

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2013/0635

BETWEEN:

THE HONOURABLE GASTON BROWNE
(THE LEADER OF THE OPPOSITION)

Claimant

and

THE ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

First Respondent

and

- [1] MR. JUNO SAMUEL
- [2] MR. NATHANIEL JAMES
- [3] MR. JACK KELSICK
- [4] MR. ANTHONYSON KING
- [5] MRS. GLENDINA MC KAY
- [6] MRS. PAULA LEE

(members of the Antigua and Barbuda Electoral Commission under the provisions of the Representation of the People (Amendment) Act No 12 of 2011)

Other Respondents

Appearances:

Mr. Anthony Astaphan SC & Ms. Samantha Marshall for the Claimant
Mr. George Lake for the Attorney General
Mr. Russell Martineau SC and Mrs. Emily Patricia Forde for the Respondents

2013: October 17

Ruling

- [1] **Cottle, J.:** On 2nd October 2013, the Claimant sought urgent injunctive relief. He is the Leader of the Opposition. He wishes the court to restrain the Antigua and Barbuda Electoral Commission from giving effect to Act 6 of 2010 and/or carrying out the registration process that it is now embarked upon. The grounds put forward for the grant of the interim injunction are on two limbs.

[2] Firstly, the Claimant says that Act 6 of 2010 is inconsistent with the Constitution of Antigua and Barbuda – especially at Section 40 (3). Act 6 of 2010 is an amending Act to the Representation of the People Act. Section 5 amends Section 16 of the Principal Act. It amends the domicile and residence requirements to enable a person to be registered to vote. It makes those requirements more onerous. The practical effect is that some persons who had hitherto been qualified to be registered as voters are no longer qualified.

Section 40 of the Constitution of Antigua and Barbuda reads:-

- (1) Each of the constituencies established in accordance with the provisions of section 62 of this Constitution shall return one member to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.
- (2) Every commonwealth citizen of the age of eighteen years or upwards who possesses such qualifications relating to residence or domicile in Antigua and Barbuda as Parliament may prescribe shall, unless he is disqualified by any law from registration as a voter for the purpose of electing a member of the House, be entitled to be registered as such a voter in accordance with the provisions of any law in that behalf and no other person may be registered.
- (3) Every person who is registered as a voter in pursuance of subsection (2) of this section in any constituency shall, unless he is disqualified by any law from voting in that constituency in any election of members of the House, be entitled so to vote in accordance with the provisions of any law in that behalf.

[3] As I understand the argument for the Claimant, the effect of Section 5 of Act 6 of 2010 is to deny persons who are presently on the voters list but who cannot meet the new residence and domicile requirements, the right to vote. As Section 47 (1) of the Constitution entrenches Section 40, the right to vote cannot be abrogated by legislation which has not been passed as prescribed by the Constitution. The amending legislation ought to be struck down as a consequence since the amending legislation has not been so passed.

[4] This is an argument upon which this court may have to make a pronouncement at some point but I do not find that necessary now. It is important to always bear in mind that the present application is for an interim injunction. This is a public law matter. As Lord Walker observed in **Belize Alliance of**

Conservation Non-Governmental Organisations V The Department of the Environment Privy Council Appeal 47 of 2003, one special factor to be considered might be if the grant of the interim relief were likely to be decisive of the whole case. Additionally, in the same case he went on to caution a court from restraining the enforcement of an apparently authentic law unless the circumstances show that the challenge to the law is, *prima facie*, so firmly based as to justify so exceptional a course being taken. I am not persuaded that the present case merits the taking of such exceptional action.

- [5] The second limb upon which the claimant bases his application for interim relief is that the actions of the Antigua and Barbuda Electoral Commission in registering voters has no statutory basis. Counsel for the Claimant argues that there is no law which requires the de-registration of people who are at present listed on the voters roll, thereby, forcing them to re-register if they wish to be able to vote. Counsel goes further; he says that Section 19 of the Representation of the People act mandates the retention of the names of persons already on the voters roll unless some disqualifying vice renders them ineligible.
- [6] In considering this application for interim relief, the principles which are to guide the court are well known. They have been disused in many cases, most recently by Bereaux J.A. in the case of **Chief Fire Officer and Another V. Elizabeth Felix-Phillip et al** Civil Appeal No. S 49 of 2013 delivered on 7th October 2013 from the Court of Appeal of Trinidad and Tobago.
- [7] This court must consider:-
 1. Is there a serious issue to be tried?
 2. Are damages an adequate remedy?
 3. Where does the balance of justice lie?
- [8] For the purposes of the present application, I am content to proceed on the basis that the Claimant has raised a triable serious issue and damages are not likely to be an adequate remedy. In analyzing the third question, I propose to look at the potential prejudice to the applicants if the injunction is refused and the strength of the respective cases.

- [9] If the injunction sought is refused at this stage and the Respondents are permitted to complete the new registration exercise, what would be at risk if it turns out at the conclusion of the substantive matter that it was wrong to permit the registration? Counsel for the Respondents says that only money will have been wasted in the abortive registration exercise. A subsequent election can be held on the basis of the old voters list.
- [10] Counsel for the Applicant reminds the court that the right to vote is of high constitutional significance. It is the exercise by the citizen of his most important right. Everyone counts. There will be persons, who have attained the age of 18 since the last list was prepared or who are registering for the first time. Having regard to the fact that elections are due by March 2014, no time will be available for those persons to get themselves registered and eligible to vote.
- [11] On the other hand, if the injunction sought is granted on an interim basis and this turns out subsequently to have been wrong then by the same token, insufficient time will remain to carry out a registration exercise before March 2014.
- [12] Weighing these two competing concerns, I conclude that the balance of justice comes down on the side of refusing the interim relief.
- [13] I therefore decline to grant the Claimant's application for interim relief. I thank all counsel for the very helpful way in which the arguments were presented to the court. I make no order as to costs on this application.



Brian Cottle
High Court Judge