the hearing of election petitions and matters incidental thereto. A look at the **Election Petition Rules** of Saint Lucia leaves no doubt, in my view, that the Chief Justice had these purposes firmly in mind when he made the **Election Petition Rules**.

[78] Section 89(2) of the **Elections Act** is the only specific rule making authority for the purpose of election petition proceedings in Saint Lucia. It is not the same rule making authority that is conferred upon the Chief Justice and two other judges of the Court by section 17 of the **Supreme Court Order** and Section 19 of the **Supreme Court Act**. I have prior observed that these sections do not afford the bases for applying CPR 2000 to election petition matters. In my view, section 90(2) of the **Elections Act** does not provide a contrary conclusion. Section 90(2) is specific to the procedure which an election court shall follow during the actual trial of an election petition and relates to the stage when evidence is taken and witnesses are cross-examined. It does not speak to the procedure for instituting the petition and does not provide an interlocutory process to election petition proceedings.

The purview of the rules

[79] It seemed to me, at first blush, that rules 26(2) and 27 of the **Election Petition Rules** of Saint Lucia, read with section 24 of the **Interpretation Act**, are concerned, in the main, with the forms that are to be used in election proceedings. It seemed to me that, ultimately, their conjoint mandate is that, in accordance with section 24 of the **Interpretation Act**, the failure to use a form prescribed by rule 26(1) of the **Election Petition Rules** would not invalidate the proceedings. This, to me, was in keeping with the basic principle in election petition proceedings that failure to observe a procedure that goes to form is not fatal, but failure to observe a substantive requirement is fatal.

[80] The substantive requirements for instituting election proceedings are those which are made under sections 88 and 89 of the **Elections Act**. These provisions provide a relatively comprehensive scheme for instituting such proceedings, with prescribed timelines. The Parliament of Saint Lucia prescribed this scheme pursuant to the peculiar and special authority conferred on it by section 39 of the Constitution. This section provided Parliament with this peculiar and special law making power for election matters, which power is separate from and additional to

the general law making power which the Constitution conferred on Parliament under section 40 of the Constitution to make laws for the peace, order and good government of Saint Lucia.

[81] The Privy Council, this court and our election courts in the Eastern Caribbean have consistently stated that the Elections Act of Saint Lucia and kindred provisions in other states, which were enacted pursuant to constitutional provisions such as section 39, provide a special and peculiar election proceedings jurisdiction. The rules for instituting election proceedings in the relevant provisions of the **Elections Act** must be observed to permit a speedy resolution of these proceedings. It seems to me that even outside of the oft repeated politico-historical perspective, these constitutional provisions, coupled with the related legislation made by Parliament, confer a special and peculiar jurisdiction in our courts purely as a matter of interpretation. Even beyond this, I have not discerned anything in **Peters** that leads me to think that the politico-historical rationalisation of this special and peculiar jurisdiction by the Privy Council, and repeated by Sir Vincent Floissac CJ in **Russell**, and the result of that rationalisation is incorrect.

[82] **Russell** was decided on rules which are identical to the **Election Petition Rules** of Saint Lucia. It is noteworthy that Sir Vincent Floissac CJ traced the jurisdiction of the court in electoral cases through the statement by Lord Upjohn in **Nair v Teik** that sought to differentiate between the parliamentary and the constitutional jurisdictions in electoral cases, when he stated as follows:[39]

> "Constitutionally, decisions on questions of contested elections are vested in the assembly for which the contested election has been held, but in the course of the 19th century many countries, including this country and many of Her Majesty's possessions overseas, adopted the view that, as the deliberations of the assembly itself were apt to be governed rather by political considerations than the justice of the case, it was right and proper that such questions should be entrusted to the courts. This required legislation in every case, and in many cases the right of appeal after the hearing of an election petition by an election tribunal to which those hearings were entrusted was severely limited, clearly for the reason that it

[39] Russell (Randolph) and Others v Attorney-General of St Vincent and the Grenadines (1995) 50 WIR 127 at p. 137.

> was essential that such matters should be determined as quickly as possible, so that the assembly itself and the electors of the representatives thereto should know their rights at the earliest possible moment."

