EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2010/159 to 2010/0222

BETWEEN:

[1] LAUREEN JAMES
[2] CHERITA CLARKE
[3] MERLE LIBURD

Appellants/Respondents

And

WINGROVE GEORGE

Respondent/Applicant

Appearances:

Mrs Tashna Powell Williams for the Respondent/Applicant
Mr Vincent Byron and Mr Lindsay Grant for the Appellants/Respondents
Appellant Laureen James present
Respondent Wingrove George present

2010: November 8th

2012: July 25th

2013: May 9th

2013: May 13th

DECISION

[1] **THOMAS J [AG]** By the way of an Amended Notice of Application the respondent/applicant, Wingrove George, applied to the court seeking the following orders:

I. The Notices of Appeal filed by the appellants/respondents on 7th and 8th July 2010 be struck out and dismissed for failure to comply with section

52(2) of the National Assembly Elections Act, Cap. 2.01 of the Laws of St. Kitts and Nevis (Revised Edition 2002).

II. The appellants/respondents to pay the respondent/applicant costs of the application.

[2] The grounds of the application are as follows:

I. The appellants/respondents failed to comply with section 52(2) of the National Assembly Act; Cap 2.01 of the Laws of St. Kitts and Nevis (Revised Edition 2002) which mandates that the notice of application must be given to the Registration Officer within seven (7) days of the date of the decision.

II. The respondent/applicant gave his decision on 30th June 2010 and the appellants/respondents gave notices of appeal to the respondent/applicant on 13th July 2010 which was some thirteen (13) days after the decision was made and which was in direct contravention of section 52(2) of the National Assembly Elections Act.

III. The failure to give notice within the stipulated time of seven (7) days is fatal to the appeals.

[3] The application is supported by the affidavit of Wingrove George sworn to on 26th October 2010 who deposes at paragraph 3 and 4 of the said affidavit as follows:

> "3. On 13th day of July 2010 at approximately 12:10 p.m. I was served with the notices of appeal in these matters and I duly signed my name and place and time of the said service....
>
> 4. I have been advised by counsel and verily believe that the notices of appeal ought to be struck out and dismissed on the grounds stated in the amended notice of application filed on my behalf".

[4] The appellants/respondents in a wide-ranging affidavit in response concern themselves with a numerous matters. However, more relevantly, they depose at paragraph 13 to 16 as follows:

> "13. We were and verily believe that the Notices of Appeal were to be served on Wednesday 7th July. The Notices were being processed by the staff of the Court Registry but that due to the number of appeals, they were not completed that day. When requests were made to get them back on Thursday 8th July and

Friday 9th, the documents were still being processed. It would not be until Monday 12th July 2010 that the documents were received back from the Registry. We are told, and verily believe by the process servers, that the Notices of Appeal were taken to the Electoral Offices on Central Street to serve them on the Registration Officer, but the officers there refused to accept service on his behalf and directed the process servers to St. Kitts Business Machines, the private business place of the Supervisor of Elections who is also the Chief Registration Officer. The staff at St. Kitts Business Machines refused to accept service as well. It would not be until Tuesday, 13th July that the Registration Officer could be contracted by telephone and he directed the process server to his place of business where he accepted service.

14. While Laureen James is the named Party, the Appellant/Respondent, to the Application of the Respondent/Applicant Registration Officer, Wingrove George filed on 24th September, 2010, to strike out and dismiss the Notices of Appeal for failure to comply with what is described as section 52(2) of the National Assembly Elections Act, Cap. 2.01 of the Laws of St. Kitts and Nevis (Revised Edition 2002) by the Respondent/Applicant Registration Officer, Wingrove George, we all object most strenuously to this application as an attempt to deny us and the people of Constituency No. 4 our day in court before the seat of justice and pray that the Court will dismiss the Application.

15. We are of the view that given all the circumstances of this case surrounding the filing and service of the Notices of Appeal in this matter, that while there may have been a breach of procedural or formal rules in appealing the decision of the Registration Officer, this should be treated as a mere irregularity and should be one of a trivial nature, and this should not lead to the nullification of our appeals and it should not be fatal.

