

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

HIGH COURT OF JUSTICE

SUIT NO. GDAHCV 2012/0463

BETWEEN:

[1] IGNATIUS KARL HOOD

Claimant/Applicant

and

[1] TILLMAN THOMAS

[2] NAZIM BURKE

[3] FRANKA BERNADINE

[4] KEN JOSEPH

[5] BERNARD ISSAC

Defendants/Respondents

Appearances:

Mr. Cajeton Hood, Ms. Kim George and Ms. Venescia Francis-Banfield for the Claimant/Applicant

Ms. Claudette Joseph and Mr. Alban John and with him Ms.Thandiwe Lyle for the Defendants/Respondents

2012: December 12; 20.

DECISION

[1] **MOHAMMED, J.:** The Claimant/Applicant (“the Claimant”) is the present Member of Parliament for St. George South East constituency in Grenada, having successfully contested the seat in the 2008 general election under the umbrella of the National Democratic Congress (“the NDC”). He was also the former Minister of Foreign Affairs in the present government but due to unhappy circumstances he resigned from this position. He instituted this action after becoming aware via the

media on 30th September 2012 that he was expelled as a member of the NDC, at its convention held on the same day. By his action he is claiming certain declaratory reliefs namely that his purported revocation as a member of the NDC on 30th September 2012 was void and that all actions which flow from his purported revocation are also void. He also seeks an order to be reinstated as a member of the NDC and to stop the Defendants/respondents ('the Defendants') from preventing him from participating in the activities of the NDC.

- [2] He has sought two interim reliefs namely: to stop the Defendants from preventing him as a member of the NDC from participating in its activities and to prevent them from selecting, announcing, registering or otherwise identifying any candidate for the upcoming parliamentary elections for the constituency of St. George South East, of which he is the incumbent Member of Parliament. He contends that the rules of the NDC and the principles of natural justice were not followed in his expulsion, he was not notified of the selection process of the new candidate by the Constituency Branch of St. George South East and as a member of the NDC he has a right to be selected as an officer of the NDC and to participate in the upcoming general elections.
- [3] Counsel for the Defendants submitted that while the Claimant may have an arguable case, the interim reliefs should not be granted since inter alia the Claimant delayed in making his application, there is no right to be selected as a candidate for the NDC to contest the upcoming parliamentary elections and it is not in the public's interest to grant the interim reliefs. Not surprisingly, there is common ground by both parties that damages are not an appropriate remedy.
- [4] The issues to be determined in the interim relief application are: (a) should the Claimant be allowed to continue participating as a member of the NDC pending the final determination of the validity of his expulsion from the NDC and (b) should the Defendants be stopped from selecting, announcing, registering or otherwise identifying any candidate for any upcoming parliamentary elections for the Constituency for St. George South East until the determination of the Claimant's

membership in the NDC. I have treated both issues separately since I am not of the view that one follows the other.

[5] For the reasons set out hereafter, I have been persuaded to grant the Claimant the first relief stated in his application but he has failed to convince me that he is entitled to the second relief sought.

[6] Before I state my reasons, I pause at this juncture to note that it was the understanding of both parties and the Court that this action was instituted against the Defendants in their respective capacities which they hold in the NDC, an unincorporated association. The improper intituling of the action is not fatal to its substance and this defect can be cured by amending the heading. I therefore grant permission to the Claimant to amend the intituling of the Defendants in the action to read **“Tillman Thomas, Nazim Burke, Franka Bernadine, Ken Joseph, Bernard Isaac (sued on their own behalf and on behalf of other members of the National Democratic Congress”)**.

[7] The granting of an interlocutory injunction is a matter of discretion and depends on the facts of the case which consists of the untested affidavit evidence presented. The applicable principles were set out by Lord Diplock in the landmark case of **American Cyanamid Co v Ethicon Limited**¹. When an application for an interlocutory injunction is made, in the exercise of the court’s discretion, the initial question which falls for consideration is: (a) whether there is a serious issue to be tried. If the answer to that question is yes, then a further question arises: (b) would damages be an adequate remedy for the party injured by the Court’s grant of, or failure to grant, an injunction? If there is doubt as to whether damages would not be an adequate remedy :(c) where does the balance of convenience lie?

