

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SKBHCV2014/0006

**In the Matter of Sections 7, 37, 37A,
39, 43, 48, 49, and 116 of the National
Assembly Elections Act CAP 2.01**

and

**In the Matter of Sections 6 and 14, and
the Second Schedule of the
Immigration Act, Chap 6.02.**

BETWEEN:

RUPERT EARLE

1st CLAIMANT/RESPONDENT

WILLIAM LIBURD

2nd CLAIMANT/RESPONDENT

and

OLUWABUNMI JESUFEMI AYORINDE

1ST DEFENDANT

and

OSANOTO AKOLADE SAMUEL

2ND DEFENDANT/APPLICANT

and

THE SUPERVISOR OF ELECTIONS

3RD DEFENDANT/APPLICANT

and

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

4TH DEFENDANT/APPLICANT

Appearances:-

Mr. Jonel Powell and Ms. Suzy St. Brice for the Respondents

Mr. Sylvester Anthony and Ms. Angelina Gracy Sookoo for the Applicant, 2nd Defendant

Ms. Alethea Gumbs of the Attorney General's Chambers, for the Applicants, 3rd and 4th Defendants

2017: May 24th

DECISION

[1] **CARTER, J.:** The National Assembly Elections Act¹ has been the subject of much discussion and discourse, much of which has led to this Court having to make determinations on various aspects of that most important piece of legislation.

[2] This is another matter which touches and concerns that Act. The respondents instituted proceedings by means of a claim form filed on the 13th January 2014 seeking declaratory relief as follows:

“(a) A Declaration that the 1st and 2nd Respondents are not qualified voters for the purposes of Section 37 of the National Assembly Elections Act and was therefore unlawfully registered in the Constituency of St. Christopher 2, Central Basseterre;

(b) A Declaration that a person entering Saint Christopher and Nevis as a student under Section 14 and the Second Schedule of the Immigration Act is not a person qualified to be registered as a voter for the purposes of section 37 of the National Assembly Elections Act.

(c) A Declaration that a person entering Saint Christopher and Nevis under the Second Schedule of the Immigration Act is not resident in Saint Christopher and Nevis pursuant to section 6(1) of the Immigration Act.

(d) A Declaration that a Commonwealth citizen entering Saint Christopher and Nevis under the Second Schedule of the Immigration Act is not ordinarily resident in Saint Christopher and Nevis so as to be registered as a voter pursuant to Section 37 of the National Assembly Elections Act.

(e) A Declaration that a person entering Saint Christopher and Nevis under paragraph 2 of Part 1 of the Second Schedule of the Immigration Act is disqualified from being registered as a voter for the purpose of electing Representatives.

(f) A Declaration that the registration of persons entering Saint Christopher and Nevis to attend as a student under paragraph 2 of part 1 of the

¹ Cap 2.01, Revised Laws of St. Christopher and Nevis 2009

Second Schedule of the Immigration Act in the Register of Voters is contrary to law and thus null and void and of no effect.

(g) An Order of Mandamus requiring the 3rd Respondent to remove from the Register of Voters the 1st and 2nd Respondents and all other persons entered on the said Register who entered Saint Christopher and Nevis under paragraph 2 of part 1 of the Second Schedule of the Immigration Act.

(h) Such further or other relief as may be just.”

[3] The crux of the respondents' complaint relates to the question of the eligibility of a student who has been permitted by the Chief Immigration Officer under Section 14(4) of the Immigration Act² to remain for up to a maximum of six years from their date of entry, whether such a student is ordinarily resident in St. Christopher and Nevis so as to qualify to be registered as a voter for the purposes of section 37(1) of the National Assembly Elections Act (hereinafter referred to as “the Act”). The respondents argue not. They claim instead that such persons cannot be said by virtue of residing in Saint Christopher and Nevis for the permitted purpose to have always been in, or have adopted St. Christopher and Nevis as the place of his or her habitation or home and that their inclusion in the Register of Voters, Monthly List and Revised list is contrary to section 37(1) of the Act.

[4] In particular, the respondents plead that Commonwealth citizens who are students lack the status of ordinary residence to qualify to be registered as a voter for the purpose of electing Representatives to the National Assembly. The 1st and the 2nd defendants are nationals of Nigeria and attended the Windsor University School of Medicine. The respondents urge that as permitted entrants under Paragraph 2 of Part 1 of the Second Schedule of the Immigration Act that they do not qualify to be registered as voters for the purposes of Sections 37(1)(b) of the Act.