Sir Vincent then concluded as follows:[40]

> "Accordingly, there are significant differences between the constitutional jurisdiction conferred by section 96 and the parliamentary jurisdiction conferred by section 36. Whereas the constitutional jurisdiction is available to any person with a relevant interest, the parliamentary jurisdiction is available only to the Attorney-General and candidates and voters at the impugned election. Whereas the constitutional jurisdiction is regulated by procedural rules (if any) made by the Chief Justice, the parliamentary jurisdiction is regulated by procedural rules enacted by Parliament. Whereas there is an ultimate appeal to Her Majesty in Council from decisions given in the exercise of the constitutional jurisdiction, there is no such appeal from decisions given in the exercise of the parliamentary jurisdiction."

[83] I accept that the provisions in the **Elections Act** for instituting election proceedings are substantive provisions, condition precedent and peremptory, unless they go to form. Parliament has not, in sections 88 and 89 of the **Elections Act**, expressly empowered the Chief Justice to make rules to vary, modify, amend or replace the substantive provisions that govern election proceedings. As a matter of interpretation, purely, the Chief Justice for Saint Lucia cannot enlarge the purview of the enabling power by making rules which would vary, modify or amend Parliament's election proceedings provisions by reference to CPR 2000 practice and procedure, where Parliament conferred no such authority on the Chief Justice. This would be the result, for example, if the Chief Justice were to provide that the interlocutory processes of CPR 2000 can be applied to extend the time which Parliament has stipulated for the presentation of the Petition. Parliament has not expressly conferred such a power. Parliament has not provided for the application of CPR 2000, has not conferred the power on anyone to make rules for that purpose, and has not given a general power to make rules to regulate election proceedings.

[40] At p. 138.

[84] I also accept that there is a high public interest in promoting democracy by ensuring that election cases are determined on their merits. I agree that the constitutional guaranteed right to access and fairness should be facilitated by our courts. However, it is pursuant to the special legislative powers for election proceedings, conferred on Parliament by section 39 of the Constitution, that Parliament has prescribed the rules in the **Elections Act** to provide that access to our courts to vindicate electoral rights. It is not the same prescription as that which is contained in section 16 of the Constitution for vindicating the violation of fundamental rights. Neither is it the same prescription as that provided by section 105 of the Constitution of Saint Lucia to vindicate other violations of the Constitution. This was the apt observation which Sir Vincent Floissac CJ, very correctly made in **Russell**, when he elucidated the difference between the constitutional, civil and election jurisdictions of our courts.

[85] It is my view that lawyers who wish to practice in our election courts have a solemn duty, obligation and responsibility to be well acquainted with electoral laws and procedures in order to facilitate the right to access, the democratic process and the vindication of electoral rights guaranteed ultimately by the constitution. Their duty is to ensure that things are done as prescribed by law in order to ensure that elections cases are eventually determined on their merits thus serving these high public interests and ideals. In my view, these interests are not served or promoted by a plea to the court to permit practice by reference to CPR 2000 in a manner that would facilitate the variation of electoral proceedings requirements mandated by Parliament pursuant to section 39 of the Constitution. This would also be a plea to this court, in my view, to permit a wholesale application of CPR 2000 to election proceedings when there is no apparent authority for doing so.

Rule 26(2)

[86] I stated earlier, that at first blush it appeared that the rule making power given by rule 26(2) of the **Election Petition Rules** is referable to forms and other matters

concerning forms. It seemed to me that the reference to rules of practice and procedure in a civil action relate to forms and matters that go to the formal requirements, and an election court judge is to determine the procedure that is to be used accordingly. On closer reading, however, the clear and ordinary purport of the words seem to suggest that the Chief Justice intended to incorporate the rules of civil practice and procedure of the court in a civil action into election petition proceedings, and the judge is to guide the procedure accordingly.

[87] Two important observations occur to me from the foregoing. The first is that CPR 2000 cannot be used to vary, amend or modify any of the substantive procedural requirements made by Parliament for election petition proceedings under sections 88 and 89, in particular, of the **Elections Act**. These are provisions made by Parliament in primary legislation. The second observation is that CPR 2000 cannot be used in any event to introduce such practice and procedures into electoral proceedings which Parliament did not empower the Chief Justice to regulate. As I earlier observed, by section 89(2) of the **Elections Act**, Parliament empowered the Chief Justice to make rules for the specific purposes stated therein and they do not point to rules for an interlocutory pre-trial process.