Should the Claimant be allowed to participate as a member of the NDC until the determination of his action?

¹ [1975] AC 396

[8] The first interim relief sought is to stop the Defendants from preventing the Claimant in participating in the activities and processes of the NDC, after his purported expulsion which was confirmed by letter dated 4th October 2012. In order to determine this issue I will consider the following.

Is there a serious issue to be tried on the Claimant's purported expulsion from the NDC?

[9] The Claimant indicated that he was aware of the date of the NDC's convention scheduled for 30th September 2012 but due to a prior commitment he was unable to attend². He first became aware of his expulsion as a member from the NDC via an announcement in the media³ and he became aware of the reasons for his expulsion from the NDC *after* the convention when he received a copy of the resolution dated 30th September 2012 ("the September resolution"⁴). The Defendants admitted that the NDC's constitution has not been altered but the Claimant's membership was terminated by the September resolution⁵.

[10] Both parties have referred to Article 17 of the NDC's constitution in support of their respective positions on the validity of the Claimant's expulsion from the NDC. Article 17 concerns the procedure to discipline a member of the party and one of the methods of disciplining is expulsion. According to Article 17 where complaints regarding offences against the NDC are made by any of its Organs, other than the party convention, such complaints are sent to the Disciplinary Committee which is charged with investigating the complaint. After investigation the Disciplinary Committee reports to the National Executive Council of the NDC which decides the matter. There is provision at Article 17.7 which gives a member of the party

² Paragraph 10 of the Claimant's affidavit filed on November 14, 2012 ("the Claimant's first affidavit")

³ Paragraph 11 of the Claimant's first affidavit

⁴ Paragraph 15 of the Claimant's first affidavit

⁵ Paragraph 18 of the affidavit of Bernard Isaac filed on November 30, 2012 ("the Isaac affidavit")

against whom a complaint is made the right to an opportunity to be heard and to legal counsel.

[11] The reasons for the Claimant's purported expulsion appear to be set out in paragraphs 4 - 8 of the September resolution. For convenience I will refer to some material parts as "the power struggle that has engulfed the NDC since November 2010 and which entered a heightened phase in November 2011 where open efforts were made to oust the Political Leader from Office⁶"; "such conduct would, in normal circumstances be subject to the Party's disciplinary procedures involving the laying of complaints and allegations, the finding of facts, the right to a hearing and the imposition of an appropriate sanction as the case may be⁷"; and "this Convention of the Party is seized of the urgency and prudence of so addressing its business that it settles, promotes and projects the good standing and image of the Party for the purposes of presenting itself to the electorate at the upcoming general elections as a united, strong, serious credible force⁸."

[12] There is common ground that the Claimant did not attend the party convention on 30th September 2012. Thus far, for the purpose of the instant application there is no evidence that the Claimant was notified that there were charges of misconduct against him which would have been tabled at the convention for a resolution to expel him from the party.

[13] Counsel for the Claimant referred me to the authority of **John v Rees and others**⁹ which addressed the substantive issues of breach of natural justice principles. For the purposes of this application this authority is not wholly relevant since it is not the function of the court to determine at this stage of the proceedings whether the proper procedure was followed under Article 17 or any other provision of the NDC's constitution in the Claimant's purported expulsion. All I am required to assess at this stage is whether there is a serious issue to be tried. Based on the

⁶ Paragraph 5 of the September resolution

⁷ Paragraph 7 of the September resolution

⁸ Paragraph 8 of the September resolution

⁹ (1969) 2 All ER 274

contentions of both parties in my view there is a serious issue to be tried namely: whether the proper procedure was followed in the Claimant's expulsion as a member of the NDC.

Can damages adequately compensate the Claimant if he is not allowed to continue as a member of the NDC?