[5] On the 23rd of January 2014, the applicants, the 3rd and 4th defendants, filed a notice of application seeking an order that:

“ 1. The Fixed Date Claim and/or Particulars of the Claim of the 1st and 2nd Respondents/1st and 2nd Claimants are struck out against the 1st and 2nd

² Cap 6.02, Revised Laws of Saint Christopher and Nevis, 2009

Applicants/3rd and 4th Defendants, as the 1st and 2nd Respondents/1st and 2nd Claimant's, Statement of Case is improperly brought before this Honourable Court, and would be an abuse of process pursuant to Civil Procedure Rules 2000, 26.3(1).

2. The Statement of Case as set out in the Fixed Date Claim Form and/or Particulars of the Claim of the Respondents/Claimants, does not manifestly specify a cause of action and should be struck out, by virtue of Civil Procedure Rules 2000, 26.3(1) (b).

3. That by virtue of the National Assembly Elections Act, Cap 2.01, S. 52, the 1st and 2nd Respondents/1st and 2nd Claimant's right to bring an appeal to the High Court in the instant matter, is barred/prohibited, where the Claimants has not availed himself or herself of the opportunity provided under the said Act to be heard by the registration officer on any claim or objections.

4. Any further relief that this Honourable Court deems just and reasonable.

5. Costs."

[6] The grounds of the application centered on:

- (a) That the claimants failed to avail themselves of the procedure set out under the National Assembly Elections Act regarding claims and objections in relation to the Monthly list of voters and that it would be an abuse of the court to allow such a claim to proceed where there is no adherence to the procedure provided by the Act;
- (b) That the claimants had failed to object to the 2nd Defendant's name on the Monthly List of Voters, resulting in there being no decision of the Returning Officer to such an objection from which the claimants could appeal to the High Court. The right to appeal to the High Court therefore did not exist and the court had no jurisdiction to hear such a claim;
- (c) That any claim or objection should have been made within a time period of seven days upon the posting of the Monthly List of Voters. The claimants had made no objection to the 2nd Defendant's name on the list within the time specified under the National Assembly Elections Act; and

(d) That the Statement of case does not disclose a cause of action against the 1st and 2nd applicants or any reasonable ground for bringing a claim, they having failed to comply with the requirements of the National Assembly Elections Act.

[7] The applicants filed two affidavits in support of the application evidencing the fact that no objections were made to the names of either the 1st or 2nd defendants when they appeared on the Monthly List of Voters for their respective districts.

[8] On the 4th of February 2014, the applicant/2nd defendant filed a similar application to strike out the fixed date claim form. The relief sought by the 2nd defendant was as follows:

“(i) A declaration that the Claimants have no right of direct access to the High Court under its original jurisdiction for the purpose of determining the qualification of voters including the Second Defendant’s right to be registered and/or removed from the Register of Voters under the National Assembly Elections Act Cap. 2.01 of the Revised Laws of the Federation of Saint Christopher and Nevis, 2009 or at all;

(ii) A declaration that the National Assembly Act and its Regulations lay down the statutory machinery to determine at first instance, the qualification of voters including the Second Defendant to be registered and/or to remain registered on the Register of Voters under the National Assembly Elections Act Cap. 2.01 of the Revised Laws of the Federation of Saint Christopher and Nevis, 2009;

(iii) A declaration that the High Court holds an appellate jurisdiction in relation to matters concerning the determination of the qualification of voters including the right of the Second Defendant to be registered and/or to remain registered on the Register of Voters under the National Assembly Elections Act Cap. 2.01 of the Revised Laws of the Federation of Saint Christopher and Nevis, 2009 pursuant to Section 52(1) of the National Assembly Elections Act.

(iv) A declaration that the Fixed Date Claim is largely a colorable devise seeking to have the High Court perform a function which parliament by the National Assembly Election Act lays on the Registration Officer and is therefore an abuse of process.

