

THE EASTERN CARIBBEAN SUPREME COURT
SAINT KITTS AND NEVIS

THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2012/0337

In the matter of section 52 of the National Assembly Elections Act Cap 2.01 of the Revised Laws of Saint Christopher and Nevis, 2002.

And

In the matter of a decision made on August 13, 2012 by the Registration Officer Leroy L. Jones on objections considered and upheld by him under the National Assembly Elections Act o have the names of **KEISHA ARCHIBALD, TARIK BRADSHAW, CALVERT BENNETT, KEVIN BENNETT, PAULA CONNOR, GASTON DIXON, SANDRA FRANCIS, ZEFTON FRANCIS, IAN JULES, JUNELLA MILLS and LAVERN PATRICK** struck from the Register of Voters for Electoral District of Saint Christopher #5.

BETWEEN:

**KEISHA ARCHIBALD
CALVERT BENNETT
KEVIN BENNETT
TARIK BRADSHAW
PAULA CONNOR
GASTON DIXON
SANDRA FRANCIS
IAN JULES
JUNELLA MILLS
LAVERNE PATRICK**

Appellants

And

LEROY L. JONES

Respondent

Appearances:

Mr Sylvester Anthony and Ms Angelina Sookoo for the Applicants
Ms Jihan A. Williams for the Respondent
Mr Vincent Byron for the Objector

2012: October 26th
2013: January 30th
2013: Reissued February 1st

JUDGMENT

[1] **THOMAS J (Ag):** Before the court is an appeal, pursuant to section 52 of the **National Assembly Act**, Cap 2.01 of the Revised Laws of the Federation of Saint Christopher and Nevis against a decision of the respondent given on August 13, 2012 whereby the respondent allowed objections made by Shawn Richards and heard on August 9, 2012. The stated grounds of this appeal are in these terms:

"There was no or sufficient basis or evidence before him to have allowed him to arrive at the decision that the appellants do not and were not at all material times, including the date of publication of the annual register of voters for the Electoral District of Saint Christopher # 5 or on August 9, 2012 residing, ordinarily residing or domiciled at the qualifying address given in the said register of voters as is required by the Act".

[2] In the premises the appellants seek an order that:

1. The decision by the respondent be reversed and the said objection be disallowed
2. Alternatively, the consideration of the objector be remitted to the respondent for rehearing with the opinion of this Honourable Court; and
3. Costs of this Appeal to be for the Respondent.

The Evidence

[3] The evidence in this appeal falls with a very narrow compass in that a total of four¹ witnesses gave evidence² on and on behalf of the objector. The essence of the evidence in all cases was that the objector was known to the witnesses as a person, where he or she lives (other than Sandy Point)

¹ The witnesses are Mr Shawn Richards, Mr Levar Flanders, Mr Delka Leader and Mr Calvin Leader

² Messers Shawn Richards and Levar Flanders gave evidence with respect to Ms Keisha Archibald; Messers Shawn Richards and Delka Leader gave evidence with respect to Mr Tarik Bradshaw; Messers Shawn Richards, Delka Leader, Calvin Leader and Levar Flanders gave evidence with respect to Mr Ian Jules; Messers Shawn Richards and Levar Flanders gave evidence with respect to Ms Lavern Patrick; Mr Shawn Richards and Ms Delka Leader gave evidence with respect to Ms Sandra Francis; Messers Shawn Richards, Levar Flanders and Delka Leader gave evidence with respect to Ms Paula Connor; Messers Shawn Richards, and Levar Flanders gave evidence with respect to Ms Gaston Dixon; Messers Shawn Richards, Levar Flanders and Delka Leader gave evidence with respect to Mr Zefron Francis; Messers Levar Flanders and Shawn Richards and Delka Leader gave evidence in respect to Mr Calvert Bennett; Messers Shawn Richards and Delka Leader gave evidence with respect to Ms Junella Mills and Mr Shawn Richards alone gave evidence with respect to Kevin Bennett.

plus the fact that the objectee did not at the material time reside in Sandy Point or never resided in the said place.

