

**IN THE SUPREME COURT OF GRENADA AND THE WEST INDIES ASSOCIATED STATES
IN THE HIGH COURT OF JUSTICE**

GDVHCV 2003/0551

**IN THE MATTER OF THE REPERESNTATION OF THE PEOPLE ACT NO. 35 OF 1993
AND
IN THE MATTER OF A PARLIAMENTARY ELECTION FOR THE CONSITUENCY OF
CARRIACOU AND PETITE MARTINIQUE HELD ON THE 27TH DAY OF NOVEMBER 2003.**

BETWEEN

GEORGE PRIME

Petitioner/Respondent

AND

ELVIN NIMROD

VICTOR ASHBY

BRENDA SAMERSON

Respondents/Applicants

Appearances:

Mr. Elliot Mottley Q.C. and Mr. Carol Bristol Q.C. leading Mr. Lloyd Noel and Mr. Ruggles Ferguson
for the Petitioner/Respondent

Mr. Karl Hudson-Phillips Q.C. leading Mr. Michael Sylvester instructed by Messrs. Henry
Hudson-Phillip & Co. for the First Respondent/ Applicant

Mr. Russel Martineau S.C. for the Second Respondent/Applicant

Hon. Attorney General Mr. Raymond Anthony for the Third Respondent/Applicant

2004: February 12

2004: March 19

DECISION

PEMBERTON J.

- [1] I am informed that there was heavy cloud cover on November 27, 2003 both in Grenada and in Carriacou. In any event, persons eligible to participate at the poll found their way to the places to perform their civic duties. At six 'o' clock in the evening, the polls closed. The counting of ballots began and by the following morning, the returns had been officially made. The result was that the ruling party was returned by a majority of 1 seat.
- [2] In the constituency of Carriacou, the exercise of the franchise was not without complaint. The incumbent Mr. Elvin Nimrod was returned. The contender, Mr. George Prime cried foul. His information as to alleged breaches were several. For instance, that the Returning Officer, Ms. Brenda Samerson, failed to make any or any proper arrangements for ensuring that the ballot box at a particular polling station was secure so that there was a missing ballot which was not found at the recount; that the addenda to the final electoral list prepared by Mr. Victor Ashby, the Supervisor of Elections, was arbitrary in that five named persons appeared on the addenda and voted at the election whereas ten named persons who qualified to be included in the addenda were not so included and were therefore disfranchised. Other irregular/illegal and corrupt practices came to his attention as well.
- [3] Mr. Prime now seeks to unseat the incumbent Mr. Elvin Nimrod having filed an election petition on 16th December, 2003. Some of his grounds are already stated above. The parties called upon to answer the suit are Mr. Nimrod, the incumbent and the First named Respondent Mr. Victor Ashby, Supervisor of Elections and the Second named Respondent and Ms. Brenda Samerson, the Returning Officer for the constituency and the Third named Respondent.

[4] The first hearing of the matter took place on 8th January, 2004. At that hearing I was informed that Mr. Prime expected to apply to the Court for an Order for the production to the Registrar documents and matters pertaining to the hearing of his Petition. Mr. Nimrod contemplated filing a Notice of Preliminary Issue. Directions were issued and a further hearing in the nature of a Pre-Trial Review was fixed for 22nd January, 2004. Before that date, both parties filed their applications and the hearing of the both applications was fixed for 12th February, 2004.

[5] On 12th February, 2004, I proceeded to hear Mr. Nimrod's application. This application requested the following relief:

- a. That the Petition be dismissed.
- b. In the alternative that paragraph 7(ii) be struck out.
- c. That the Petitioner pay costs of the First Named Respondent.

The grounds stated are as follows:

- a. That the Petition be struck out on the ground that security on behalf of the Petitioner was not provided in accordance with Section 100 (1)(b) of the **REPRESENTATION OF THE PEOPLE ACT No. 35 of 1995**;
- b. The Petitioner has not complied with **THE ELECTION PETITION RULES 1960 S.I. 1960/543 ("the UK Rules") – Rules 5 (1), (2), 6 (3) and 19** and **THE REPRESENTATION OF THE PEOPLE'S ACT (UK) Section 122(5)**;
- c. It is not competent on an election petition to raise matters other than questions concerning the conduct of the polls on polling day.

[6] It was agreed that the hearing should proceed on the basis of the grounds that the security offered offended Section 100 (1)(b) of the **REPRESENTATION OF THE PEOPLE ACT**, that the Petitioner did not comply with Rules 5(1) and (2), and 19 of the UK Rules and whether it was competent for the Petitioner to raise matters on the petition other than those concerning the conduct of the polls on polling day.