(v) A declaration that the Claimants have failed to properly invoke the jurisdiction of the High Court to hear the issues raised in the Fixed Date Claim or to grant the relief sought therein, as no objections were made to the Second Defendant’s name or to the subject class of voters before the Registration Officer pursuant to the Act and its Regulations;

(vi) An Order that the Claimants Fixed Date Claim filed on January 13, 2014, be struck out in its entirety in that the claim and the relief sought violates or contravenes

(a) Section 45 of the National Assembly Elections Act which states that all claims to be registered or objections to names on the Register shall be determined in accordance with the regulations by the appropriate registration officer [in this case Wingrove Archibald] acting with respect to the constituency in questions;

(b) Section 52 (1) of the National Assembly Election Act;

(c) Regulations 3 (3) of the Elections Registration Regulations which stated inter alia that qualification to be registered shall be considered by the Registration Officer who will determine whether the Application should be approved; and

d) is an abuse of process

(vii) Costs.”

[9] In support of this application the applicant/2nd defendant filed an affidavit on the same date wherein he deposed to the following:

“ ...

(3) On 15th August, 2013 I received a Certificate of Registration to vote in Constituency #1. On January 10, 2014 I received my National Identification Card. Now produced and shown to me is a true copy of my Certificate of Registration and National Identification Card annexed hereto and collectively marked “A.S.O.1”.

(4) Prior to being served this the Fixed Date Claim, I have received no objections or proceedings challenging my registration to vote in Constituency #1.”

[10] The respondents filed submissions in response to both applications to strike and it was agreed that the court would deal with both applications together. Both applicants filed written submissions with authorities in support of their respective applications which as set out above are not dissimilar in their grounds.

[11] The court's power to strike out a statement of claim arises at rule 26, Civil Procedure Rules 2000, “CPR”. CPR 26.3 (1) provides as follows:

“In addition to any power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that-

(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;

- (b) *the statement of case or part to be struck out does not disclose any reasonable ground for bringing or defending a claim;*
- (c) *the statement of case or the part to be struck out is an abuse of the process of the court or likely to obstruct the just disposal of the proceedings; or*
- (d) *the statement of case or the part to be struck out is prolix or does not comply with the requirement of Part 8 or 10.”*

[12] In **Tawney Assets Limited v East Pine Management**, Mitchell J stated that:
*“The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. **The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.**”* (emphasis mine)

[13] These are the strictures within which a court will exercise its discretion to strike out a claim under this Part. It is a jurisdiction that is to be used only in those cases where the need is plain and obvious, the end result being that even where a case discloses a cause of action with only *some* prospects of success, it would not be struck out.

[14] The main issues for determination:

- (a) Whether a claim for declaratory relief is sustainable were the claim discloses no cause of action
- (b) Whether this court has the jurisdiction to entertain the instant claim
- (c) Whether the claim is an abuse of process because the claimants have not availed themselves of the procedure to object to an elector under the National Assembly Elections Act;

Declaratory Relief

[15] The respondents submit that the law is clear that an application for declaratory relief is sustainable although there is no cause of action. The respondents insist

that a cause of action is not necessary to sustain this claim and refers the court to Section 24 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act which they submit is clear in its terms. Section 24 states that:

“24. Declaratory order. No action or proceeding shall be open to objection on the ground that merely declaratory judgment, decree or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.”

[16] This issue arose in the case of **Nevis Island Administration v West Indies Power (Nevis) Limited**³. In that matter the claimant sought an order for a declaration that the defendant was unable to pay its debts and that the claimant was thereby entitled to terminate a contract between the two parties. On the question of whether the claim should be struck out as being an abuse of process the court reiterated that there was an inherent jurisdiction in the court to grant a declaration and that the provision in Section 24 does not confer the jurisdiction, but instead regulates the court’s ability to grant a Declaration.

[17] Actie M. (Ag.) referred to Section 24 of the ECSC Act and agreed with the authorities cited by the claimant⁴ that the claimant did not have to establish a cause of action but that: *“It is only necessary to show that the plaintiff’s own legal position will in some way be resolved by granting the declaration.”* The Learned Master concluded that a party would need to show that he has a *“sufficient interest”* in the matter to which his application relates in order to be successful.

[18] Whether Section 24 gives the court the power to make a declaration absent a cause of action is not the main issue on this application⁵. Rather the crux of the application concerns the question of whether this Court has jurisdiction to make declarations such as those sought by the respondents and whether the claim is an

³ NEVHCV 2012/0078 at page 5

⁴ Re S (hospital patient: court’s jurisdiction) [1995] 3 All ER 290 at page 296 and Archibald v Camacho 1960 3 WIR 40

⁵ Whether Section 24 grants the power or merely recites what is already inherent has also been the subject of argument. Supra n. 3

abuse of process because the respondents have failed to avail themselves of the procedure under the Law.