- [4] The cross-examination by Mr. Anthony on behalf of the objectees was very limited and re-examination by Mr Byron was correspondingly limited. Additionally, no witnesses were called on behalf of the objectors.
- [5] In the circumstances the registration officer had before him the sole evidence of the objector and 3 other witnesses; and his decision was that there was compelling evidence that the persons never or no longer lived in the Electoral District No. 5.

ISSUE

The issue for determination is as follows:

Whether there was no or not sufficient basis or evidence before him to have allowed him to arrive at the decision that the appellants do not and were not at all material times, including the date of publication of the annual Register of Voters for the Electoral District of Saint Christopher #5 or on August 9, 2012 residing or ordinarily residing or domiciled at the qualifying address given in the Register of Voters as is required by the Act.

- [6] The **Constitution of Saint Christopher and Nevis ("The Constitution")**, the **National Assembly Elections Act ("The Act")** and the **Election Registration Regulations** are all cited and analyzed in the submissions and as such the relevant provisions will be cited and depending on their importance, detained with respect to the issue.

Submissions on behalf of the Appellants

- [7] Learned counsel for the appellants cited a number of authorities³ in support of their case that the appeals should be allowed on the evidential threshold regarding the requirement of being resident, ordinary resident or domiciled in a constituency and the actual evidence adduced. Submissions were tendered in relation to each appellant and the main aspects are as follows:

³ Apart from the Constitution, the National Assembly Elections Act, the Election Registration Regulations these cases were cited and relied on: Robert v Pinder, Bahamas Law Reports, Dudley Williams v Lauren James Civil Appeal No. 16/2007, Parry Benjamin Lawrence and Daniel v Brantley HCVAP2012/0003 2012/0004 and 2012/0005

Keisha Archibald

- "18. We submit that the evidence before the Respondent was contradictory. The test which the Respondent had to satisfy himself of is whether the Appellant was ordinarily resident in Constituency #5 at the time of registration (and publication) of the Register of Voters. Section 37 of the Act states that a person is qualified as a voter is he is ordinarily resident therein at the date of registration. No evidence was led that at the date of registration she was not ordinarily resident in Constituency #5. In fact the opposite was revealed by the evidence. No evidence was led as to whether the First Appellant was ordinarily resident in Constituency #5 at the time of her registration.
21. The evidence of Flanders does not take the Objector's case further. He simply states that he know the First Appellant to live in Bird Rock and has been to her home. He does not say what time period he was talking about. His evidence contradicts that of the Objector, who clearly states that between 2010 and 2012 she lived in Sandy Point".

Calvert Bennett

- "23. The evidence of the witness Levar Flanders in relation to this witness should have been rejected by the Respondent and this witness should have been regarded as an incredible witness. In his evidence, he indicated that he spoke to the Second Appellant and that the Second Appellant told him that he lived in St. Pauls. This evidence is hearsay as the Second Appellant was absent. At the said hearing and should not have been allowed base on the basic principle and rules of evidence.
26. As well, the evidence of Leader that the Second Appellant is his nephew and that the Second Appellant lives at Back Street, is once again not sufficient to meet the high threshold required by law in order to disenfranchise the Second Appellant. No evidence has been led to show where the Second Appellant was ordinarily resident at registration, publication of the Register in 2012 or at the date of the hearing of this objection".

Kevin Bennett

- "29. The single uncorroborated evidence of the objector that the Third Appellant lives in Newton Ground but he does not know exactly where; is again not sufficiently high or reliable to establish that the Third Appellant is not and was not at this time of registration or publication ordinarily resident in Constituency #5".

Tarik Bradshaw

- "33. What is clear is that both witnesses [the Objector and Leader] are not certain nor have they corroborated each other's story on where exactly the Fourth Appellant is ordinarily resident at the material times required. One say he moved from St Pauls. This, we submit should have raised red flags for the Respondent. Such uncertainty in the evidence surely does not meet the sufficiently high threshold

required by the Court of Appeal to remove a voter's names from the Register for a particular constituency".