[7] **CHRONOLOGY OF EVENTS**

Mr. Hudson-Phillips Q. C., Counsel for the Mr. Nimrod, during the course of his oral submissions conveniently set out the sequence of events which are of importance in this application. Those events are as follows:

- a. 27th November, 2003 – Election Day in Grenada, Carriacou and Petite Martinique;
- b. 28th November, 2003 - Return to Writ of Election filed;
- c. 16th December, 2003 - Election Petition filed;
- d. Bond entered into by the Petitioner in his own behalf;
- e. Notice of Entry into Bond filed (not addressed to anyone);
- f. Notice of Appointment of Agent filed;
- g. Form of Receipt of Petition signed by the Deputy Registrar;
- h. 17th December, 2003 – Cheque in the sum of \$1,200.00 drawn on the Petitioner's Client Account left at the Registry;
- i. Receipt of even date given for the amount;
- j. 19th December, 2003 – Amended Petition filed;
- k. 22nd December, 2003 – 21 days after Return to Writ of Elections;
- l. 29th December, 2003 – Service of Amended Petition and copies of documents served on First Respondent (copy of cheque and receipt for same not served on the First Respondent.);
- m. 19th January, 2003 – Notice of Application to strike out Petition filed by Mr. Nimrod the First Respondent/Applicant;
- n. 3rd February, 2003 – Amended Notice of Application to strike out the Petition filed by Mr. Nimrod the First Respondent/Applicant.

[8] Mr. Hudson-Phillips Q.C. based his oral submissions on the application to dismiss the Petition on two broad grounds, first, non-compliance with Section 100(1)(b) of the **REPRESENTATION OF THE PEOPLE ACT**¹ (“the Act”) and second on the non-compliance with the 1960 United Kingdom Election Petition Rules (“the UK Rules”).

¹ No. 23 of 1993.

He dealt briefly with the correctness of including Para. 7(ii) as a ground upon which the petition is based, that is, whether the complaints regarding the alleged acts are to be correctly dealt with at the hearing of an election petition. I shall deal with them in the reverse order.

[9] **THE PETITION TO BE HEARD BY THE COURT**

Whilst this was not made the subject of contention, I do not think that I should let this matter go adrift. Mr. Prime filed a Petition on 16th December, 2003 and filed another on 19th December, 2003. The issue is, which Petition is properly before the Court?

[10] **LAW**

Section 100 (1) of the Act provides that election petitions shall be presented within twenty-one (21) days after the return made by the returning officer, save for those petitions alleging fraudulent practices, as stated, in which case the time is limited to twenty-eight days after the stated event.²

[11] How is this provision to be interpreted? To me, this means that the Petition and any amendment thereto must be made or “perfected” within the time limit stipulated in order to satisfy the requirement of being presented as stated in the Act. I am fortified in this view by expressions of Rawlins J. when he reasoned that the rules are to be adhered to strictly since to do otherwise will “defeat the underlying virtue of the mandatory nature of the legislation, which is intended to ensure that the validity of the election of a member is dealt with expeditiously...”³

² The following provisions shall apply with respect to the presentation of an election petition:-

(a) The petition shall be presented within twenty-one days after the return made by the returning officer of the member to whose election the petition relates, unless it concerns the allegation of corrupt practices upon the making of the return and specifically alleges a payment of money or other reward to have been made by any member...in which case the petition shall be presented within twenty-eight days after the date of such payment

³ See **ETHLYN SMITH AND DELORES CHROSTOPHER v SUPERVSIOR OF ELECTIONS** Claim No. BVIHCV2003/0097 and **REEIAL GEORGE AND IRENE PENN-O'NEAL v EILEENE PARSONS AND PAUL WATTLEY v SUPERVISOR OF ELECTIONS** Civil Suit BVIHCV2003/0098 per Rawlins J. para. 44

[12] The Election Petition filed on 16th December, 2003 satisfies the provisions of Section 100 (1). The Amended Petition filed on 19th December, 2003, offends the provision. The relevant petition that attracts the court's jurisdiction is therefore that filed on 16th December, 2003. The issue of whether the leave of the court was necessary for filing and service of the amended Petition therefore does not arise for consideration.

