THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. 202 of 2015

BETWEEN:

LAURON BAPTISTE

PETITIONER

-AND-

VIL DAVIS
Returning Officer for the Constituency of North Windward

VERONICA JOHN
Presiding Officer for North Windward

MONTGOMERY DANIEL

SYLVIA FINDLAY-SCRUBB
Supervisor of Elections

RESPONDENTS

CONSOLIDATED WITH

CLAIM NO. 203 OF 2015

BETWEEN:

BENJAMIN EXETER

PETITIONER

-AND-

WINSTON GAYMES
Returning officer

KATHLEEN JEFFERS
Presiding Officer

SIR LOUIS STRAKER
SYLVIA FINDLAY-SCRUBB
Supervisor of Elections

THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

RESPONDENTS

CLAIM NO. 202 OF 2015

Appearances:
Mr. Bertram Commissiong Q.C. with Mr. Keith Scotland,
Mrs. Kay Bacchus-Baptiste, Mrs. Zhinga Horne-Edwards, Mrs. Sharon Morris-Cummings with Ms. Shirlan 'Zita' Barnwell and Ms. Maia Eustace as instructing solicitors for the Petitioner.
Petitioner present.
Mr. Douglas Mendes, S.C. with him Mr. Michael Quamina instructed by Mr. Joseph Delves for the 1st, 2nd and 4th Respondents. 1st, 2nd and 4th Respondents present.
Ms. René Baptiste, Mr. Duane Daniel and Mr. Carlos James for the 3rd Respondent.
3rd Respondent present.

CLAIM NO. 203 OF 2015
Appearances:
Mr. Stanley John, Q.C. with him Mrs. Kay Bacchus-Baptiste,
Mrs. Sharon Morris-Cummings, Mrs. Zhinga Horne-Edwards with Ms. Shirlan 'Zita' Barnwell and
Ms. Maia Eustace as instructing solicitors for the Petitioner.
Petitioner present.
Mr. Douglas Mendes, S.C. with him Mr. Michael Quamina instructed by Mr. Joseph Delves for the 1st, 2nd and 4th Respondents. 1st Respondent absent, 2nd and 4th Respondents present.
Ms. René Baptiste, Mr. Duane Daniel and Mr. Carlos James for the 3rd Respondent.
3rd Respondent present
Mr. Anthony Astaphan, S.C with him Mr. Kendrickson Kentish instructed by Mr. Richard Williams and Ms. Danielle France of the Law Firm Williams and Williams for the 5th Respondent.
5th Respondent present – represented by Mr. Kezron Walters

2019: February 11, 12, 13, 14, 15, 18, 19
March 6, 7, 21
June 13

SUPPLEMENTAL REASONS

[1] JOHN, J. (AG): On the 21st day of March, 2019, the Court delivered judgment in the above matters and dismissed the claims brought by both Petitioners with costs to be assessed if not agreed.

[2] By letter dated 22nd March, 2019, Joseph A. Delves Barrister and Solicitor, on the advice of Senior Counsel wrote to the Registrar of the High Court. In the correspondence, he asked the Registrar to draw to His Lordship's attention that he omitted to give reasons for his rejection of the Petitioner, Lauron Baptiste's complaints namely:

1) that there were 39 more counterfoils than there were ballots at polling station NW1; and
2) that there was no recount of the ballots on the day after the election, a claim which was advanced through the evidence of Cheryl Sutherland but denied by the Returning Officer, Ville Davis.

[3] The letter concluded by saying:

> ***"Given** that there is very likely to be an appeal in the matter, and that the Court of Appeal would no doubt be assisted by His **Lordship's** reasons particularly on the question of why he seemingly rejected the evidence of Ms. **Sutherland"**.*

Can the Court provide the reasons notwithstanding that judgment in the matter has already been delivered?