Paula Connor

- "35. The evidence that was before the Respondent in relation to the fifth Appellant was not sufficient nor did it in any way satisfy the requirements stated by Justice of Appeal Barrow, S.C. above. The objector admitted that he did not know the fifth Appellant personally. One of the requirements of the Court of Appeal ...is that the objector must individually know the objectee. The objector led no evidence as to where the fifth Appellant was ordinarily resident; he gave no evidence of ever going to the fifth Appellant's house; he gave no evidence that he knew the individual who lived at the address stated on the Register for the fifth Appellant and that she was not ordinarily resident at the address when she registered to vote at the material time".

Gaston Dixon

- "39. The evidence of the objector in relation to the sixth Appellant is very poor and in no way meets the requirements sated above. The '*know* the sixth Appellant by '*seeing him*' *we submit*, does not meet the sufficiently high threshold of evidence required by the Court to remove the sixth Appellant's name from the Register, to state that the sixth Appellant has never lived with his father in Sandy Point again, is poor evidence and in no way meets the high threshold required to prove that the sixth Appellant was not ordinarily resident in Constituency #5 at registration or publication of the Register.
40. The evidence of Flanders and Leader once again are circumstantial and do not satisfy the required high threshold needed to disenfranchise the sixth Appellant. To be sleeping at one's business place we submit, does not amount to ordinary resident there. There is no evidence, corroborated or otherwise, to indicate that the sixth Appellant was not ordinarily resident in Constituency #5 at registration or publication of the Register. Assumptions based on the sixth Appellant having a business place in St Pauls and that therefore means that he lives there, is dangerous and does not amount to factual proof of the sixth Appellant's ordinary residence or lack of qualification to be registered in Constituency #5".

Sandra Francis

- "42. There is no evidence that the Seventh Appellant is not ordinarily resident in Constituency #5. The objector does not say that he knows her. His evidence is that he knows she does not live in Sandy Point and that he met her at a public meeting in St Pauls. This is evidence at its poorest. It in no way begins to answer the questions Barrow JA indicated is required of the objector for the Respondent to allow his objection.
43. Again, Leader's evidence does not take the Objector's case any further. He does not say that he has visited the Seventh Appellant's house nor provides any of the

other relevant evidence as required by the Court of Appeal. Nor does he give any evidence to negate that she was ordinarily resident in Constituency #5 at registration or publication of the Register 2012. He does not say when she 'started living' in St Pauls, whether this was for all her life or some other relevant and material time period".

Zefton Francis

- "44. There is no evidence to negate, that upon registration and subsequent publication of the Register 2012, the Eight Appellant was ordinarily resident in Constituency #5. Only one person said that they actually knew the Eight Appellant personally. The evidence of Flanders as to what the Eight Appellant's mother told him is hearsay and should not have been allowed as a matter of the rules of evidence. Leader does not give any evidence to show the distance the Appellant lives from him in order to establish whether this was within the boundaries of Constituency #5".

Ian Jules

- "46. The evidence given by the Objector with respect to this Appellant does not satisfy in any way the sufficiently high threshold required in order to disenfranchise the Ninth Appellant. The fact that the Objector stated that the Ninth Appellant was previously objected to, and the objection was denied and the name remained on the Register should have alerted the Respondent to the Ninth Appellant's qualification to vote in Constituency #5 and therefore to remain on the Register.
47. The evidence of Flanders and Leader, we submit, does not satisfy the necessary requirements stated above to have lawfully allowed the Respondent to remove the Ninth Appellant's name from the Register. There is no evidence that the Ninth Appellant was not ordinarily resident in Constituency #5 at registration or publication of the Register".

Junella Mills

- "49. There is no evidence that the Tenth Appellant was not ordinarily resident at registration or publication of the Register for 2012. The objector stated that he does not know specifically where the Tenth Appellant lives. No one has indicated that they have visited the Tenth Appellant's home and that they know her to ordinarily resident outside of Constituency #5".