16. There has been no substantial prejudice, if any, suffered by the Registration Officer. We have been told and we verily believe that the overall administrative scheme for the Notice of 7 days, is for the Registrar of the High Court to be notified in a timely manner. Whether this is done by the Registration Officer by the Appellants themselves should be of no import, and this was done by us when we filed on 7th July, 2010".

[5] To strike or not to strike becomes the issue for determination. And the submissions are along those paths.

Submissions on behalf of the Respondent/Applicant

[6] On behalf of the respondent/applicant it is submitted that the requirements of section 52(2) of the **National Assembly Elections Act** are mandatory and as such written notice of appeal must be given to the Registration Officer at the time when the decision is made or within seven (7) days thereafter.

[7] It is further submitted that in this case such notice was given written notice of appeal "approximately thirteen... days after the decision was made". And further still that electoral legislation is strictly constructed and the court does not have the jurisdiction to extend time limits imposed in these types of legislation.

[8] Reliance is placed on a number of cases[1] concerned with election petitions but learned counsel submits that they are relevant to the issue. Reliance is also placed on a number of decisions which turned on the point of the seven (7) days notice to the Registration Officer and in which the requirement was interpreted and applied strictly[2].

Submissions on behalf of the Appellants/Respondents

[9] The submissions on behalf of the appellants/respondents give rise to a unique legal impasse. This is because the position is taken that the **Revised Laws of St. Christopher and Nevis 2002** are not validly in force and hence although the same enactment; being the **National Assembly Elections Act** is an issue they rely on the **1962 Revised Edition of the Laws of St. Christopher and Nevis**. This cannot prevail since the gazette notice of 10th March 2010 giving effect to the **2002 Revised Edition of the Laws of St. Christopher and Nevis** stands valid and without a court ruling to the contrary. Indeed, the material part of the said gazette notice states that:

> "The Revised Edition of the Laws of St Christopher and Nevis shall be the authoritative edition and the sole and proper Laws of Saint Christopher

[1] The cases are: Allen v Wright (No.2) 2WIR 102; Stewart v Newland and Edman 19 WIR 271; Steven v Walywyn 12 WIR 51

[2] Eugene Hamilton v Charles Gumbs, Cliam Nos. SKBHCV2007/0149 to 0168; Marvin & Jamol Hamilton v Godfrey David Claim Nos. NEVHCV2009/0034

and Nevis in respect of all written laws contained in the Revised Edition with effect from the 23rd day of March, 2010".

[10] In the end however, section 44(2) and section 52(2) of the **National Assembly Act** are worded identically in both editions of the **Laws of St. Christopher and Nevis** and given the narrow issue the court will entertain the submissions on behalf of the appellants/respondents.

[11] The submissions reject the strict construction of the provision as to the time within which the Registration Officer must be notified on an appeal. Instead, reliance is placed on the judgment of Chief Justice Michael de la Bastide in **Matthews (Charles) v The State**[3] in which a number of authorities were analysed and concluded that a number of factors may cause a court to interpret a mandatory provision as being directory and as such a failure to comply strictly may be considered a mere irregularity without the consequence of nullification.

[12] The submissions continue thus:

> "In the judgment of de la Bastide CJ the following have been identified as factors that should be taken into account which would lead the court to determine a later notification to the Registration Officer as a mere irregularity which does not give rise to a nullification of the appeals.
>
> a) Did the Registration Officer suffer my prejudice by being notified 13 days after his decision instead of 7 days?
> b) Would serious public inconvenience be caused by holding them mandatory".

[13] Learned counsel for the appellants/respondents also placed reliance on the ruling of this court in case of **Hon. Shawn K. Richards and Lindsay E.P. Grant v Boundaries Commission**[4] in which the court was guided by a Privy Council decision in **Charles v Judicial and Legal Services Commission**[5]. Under consideration was the matter of time limits imposed by law and breaches thereof.

---

[3] [2002] 60 WIR 390
[4] Consolidated Claims Nos. SKBHCV2009.0159 and 0179
[5] [2002] UKPC 34

Analysis

[14] Section 52(2) of the Act reads as follows:

> "Any claimant or objector deserving to appeal against the 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".