The Jurisdiction of the Court

[19] The main argument on both applications before the court is that the court's jurisdiction is ousted by the Act. The applicants argue that the court does not have an original jurisdiction to determine the questions raised by the respondents but rather the court's appellate jurisdiction derives from Section 52 of the Act and that it is only in the circumstances outlined in Section 52(1) of that Act that the court can be tasked with any questions concerning the registration process. The applicants' position is that the respondents have not availed themselves of the process under the Act for objection to the Registration of voters, thereby triggering the registration officer's obligation to make a determination on their objection, and that their failure to do so limits this Court's jurisdiction to grant the relief sought.

[20] In aid of their submissions the applicants have asked this Court to consider the case **Attorney General of St. Lucia and Another v Vance Chitole**⁶. In that case the Court of Appeal was concerned with an appeal which questioned the jurisdiction of the court under the Customs Act of St. Lucia, on a fixed date claim wherein the court below had purported to make a determination on an issue between an importer, the respondent on the appeal, and a Commissioner of Customs although the Customs Act provided an alternative dispute resolution mechanism. The Customs Act provided that a person aggrieved by a decision of a Commissioner could appeal to the Comptroller of Customs and for a hearing to hear such appeal. The Comptroller or the appellant therefrom was entitled thereafter to appeal to the High Court and then on to the Court of Appeal. Gordon J.A. referred to the case of **Wilkinson v Barking Corporation**⁷ to illustrate what

⁶ Civil Appeal [2005] ECSCJ No. 3

⁷ [1948] 1 K.B. 721

he determined was a want of jurisdiction in that case. He referred specifically to the judgment of Asquith LJ in *Barking* where he said the following:

“It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to the remedy or that tribunal and not to others. As the House of Lords ruled in Pasmore v Oswaldtwistle U.D.C (per Lord Halsbury): ‘The principle that where a specific remedy is given by statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given in the statute, is one which is very familiar and which runs through the law’...The real answer to the Plaintiff’s contention under this head can be put in several ways: No act of the parties can create in the courts a jurisdiction which parliament has said will vest, not in the courts, but exclusively in some other body. Nor again can a party submit to, so as to make effective, a jurisdiction which does not exist: which is perhaps another way of saying the same thing.”

[21] Gordon J.A. went on to conclude that *“the importer has been given a statutory right to challenge the determination by the second Appellant of a value of imported goods but that such challenge can only be mounted within the constraints of the Customs Act. This the Respondent has failed to do and I am clear that neither this Court, not (sic) the High Court has the original jurisdiction to hear such challenge by the Respondent. Clearly, the High Court and the Court of Appeal had appellate jurisdiction as given by section 139 of the Customs Act but only that.”*⁸ The court found that as all the items of relief in the claim were matters for which the Customs Act made provision, the appeal was allowed.

[22] The appellants also referred the court to the case of **Ferdinand Frampton v Ian Pinard and Ors**⁹ In **Frampton**, the court dealt with an issue relating to the impeaching of the registration process in Dominica. The petitioner on an election petition alleged that there was no sure and safe means of voter identification and an accurate Register of votes. The question was whether where voter registration statutes provide a comprehensive regime for voter registration, objections and removal of names from the list or Register of voters, objections should be made by

⁸ See Chitole at page 4

⁹ DOMHCV2005/0149; DOMHCV2005/0154

the stipulated procedure or whether they could be raised after the election had been concluded in an election petition. Rawlins J. as he then was, agreed with the respondents in that case based on the authority of **Radix v Gairy**¹⁰ that: “*where there is a legislative regime, which provides a detailed procedure for registration and for the hearing of claims and objections in relation to the electoral register, the procedures set out in the legislation must mean something.*”¹¹ Rawlins, J. went on to confirm that an issue of whether persons listed on the Register are qualified to vote could attract judicial review on objections which are made before an election while an irregular or unlawful act or omission by, for example, a Chief Elections Officer in relation to the registration process, could properly be the subject of an election petition. The court underlined the necessity of following the statutory regime.

[23] The respondents’ position is that the court has jurisdiction to grant declaratory relief by virtue of Section 24 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act. In their submissions¹² on this point the respondents state that their claim is not seeking constitutional relief or judicial review where the courts have always seen the existence of an alternative remedy as a bar to granting such relief.