[13] **WHETHER THE ALLEGED ACTS OF THE RETURNING OFFICER MS. SAMERSON CAN BE INQUIRED INTO ON THE HEARING OF AN ELECTION PETITION.**

MR PRIME'S POSITION

Mr. Mottley Q.C. did not refer to Ground 7(i) of the Petition. This concerned conduct of the Returning Officer on the day in question. Queen's Counsel concentrated his efforts on convincing me that Ground 7(ii) was of merit. This ground concerned the addenda to the list and the actions of Ms. Samerson. For completeness I shall set out the ground:

BREACH OF DUTY BY RETURNING OFFICER

The addenda to the final electoral list prepared by the second Respondent was arbitrary in that several persons including Veronica Roberts (polling division 1), Benedict Andrews (polling division 3), Faith Samuel, Ann Lawrence (polling division 5) and Louisa Matheson (polling division 8) appeared on the addenda and voted at the said election whereas Clara Thomas (polling division 2), Michael Quashie, Sherri Samuel (polling division 3) Ann Louisa Rulow (polling division 6) Catherine Joseph, Augustine James, Cartherine Clement, Risha Sylvester, John Bedeau (polling division 9) and who were qualified to be included in the addenda were not so included and therefore were disfranchised.

[14] Queen's Counsel submitted that when the disfranchised persons came to vote, Ms. Samerson did not obtain an addendum as she did for the first group who were allowed to vote. This behaviour was categorized as unfair, discriminatory and in the circumstances,

illegal. This infringed the disfranchised constitutional rights as well.⁴ However for our purposes, Mr. Mottley Q.C. advanced that this difference in voting, that is allowing some persons to vote and not others produced an irregularity. Ms. Samerson did not treat all persons equally. Had she done so, it would have affected the outcome of the elections. It is therefore an issue validly included in the hearing of an election petition. In other words what I must address my mind to is not the rights of the disfranchised which are allegedly infringed, but to Ms. Samerson's actions on that day and rule that they are properly before the court to be heard on the election petition.

[15] **LAW**

Queen's Counsel relied on **BEEN'S CASE**⁵ and submitted that based on that authority that an irregularity on the part of election officials if found is enough for the election court to intervene.

[16] **RESPONDENTS/APPLICANTS – MR. NIMROD, MR. ASHBY AND MS. SAMERSON**

Both Mr. Hudson-Phillips Q.C. and Mr. Martineau S.C. spoke to the Respondents/Applicants' positions. In Mr. Martineau S.C.'s opening address he referred me to Section 102 of the Act⁶, the terms of which are clear. Both Mr. Hudson-Phillips Q.C. and Mr. Martineau S.C. relied on **RADIX v GAIRY**⁷ to advance their positions that the time for objection to the voter's list is sometime prior to its proclamation. Mr. Martineau S.C. stated further that Ms. Samerson's conduct, as Returning Officer had no place on the hearing of this matter. Petitions he submitted are to enquire in to the conduct of the polls

⁴ See Section 32 (2)(b) of the **CONSTITUTION** which reads:

Every person who is registered as aforesaid in any constituency shall, unless he is disqualified by Parliament from voting in that constituency in any election of members of the House of Representatives, be so entitled to vote, in accordance with the provisions of any law in that behalf, and no other person may so vote.

⁵ **LILLIAN BEEN v SEAN RICKARD ASTWOOD, STANLEY WILLIAMS, WILLIAM CLARE, STAURT TAYLOR** (Turks and Caicos) Action CL no. 26/03 per Ground C.J. para.2

⁶ **REPRESENTATION OF THE PEOPLE ACT No. 35 of 1993 Section 102**

At any election a person shall not be entitled to vote unless his name is on the list of electors for the time being in force by virtue of this Act ...

⁷ (1978) 25 W.I.R.553 Court of Appeal Grenada

on election day.⁸ In closing, he reiterated his position and alluded to the fact that there was no allegation of bad faith in the petition. This has to be apparent in order to conform to **Section 110 (c)** of the Act. ⁹Senior Counsel's position is that that issue could not as it were gain entry to the proceedings "through the back door".

[17] **ANALYSIS**

Sections 102 and 110 (c) of the Act are clear. **RADIX'S CASE, DREW'S CASE and BEEN'S CASE** are very helpful on this issue. In the latter case, the Honourable Chief Justice had to consider irregularity in the context of omitted voters where the Ordinance allows for late registration of voters, as in Grenada. At paragraph 17 of the decision he went on to say that "decisions taken on late registration are final and may not, on the absence of bad faith, be enquired into on an election petition...". He did not find that there was sufficient in that case to trouble the list in that regard.