- [14] The claim is for a declaration that the purported revocation of the Claimant's membership of the NDC be declared void. He has also claimed injunctive relief but he has made no claim for damages. If the Claimant succeeds at trial under this claim there is no basis to assess his damages. I am of the view that damages appear to be inadequate as a remedy.

Does the balance of convenience lie with the Claimant remaining as a member of the NDC?

- [15] It is common ground that if there was doubt as to adequacy of damages the court must examine where the balance of convenience lies. In this case there is no doubt that damages are inadequate as a remedy. In determining where the balance of convenience lies Diplock LJ described it as "If the Defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake. Whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial¹⁰." The matters to be considered vary from case to case.

- [16] Who would suffer the greater inconvenience if the Claimant is allowed to remain as a member of the NDC until the trial, the Claimant or the Defendants? In my

¹⁰ [1975] AC at page 408

view the balance of convenience lies in the Claimant's favour for the following reasons:

(a) The Claimant has been a member of the party from arguably 1989¹¹. While the Claimant experienced difficulties as a member of the party during the years previous to him being a minister of government he did not resign his membership from the NDC. He stayed on, continued to work in the NDC and was accepted by its members¹². The Claimant's disappointment appears to be when he was a Cabinet Minister in the NDC government from 2008¹³. Even after he resigned as Minister of Foreign Affairs in 2012 he continued being a member of the party¹⁴.

(b) From the evidence before me, the Claimant's main problems were primarily with the first Defendant ¹⁵ and not with the entire membership of the NDC. I do not share Counsel for the Defendants' view that to allow the Claimant to remain as a member would add fuel to an inflammatory situation. The evidence presented by both sides demonstrated that the Claimant and the first Defendant, not all the Defendants nor the entire membership of the NDC had opposing views on several issues.

[17] I therefore find that the Claimant is entitled to paragraph 1 of the interim relief sought in his notice of application and I so order. I will now deal with paragraph 2 of the Claimant's interim relief.

Should the Defendants be restrained from selecting, announcing, registering any NDC candidate for St George South East?

¹¹ Paragraph 3 of the Claimant's first affidavit

¹² Paragraphs 4,5 and 6 of the Claimant's first affidavit

¹³ Paragraph 7 of the Claimant's first affidavit

¹⁴ Paragraph 6 of the Claimant's first affidavit

¹⁵ Paragraphs 7,8,9 of the Claimant's first affidavit and paragraph 15 of the Claimant's filed December 11, 2012 ("the Claimant's second affidavit")

[18] The second interim relief sought by the Claimant is to stop the Defendants, in the name of the NDC, from selecting, announcing, registering or otherwise identifying any candidate for any upcoming parliamentary elections for the constituency of St George South East until further or other order of the court.

[19] The Claimant contends that the process used in selecting any candidate to contest the upcoming general elections for the St George South East constituency was flawed for primarily two reasons¹⁶. Firstly, as a member of the National Executive Council he was ex-officio a member of the St George South East Constituency Branch and therefore he was entitled to be notified of the meeting of the Constituency Branch when it was selecting its potential candidate. Secondly, the elections for the new executive for the Constituency Branch for St George South East was not proper since he was not notified of the said election.

[20] The Defendants are of the view that “On Monday 24thSeptember 2012, Randall Robinson was elected by the general membership of the NDC’s St George South East constituency as their candidate to contest the upcoming general elections for the NDC¹⁷” which they maintain was proper.

Is there a serious issue to be tried arising from the selection of the candidate for St George South East of the NDC?

[21] The procedure to be followed in the selection of candidates can be found at Article 14 of the constitution of the NDC which states “Candidates for contesting Parliamentary and other State elections on behalf and in the name of the NDC shall be chosen by the National Executive Council in Consultation with Constituency Branches and Village Party Groups”.