[4] The court has considered two (2) cases from which guidance has been derived on the issue of the need to provide reasons. The first is Verbin Bowen et al v The Attorney General et al[1] and delivered on the 4th of November, 2013. There, Mitchell JA, sitting as a single judge of the Court, set out very helpful guidance. At pages 5-6 of the judgment, the learned judge opined:

> *[10] This Court takes note of the usual practice of the judges of our region on giving an oral decision on an application heard in Chambers to express their reasons orally, and to direct the order to be prepared by counsel for the claimant so it can be settled by the judge and signed by the Registrar. A judge in such a case would only put her reasons in writing when so requested. A High Court judge has no practical way of knowing that an interlocutory appeal has been filed against her order, and that written reasons for her order will be needed by the Court of Appeal, unless someone brings notice of the need for her reasons to her attention.*
>
> *[11] If a judge neglects or for any reason fails to provide her reasons for her order, and the reasons cannot otherwise be determined, the **judge's** order is thereby vitiated and the appeal may be automatically allowed, as explained by Rawlins CJ in his judgment in Jada Construction Caribbean Limited v The Landing Limited. Alternatively, where a judge fails to give reasons for her decision, the Court of Appeal may, in a suitable case, exercise its own discretion, as explained by George-Creque JA in the case of Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste. Such considerations do not arise here as there is no reason to believe that the trial judge has failed to give reasons for her decision.*
>
> [13] While there is no express mention in CPR 62.10(1) of such a requirement, this Court has repeatedly pointed out that it is not acceptable for an appellant to challenge a **judge's** exercise of a discretion without placing before the Court of Appeal in the appeal bundle any of (i) the **judge's** written reasons or, (ii) in

[1] ANUHCVAP 2013/0016

the absence of such written reasons, a transcript of the hearing, or, (iii) in the absence of a transcript, a copy of the **judge's** notes; or, (iv) in the last resort, an affidavit of what transpired in the court below. Only then is there such compliance with CPR 62.10(1) that an appeal court can properly engage in the exercise of assessing whether the court below acted properly in exercising its discretion.

[5] The second case the court considered was Peter Thomas v Desireen Douglas et al[2]. In that case, the issue was the failure of a judge to provide reasons or the ground for an Order of Mandamus which is a form of discretionary relief to which an applicant is not entitled as of right. There was an appeal against the judge's order. The judge had not provided her reasons nor was a request made for the reasons.

[6] In the course of delivering the judgment dismissing the appeal, Webster, JA (Ag.) referred to the statement made by Mitchel, JA in Bowen which is at paragraph [11] supra.

[7] THE FIRST COMPLAINT

That there were 39 more counterfoils than there were ballots at polling station NW1.

[8] REASONS

1. The effect of the complaint is that there must have been missing ballot papers which were not accounted for.
2. The evidence of Ms. Veronica John, the Presiding Officer was that when the issue was brought to her attention, a recount was conducted and the counterfoils tallied with the ballots. The Petitioner's witnesses at the recount did not accept that the recount resolved the issue.
3. The Respondents accepted that at the preliminary count when the counterfoils were originally counted they exceeded the ballot by thirty nine (39).
4. The Court had earlier expressed the view that Ms. John was a credible witness and on that issue the Court accepted her evidence that a recount was conducted and the counterfoils tallied with the ballots.
5. That, however, was not the end of the matter. Neleon Adams and Kendall Sandy both gave evidence on behalf of the Petitioner, and testified that at the preliminary count there were three hundred and sixty six (366) votes counted, that is to say, one hundred and forty one (141) for

[2]GDAHCVAP 2014/0036

NDP, two hundred and twenty two (222) for ULP, two (2) for Green Party, one (1) for DRP and two (2) rejected ballots. This was borne out by the witness statement of Neleon Adams at paragraph 19.

6. That, no doubt, was a direct reference to the number of persons that Adams recorded as having voted on his voter's list. The final count of voters confirms that the total number of persons who voted was three hundred and sixty six (366) (see SSF5 annexed to the witness statement of Ms. Sylvia Findlay-Scrubb).
7. The Court was therefore satisfied based on the evidence of Ms. Veronica John, Mr. Adams, Mr. Davis and the Exhibit SSF5, that there were not thirty-nine (39) more counterfoils than ballots. Accordingly, the court dismissed the complaint.

[9] THE SECOND COMPLAINT

That there was no recount of the ballots on the day after the elections, a claim which was advanced. through the evidence of Ms. Cheryl Sutherland but denied by the Returning Officer Mr. Ville Davis.