Laverne Patrick

- "51. [T]he evidence put forward with regard to the Eleventh Appellant does not satisfy the high threshold required by the Court of Appeal to negate that the Eleventh Appellant was ordinarily resident in Constituency #5 upon registration and publication of the Register. The evidence provided is vague and does not [contain] the specific information and details required by the Court of Appeal to

lawfully allow the Respondent or we submit, this Court to remove the Eleventh Appellant's name from the Register.

Submissions on behalf of the Respondent

[8] Learned counsel for the respondent having noted "the sole ground of appeal" concerned the sufficiency of the evidence before the respondent to enable him to arrive at the decision that the appellants do not and were not residing, ordinarily residing or domiciled in Electoral District of St Christopher #5 went on to consider the matter of the receipt of notices by the appellants. For the record the submissions: "concisely" advanced on behalf of the respondent are as follows:

- "i. At all material times the Respondent acted within the purview of the powers conferred upon him by the electoral law of our land.
- ii. Although there is no positive evidence that the notices of objector were personally received by the Appellants, the presence of counsel for the objectees and his compliance in the objection hearings on their behalf negate any submission that the Appellants had not received notice of the hearing. This Court is respectfully encouraged to consider the judgment of Mitchell JA (Ag) in the Court of Appeal decision of Justice Pemberton that the 'presence of counsel is a sure indication that, without more, the Claimant is not intentionally absent'. The evidence from the Respondent's notes in the Record of Appeal clearly indicates that the Appellants were intentionally absent. It is unconscionable and unfair that said Appellants should now seek to invoke the blessing of the Honourable Court to afford them another opportunity to do that which could have been done on August 9, 2012 had they chosen to be present.
- iii. In circumstances where evidence suggests that objectees have received notice, a ruling from this Honourable Court in favour of the Appellants would signal to present and future objectees that in order to circumvent a determination being made by a Registration Officer as to the objections made to their inclusion in the Register of Voters and thereby have their names remain, one should simply not attend the hearing and the claim would be disallowed.
- iv. According to Regulation 34, determinations on objections are to be heard by a Registration Officer based on 'evidence that is available to him or her'. Based on the evidence adduced by the objector i.e. the only evidence that was made available to the Respondent in light of the Appellant's refusal to appear at their hearings, the Respondent did in fact and law have sufficient basis or evidence before him to have allowed him to arrive at a decision that the Appellants do not and were not residing, ordinarily residing or domiciled in Electoral District of St. Christopher #5".

The Constitution and the Law

- [9] Section 20 of the Constitution provides for the election of representatives and for these purposes in subsection (2) thereof there is prescribed the qualification to vote. Qualified are persons who are: "Commonwealth citizens of age of eighteen years or upwards who possess such qualifications relating to residence or domicile in Saint Christopher and Nevis as Parliament may prescribe... unless he or she is disqualified from registration as such, be entitled to be registered as a vote for the purpose of electing representatives in one (but not more than one) constituency in accordance with the provisions of any law in that behalf and no other person may be registered as such".
- [10] **The National Assembly Elections Act** deals comprehensively with the elections together with the **Election Registration Regulations** which are contained in the Fourth Schedule to the said Act. Various provisions of the two enactments will be cited as they arise.
- [11] Section 52 of the Act bears the rubric "Appeal" and subsections (1), (2) and (6) are of immediate relevance:
- "(1) An appeal shall lie to a Judge of the High Court sitting in Chambers from any decision of a registration officer or any claim or objection which has been considered by him or her under this Act.
Provided that no appeal shall lie where a claimant or objector has not availed himself or herself of his or her opportunity as provided by this Act of being heard by a registration officer on the claim or objection.
 - (2) Any claimant or objector desiring to appeal against a decision of a registration officer shall give written notice of appeal to the registration officer and to the opposite party, if any, when the decision is given or within seven days thereafter, specifying the grounds of appeal.
 - (6) Every appeal under this section shall be prosecuted, heard and determined by the Court in such manner as may be prescribed by rules of court and the costs of every such appeal shall be in the discretion of the Court hearing such appeal".
- [12] Section 37 of the Act, to some extent, contains the language of section 29 the Constitution. However, as authorized by the said section 29, the Act also prescribes in said section 37 as follows:
- "(1) Subject to this Act and any enactment imposing any disqualifications for registration as a voter, a person is qualified to be registered as a voter for a constituency if he or she is