[24] The respondents submit that courts have been more liberal in the grant of declarations and have not been restricted strictly by the matter of whether there is an alternative procedure and/or remedies available on an application for a declaration. They point to the case of **Pyx Granite Co. Ltd v Ministry of Housing and Local Government**¹³ as being the authority for the proposition that the existence of an alternative remedy is not a bar to declaratory relief. The respondents submit that the dicta in **Punton v Ministry of Pensions and**

¹⁰ (1978) 25 WIR 553

¹¹ See note seven, at page 7

¹² Submissions in Response to application to Strike filed on the 29th January 2014

¹³ [1960] A.C 260

National Insurance (No. 2),¹⁴ to the effect that where a novel right is created by statute with an exclusive remedy there is a statutory ouster of relief by way of declaration, is distinguishable. The respondents instead cite the case of **Ealing London Borough Council v Race Relation Board**¹⁵ in which **Punton** was distinguished in aid of their submission. The respondents argue that the **Ealing London Borough** case supports their submission on this point as it was held in that case that *“nothing in Section 19 of the Act of 1968 excluded the jurisdiction of the court to grant the declarations, and that discretion to grant relief by way of declaration would be exercised subject to the contention that the rule was lawful...”*

[25] The court notes that **Punton** was distinguished in **Ealing** not on the main proposition of law relating to the ouster of the court’s jurisdiction where a statutory remedy is provided. Instead, the distinction made by the court was based on the court’s view that in the particular circumstances of **Punton**, a declaration would not have altered the decision which had already been made by the national insurance commissioner and therefore the grant of a declaration would have resulted in a case where there would remain two conflicting results of court and commissioner subsisting at the same time. In **Ealing**, Stanwick J. chose not to follow **Punton** because he found that the factual situation in **Ealing** was that *“there has been no decision of the county court, and if this court should make a declaration it will serve a useful purpose...”*¹⁶

[26] On the instant application, the respondents have not detailed in their submissions how this Court should view the facts in the instant matter so as to find that these are distinguishable from the principle in **Punton**. That this is essential is evident when one delves further than the headnote into the **Ealing London Borough** case. At page 317 of that judgment after stating the principle referred to above in

¹⁴ [1964] 1 WLR 226

¹⁵ [1971] 1QB 309

¹⁶ *Ibid.* at page 319

Pyx Granite Ltd, that clear words are needed to oust the jurisdiction of the court, the Learned Judge went on to state that:

“Of course, if, as in Barracloough v Brown [1897] A.C. 15...a new right is given and a particular inferior court is nominated uno flatu...in which to obtain a remedy, that same remedy cannot be sought in the High Court. But where, as in the Pyx Granite case ...a person seeks a declaration that the circumstances of his case do not come at all within the provisions of the new Act that threatens him and in particular where he has no right of access of his own motion to the inferior court to establish his case, the principle in Barracloough’s case...could not, in my judgment, possibly apply.”

Stanwick J. granted the declarations sought since he was convinced that on the facts in **Ealing** the principle in Barracloough’s case did not apply.

[27] In the instant case, following **Ealing**, it would seem to this Court that the respondents must show that they could not be granted the relief that they seek on the claim from the registration officer in the Constituency of St. Christopher 2, Central Basseterre; they must demonstrate that they stand outside the remedies and access guaranteed in the Act to those who would seek to object to the first and second defendant’s name or to the subject class of voters before the Registration Officer pursuant to the Act and its Regulations. The respondents’ claim form does not do so and neither is this suggestion made in the answer to the applications to strike.

[28] The **Act as amended** and the **Election Registration Regulations** (hereinafter referred to as “the Regulations”) establish a comprehensive process governing the registration of eligible voters and the compilation of the Register of Voters to be used in an election. These pieces of legislation also lay out the procedure governing the removal of voters from the Register.¹⁷ The Act and the Regulations are distinct pieces of legislation affecting as they do one of the most important rights granted to citizens in a democratic society. These courts have stated repeatedly that the court must be extremely careful in the interpretation of the

¹⁷ See paragraph 32 below

sections of such legislation not to impinge on the exclusive province of the legislature to make the laws which accord and affect the rights of its citizens.

[29] The Act provides at section 52:

*“Section 52 – **Appeal.***

(1) An appeal shall lie to a Judge of the High Court sitting in Chambers from any decision of a registration officer on any claim or objection which has been considered by him or her under this Act:

Provided however 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 the registration officer on the claim or objection.”

