

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

Claim No. BVIHCV2019/0087

IN THE MATTER OF SECTIONS 7, 67 (3) (a) OF THE BVI CONSTITUTION ORDER IN COUNCIL (2007)
AND IN THE MATTER OF THE ELECTIONS ACT

BETWEEN:

MARK VANTERPOOL

Applicant

-AND-

JULIAN WILLOCK
THE SPEAKER OF THE HOUSE OF ASSEMBLY
THE ATTORNEY GENERAL as Intervener

Respondent

Appearances: Mr. Edward Fitzgerald, QC, Mr. Patrick Thompson and Ms. Reynela Rawlins, Counsel for
the Applicant
Mr. Anand Ramlogan, Senior Counsel, Mr. Valston Graham and Ms. Cherice Archibald,
Counsel for the Respondent
Mr. Baba Aziz, Attorney General appearing as Intervener

2019: April 12th, 13th

DECISION ON APPLICATION FOR JUDICIAL REVIEW

BACKGROUND

- [1] Smith J: On 23rd January 2019, His Excellency, The Governor Augustus Jaspert dissolved the House of Assembly. In the general election that followed on 25th February 2019, the Applicant was elected as the representative for the Fourth District.
- [2] On the 5th March 2019, the Applicant wrote to the Clerk of the House of Assembly to say that he did not wish to be sworn in and that she was to *“accept this letter as my resignation from the House of Assembly”*.

- [3] Subsequently, on the 12th March, 2019 the Honourable Mr. Julian Willock was elected Speaker by the Members-Elect other than the Applicant.
- [4] The following day on the 13th March, 2019, the Clerk replied to the Applicant's letter stating that Mr. Julian Willock was the new Speaker and that he had been sworn into office on the 12th March, 2019.
- [5] Referring to Section 67 (3) (a) of the British Virgin Islands Constitution, which is set out below, the Clerk concluded: *"...therefore, you should direct the said letter to the Honourable Speaker."* Section 7 of the Virgin Islands Constitution Order 2007 No. 1678 states: *"for the purposes of the Constitution the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person, unless otherwise specified in the letter of resignation."*
- [6] On the 13th March, 2019 the Clerk's note and the Applicant's letter were both passed on to the Speaker, who the same day wrote to the Applicant referring to Section 67 (3) (a) of the Constitution and said: ***"I have hereby accepted your letter of resignation with immediate effect, as per Section 67 (3) (a)".***
- [7] The next day, 14th March, 2019, the Applicant wrote to the Speaker saying that he had been advised by the Attorney General that his earlier letter was "invalid" asking the Speaker to arrange for his swearing in *"as soon as possible as the declared elected representative of the Fourth District"*.
- [8] The Court is advised that there had been no response to that letter.
- [9] On the 25th March, 2019, the Speaker issued a statement on the matter, the first of two. He referred to his earlier "ruling" on 13th March, 2019 to accept the Applicant's resignation, and said that this ruling still stood. He also said that he had advised the Governor on two occasions that there was a vacancy for representation in the Fourth District, ***"as Mr. Vanterpool followed through with his express intent and did not show up on 12th March 2019 to be sworn in as an elected Member."*** Having regard to the need of the people of the Fourth District to be represented as soon

as possible, he concluded: “... **we** await a By-election date, which under the constitution, can only be called by him [the Governor]”.

- [10] On the 26th March, 2019, the Governor issued a statement in response.
- [11] The Governor indicated that he had received the Speaker's correspondence and that he was aware that the “**the question** of whether the Fourth District seat is vacant is being contested by the Member-Elect of that district.” His statement concluded: “I have received legal advice that has been copied to the Honourable Speaker, advising that the resignation of the Member-Elect was invalid on the basis that the Member-Elect has no constitutional right to resign prior to being sworn in. Therefore, at this point, I do not intend to issue a writ for a by-election. The swearing in of the Member-Elect is a matter for the House to determine, having regard to the will of the electors in the Constituency”.
- [12] On 28th March, 2019, the Speaker issued a second statement on the issue. He confirmed that he had read the Governor's statement but his position remained the same. Recognizing the constitutional significance of the issues, however, he accepted that:
- “... it would be prudent at this juncture to seek the opinion of the courts in the interest of fairness, transparency, and best practice the Honourable Attorney General, of whom I have the highest respect, has advised myself, the Governor and Mr. Vanterpool of his position.”
- [13] The Speaker confirmed that he would comply with the outcome of that process. The Speaker also wrote to the Attorney General Mr. Baba Aziz to say that the House of Assembly would be engaging independent counsel “to adjudicate the Constitutional matter if it reaches to a court of law.” He also indicated that he had received legal advice on the matter.
- [14] On the 1st April 2019, the Applicant's legal practitioners sent a pre-action letter to the Speaker of the House. The essence of their complaint was that Mr. Vanterpool was being unlawfully prevented from taking his seat and sought a reply by 2 p.m. that day, failing which all available remedies would be pursued (my emphasis). The Court is not aware of a response to that letter.