- (a) A citizen of Saint Christopher and Nevis of eighteen years or upwards who is domiciled in Saint Christopher and Nevis or is ordinarily resident therein at the date of registration;
 - (b) A Commonwealth citizen of eighteen years or upwards and has resided in Saint Christopher and Nevis for a period of at least twelve months immediately before the date of registration as a voter or is domiciled in Saint Christopher and Nevis and is resident therein at the date.
- (2) A person is not qualified to be registered as a voter for more than one constituency.
- (3) Where a person who is registered as a voter for a constituency has ceased to reside in that constituency, he or she shall not on that account cease to be qualified to be registered as a voter for that constituency until he or she has become qualified to be registered as a voter for another constituency”.

[13] A related provision is section 39 of the Act which says that:

“A person registered pursuant to this Act shall remain registered unless and until his or her name is deleted from there because

- (a) He or she has died;
- (b) An objection to his or her registration has been allowed; or
- (c) He or she has become disqualified from registration as a voter under this Act or any other enactment imposing disqualifications for registration as a voter”.

Analysis

[14] It is clear from the Constitution the eligibility to vote, qualification to vote and the right to remain registered to vote is sacrosanct. And it will be recalled that, the essence of the appellants’ case is that the registration officer did not have sufficient evidence or basis before him to arrive at the decision that the appellants do not and were not at all material times, including the date of publication of the annual Register of Voters for the Electoral District of Saint Christopher #5 on August 9, 2012 residing, ordinarily residing or domiciled at the qualifying address given in the said Register of Voters.

[15] So the appeal therefore comes down to the legal import ‘residing’, ‘ordinary residing’ or ‘domiciled’.

[16] In Regulations 5 and 6 of the **Election Registration Regulations** this is to be found:

“5. Ordinary Residence

- 1. The place of ordinary residence of a person is, generally, that place which has always been or which he or she has adopted as, his or her habitation or home, whereof when away from there he or she intends to return.

2. The question as to whether a person is ordinary resident or domiciled in any constituency at any material period shall be determined by reference to all the facts of the case.

6. Domicile

1. For purposes of registration, domicile means domicile of origin or domicile of choice in Saint Christopher and Nevis as ordinarily interpreted at common law.
2. In the case of separation or desertion or married woman may have a separate domicile".

[17] Based on the law the onus lay on the objectors to show that the objectees/appellants were not ordinarily resident or domiciled in Saint Christopher #5. To this end the Court notes that in general the evidence of Shawn Richards, Levar Flanders, Delka Leader and Calvin Leader consisted of knowing the objectees, where they now reside, contact with the objectees' family and the fact that the objectees never lived in Sandy Point.

[18] As against the foregoing the law says that 'ordinary resident' calls for evidence as to the place a person has adopted as his or her habitation or home or when away intends to return. By definition, these legal requirements call for, *inter alia*, an element of time which is generally absent with respect to the objectees except for Lavern Patrick, who according to Shawn Richards, has lived in Newton Ground for more than 10 years, given the requirement of home. This compounded by the fact that none of the appellants appeared at the hearing to give evidence so as to give rise to inference, being drawn, as appropriate. Both Shawn Richards and Levar Flanders were not cross examined on their evidence as to where Lavern Patrick lives.

[19] In the case of **Fox v Stirk and Bristol Electoral Registration Officer**⁴ Widgery LJ in considering the meaning of 'reside' said this:

"I also would begin when considering what is meant by the word 'reside' by observing Viscount Caves acceptance of the definition in the Oxford English Dictionary, which My Lord has read namely to dwell permanently or for a considerable time, to have one's settled or usual abode to live in or at a particular place"

⁴ [1970] 2 QB 463, 476-477. See also Vol. 15 Halsbury's Laws of England at para, 415

[20] The notion of 'ordinarily resident' is not confined to matters of elections. It is a general rule of wide application. For instance in the sphere of revenue law the following is to be found in **Pinson on Revenue Law**⁵ at para 7-17, *matatis nutandis*;

"'Ordinary residence' is broadly equivalent to habitual residence and contrasts with casual or occasional residence. The question whether an ordinarily resident in the United Kingdom in any year of assessment has to be answered by examining his pattern of life over a period of years in this respect, the concept of ordinary residence resembles domicile more than residence".