[30] When one examines the wording of section 52, it is clear that the intent of the legislature was that the court should not become involved in the registration process, to ensure that there has been compliance with the provisions and procedures of the Act, unless and until the registration officer had made certain determinations thereunder. The court’s jurisdiction “on appeal” is assumed only when there has been a “*decision of a registration officer on any claim or objection which has been considered by him or her under this Act*”. If this Court were to determine the claim as filed, the court would be moving to consider the circumstances complained of without there being any decision of the registration officer or any consideration by him of any claim or objection.

[31] As has been alluded to above the respondents do not submit on this application that the Act and the Regulations are absent a mechanism for the resolution of the matters that they now seek to have this Court adjudicate upon by way of the fixed date claim, specifically *the determination of the qualification of the 1st and 2nd respondents as voters and including their right to be registered and/or to remain registered on the Register of Voters.*

[32] Respectfully they could not do so. Section 45 of the Act states that:

*“Section 45 – **Claims and objections.***

(1) All claims for registration made by a person whose name does not appear in the register or the appropriate monthly list and all objections to the registration of persons whose names appear in the registers of voters and in the monthly lists, as the case may be, shall be determined in accordance with the regulations by the appropriate registration officer acting with respect to the constituency to which the register or list in question relates.

(2) When a claim thereunder has been disallowed or an objection thereunder has been allowed, the registration officer shall transmit a record of his or her determination to the Chief Registration Officer.”

[33] The following sets out the detailed procedure stated in the Regulations:

“Regulation 14 - Notice of Objection to Registration.

Any person whose name appears on the Register of Voters or Monthly List for a constituency may object to the registration of any person whose name is included in those lists by sending to the Registration Officer notice of objection in the form set out as Form No 8 in the Schedule or such other form as may be prescribed.

Regulation 16 - Date for Making Objections.

The objection to any name included in the Register of Voters or Monthly List shall be sent not later than ten days after the posting of such Register of Voters or Monthly List.

Regulation 19 - Notice to Persons Affected by Objection.

The Registration Officer shall immediately after receiving any notice of objection send by registered post or in writing of which there is evidence that it has been received by the addressee, a notice in the form set out as Form No. 12 in the Schedule to the person in respect of whose registration the notice of objection is given and a notice in the form set out as Form No. 13 in the Schedule to the person making the objection.

Regulation 21 - Publication of Objections to Registration.

It shall be the duty of the Registration Officer, not later than fifteen days after the posting up of the Register of Voters or Monthly List to cause to be affixed on each of two conspicuous buildings in the polling division in the constituency in the form as set out as Form No. 15 in the Schedule, a list of names of persons for the polling division to whose registration notice of objection has been given and such list shall remain posted for a period of five days.

Regulation 22 - Publication of Objections to Claims.

It shall be the duty of the Registration Officer, not later than ten days after the posting up of the list of claimants in accordance with Regulation 20, to cause to be affixed on each of two conspicuous buildings in the polling division in the form set out as Form No. 16 in the Schedule, a list of names of persons for the polling division to whose claims notice of objection has been given and such list shall remain posted up for a period of five days.

Regulation 23 - Consideration of Claims and Objections.

(1) The Registration Officer shall consider all claims and objections of which notice has been given to him or her in accordance with these Regulations and for that purpose shall give at least five days notice in writing, of which there is evidence that it has been received by the addressee, or notice by registered post, to the claimants or objectors and the persons in respect of whose registration or claims notice of objection has been given of the time and place at which the claims or objections will be considered by him or her.

(2) Agents of political parties or candidates shall be entitled to be present at any consideration of claims or objections.”

[34] The respondents have pointed to no instance, in circumstances such as in the instant case, in which the registration process has been curtailed or interrupted by the court, in the manner that they now seek to have the court do now. The effect of a declaration being granted would be to effectively usurp the decision-making power of the registration officer and to circumvent the procedure as laid down by the provisions of the National Assembly Elections Act and the Election Registration Regulations. If the court is to intervene in an action before the registration officer/supervisor of Elections is afforded the opportunity to make a determination this would seriously undermine the entire election scheme and process. The certainty that is essential to that process would be undermined and threatened. The acts and rights that the Act and Regulations seek to regulate are sacrosanct in a democratic society. This principle has been stated again and again by these courts.¹⁸