[88] It is pursuant to these purposes that the Chief Justice has, in rules 26(2), by reference called in aid reliance on rules and practice of the court in a civil action to buttress his **Election Petition Rules**. In the premises, his reference to the rules of civil practice means that those rules may only properly be used for the purposes for which he was empowered to make them pursuant to section 89(2) of the **Elections Act**. Thus CPR 2000, our civil practice rules, may only fill the gaps in the **Election Petition Rules** so far as these rules are concerned with the deposit of security; the practice and procedure for the service, and for the practice and procedure for the hearing of election petitions and matters related to this. This may not displace any express rule that the Chief Justice expressly provides in the **Election Petition Rules**. Additionally, CPR 2000 cannot be used to oust, modify or amend any rule in the **Election Petition Rules**. They cannot vary, modify or

amend any substantive procedural provision contained in sections 88 or 89 of the **Elections Act**.

CPR rule 2.2

[89] The question whether rule 2.2 of CPR 2000 applies to render CPR 2000 applicable to election proceedings is an intriguing one. Rule 2.2 was reproduced in full earlier.[41] In assessing it, I prior stated my agreement with the consistent statements in our election courts that election petition proceedings do not fall under rule 2.2 inasmuch as elections proceedings are not civil proceedings. The election jurisdiction vested in the court by section 39 of the Constitution of Saint Lucia is not the ordinary civil jurisdiction of the Court. In any event, even if I were to find that CPR 2000 is applicable to election proceedings by virtue of rule 2.2(3) of CPR 2000, the result would be no different from finding that CPR 2000 is applicable under rule 26(2). This is because CPR 2000 could only apply for the 3 purposes that Parliament expressly enabled the Chief Justice to make rules pursuant to section 89(2) of the **Elections Act**.

Answering the questions referred

[90] The foregoing discussion provides the background against which the questions that were referred to this court may be answered.

Question 1.1

[91] This question asked us to say whether CPR 2000 created under section 17 of the Supreme Court Order of 1967 apply in whole or in part to the jurisdiction created or conferred by section 39 of the Constitution of Saint Lucia including proceedings under the provisions of the **Elections Act**.

[92] The answer to this question is that CPR 2000 is not generally applicable to the jurisdiction created or conferred by section 39 of the Constitution of Saint Lucia

[41] In para. 39 of this judgment, under the heading "Mr. Armour's case for the petitioners".

including elections proceedings under the provisions of the **Elections Act**. The rules of civil practice and procedure are only applicable to election petition proceedings to the extent that there is an express constitutional or statutory power that permits the rules to apply. This is the true statement of principle. It is not that the rules of civil practice are not ever applicable to election petition procedure. They are not applicable if statutory provisions do not provide for their applicability.

[93] The foregoing statement of principle accords with statements made by Lewis CJ, in **Duporte v Freeman**.[42] It was thus that the election court of British Virgin Islands stated in **Ethlyn Smith v Delores Christopher et al and Reeial George et al v Eileene Parsons et al**,[43] with reference to **Williams v The Mayor of Tenby and Others**[44] and a UK election statute of 1872 Act that was similar to section 63 of the **Elections Act, 1994** of the British Virgin Islands:

> "[19] The difficulty for the petitioners, however, is that on the principles enunciated in the election cases, we cannot go to the Rules. When a similar issue was raised in Williams v. Tenby, the response of the Court of Common Pleas, was clear. It stated, at page 138;
>
> > 'If it is [a] matter of procedure, then the judge will have some powers. **But if the Act does not give these powers, then he has them not**. The question still is whether the provisions of the Act are or are not peremptory. I think they are peremptory, and that the terms not complied with are conditions precedent, which ought to be complied with before the petition could be presented' ".
>
> "[25] Election statutes are therefore to be interpreted stringently and failure to comply strictly with their requirements is fatal to the petition, unless the Court can find that the failure goes to form. This second observation by their Lordships stated, in effect, that **unless elections rules, or may I add, the Ordinance, confer power upon the court to amend pleadings or to extend the time within which actions are to be done under the Act, the election judge has no power to do these things**. This is the general approach in other cases within and outside our jurisdiction." (My emphases).

