

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE**

SAINT CHRISTOPHER

CLAIM NO. SKBCV2007/0097 to 0113

IN THE MATTER of the National Assembly
Elections Act, Cap. 162 of the Laws of Saint
Christopher and Nevis (Revised Edition 1961)
("the Act")

And

IN THE MATTER of a decision made on
February 26, 2007, by a Registration Officer (The
Respondent herein) on an objection considered
by him under the Act against the inclusion of
voters in the Register of Voters for a number of
polling divisions of the Electoral District of Saint
Christopher #4 (Challengers, Old Road,
Verchild's, Middle Island, Lamberts, Conyers,
Godwin Ghaut, Half Way Tree and New Guinea)

BETWEEN

LAUREEN JAMES

Appellant

AND

DUDLEY WILLIAMS

Respondent

Appearances:

Mr. Lindsay Grant and Mr. Fitzroy Eddy for the Appellant
Mr. Arudranauth Gossai for the Respondent

2007: April 16, June 18

JUDGMENT

1] **BELLE J.** On the 26th day of February 2007 the Appellant filed an objection against the inclusion of the names of all of the persons named in Appeals numbered SKBHCV 2007/0097- 0113 in the Register of Voters for various Polling Divisions of Electoral District #4 for St Christopher and Nevis. The filing of the objection followed the prescribed rules and resulted in a hearing to consider whether the named registered voters should be removed from the list, according to the Appellant who stated in her Affidavits of March 5th 2007 that she was a registered voter in polling division 4 of Electoral District #4. The basis of the objection to the various voters varied from the voter not residing and never having resided in the said electoral district to residing overseas. In the Appellant's view these registered voters were not entitled to be registered in Electoral District #4. In his Reasons for Decision the Registration Officer stated that on 19th February 2007 he sent Notices to the Appellant and to the persons objected to through registered post notifying them of the date, place and time of the hearing of the objections. He also said that the Lists of Objections to the Register of Voters were posted in two conspicuous buildings in Polling Divisions 1, 2, 3, 4 and 5 of Electoral District #4. On 26th February 2007 between the hours of 5pm and 7 pm the hearing of these objections was held at the Old Road Community Health Centre, Saint Christopher. Present were the Appellant, her counsel Mr. Chesley Hamilton and Mr. Eugene Hamilton, but none of the persons objected to attended the hearing. The Registration officer decided to proceed in the absence of the persons objected to pursuant to Regulation 33 (2) of the Election Registration Regulations No.5 of 1984.

[2] It is notable that the Registration Officer failed to mention whether there was any indication whatsoever that the persons objected to had received the Notices. Laureen James attended the hearing gave her evidence and was informed by the Registration Officer Mr. Williams that he was not satisfied that the persons mentioned in the Appeal should be removed from the register. He said that he had told the Appellant that she must prove that the person objected to do not reside in Electoral District #4 or that they resided elsewhere. Ms. James appealed this decision and on appeal argued that this decision disregarded the dictum of Belle J in **Lindsay Grant v Rupert Herbert SKBHCV2004/0182**.

3] In giving his reasons for not removing the person who did not turn up to the hearing, the Respondent said that the Applicant merely asserted that the person objected to did not reside in the constituency and made submissions in relation to the law. However Ms. James had stated in her Affidavit in support of the Appeal that she did not just allege that these persons did not live in the constituency but rather she also stated that the said persons always lived outside of Electoral District #4. This was not refuted by the Registration Officer.

[4] The record produced by the Registration Officer revealed that Laureen James had said that she knew Registered Voter Ermine Cannonier (apparent reference to Ingrid Cannonier) for a very long time for over ten years and that she lived in New York. According to the record the Appellant had informed the Registration Officer that before Ermine Cannonier migrated she lived in St. Paul's and never lived in (constituency) Electoral District # 4 at any time. She then stated the legal basis for her objection. Laureen James went on to state her objection to Ingrid Cannonier; Latoya French ; Cassandra Williams; Amanda French; Euriel Williams, Kirlin Williams; Ellis Lucas ; Lisa Browne; Nathaniel Francis; Sylvia Williams; Stivor Dorsette; Glentine Wattley; Alva Browne; Steven Zakers; Victoria Ward; Almon A. Glasford; Kenrick McKoy; Timothy D. Abbottt; Sandra Bradshaw and Desmond Hicks on the grounds that (a) these person are registered in contravention of section 42 (a) of Cap.162 as amended by Act number 16 of 1983; (b) these persons are not qualified to be registered in constituency 4 (four) ; and (c) these person never lived in constituency 4 (four).