[35] As the respondents have themselves made clear in their submissions, this is neither a judicial review nor a constitutional relief claim. The respondents seek by way of a declaration to circumvent the clear provisions of the Act. Given the very nature of the matters with which this Act is concerned and the nature of the right that it seeks to protect, this Court is unable to agree with the submissions of the respondent that it can intervene in the manner that is sought on the claim. This Court agrees with the application that the claimants have failed to object to the 2nd

¹⁸ Joseph Parry v Mark Brantley, HCVAP 2012/003. At paragraph 51 Mitchell J.A. (Ag.) reiterated: “The provisions of the Act governing the exercise of the right to vote may be said to have a constitutional pedigree. In applying the law and the regulations, preference must be given to recognition of the right to vote, and the legislation must be construed in a manner which promotes enfranchisement and guards against disenfranchisement. These concepts and principles apply to the states and territories of the Eastern Caribbean no less than they do in Canada and South Africa.”

defendant's name on the monthly list of voters, resulting in there being no decision of the Returning Officer to such an objection from which the claimants could appeal to the High Court. The right to appeal to the High Court therefore did not exist and the court has no jurisdiction to hear such a claim. This Court does not have the jurisdiction to intervene in the registration process in the manner sought by the respondents.

Abuse of Process

[36] In other cases concerning this legislation, this Court has emphasized that the provisions of this law are mandatory as they relate to time periods within which appeals may be made to the court from a decision of the registration officer as well as the form in which such appeal must be brought.¹⁹ The Act sets out the procedure by which the respondent could object to the inclusion of the names of the applicants, 1st and 2nd defendants on the register. If they had done so and the Registration Officer's decision or determination was not in their favour they could then have appealed to this Court against that decision. This is not a case in which the respondents claim that they were unable to voice or make their objection to the registration of the 1st and 2nd applicants as voters, to their right to be registered or to remain registered.

[37] The evidence before this Court from the affidavit of the applicant/2nd defendant in support of this application at paragraph 9 above is that "*Prior to being served this the Fixed Date Claim, I have received no objections or proceedings challenging my registration to vote in Constituency #1.*" In the case of **Brantley v Parry, cited above**, Mitchell J.A. emphasized the importance of the notice provision with regard to objections to persons' names on the Register of Voters and its vital function in the protection of the right to vote.

[38] I agree with the applicants:

¹⁹ See *Cherita Clarke and Liburd v Laureen James and Anor.* SKBHCV2014/0111, SKBHCV2014/0112, SKBHCV2014/0126 and *Laureen James et al v Wingrove George*, SKBHCV2010/159 to SKBHCV2010/0222

- (i) that any claim or objection should have been made within the specified time period upon the posting of the Monthly List of Voters. The claimants made no objection to the 2nd defendant's name on the list within the time specified under the Act and the Regulations; and
- (ii) that the claimants having failed to avail themselves of the procedure set out under the National Assembly Elections Act regarding claims and objections in relation to the Monthly list of voters and that it would be an abuse of the court to allow such a claim to proceed where there is no adherence to the procedure provided by the Act.

[39] As it regards paragraphs (a) (b) (d) – (h) of the claim form, these are all matters for which there is ample statutory provision in the National Assembly Elections Act and which empower the Registration Officer to make a determination. The only matter that does not fall within this ambit is Paragraph (c) in which the respondents seek:

“(c) A Declaration that a person entering Saint Christopher and Nevis under the Second Schedule of the Immigration Act is not resident in Saint Christopher and Nevis pursuant to section 6(1) of the Immigration Act.”

A party needs to exhibit a sufficient interest in order that the court should look to act to grant the relief that the respondents seek pursuant to section 24 of the Eastern Caribbean Supreme Court (Saint Christopher and Nevis) Act. Considering the failure of the respondents to pursue the course set out for objecting to the registration of the applicants, 1st and 2nd respondents, this Court does not find that they have demonstrated that they possess the sufficient interest necessary in this regard. There is also nothing in the pleadings to suggest that the claimant's own legal position will in some way be resolved by granting the declaration.²⁰ The argument that the respondents offer that a declaration in terms of paragraph (c)

²⁰ Supra, at paragraph 17

above will act as a guide to the Supervisor of Elections and the Registration Officer in terms of what the interpretation of the relevant laws are does not suffice.

Conclusion

[40] This Court does not have the jurisdiction to entertain the claim as filed. The claim form is struck as being an abuse of process of the court. This Court makes no order as to costs.

Justice Marlene I Carter
High Court Judge

By the Court

Registrar