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[42] (1968) 11 WIR 497 at pp. 498 and 499C.

[43] Claim Nos. BVIHCV2002/0097 and 0098, High Court of the British Virgin Islands (delivered 23rd July 2003, unreported), at paras. 19 and 25.

[44] (1879) 5 CPD 135 at p. 138.

[94] In **Frampton and Others v Pinard and Others**, the Dominica election court stated the following:[45]

> "[15] The normal civil procedure rules, in our case, the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 ("the Rules"), are not applicable, for example, to join new parties after the time provided for the presentation of the petition, **unless the election statutes provides for it**. …"
>
> "[29] Learned Counsel for the petitioners contended that the Rules are applicable in these cases to permit amendments, an interlocutory process, the joinder of additional parties and interrogatories, for example. I do not think that the Rules are applicable in elections cases in Dominica **because the election statutes do not provide for it**." (My emphases).

[95] It is section 39 the Constitution of Saint Lucia that confers the jurisdiction to make laws to regulate electoral matters, by empowering Parliament to make laws to regulate these matters. Section 39(6) of the Constitution provides for the circumstances, the manner in which and the conditions upon which any application may be made to the High Court for the determination of any question under section 39. It also provides that the powers, practice and procedure of the High Court in relation to any such application shall be regulated by such provision as may be made by Parliament. Pursuant to this mandate Parliament enacted the **Elections Act**.

[96] In sections 88, 89 and 90 of the **Elections Act**, Parliament has provided the regime by which the validity of an election may be challenged in court. Parliament did not expressly provide for the application of CPR 2000 to any proceedings under section 39 of the Constitution. However, by section 89(2) of the **Elections Act**, Parliament empowered the Chief Justice to make rules concerning the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and matters related thereto. 'Hearing' refers to practice and procedure during the trial process.

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[45] At paras. 15 and 29.

[97] The **Election Petition Rules**, which the Chief Justice made in 1948, have been continued in force under the present **Elections Act**. In rule 26(2), the Chief Justice provided that in any matter not provided for by the **Election Petition Rules**, the practice and procedure of the Court in a civil action shall apply and have effect and the judge may in any such case direct what the procedure shall be. By this rule the Chief Justice validly incorporated the civil practice and procedure contained in the rules of court, now CPR 2000, into election proceedings. However, the incorporation could only be valid for the purposes for which Parliament empowered the Chief Justice to make rules under section 89(2) of the **Elections Act**, and the relevant rules in CPR 2000 are not in conflict with provisions of the **Elections Act** and/or the **Election Petition Rules**. Those purposes are for the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and matters related thereto. In Saint Lucia, there can only be resort to the rules of civil practice which provide for these matters, and, ultimately, it is the judge who is hearing the matter who is to direct what actual procedure is to be followed from those aspects of CPR 2000. Even for these aspects, there cannot be a resort to CPR 2000 where the latter is contrary to a statutory provision for election proceedings, including a provision of the **Election Petition Rules**.

Question 1.2

[98] This question is whether and to what extent, if any, can CPR 2000 apply in view of Rule 26(2) of the **Election Petition Rules**. The answer to this question follows from the foregoing paragraph of this judgment. The provisions of CPR 2000 apply in election petition proceedings but only so far as any rule in CPR is concerned with the deposit of security; the practice and procedure for service, and the practice and procedure for the hearing (actual trial) of election petitions and matters related to this. Even so, the judge who is involved in the matter is to direct what actual procedure is followed.

Question 1.3.1

[99] This was the question whether, on the assumption that CPR 2000 may apply in Saint Lucia, a petitioner may, upon good reason given, rely on any provision of CPR 2000 to apply to the court to enlarge the time prescribed for the doing of specific acts and taking of specific steps prescribed by the **Elections Act** or the **Election Petition Rules**.

[100] On the foregoing discussion and analysis, this question is answered in the negative.