[18] There is no allegation of bad faith on the face of the petition. Whilst it is true that the disfranchised braved the elements to come to the respective polling stations, I do not think that Ms. Samerson's not allowing them to vote can demonstrate bad faith. There is no allegation or evidence on the face of the petition as well that their failure to exercise their franchises would have affected the results of the elections.

[19] When one looks at it, the alleged irregularity of Ms. Samerson's behaviour cannot be enquired into by means of this election petition. I adopt the reasoning in **RADIX'S CASE**¹⁰

⁸ See **DREW AND OTHERS v HALL AND OTHERS; SOMER v SCOTT AND OTHERS; STEEDE v SCOTT AND OTHERS; BYRON v SCOTT AND OTHERS** 919830 33 W.I.R. 97; 107 per Sir James Astwood C.J. : "The representation petitions are for the purpose only of enquiring into the conduct of the polls on election day...".

⁹ **REPRESENTATION OF THE PEOPLE ACT No. 35 of 1993 Section 110 (c)**
Notwithstanding anything to the contrary, no order shall be made by any Court ...declaring any election to be void by reason of –
the wrongful omission from or inclusion in any preliminary or finally revised list of electors of the name of any person whose name ought or ought not to have been so omitted or included, as the case may be, unless the Court is satisfied that such wrongful omission or inclusion was due to the registration officer or election officer by whom such list was prepared or revised having acted otherwise than in good faith.

¹⁰ *op. cit.* f.n. 7

that the election of a candidate can only be spoken against where there is proof that an election offence was committed or that there was some irregularity during the conduct of the election **which affects the results**. Further, the time for objecting to the list of electors is some time prior to the proclamation. Ground 7 (ii) is therefore struck out.

[20] THE RULES TO BE APPLIED TO ELECTION PETITIONS IN GRENADA

It is accepted that there are no rules made pursuant to Section 98 of the Act.¹¹

MR. PRIME'S POSITION

Mr. Mottley Q. C. accepted that the High Court had what is referred to as an election jurisdiction. He accepted as well that the nature of the jurisdiction is "special, exclusive, restrictive in the determination of questions as to elections...".¹² This jurisdiction he concedes is the court's parliamentary jurisdiction "conveniently assigned to the judiciary by the Constitution and by legislation...".¹³ Queen's Counsel avers to Section 12 of the **WEST INDIES ASSOCIATED STATES ACT**¹⁴, which speaks of the general jurisdiction of the High Court. It is intended to refer to that jurisdiction only. It is not meant to extend to from that general jurisdiction to the special jurisdiction enjoyed by an election court. Queen's Counsel strengthens his views by reference to Sections 97, 98 and 99 of the Act.¹⁵ Section 97 gives the High Court jurisdiction to hear election petitions; section 98 speaks to

¹¹ **REPRESENTATION OF THE PEOPLE ACT Section 100 (2) : Rules not inconsistent with the Constitution or this Act, as to the deposit of security and the practice and procedure for the service and hearing of election petitions and matters incidental thereto may be made by the Chief Justice.**

¹² See **GLADYS PETRIE AND OTHERS v THE ATTORNEY GENERAL AND OTHERS** 14 W.I.R. 290; 293 per Bollers C.J. See further

¹³ See **RUSSEL (RANDOLPH) AND OTHERS v ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES** 50 W.I.R. 128 ; 136 per Sir Vincent Flossaic C.J.

¹⁴ CAP. 336 which states : **Any Judge of the High Court may in accordance with rules of court , or so far as such rules shall not provide, in accordance with the practice and procedure which shall for the time being be in force in the High Court of Justice in England exercise, in court or in chambers, all or any of the jurisdiction vested in the High Court.**

¹⁵ **REPRESENTATION OF THE PEOPLE ACT Section 97 : In accordance with Section 37 of the Constitution, the High Court shall have jurisdiction to hear and determine any question whether any person has been validly elected as a member of the House of Representatives on application being made to the High Court for the determining of such question....**

Section 98(1) Every election petition brought under section 97 shall be tried before the High Court in the same manner as a suit commenced by a writ of summons ...".

the trial of the petitions, to be heard as if they had been commenced by writ of summons; and section 99 provides that subject to the Constitution and the Act, the judge at the hearing has the same powers, jurisdiction and authority at the trial to subpoena and can swear witnesses as can be done in the Supreme Court.

