

SAINT CHRISTOPHER & NEVIS

IN THE COURT OF APPEAL

HCVAP2006/009/0011

BETWEEN

**LEROY BENJAMIN
WENTFORD ROGERS
RUPERT HERBERT**

First Appellant
Second Appellant
Third Appellant

v

LINDSAY FITZPATRICK GRANT

Respondent

and

HCVAP2006/012

BETWEEN

**LEROY BENJAMIN
WAYLAND VAUGHN
CEDRIC LIBURD**

First Appellant
Second Appellant
Third Appellant

v

EUGENE HAMILTON

Respondent

Before:

Appearances:

Mr. Maurice King Q.C, Arudranautu Flossaic and Adrian King for Appellants, Dr. Francis Alexis holding for the Appellants
Mrs. Marguerite Foreman and Fitzroy Eddy holding for Mrs. Constance Mitcham for the Respondents.

2008: July 15

JUDGMENT

BARROW, JA.: The judgment in this matter relates to two civil appeals out of Antigua on the matter of an award of costs in election petitions. The two appeals were consolidated and heard together and in both of them the learned trial judge made determinations that he would not award costs to the unsuccessful challenger to the election results, and essentially, he made this determination on the basis of the public interest in election petitions. The challengers, as indicated, were unsuccessful and the judge appreciated that the usual rule is that costs follow the event, but the judge decided that the public interest in an election petition was such as to justify his making a determination to not award costs against the unsuccessful party.

We considered the matter and adverting to the rule dealing with costs which says that in making a determination the court must consider all circumstances, including those listed. The determination of the court was therefore that while the public interest in an election petition was a factor which could have been considered, that factor alone was not all that was to be considered but rather, there was a duty on the part of the court to consider all the circumstances. All the circumstances included the fact that the party was unsuccessful, the merits of the case, the strength of the case, the reasonableness in pursuing particular issues or allegations and the manner of pursuing these issues or allegations. At an early stage there had been interlocutory determinations striking out substantial portions of the election petitions, and in fact there had been or had sought to be challenges against the refusal or the failure to have struck out the entire election petition in both instances. It therefore appeared that it was not a case of overwhelming prospects of success even at an early stage and in fact the striking out at an interlocutory stage indicated that they were weak cases, at least to the extent that they were struck out without even reaching the final determination.

As regards a matter of the public interest in an election petition, we adverted to the fact that the public interest is something which must not be presumed in relation to an election petition but there must be an examination of the particular petition to decide whether the public interest in fact existed in the form of justifying or necessitating the bringing of an election petition to ventilate the particular aspect that was being raised. The point was made that for instance, if there was a flaw or flaws in the entire electoral process, including

the preparation of voters list, etc. the public interest may have been as well served or indeed better served by the person who brought the challenge mounting, for instance, a public awareness campaign by television, by newspaper articles, etc. and therefore bringing a challenge in court was not necessarily the way to go. We drew a distinction between the provision in the Rules as regards administrative orders where a policy is ordained in the Rules which says that save where a litigant or an applicant for an administrative order acts unreasonably in bringing the proceedings, the rule is that no order for costs is to be made against such an applicant. In contrast there is no similar rule in relation to election petitions. In fact, the statute, in the case of Antigua, makes it a mandatory requirement that any person bringing an election petition must provide security for costs before the petition can be heard. It therefore establishes, it seem to us, a presumption that costs will be awarded. So it will have to be an exceptional case for costs to not be awarded. In the circumstances of this case there was not anything exceptional which would have justified a departure from the rule which was conformed by the statutory provision that provision must be made for an unsuccessful challenger to pay costs.

We therefore reversed the order of the trial judge and made an order for costs in favour of the successful defendants to the election petition.