[101] Provisions that are made prescribing the time for the doing of specific acts and taking specific steps in the **Elections Act** are substantive, conditions precedent and peremptory, unless they go to form. If those provisions are not complied with, a petition is rendered a nullity and is subject to be struck out as such. CPR 2000 cannot be relied upon in election petition proceedings to import an interlocutory process, particularly in the pre-trial stages of the proceedings. This because the Parliament of Saint Lucia has not provided for this pursuant to its power to regulate election petition proceedings pursuant to section 39 of the Constitution. Additionally, Parliament has only conferred upon the Chief Justice to power to make rules for the limited purposes of the deposit of security; the practice and procedure for service, and for the practice and procedure for the hearing of election petitions and matters related to this. Parliament has not given the Chief Justice or any other authority power to make rules to amend or vary the substantive procedures and other requirements that Parliament made for election petition proceedings in the **Elections Act**. The rules made by the Chief Justice therefore cannot be relied upon to vary or amend any provision made in the **Elections Act**.

Question 1.3.2

[102] This question is whether, on the assumption that CPR 2000 may apply in Saint Lucia, a petitioner may, upon good reason given, rely on any provision of CPR 2000 to apply to the court to vary, modify, amend or perfect the petition notwithstanding that the 21 days prescribed by section 89(1)(a) of the **Elections Act** have expired. More specifically, a petitioner may for good reason apply to extend or enlarge the time for the performance of the obligations or requirements prescribed by sections 88 and 89(1)(b) and (c) of the **Elections Act** or the **Election Petition Rules**.

[103] This question is answered in the negative, given the discussion and analysis contained in this judgment, and, in particular, the summary contained in paragraph 101 of this judgment.

[104] The exception would be matters that go to form. In my view, the signing of a form, document or pleading filed in election petition proceedings by a person who is not authorised to do so by the statutes does not go to form. It is non-compliance with the statutory requirement. However, it is my view that where the person who is authorised to sign a form has not done so, this goes to form. The court may, in its discretion, permit the person to sign the document so long as the document was filed within the stipulated time. The discretion should only be exercised where the court is satisfied, on affidavit evidence supporting the necessary application, that there were good and sufficient reasons that militated against the person signing the document. This is similar to the well-known practice in the commercial court where affidavits, for example, are sometimes filed without the signature of the maker who is not within the jurisdiction, on an explanation coupled with a promise by counsel that the signed document will be signed and filed as soon as it is convenient. This does not import an interlocutory process from CPR 2000. It is a part of the court's inherent case management power, which is always to be exercised in election petition proceedings to guide a case to the hearing of strike

out applications or to eventual trial by providing the necessary directions at an early stage.

Question 1.3.2.1

[105] This question is whether, on the assumption that CPR 2000 may apply in Saint Lucia, a petitioner may, upon good reason given, rely on any provision of CPR 2000 to apply to the court to exercise its power under rule 26.9 of CPR 2000 upon a failure to comply with the provisions of the **Elections Act** and or the **Election Petition Rules** and or election law of Saint Lucia. Rule 26.9 is the rule which permits a party to a civil action to apply to the court for relief from the normal sanctions for failure to comply with a statutory provision or rule.

[106] This question is answered in the negative, given the discussion and analysis contained in this judgment, and, in particular, my finding that the elections laws and principles do not import such an interlocutory process into election petition proceedings in Saint Lucia. The provisions of CPR 2000 would not generally apply to election petition proceedings, unless there is an express statutory provision that permits their application. There is no express provision in the laws of Saint Lucia.

Question 1.4

[107] It would be recalled that the inquiry that this question raises is this: if CPR 2000 is found to be applicable in electoral proceedings, does Rule 26.9 of CPR 2000 apply, upon proper explanation, to relieve the severity of provisions of the **Elections Act** or the requirement in Rule 19 of the **Election Petition Rules**, that a petition which complains of conduct of a Returning Officer, but does not make that Returning Officer a respondent to the Petition, and has not been served on that Returning Officer within the specified time is nevertheless liable to be struck out?

[108] Rule 19 provides for the Returning Officer to be a respondent if there is a complaint in a petition against him or her. The rule states as follows:

> "Where a petition complains of the conduct of a returning officer, such returning officer shall for the purposes of these Rules, except the substitution of respondents in his or her place, be deemed to be a respondent."