[22] The composition of the National Executive Council is set out in Article 4.10 of the NDC’s constitution. The Claimant as the Member of Parliament for St George

¹⁶ Paragraph 23 of the Claimant’s first affidavit and at paragraph 27 of the Claimant’s second affidavit

¹⁷ Paragraph 22 of the Isaac affidavit

South East qualifies as a member of the National Executive Council under Article 4.10 (iii) and ex officio as a member of the Constituency Branch pursuant to Article 4.13. Apart from the procedure set out in Article 14 the Claimant indicated a practice used by the NDC in selecting a candidate where there is an incumbent Member of Parliament¹⁸.

- [23] The Defendants contend that the selection of Mr. Randall Robinson was done before the purported expulsion of the Claimant, which the latter claims he had no notice. In my view there are 2 issues. If the selection of Mr. Robinson was done *before* the purported expulsion then the issue is whether the procedure was proper in the absence of notice to the Claimant. If it was done *after* the purported expulsion the issue is whether the validity of the expulsion impacts on the selection as a natural consequence. Either way there is a serious issue to be tried.

Can damages adequately compensate the Claimant if Mr. Robinson's selection as the candidate for St George South East is allowed to stand?

- [24] Both parties submitted that damages cannot compensate them for any loss they would suffer if the injunction is or is not granted. I share their views.

Does the balance of convenience lie in stopping the selection of Mr. Robinson or to allow the Claimant to be part of the process?

- [25] Who would suffer the greater inconvenience? The Claimant who is the incumbent Member of Parliament for the constituency of St. George South East or the Defendants who have embarked on the process of selecting a candidate for the constituency for St. George South East in Mr. Robinson.

- [26] In my view the greater inconvenience lies with the Defendants for the following reasons:

¹⁸ Paragraph 19 of the Claimant's second affidavit

- (a) Delay- The maxim of equity that ‘delay defeats equities’ is well known and is sometimes stated in the expressions- ‘a person who sleeps on his rights loses them’. Delay in seeking interim relief is that much more critical. This is because the granting of interim relief is predicated on a state of urgency.

The selection of Mr. Robinson was purportedly done by the Constituency Branch of the St George South East constituency on 24th September 2012. According to paragraph 26 of the Claimant’s affidavit filed 13th December 2012 (“the Claimant’s second affidavit”) “Further to this, the deputy chairman of the constituency, Mr. Wilby Stewart, called Senator Glen Noel on the phone in my presence, and complained that what was happening was wrong and that the term of the executive had not expired. Mr. Noel officially occupies the post of Minister of Information and Mobilization and takes the lead in public relations for the administration of the First Respondent. I am informed by the said deputy chairman and verily believe that the answer received from Senator Noel was “then sue us”.”

There is no evidence when this incident occurred. If this occurred before the September resolution when the Claimant was still purportedly a member of the NDC, then he would have been aware that something was amiss and it was open to him at that time to embark on action to stop the process. If it occurred *after* 4th October 2012 there has been no explanation from the Claimant to account for the 6 weeks delay before the instant action and application were filed on 14th November 2012. In my view this delay has impacted on the status quo on this issue since Mr. Robinson would have already been identified by the Constituency Branch by the time the instant application was filed.

- (b) Maintaining the status quo – It therefore follows that prompt action means that the preservation of the status quo favours the Claimant if a Defendant’s activities are at a preliminary stage. Conversely, if the Defendant has

proceeded a long way, he may claim that preservation of the status quo involves allowing him to continue. In the instant case the Defendants have proceeded some way in the selection process of the candidate for the constituency of St George South East. The status quo is the St George South East Constituency Branch has selected a candidate, Mr. Randall Robinson. I appreciate that the Claimant's request for injunctive relief from me is to restrain the Defendants from selecting, announcing, registering or identifying any candidate but on the face of the evidence this was already done by the Constituency Branch on 24th September 2012. The propriety of the process used by the Constituency Branch is a substantive issue which has not been disputed in the interim or final relief which I will next address.