[21] If therefore, it was Parliament's intention that the court was to exercise its general jurisdiction, there would be no need to include these provisions in the Act. One should not infer that the limited election jurisdiction is included in its breadth. In order to deal with elections, we have to go back to that point where the jurisdiction to deal with elections is dealt with Parliament itself. Mr. Mottley Q.C. elaborated on the exclusive nature of the Court's election jurisdiction and opined that such jurisdiction could not be "lumped" into the court's exercise of its general jurisdiction. Here he disagrees with Nelson J.A. in **CHAITAN AND PETERS**¹⁶ and opines that that learning should be confined to the court exercising its constitutional jurisdiction. I shall consider this position later.

[22] Queen's Counsel further asserts that the Act in Grenada vests the Chief Justice with the rule making power.¹⁷ He has failed to make those rules. This does not mean that Section 12 is to be interpreted in such a way as to lead to the applicability of the United Kingdom Election Rules. Therefore, when one looks at the nature of the jurisdiction of an election court, the manner and intent of the limited jurisdiction and the fact that the election jurisdiction is not a part of the general jurisdiction, one cannot say that the United Kingdom jurisdiction will apply. Thus Mr. Mottley Q.C. concludes, that if there are no rules, one has to fall back on general principles. Since general rules apply therefore, the time for service of the petition can only be limited to a reasonable time. Queen's Counsel proffers for my consideration a ten day period for service to be effected. He looks to the repealed provision to fortify his position. Mr. Mottley Q.C. stated emphatically that Section 3(2) of the

¹⁶ **WILLIAM CHAITAN and WINSTON PETERS v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO, FARAD KHAN and FRANKLIN KHAN** (unreported) Civil Appeal Nos. 21 and 22 of 2001 (Trinidad and Tobago) per Nelson J.A. p 14

¹⁷ **REPRESENTATION OF THE PEOPLE ACT** Section 100 (2) *op. cit.*

CIVIL PROCEDURE RULES¹⁸ would not assist Mr. Nimrod, Mr. Ashby and Ms. samerson since this is not a civil action.

[23] **MR. NIMROD, MR ASHBY AND MS SAMERSON'S POSITIONS**

Both Messrs. Hudson-Phillips and Martineau S.C. spoke to this issue. Both gentlemen urge that I accept the reception of the United Kingdom 1960 Rules as the rules to govern the procedure for the conduct of election petitions in Grenada. Mr. Hudson-Phillips Q.C. based his submission on an interpretation of the **CIVIL PROCEDURE RULES** Section 3(2).¹⁹ Senior Counsel stated that the conjoint effect of the non exercise of the rule making power by the Chief Justice as vested in him by Section 100(2) of the Act and the applicability of rules and orders for the time being in force in the High Court of Justice of England to Grenada where rules are not expressly provided for, enable the incorporation of the **ELECTION PETITION RULES 1960**²⁰ into the laws of Grenada, in so far as they are consistent with the **CONSTITUTION** and the Act. As such, the 1960 UK rules are deemed to be the Rules provided for in Section 100(2) of the Act.

[24] Mr. Martineau S.C. came by his conclusion by another route. Senior Counsel preferred to rely on Section 12 of the **WEST INDIES ASSOCIATED STATES ACT**.²¹ Therefore, in so far as the High Court of England exercises jurisdiction with respect to election petitions, one may look to the Election Rules in the United Kingdom to fill gaps that exist in Grenada. The only gap that needs to be filled is that where the Chief Justice has failed to make Rules governing the matters contained in Section 100(2). In the **CHAITAN AND PETERS CASE**²² the Court of Appeal in Trinidad and Tobago had to address the Rules Committee's failure to make rules under that country's **REPRESENTATION OF THE PEOPLE ACT**. Sharma J.A. as he then was opined that the failure to have those rules was ground enough to dismiss the petition. This position was not urged on this court. Instead, Senior Counsel

¹⁸ Section 3(2) provides: **In all cases not expressly provided for, the practice and forms shall as nearly as possible be in conformity with the practice for the time being in force in the High Court of Justice in England; and the Orders and Rules of the High Court of Justice in England shall, so far as they may be applicable and convenient, be in force in the High Court.**

¹⁹ CAP.55. Section 3(2) states

²⁰ **S.I. 1960/543 (UK).**

²¹ *Op. cit.* f.n. 14

²² *Op.cit.* f.n. 16.