[109] Given the provisions of rule 19, this question is answered in the negative. The petition is not liable to be struck out on the grounds that the Returning Officer was not joined or served although his conduct was complained of in the petition. It does not require an application for relief from sanctions under rule 26.9 of CPR 2000 as this rule is not applicable in election petition proceedings. It is because even if not joined or served, rule 19 of the **Election Petition Rules** deems the officer to be a respondent.

[110] Notwithstanding this answer, it would always be prudent to join, as a respondent, a Returning Officer, Supervisor of Elections or any other electoral official against whom allegations are made which tend to impeach their conduct of a poll. This is for proper procedure and their right to natural justice to permit them to respond to the allegations against them. This would also assist the court as they would always be in the best position to explain their actions.

Question 1.5

[111] The inquiry made by this question is whether, notwithstanding the absence of any provision of the **Elections Act** or the **Election Petition Rules**, and on the assumption that the Returning Officer is not required to be joined as a party, where the substantive issue to be determined by the court concerns objections made to the ballot count in relation to which objections the Returning Officer will have his Record, whether the provisions of the CPR in respect of (further information and disclosure) apply so that there exists a duty on the part of the Returning Officer to make available that record to the Court (ex p Huddleston principle)?

[112] Section 70(2) of the **Elections Act** provides as follows:

> "No such election documents in the custody of the Clerk of the House of Assembly shall be inspected or produced except under the order of a judge of the High Court; and an order under this subsection may be made by any such judge on his or her being satisfied by evidence on oath that the inspection or production of such election documents is required for the purpose of instituting or maintaining a prosecution for an offence in relation to an election or for the purpose of a petition which has been filed questioning an election or return."

[113] Mr. Astaphan, SC, conceded, correctly in my view, that this section provides for disclosure of election documents for the purpose of a petition which has been filed questioning an election or return. He submitted, however, that in order for petitioners to rely on section 70(2) the petitions must be valid. He said that a valid petition must be in strict compliance with the provisions of the **Elections Act** and/or the Rules; must disclose a cause of action and pray for all relevant relief prior to the expiration of the 21 days within which the petition must be presented; and all parties must properly be joined and/or served in accordance with the law. I agree, except that pursuant to rule 19 of the **Election Petition Rules** a Returning Officer would be deemed a respondent in any event, even if not initially joined.

[114] It is obvious that section 70(2) contemplates that the court may order all documents that are related to an election, which are in the custody of the Clerk of the House or in the custody of any electoral officer be produced or inspected. This would, among other things, facilitate that aspect of section 90 of the **Elections Act**, which states that at the conclusion of the trial, the judge shall determine whether the member of the House whose return or election is complained of or any and what other person was duly returned or elected, or whether the election was void. It seems to me that a judge in Saint Lucia would need to see the ballots, particularly those that are in issue from the count, in order to be in a position to determine 'what other person was duly returned or elected'.

[115] During the hearing of this reference, Mr. Armour, SC, referred to the fact that in **Ribeiro v Simmonds**, Sir Maurice Davis CJ, permitted the decision by the election court judge to stand after the latter examined the rejected ballots in court. In my view, the Chief Justice was correct particularly as there was nothing to indicate that the judge's count and finding when he examined the rejected ballots was wrong. The Court of Appeal could not therefore in good reason overturn the judge's finding. It seems to me that if a petitioner pleads, with sufficient particularity, that the ballots that were rejected in error exceeded the margin of victory in an election, the court may examine and count the rejected ballots. In any event, where there is an objection to the count, the election court may demand that all records relating to the ballots be brought intact into the court by the officer who has custody of them, once the judge is satisfied on the pleadings, including any affidavit, that there may be reason to examine the ballots. There is nothing, in my view, that requires an application under CPR 2000 in order to have this disclosure and production of all records papers and documents, including the 4 ballots.

Costs and order

[116] Inasmuch as these are referral proceedings at the request of both all parties to the petitions, the parties will meet their own costs. The petitions are returned to the election court for the continuation of proceedings.

Sir Hugh A. Rawlins
Chief Justice

I concur.

Janice M. Pereira
Justice of Appeal

I concur.

Davidson K. Baptiste
Justice of Appeal