- (c) The inadequacy of the interim relief sought- In the Claim Form the Claimant has sought a declaration that all actions which flow as a consequence of his purported expulsion from the NDC are void¹⁹. This is wide and general and the Defendants are entitled to know exactly what case they have to meet. The Claimant has not sought to stop and /or challenge the process of the selection of Mr. Robinson by the St George South East Constituency Branch. He has not sought to have Mr. Robinson's selection declared void nor has he challenged the legality of the election of the executive of the Constituency Branch for St George South East. Instead the Claimant is seeking to stop the Defendants and by extension the NDC from selecting, announcing, registering Mr. Robinson or any other person as the candidate for any upcoming parliamentary elections for the constituency of St George South East. In light of the procedure outlined in Article 14 of the NDC's constitution together with the evidence of Mr. Isaac, it seems to me that there is no evidence to conclusively indicate that the NDC has selected Mr. Robinson as the candidate for St George South East constituency. There is only evidence that the Constituency Branch has selected Mr. Robinson which is different from the interim relief sought. It may be that the National Executive Council of the NDC

¹⁹ Paragraph III of the claim form filed November 14, 2012

after consultation may or may not accept the selected candidate. It is not for me to speculate. On this note, I refer to Counsel for the Claimant's challenge of a document dated 9th August 2012 which was initially annexed to the affidavit of Bernard Isaac filed 30th November 2012 as "I-6" (an undated and unsigned copy) and then the dated and signed copy which was annexed as "SGSEC" in an affidavit filed on 11th December 2012. At this stage of the proceedings it is not part of the court's function to try to resolve a conflict of evidence on affidavits as to facts. There has been no cross-examination to test the value of this document. In any event, the validity, meaning and effect of this document will be determined by the Court after cross-examination at the trial.

- (d) The public's interest - In some cases the wider public interest may be properly considered as decisive. If the injunction is granted the process of selecting a candidate for the St George South East constituency for the NDC would have to start over at a time where both parties have admitted that general elections are upcoming. In my view this is a matter in respect of which the Defendants could not be compensated if I granted the injunction and if it transpired at the substantive hearing that the relief should not have been granted.
- (e) Right vs. eligibility of selection - I cannot agree with the Claimant's submission that as a member of the NDC he has a right to be selected as a candidate for the upcoming parliamentary elections. I share the views of Counsel for the Defendants that as a member of the NDC, he is eligible for selection as a candidate.
- (f) Utility of the relief if granted- If the Claimant does not succeed in his application for this injunctive relief he may not be the NDC's candidate for St George South East in the upcoming general elections. However, from the evidence presented this Claimant has indicated that he has not been happy both as a Minister of Government and as a Member of Parliament from at least early 2012. Paragraph 8 of the Claimant's second affidavit confirms the

frustrations he experienced as a Member of Parliament. At one point in time the Claimant admitted “Because of the prevailing conditions I did say that I was not going to contest the next election. In response to my statement, many persons in the constituency prevailed on me to change my mind, which I did²⁰”. Paragraphs 7, 8 and 9 of the Claimant’s affidavit filed 14th November 2012 and paragraph 6 of the Claimant’s second affidavit all confirm the level of stress and frustration which he experienced while he was a member of the Cabinet as the Minister of Foreign Affairs.

[27] In light of the aforesaid reasons I therefore find that the Claimant is not entitled to paragraph two of the interim relief sought in his notice of application.

Order

[28] The Defendants and each of them whether by themselves, their agents, servants and successors or otherwise with immediate effect are restrained from taking any action whatsoever or howsoever styled aimed at preventing, or otherwise impeding participation of the Claimant in the activities and processes of the NDC pursuant to the decision communicated to the Claimant by letter dated 4th October 2012 until the determination of this action. This order is conditional on the Claimant undertaking to be liable in damages to the Defendants in the event that the Court later finds that the Defendants have suffered any loss or damage as a consequence of the making of this Order.

[29] Cost of the application is reserved until the determination of the trial.

Margaret Y. Mohammed
High Court Judge

²⁰ Paragraph 6 v of the Claimant’s second affidavit.