

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2015/0003

BETWEEN:

**[1] HON. MARK BRANTLEY (IN HIS PERSONAL CAPACITY AND AS A
REPRESENTATIVE OF THE CONCERNED CITIZENS MOVEMENT)**

**[2] DR. HON. TIMOTHY HARRIS (IN HIS PERSONAL CAPACITY AND AS A
REPRESENTATIVE OF THE PEOPLES LABOUR PARTY)**

**[3] HON. SAM CONDOR (IN HIS PERSONAL CAPACITY AND AS
REPRESENTATIVE OF THE PEOPLES LABOUR PARTY)**

**[4] HON. SHAWN RICHARDS (IN HIS PERSONAL CAPACITY AND AS
REPRESENTATIVE OF THE PEOPLE'S ACTION MOVEMENT)**

Appellants

and

**[1] CONSTITUENCY BOUNDARIES COMMISSION (BEING MR. R.A. PETER
JENKINS, HON. ASIM MARTIN, HON. MARCELLA LIBURD, HON. VANCE
AMORY, AND HON. VINCENT BYRON)**

**[2] DR. HON DENZIL DOUGLAS, PRIME MINISTER OF ST. CHRISTOPHER AND
NEVIS**

**[3] THE ATTORNEY GENERAL OF ST. CHRISTOPHER OF NEVIS (AS
REPRESENTATIVE OF HIS EXCELLENCY THE GOVERNOR GENERAL)**

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mr. Mario Michel
The Hon. Mde. Gertel Thom

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Christopher Hamel-Smith, SC and Mr. Douglas Mendes, SC, appearing for the Appellants, leading Mr. Delara MacClure Taylor instructed by Ms. Talibah Byron
Mr. Anthony Astaphan, SC, for the First and Second Respondents, leading Ms. Angelina Sookoo

Mr. Lord Peter Goldsmith, QC, for Third Respondent the Attorney General,
instructed by Solicitor General Mrs. Simone Bullen-Thompson

2015: February 4, 5.

Constituency boundaries – Injunction – Proclamation – Whether proclamation giving effect to recommendations of Constituency Boundaries Commission had been made by the Governor General prior to the granting of injunction by the learned judge – Section 50 of the Constitution of the Federation of Saint Christopher and Nevis – Exercise of judge’s discretion – Whether the learned judge was wrong in discharging injunction

JUDGMENT

- [1] This is a judgment of the Court. The appellants have appealed the order of a judge setting aside an interim injunction previously granted by her. The injunction had been granted at an ex parte hearing on 16th January 2015 and was discharged on 27th January 2015 following an inter partes hearing on 22nd January 2015.
- [2] The question of whether or not to discharge an injunction is one which is concerned with the exercise of a judge’s discretion and necessarily engages the well-known principles upon which the exercise of a judge’s discretion can be assailed by an appellate court. Accordingly, it is incumbent upon the appellants to show that the judge was wrong in law, or she took account of irrelevant matters, or she failed to take account of relevant matters, or she was obviously wrong in the conclusion she arrived at.
- [3] The learned judge had found in her judgment of 27th January 2015 that the proclamation giving effect to the recommendations of the Constituency Boundaries Commission had been made by the Governor General prior to the issue of an injunction by her on 16th January 2015 and that therefore the injunction, having been granted to prohibit an action already taken, was useless.

- [4] The appellants have sought to argue that the learned judge erred in law in the exercise of her discretion because, as a matter of law, the proclamation by the Governor General had not been made before the issue of the injunction. They based their arguments on their interpretation of section 50 of the Constitution of the Federation of Saint Christopher and Nevis in accordance with the definition of “proclamation” contained in section 119 of the Constitution.
- [5] This submission is obviously challenged by the respondents, who contend that the making of the proclamation by the Governor General had, as a matter of fact and law, been completed prior to the issue and service of the injunction and was therefore a useless and thus inappropriate exercise of the court’s discretion in granting the injunction.
- [6] We are of the view that section 50 of the Constitution of the Federation, which comes under Part 4 of the Constitution headed “Delimitation of constituencies” and which is side-noted “Review of constituency boundaries” creates a self-contained regime commencing in subsection (1) with the review of the boundaries by the Constituency Boundaries Commission and the submission by the Commission of a report to the Governor General containing its recommendations; providing in subsections (2) to (5) for various factors concerning the review and report; culminating in subsection (6) with the approval of a draft proclamation by the National Assembly giving effect to the recommendations of the Commission and the making of a proclamation by the Governor General in accordance with the draft; and then concluding in subsection (7) with a provision for the non-justiciability of the validity of the proclamation by the Governor General. The regime provides the context within which one must interpret and understand the provisions therein contained and really leaves no room for giving meaning to words used in the section by incorporating other sections contained in other parts of the Constitution.