[15] As noted above, the court is required to decide whether the applicant/respondent contends, that the provision is mandatory in its import; or as the appellants/respondents say, the section is directory only.

[16] Traditionally and grammatically the word 'shall' is used and interpreted to connote an obligation or the imperative mood[6]. This sometimes found in legislation[7]. In this regard it is to be noted that in the case of Barbados section 37 of the **Interpretation Act** [8] reads thus:

> "If any enactment passed or made after 11th June 1966, the expression 'shall' shall be construed as imperative and the expression 'may' as permissive and empowering".

However, the modern/purposive approach to the interpretation of legislation has attenuated the traditional rule.

[17] The traditional approach is reflected in three of the cases[9] cited on behalf of the applicant/respondent. All three cases turned on non-compliance with time limits set by legislation. The ruling being that the court had no jurisdiction to extend the prescribed time since it is a matter of substantive law.

[18] Learned counsel for the appellants/respondents has sought to distinguish the cases on the basis that they relate to election petition. This the court rejects absolutely as being immaterial. The concern is the interpretation of a particular word or words in legislation in a similar context.

---

[6] C.G. Thorton, Legislative Drafting (3rd ed) at pp 90, 241
[7] See for example the Interpretation Act of Antigua and Barbuda
[8] Cap. 1 (Revised Laws of Barbados)
[9] Allen v Wright; Stewart v Newland and Edman; and Stvens v Walwyn, supra

[19] The dictum of Lord Griffiths in **Pepper v Hart**[10] perhaps signals the genesis of this approach. This is what His Lordship said:

> "The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give to the true purpose of the legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted".

[20] In this regard in the case of **Matthews (Charles) v The State** learned counsel for the appellants quotes the following passage from the case:

> "It is no longer accepted that it is possible, merely by looking at the language of a legislative provision, to distinguish between mandatory provisions, the penalty for breach of which is nullification, and directory provisions, for breach of which the legislation is deemed to have intended a less drastic consequence. Most directions given by legislature in statutes are in a mandatory form, but in order to determine what is the result of a failure to comply with something prescribed by a statute, it is necessary to look beyond the language and consider such matters as the consequence of the breach and the implications of nullification in the circumstances of the particular case".

[21] Also quoted by learned counsel for the appellants/respondents is a passage from **de Smith on Judicial Review of Administrative Act**[11] (quoted by Chief Justice de la Bastide, and also in passage from the Learned Chief Justice's judgment). They are as follows:

> "In his judgment de la Bastide says this at page 403:
>
> > 'The modern approach is described in de Smith on Judicial Review of Administrative Action (4th Edn) p 142 in the following way: In assessing the importance of the provision, particular regard may be had to its significance as a protection of individual rights, the relative value that is normally attached to the rights that may be adversely affected by the decision and the importance of the procedural requirement in the overall administrative scheme established by the statute. Furthermore, much may depend upon the particular circumstances of the case in hand. Although 'nullification is the natural and usual consequence of disobedience', breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature, *or if no substantial prejudice has been suffered by those for*

[10] [1993] 1 All ER 42, 50
[11] 4th edition at page 142

whose benefit the requirements were introduced, or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the Act of decision that is impugned (Emphasis supplied)'

Chief Justice de la Bastide opines further on page 404 letter a-b:
'It is consistent with this approach that courts should recognise, as the House of Lords did in Neill and Ibrahim J in Latif Alim that some breaches of the procedural rules for the conduct of preliminary inquiries are less grave than others. In our view, the degree of gravity may not only according to which rule is broken, but also according to the particular circumstances in which the breach occurs, so that different breaches of the same may produce different results, at least in the case of those rules which are non essential part of due process. We consider the requirement enshrined in s 18 is one of those, the consequences of a breach of which must be considered on a case-by-case basis. It is necessary therefore to look at the facts of the instant case'".