[5] On the hearing of the Appeal counsel for the Appellant Mr. Grant submitted that the named persons were not qualified to vote in the said constituency, that the relevant rules provided that the registration officer had to be satisfied that there was enough evidence to remove the name from the list and that indeed there was no other evidence before him other than that given by the Appellant. Counsel for the Respondent argued that the Appellant had to satisfy the Registration officer and had failed to do so. According to the Respondent's counsel the burden of proof was a high one based on **Walcott v Hinds** and, **Terence**

Henry v Leonard O'Loughlin and the mere statement that someone did not reside in a particular constituency was not sufficient to disenfranchise a voter.

[6] The case **Terence Henry v Leonard O'Loughlin et al** Suit No 42 of 1999 (St. Christopher Circuit) deals with the contention of the Appellant in that case that regulation 33 (1) provided that the Registration officer must remove the names of those persons whose names appear in the monthly list if those persons do not appear before the Registration Officer when he is hearing objections to the inclusion of their names in the monthly list. The Learned Mr. Justice Neville Smith rejected this contention and his ruling was approved by the Court of Appeal in Civil Appeal No 12 of 1999. The case however does not deal with the issue of burden of proof and how the Registration Officer hearing the objection must treat the evidence before him. Counsel for the Respondent cited **Walcott v Hinds** 10 W.I R 521, in support of the argument that the burden of proof for removing a voter from the voters list must be higher than usual, but that case goes no further than to say that a high burden of proof is required to overturn an election especially where there is an allegation such as fraud.

[7] In **Walcott v Hinds** Douglas CJ cited in support of his decision the dicta of Denning L J in **Bater v Bater** 1950 2 All.E.R 458 at page 450 in the following terms:

"A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion..."

[8] But we are not dealing here with an election we are dealing with the authenticity of the records on which the election relies. Even if there is an allegation of fraud, it would not appear to be necessary to prove fraud to establish that the voters list is inaccurate. We can obtain some guidance from **Walcott v Hinds**. But I do not think that the standard of proof required in an election petition equates to a challenge to the accuracy of the voters list. I acknowledge however that as was intimated by Smith J in **O'Loughlin**, the court would not wish to sanction the disenfranchisement of a voter on less than very good evidence.

There therefore must be a basis for assessing the evidence on which the Registration Officer made his decision. The Registration Officer does not say in his reasons whether he considered the evidence good or weak. Neither does he say whether he believed or disbelieved it. On what basis then does he conclude that it was insufficient or that he was not satisfied? This question is not answered.

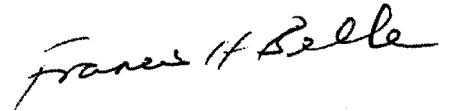
[9] One of the remarkable things about this Appeal however is that while there was a transcript or record of what had actually been said at the hearing of the objection, there was no proof that the voters objected to had been served with the Notices of the hearing. These issues along with the facts stated above leave the court at the mercy of subjective statements by the Appellant and the Respondent. This is unsatisfactory.

[10] Nevertheless if I proceeded on the basis of the submissions which I have considered I must state that the regulations as they stand, taken literally, appear to permit the Registration Officer to act as he has done. However a reasonable interpretation of the regulations gives rise to two concerns. Firstly is it satisfactory that in so important a procedure which is indeed the backbone of the integrity of the voter's list that a person summonsed to attend the hearing of an objection to their registration should by mere absence achieve a decision in their favour? Indeed it is acknowledged that the Appellant would have to prove her case. But how can she do that other than by giving the evidence, which she had done? Having given this evidence is it good enough that the registration officer simply states that he is not satisfied that he should remove the name of the person without more, because the law empowers him to do so? I find that this cannot be a correct interpretation of the law in a modern democratic system, which as I stated previously is the backbone of the integrity of the process. My second concern therefore is that the registration officer failed to give reasons why he did not accept the evidence of the objector. The law does not specifically require him to do so. However there has been an appeal and he is called upon to justify his decision. It is for the court to determine whether he has done so. In the circumstances the court finds that it is only reasonable that the Registration Officer should justify his decision. Indeed the objector had gone to the trouble of checking the list, collecting the evidence, making the objection, attending the hearing

and giving evidence on oath, something which the registered voter had failed to do. Indeed it is a case in which a contemnor to the process is given better treatment by the said process than the person who has at all times abided by the rules. Again I find that this could not have been the intention of the legislation.

[11] I therefore conclude that a court sitting in an appellate jurisdiction must come to the aid of the process. I therefore order the Registration Officer (1) to rehear the objections in these matters. (2) The Registration Officer must produce proof of service of Notice on the voter (3) The Registration Officer is ordered to make a written record of the evidence taken at the hearing and determine which evidence to accept and which to reject if any and come to a final conclusion on the matter. This record must be produced on Appeal if his decision is appealed.

[12] There will be no order as to costs at this stage.



Francis H V Belle

High Court Judge