advanced Nelson J.A.'s position in which he reasoned that the conjoint effect of Section 20(1) of the **JUDICATURE ORDINANCE**²³ and Section 14 of the **SUPREME COURT OF JUDICATURE ACT**²⁴ was to allow for the incorporation of the 1960 Election Rules of the United Kingdom into Trinidad and Tobago.²⁵ Senior Counsel submitted that the substance and conjoint effect of Sections 20(1) of the **JUDICATURE ORDINANCE** and Section 14 of the **SUPREME COURT OF JUDICATURE ACT (Trinidad and Tobago)** are the same as Section 12 of the **WEST INDIES ASSOCIATED STATES ACT** in Grenada. Applying the reasoning of Nelson J.A. will see the application of the Election Rules 1960 in Grenada.

[25] **ANALYSIS**

An election court is not a tribunal in which the judge of the High Court sits. In fact, these proceedings are "...proceedings in the High Court and not proceedings in any subordinate or derivative body...".²⁶ Further, an election court has power to pass on "its own jurisdiction...".²⁷ It seems passing strange that Parliament will opt to allow the High Court to exercise substantive election jurisdiction and in the absence of its making the rules itself allow the High Court to determine its rules of procedure based on general principles. In fact, the Act vests the Court through the Chief Justice with the power to make these rules. This power is a discretionary power which may be exercised. If it is not exercised, we simply cannot say we have no rules or look to general practice. What I think necessary is to embark upon an exercise to see if the Legislature has attempted to fill that lacuna when the Chief Justice has made the rules, as we have in this case.

[26] I decline Mr. Mottley Q.C's invitation to declare that the matters stated in Section 100(2) are governed by no rules of procedure. I feel that I ought not to resile from interpreting

²³ **Ch. 3 No. 1 of the Laws of Trinidad and Tobago**

²⁴ **Chap. 4:01 of The Laws of The Republic of Trinidad and Tobago**

²⁵ See Nelson J.A. in **CHAITAN AND PETERS** *op. cit.* page 39 : "In so far as rules of court are not otherwise made for the hearing of election petitions Trinidad and Tobago practice and procedure would be governed mutatis mutandis by the equivalent English rules of practice and procedure prevailing as at August 30, 1962: see section 21 of the Interpretation Act Chap. 3:01. In my view therefore the Election Petition Rules (UK) will apply to the present case to supplement local practice and procedure. For an application of this procedure see **Ramoo v Olds Discount (1967) 12 WIR 116 (CA)**".

²⁶ See **CHAITAN and PETERS** *op. cit.* per Nelson J.A. p 14

²⁷ *op. cit.*

existing applicable legislative provisions and follow instead what appears to be reasonable. Proper and logical interpretation of existing legislative provisions is not what I should regard as “eking out a jurisdiction”. I should therefore examine the approach taken by Messrs. Hudson-Phillip Q.C. and Mr. Martineau S.C.

[27] If we agree that the **CIVIL PROCEDURE RULES, 2000** do not apply to Election Petitions²⁸, then we cannot use the provisions of the substantive Act, the **CIVIL PROCEDURE ACT** as the vehicle to incorporate Rules made to govern another regime.

[28] Having said that, I turn to Nelson J.A.’s approach as advocated by Mr. Martineau S.C. as the correct one to be taken in these circumstances. I think that the learning espoused there is pertinent in this case, since I do not agree that it should be confined in the way that Mr. Mottley Q.C. suggested. Whilst the **CHAITAN AND PETERS CASE** troubled the court’s constitutional jurisdiction, the learning certainly applied to the issues to be dealt with in the court’s election jurisdiction. I am fortified in my view on an examination of Section 12 of the **WEST INDIES ASSOCIATED STATES ACT**. That section enables any Judge of the High Court where rules do not provide, such jurisdiction as vested in the High Court of Justice in England in accordance with such practice or procedure that shall for the time being be in force in England. In fact, Nelson J.A. goes on to state: “In my judgment Parliament must have been aware that since a power to make local election petition rules was introduced by the Elections (Legislative Council) Amendment Act No. 18 of 1934, no local rules specific to election petitions had been made. In the absence of such rules the English practice and procedure in relation to election petitions apply by virtue of section 14 of the Judicature Ordinance....”.²⁹

[29] The only difference between the Trinidad and Tobago provisions and the Grenada provision is that the practice and procedure in Trinidad and Tobago is circumscribed by the **INTERPRETATION ACT**³⁰ that limits the reception of such rules into Trinidad and Tobago from England to 31st August 1962. Grenada does not have a corresponding reception

²⁸ See Rawlins J. in **ETHLYN SMITH CASE** *op. cit.* f. n. 3 para. 19.