[22] It is in the context of the foregoing that this court in the case of **Shawn K. Richards and Lindsay Grant v Boundaries Commission**[12], in considering whether section 50(2) of the Constitution of Saint Christopher and Nevis was mandatory or directory that the conclusion was reached that it comes down to context and circumstances.

[23] What is the context and circumstances involved here?

1. In the long title to the **National Assembly Elections Act** it is stated that it is "An Act to make provision for the constitution and powers of the National Assembly arrangements for elections; for election petitions; for election officers, and for related or incidental matters".
2. The registration of electors lies deep in the fabric of democracy as enshrined in the letter and spirit of the Constitution.
3. Voters in turn form the very bedrock of the electoral process.
4. Elections give rise to the election of members of Parliament to represent the electors.
5. Under the Westminster Model of Government as enshrined in the said Constitution the Executive comes from Parliament.

[12] Loc cit

6. The issue of certainty is relevant.
7. It is common ground that the notices of appeal were notified to the Registration Officer some 13 days after his decision on 30th June 2010.

[24] It is in the context of foregoing that section 52(2) of the Act must be construed and in particular the word 'shall'.

[25] The first point that arises is that fact that the section gives rise to circumstances in which the written notice must be given. First, is after the decision or, second, within seven (7) days thereafter. Both circumstances point to the urgency and the need for certainty in the matter. This is pellucid. And this is accentuated by the fact that section 119 of the said Act, provides for the inclusion of Sunday in the calculation of the seven (7) days. This is unusual since, for example, under the Civil Procedure Rules 2000 by virtue Rule 3.2(4) where the period of involved is seven (7) days or less only weekdays must be counted.

[26] The court considers that the foregoing represents the approach to the construction of the words of a statute or other enactment that is contemplated by the Privy Council in **Charles v Judicial and Legal Services Commission**[13].

[27] Learned counsel for the appellant/respondents in his submission points to two factors which must be considered in the determination as to whether late notification was a mere irregularity that would not nullify the appeals. These are: whether the Registration Officer suffered any prejudice and whether there would be serious inconvenience to the public.

[28] In so far as the matter of prejudice is concerned the court considers that this should not be confined to the circumstance where personal rights are in issue as in the **Matthews** case. Therefore, rather than the Registration Officer suffering prejudice, the consideration would be whether the public would suffer prejudice given the nature of the matter involved.

---

[13] [2002] UK PC 34, supra

[29] The second matter to be considered is not in the appellants favour since the court has interpreted the provision as requiring urgency so that to treat the word 'shall' as a false imperative and extend time would open the door to delays and uncertainty.

Conclusion

[30] Having regard to the authorities and the learning analyzed, it is the determination of the court that section 52(2) of the National Assembly Election Act is in mandatory and, as such the time limit of seven days for the written notification of an appeal must be complied with. Accordingly, the notification by the appellants/respondents, thirteen days after the decision render the appeals null and void for failure to comply with section 52(2) of the National Assembly Election Act.

Costs

[31] The appellants/respondents must pay the applicant/respondent costs in the amount of $1000.00.

ORDER

[32] **IT IS HEREBY ORDERED** as follows:

1. The appeals filed by the appellants with respect to the decisions of the Registration Officer, Wingrove George, given on the 30th June, 2010 are struck out for failure to comply with the mandatory requisites of section 52(2) of the National Assembly Elections Act.
2. The appellants/respondents must pay the respondent/applicant costs in the sum of One Thousand Dollars ($1000 ECC).

Addendum

The Court finds it necessary to seek to account for the long delay before this decision between the filing of the appeals and the decision.

The fact of the matter is that when the matter first came on for hearing in October of 2010 the lawfulness or otherwise of the 2002 Revised Edition of the Laws of St. Kitts and Nevis was apparent and after exchanges between the court and learned counsel for the appellants an undertaking was given to the court that an appropriate action would be filed to have a determination made in this regard. Accordingly all matters were stayed until further order of the court.

As far as the court is aware no action was ever filed and it was not until a status hearing held in July 2012 that the court was informed that no action would be filed. The matter was then set down for hearing.

Errol L Thomas
High Court Judge [AG]