- [7] In accordance with the regime created by section 50, the Constituency Boundaries Commission reviewed the boundaries of the constituencies in the Federation and recommended alterations to the constituency boundaries; a draft proclamation giving effect to the recommendations of the Commission was thereafter approved by the National Assembly; the Governor General then signed a proclamation which (according to the evidence of the Attorney General) was published in the Official Gazette. All of this happened on Friday, 16th January 2015, and though one may say that the process was hurried through by the relevant authorities to gain an unfair political advantage, that is an issue of political morality and not constitutional validity, which is not suitable for judicial enquiry.
- [8] In terms of the sequence of the making of the proclamations by the Governor General giving effect to the boundary changes and the proclamation dissolving Parliament, the evidence of the Attorney General contained in his affidavit dated and filed on 19th January 2015 is that the Governor General signed the proclamation giving effect to the boundary changes at approximately 6:20 p.m. on Friday, 16th January 2015 together with a proclamation dissolving the Parliament, or that he signed the proclamation to dissolve Parliament at the same time as he signed the proclamation on the boundary changes. According to the Attorney General in his aforesaid affidavit, the consequence of the actions of the Governor General at approximately 6:20 p.m. on 16th January 2015 is that when Parliament was dissolved by proclamation of the Governor General, the proclamation signed by the Governor General on the boundaries changes came into force.
- [9] The appellants have argued that the coincidence of the signing of the two proclamations does not meet the requirements of section 50(6) for the proclamation to come into force upon the dissolution of Parliament on that day, because there is no evidence that it was made before and not together with the dissolution proclamation, and so it can only come into effect following the next dissolution of Parliament whenever that may be in the ensuing five-year period following the 16th February 2015 general elections.

- [10] We reject this submission and prefer the submission of the Attorney General that the intent of section 50(6) was to ensure that changes to constituency boundaries should not come into force during a subsisting parliamentary term so that a person duly elected as the representative of a constituency delineated in one way finds himself in the course of his parliamentary term representing a differently-delineated constituency. On this purposive interpretation of section 50(6) of the Constitution, we hold that the proclamation made by the Governor General on 16th January 2015 giving effect to the report of the Constituency Boundaries Commission recommending changes to the constituency boundaries in the Federation of Saint Christopher and Nevis came into force on 16th January 2015 upon the dissolution of Parliament on that day.
- [11] We also reject the submission of the appellants that the definition of “proclamation” in section 119 of the Constitution must be applied in the interpretation of section 50 and that the effect of its application is that the boundaries proclamation was not made until it was published in the gazette and, further, that publication includes circulation to the general public of the actual gazette with the name of the printer imprinted at the end of it together with the words “by authority”.
- [12] Arising from our above findings, we agree with the learned judge that by the time that she had granted the injunction at 7:38 p.m. on Friday, 16th January 2015 and which injunction was served on the Attorney General at approximately 8:20 p.m. on that day, what she had sought to injunct had already occurred and so the injunction was properly discharged by her on 27th January 2015.
- [13] As to the submissions of the appellants as to violation of their constitutional rights, learned counsel for the appellants informed the Court that these submissions would come into play if the Court had to perform a balancing act in determining whether to impose or discharge an injunction. In view of our findings above, however, we do not consider it necessary to perform any balancing act and so we

will not further consider the appellants' submissions on alleged violations of their constitutional rights.

[14] Having considered all of the submissions – both oral and written – by counsel on behalf of the parties, we are satisfied that the appellants have not demonstrated that the judge's exercise of her discretion in discharging the injunction was improper and should therefore be overturned.

[15] We therefore dismiss the appeal against the judge's order discharging the injunction previously granted by her. Consequently, the interim injunction ordered by this Court on 29th January 2015 pending the hearing of this appeal is discharged.

[16] There shall be no order as to costs.