[21] The import of removing a person from registration in a particular constituency based on ordinary residence is made clear by Justice of Appeal Barrow in **Dudley Williams v Laureen James**

"As Mr Gossai quite properly indicated had they seen perhaps just a smidgen of evidence more, which was to say that the objector claimed to know these persons individually and that she was able to say of her own knowledge that they never lived at these addresses because she knew that they lived at other addresses or because she knew the particular addresses, she knew the inhabitants and occupants of those dwellings and that these persons never lived there would have been sufficient perhaps to have established what was necessarily only a *prima facie* requirement at the sufficiently high level to disenfranchise these persons".

[22] Against the background of the law and the evidence learned counsel for the appellants has sought to show the evidence adduced did not meet the high threshold required to deregister a person registered. This is the final conclusion:

"53. The Court of Appeal has made it abundantly clear that the right of enfranchisement has a constitutional pedigree and in applying the law preference must be given to the recognition of the right to vote and to promote enfranchisement and guard against disenfranchisement. It is based on this constitutional pedigree that the Court have enunciate that detailed and specific information must provide (at minimal) a *prima facie* case that a voter is not ordinarily resident in a particular Constituency at the material times and therefore not entitled to vote therein.

54. We submit that the evidence provided by the Objector in support of his objection to each of the Appellants herein fell significantly short of a *prima facie* case, let alone the high threshold required, to have allowed the Respondent to lawfully remove the Appellants' names from the Register 2012. The lack of evidential proof of a sufficiently high level, that the Appellants were not ordinarily resident at all material times in Constituency #5, we submit resulted in the Respondent's decision being contrary to law and the Appellants' constitutional right to enfranchisement and should therefore be reversed by this Honourable Court and the Appellants' names restored to the Register for Constituency #5".

⁵ 15th Edition by Bary Pinson

- [23] The appellants' conclusion is amply supported by the law and the evidence and the Court agrees with the conclusion. But there is a further legal point in that section 37(3) of the Act prohibits disqualification as a registered voter where a voter has ceased to reside in a constituency "until he has become qualified to be registered as a voter for another constituency". This brings into focus the sacrosanct nature of the right to vote in the context of a democratic system of government which is provided for in the Constitution of the Federation of Saint Christopher and Nevis and other similar constitutions embodying the Westminster Model of Government. This was elaborated upon by our Court of Appeal in the recent case of **Parry, Benjamin Daniel v Brantley**⁶. And the absence of evidence from the objectees once again returns to haunt the respondent.
- [24] Regulation 6 of the Election Registration Regulations also speaks of 'domicile'⁷ which brings with it an even heavier burden than that of ordinarily resident and as such need not be elaborated upon for present purposes.

Costs

- [25] The rule in Public Law matter is that costs are not awarded unless there are special circumstances to warrant the award of costs. The Court does not consider that there are any bases to award costs.

RESULT

- [26] 1. The appeal is allowed as the decisions regarding the disqualification of the appellants are quashed because:
- (a) The Respondent did not have a sufficiency of contextual evidence to enable him to arrive at the decisions that the appellants do not and were not at all material times, including the date of publication of the annual Register of Voters for the electoral district of Saint Christopher #5 or on August 9, 2012 residing, ordinarily residing or domiciled at the qualifying address given in the Register of Voters.

⁶ HCVAP2012/003, HCVAP2012/004, HCVAP2012/005

⁷ See *Winans v Attorney General* [1910], A.C 27, *Re Flynn* [1968] 1 All E.R 49

(b) There was no evidence before the Registration Officer that the appellants had become qualified to be registered as a voter for another constituency as mandated by section 37(3) of the National Assembly Elections Act.

2. There is no order as to costs.

Errol L. Thomas
High Court Judge (Ag.)