²⁹ See Nelson J.A. in **CHAITAN AND PETERS** *op. cit.* page 39

³⁰ Chap. 3:01 of the Laws of the Republic of Trinidad and Tobago

provision. I am therefore inclined to the view that the **ELECTION PETITION RULES 1960**, SI 1960/543 of England (“the UK Election Rules”) will apply to Grenada, being the ones “**for the time being in force in the High Court of Justice in England...**” subject of course to their compatibility with the **CONSTITUTION** and the Act. Further, having examined the provisions, I do not find any inconsistency with the **CONSTITUTION** or with **THE REPRESENTATION OF THE PEOPLE ACT**.

[30] **HAS THE PETITIONER OBSERVED THE ELECTION RULES**

Having come to the conclusion that the UK Election Rules apply, I shall examine the alleged acts of non-compliance by the Petitioner. I shall outline only the acts that are relevant to this matter and deal with them. The first as stated is that the Petitioner did not within five (5) days after giving security, serve on the Respondents or any of them or upon the Director of Public Prosecutions a notice of Presentation of petition and the nature and amount of the security which he has given, together with a copy of the petition and of the affidavit accompanying any recognizance³¹. There is no dispute. Mr. Prime did not do this. Second, the UK Election Rules direct the Petitioner to file an affidavit of service of the Petition as soon as practicable after service is effected³². I do not think that I need to make a deliberation on this issue. I think that the default in complying with Rule 5(1) is sufficient to render me unable to hear this petition any further. I base this ruling on established authority that Election Petition Rules are mandatory in nature.³³ I have already addressed the issue when I dealt with the Amended Petition and I propose to say no more.

³¹ Rule 5(1)

³² Rule 5(2)

³³ See **MICHAEL BROWNE v YVONNE FRANCIS-GIBSON (unreported) Civil Appeal 11 of 1994 St. Vincent and The Grenadines** per Sir Vincent Floissac p. 5: We are therefore bound by venerable authority to hold that subrule (4) of rule 9 of the Election Petition Rules is a mandatory statutory provision and that failure to serve notice of the nature of the security given with respect to an election petition or to do so within the time prescribed by that sub rule paralyses the petition.

See also **ETHLYN SMITH CASE** f. n. 3 per Rawlins J. for a detailed analysis of earlier cases.

[31] **COMPLIANCE WITH SECTION 100(1)(b) OF THE ACT**

The sequence of events becomes important in determining this issue. According to the documentary evidence supplied by Mr. Prime through his affidavit filed 30th January, 2004, the cheque was paid to the Supreme Court Registry on the day after the filing of the petition on 17th December, 2003. A receipt of even date was given for the cheque. The copy of the cheque bears a stamp “RBTT BANK GRENADA LIMITED – Dec 19 2003” and another stamp “GRENADA COOPERATIVE BANK 2003 -12- 22”.

[32] Section 100(1)(b) of the Act is expressed in clear terms. It provides that at the time of the presentation of the petition or within three days afterwards, the Petitioner must provide security for the payment of all costs, charges and expenses that may become payable by the Petitioner. Subsection (c) goes on to expand on the amount of the security and how the security should be given. It provides that the security is not to exceed the sum of \$1,200.00 and “shall be given by recognizance ... or by deposit of money in the Supreme Court, or partly in one way and partly in another...”. Mr. Prime chose to effect the security by deposit of money – by way of cheque. Is this in compliance with the section? In other words, does the deposit by way of cheque satisfy the statutory requirement of deposit of money?

[33] **MR. PRIME’S POSITION**

Mr. Mottley Q.C. opined that a cheque is a bill of exchange and according to the **BILLS OF EXCHANGE ACT** ³⁴ at section 3(1) a bill of exchange is defined as “an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer...”. Queen’s Counsel’s contention is that on the evidence, the cheque was paid on 17th December, 2003 and deposited by the Registry to the Registry’s account on 19th December, 2003. On that date, that is, 19th December, 2003, the cheque became available to the Registrar in the ordinary course of banking and was therefore converted to money. According to Queen’s

³⁴ CAP 31 OF THE REVISED LAWS OF GRENADA

Counsel, **SABGA'S CASE**³⁵ did not decide that a cheque was not to be regarded as money. The case recognized that in certain circumstances that a cheque could be regarded as money.³⁶ He contends that this is authority for the proposition in this case, that when looked at the sequence of events that the deposit of the cheque to the Registry constituted the payment of money and therefore satisfied Section 100(1)(b) of the Act.