[10] REASONS

The Petitioner claimed that there was no publication of the notice for the final count in breach of Rule 13 (2) of the House of Assembly Election Rules. That rule provides:

> **"(2)** The returning officer shall as soon as possible after adjourning the election, give notice of the day and time on which and the address of the polling stations at which the poll will be taken and the names of the candidates nominated for election and of the place where and the day and time when the number of voters given to the several candidates will be finally counted, by publication thereof in one or more newspaper and by causing notices to be posted at such places in the district as he may deem necessary in Form 6 in the **Appendix"**.

[11] The evidence advanced showed indisputably that neither the Petitioner nor any of his agents attended the final count. Notwithstanding the assertion in his pleadings, no evidence was forthcoming from the petitioner nor his agents of the failure to give the requisite notice.

[12] Against the evidence of the petitioner, there was evidence from Mr. Ville Davis, the Returning Officer. He testified that he posted the requisite "Form 6" at the police station and additionally the "Form 6" was published in the newspapers prior to the election date. Although Mr. Davis was cross-examined, Counsel for the petitioner did not challenge his assertion on that issue.

[13] There was, however, evidence from Ms. Cheryl Sutherland in her witness statement that she saw no "Form 6" as prescribed in the Representation of the People Act advising of the date, place and time of the final count. Under cross- examination Ms. Sutherland admitted, that she did not know what "Form 6" was. In fact, it was very hilarious when she said "the only Form 6 I know is in school".

[14] Accordingly, the court was satisfied that there was due notice of the final count in accordance with the Representation of the People Act.

[15] The ground of appeal therefore failed.

[16] The petitioner further alleged that contrary to Rule 42 (2) (a) of the House of Assembly Election Rules there was no final count of the votes cast. Instead of counting the ballots individually it was claimed that the Returning Officer simply accepted the figure written on the envelopes containing the ballots.

[17] The Returning Officer, Mr. Ville Davis gave evidence outlining the procedure followed during the count. He said that he counted each ballot and in one instance he even accepted two votes which had been rejected by the Presiding Officer (see paragraphs 18-20 of his Witness Statement). The court noted that in giving evidence his evidence in chief, Mr. Davis was at times faltering. He was cross-examined by Counsel for the Petitioner and maintained his position that there was a final count.

[18] The only evidence to the contrary came from Ms. Cheryl Sutherland whose evidence was, in many instances, contradictory and unreliable. Ms. Sutherland in a sworn Statement before Notary Public on 14th December, 2015 stated *inter alia* that she saw "no Form 6". Under cross-examination, she admitted having in her possession a copy of her witness statement which she said she had studied the previous day. Her testimony was consistent with the statement, yet when cross-examined; she denied knowing about "Form 6".

[19] Accordingly, the court was satisfied that there was due notice of the final count in accordance with the Representation of the People Act.

[20] It can be inferred from the statement of Ms. Sutherland that she knew what a Form 6 was and was on her guard for such a document, displaying the date, time and place of final count but that she saw none. That however, was not true having regard her evidence under cross examination.

[21] Referring to Ms. Sutherland's testimony that neither the Returning Officer nor anyone recounted the accepted ballots and the Returning Officer simply took what was written on the envelope as the information regarding how the ballots were cast it must be borne in mind that there is no legal requirement or any rule which requires the Presiding Officer to write the results of the preliminary count on the envelope in which the ballots are placed.

[22] By Ms. Sutherland's estimate, the process took five (5) hours, less one half hour break. But she testified that the process of opening each box, checking the contents and noting the count allegedly written on the envelope took ten minutes each, which meant the entire process took 140 minutes or 2 hours and 20 minutes in all, which left a further 2 hours and 10 minutes un-accounted. She said (at paragraph 17) that **"***The process took about 5 hours but we had stopped counting for about half* ***hour"***. That contradicted her statement that there was no counting of the ballots.

[23] The allegations made in the complaint were extremely serious and therefore warranted cogent, compelling and reliable evidence in support thereof. The evidence of Ms. Sutherland was unsatisfactory, unreliable and very contradictory. In all circumstances, the court rejected the complaint.

Stanley John
High Court Judge (Ag.)

By the Court

Registrar