- [15] Later that day, after the 2 p.m. deadline, the Applicant filed the present application for leave to make a claim for judicial review. The Court provided an urgent hearing on the application the same day. It rejected the Applicant's application for an interim injunction to delay the first sitting of the new session of the House of Assembly, which would be taking place the following day, but scheduled a hearing of the application for leave on 10th – 11th April, 2019. That hearing eventually came before the Court on 12th April, 2019 in two forms: 1) a Fixed Date Claim and 2) an **application for Judicial Review of the Speaker's actions. This ruling is centered on the latter.**

Legal Framework

- [16] Section 7 of the BVI Constitution contains a general provision on resignation:

“Resignation

7. For the purposes of this Constitution, the resignation of the holder of any office that is required to be addressed to any person shall have effect from the time that it is received by that person, unless otherwise specified in the letter of resignation.

- [17] So far as relevant, Section 67 of the BVI Constitution provides:

“Tenure of seats of members of the House of Assembly

67. (1) Every elected member of the House of Assembly shall vacate his or her seat in the House at the next dissolution of the House after his or her election.

... **(3)** An elected member of the House of Assembly shall also vacate his or her seat in the House-

(a) If he or she resigns it by writing under his or her hand addressed to the **Speaker ...”.**

- [18] Section 73 entrenches in the Constitution the requirement for newly elected members of Parliament to swear an Oath or Affirmation:

“Oaths and Affirmations

73. No member of the House of Assembly shall be permitted to take part in the proceedings of the House (other than proceedings necessary for the purposes of this section) until he or she has made and subscribed before the House an oath or affirmation of allegiance and an oath or affirmation for the due execution of office as such member in the forms set out in Schedule 1; but the election of the Speaker and Deputy Speaker may take place before the members of the House have made such oaths or affirmations.”

- [19] This requirement to swear an oath "for the due execution of office as such member" is reinforced in Standing Order (3) (1) of the House of Assembly's Standing Orders:

"Except for the purpose of electing a Speaker and Deputy Speaker after a general election, no Member of the House shall take part in the proceedings thereof until he has made and subscribed the oath of allegiance ...".

The Arguments

- [20] The Respondent has argued that the Application for Judicial Review is not the proper vehicle; indeed it is inappropriate for matters such as the matter currently before the Court.
- [21] The issue for the Court here to consider whether an application for Judicial Review is an appropriate vehicle to mount a challenge in a matter such as this.
- [22] The accepted view is that the application for Judicial Review asks the Court to exercise a supervisory jurisdiction over inferior tribunals and quasi-judicial bodies and so forth. This is the essence of Judicial Review in its classical sense.
- [23] Counsel for the Respondent noted: **"In England, they do not have a written Constitution so there** may have been some developments but at its core, it is about the court exercising a supervisory jurisdiction."
- [24] Counsel brought authorities to the Courts attention, some being more relevant to the case at Bar than others. The case of Bradlaugh vs Gossett says quite clearly that the Courts in matters of Parliament are to steer clear.
- [25] In that case the plaintiff, Mr. Charles Bradlaugh was duly elected to serve in the House of Commons for Northampton and was entitled to take the oath prescribed to be taken by members of the House of Commons to sit and vote as one of the representatives. Mr. Bradlaugh required the Speaker to call him to the table for the purpose of taking the Oath. The Speaker did not do so. On 9th July the House of Commons resolved that the Sergeant-at-arms exclude Mr. Bradlaugh from the House.

[26] In that case it was held that: *"The House of Commons is not subject to the control of Her Majesty's courts in its administration of that part of the statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into by a court of law. A resolution of the House of Commons cannot change the law of the land but a court of law has no right to inquire into the propriety of a resolution of the House restraining a member from doing within the walls of the House itself something which by general law of the land he has a right to do. An action will not lie with the Sergeant of Arms for excluding a member from the House in obedience to a resolution directing him to do so, nor will the court grant an injunction to restrain that officer from doing so."*

[27] This reasoning found favour with Ellis J when she pointed out in case No BVIHCV2019/0087 Mark Vanterpool vs Julian Willock and The Attorney General at page 4:

"Although Counsel for the Applicant did not address the question of the Court's jurisdiction and remit to entertain this Application, in the Court's judgment it is a relevant and live issue in light of the doctrine of separation of powers. There can be no doubt that a court must be reluctant and will generally not intervene in the internal or intramural activities and proceedings of the Legislative as far back as 1884, the common law has maintained that Parliament has exclusive jurisdiction over internal proceedings of the House."

[28] This Court is in agreement with the opinions expressed in the Bradlaugh case. I am of the clear view that to entertain the application in its present form would put the Court on a collision course with the framers of the Constitution and this should be studiously avoided.

[29] Having said all of the above, this Court is of the view that it does not have the jurisdiction nor authority to entertain the claim in its current form. The Application for leave for Judicial Review is hereby dismissed and the Claimant is invited to seek relief under CRP 56 (11).

[30] 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.

Ann-Marie Smith
High Court Judge

By the Court

Registrar