[34] In any event, Mr. Mottley Q.C. urged on me to adopt a modern and common sense approach to ascertain the intention of the legislation. When this is done, the present case can be distinguished from **SABGA'S CASE**. What is required by the legislation is that money should be in the Registrar's hands by the expiration of three days after filing the petition. The intention behind the deposit of the security was to prevent frivolous and vexatious applications seeking to challenge lawfully elected members of the House of Representatives. The deposit of money was one form of satisfying the requirement of providing security for costs. The issue was that the character of the deposit was that it was readily convertible. Once the cheque was cashed within the three days that is something different. It is therefore not sufficient to say that the cheque is not money. One has to go further. There is proof here that the Clerk to the Registry received the cheque on 17th December, 2003 and banked it on 19th December, 2003. A receipt was given in the name of the Accountant General. In accordance with the definition of money as provided in **SABGA'S CASE** "cash or coin of the realm"³⁷ the Registry was in receipt of cash within the three day requirement as laid down by the Act.

[35] Mr. Mottley Q.C. advanced the learning in **AWILCO'S CASE**³⁸ to assist me in employing the common sense and modern approach. That case concerned the civil commercial jurisdiction of the court, the determination of rights of parties on a charterparty. Lord Bridge of Harwich had to interpret the condition in the charterparty requiring the payment of hire to be "made ... in cash in United States currency ..." was satisfied payment being made by

³⁵ **SABGA v SOLOMON (1963) 5 W.I.R. 66**

³⁶ See Mc Shine J.A. *op.cit.* p71 letter H: "... If there is evidence before us, for instance, that the Registrar had cashed the cheque and in fact held a deposit of money, it might be argued that the point was no longer of any practical importance and that the respondent was merely catching at straws..."

³⁷ *Op. cit.* page 69 letter F per Mc Shine J.A.

³⁸ **A/S AWILCO v FULVIA SpA DI NAVIGAZIONE THE CHIKUMA [1981] 1 All E.R. 652**

irrevocable transfer to the owner's bank. The learned Lord Bridge quoted Brandon J. in **THE BRIMES**³⁹ when he said "...In my view these words must be interpreted against the background of modern commercial practice. So interpreted it seems to me that they cannot mean only payment in dollar bills or other legal tender of the USA. They must, as the shipowners contend, have a wider meaning, **comprehending any commercially recognized method of transferring funds, the result of which is to give the transferee the unconditional right to the immediate use of the funds transferred...**". This view Queen's Counsel states is in keeping with the modern trend of doing away with cash. The accent is on the immediate use of the funds transferred. The cheque deposited by the Petitioner on 17th December, 2003 and cashed by the Registry on 19th December, 2003 therefore satisfies the requirement for the deposit of money as security in accordance with the Act.

[36] **MR. NIMROD, MR. ASHBY AND MS. SAMERSON'S POSITIONS**

Both Messrs. Hudson-Phillips and Martineau S.C. were at one mind on this issue, that the cheque as deposited could not and did not satisfy the requirement of the deposit of money as security in accordance with the Act. Mr. Hudson-Phillips gave the lead submission on this issue and relied on the dicta of Mc Shine J.A. in **SABGA'S CASE**⁴⁰ and **RE ST. BONIFACE**⁴¹. The essence of the submission was that the deposit of "money" as specified in the Act could only mean the deposit of cash or coin. A cheque by its very nature cannot satisfy this requirement. It is a promise to pay conditional upon its acceptance as a Bill of Exchange, the person to whom the cheque is directed wishing to pay and not objecting to pay. It is not money. By contrast, money as Mc Shine J.A. said in **SABGA** at page 70 Letter E is devoid of conditions "as a cheque might not be...". Whether the cheque is certified or not is immaterial. It still does not satisfy the requirement of money.

³⁹ [1973] 1 All E.R. 769; 782

⁴⁰ *op. cit* f. n. 31.

⁴¹ **The Manitoba Reports Vol. 8 page 474**

[37] Mr. Hudson-Phillips Q.C. then directed me to the approach of other courts on this issue. In **NAIR v TEIK**⁴² Lord Upjohn opined that petitions such as we have here must be determined as quickly as possible⁴³ hence the requirement that the form of security be readily convertible and/or accessible and that legislation must be subjected to mandatory construction⁴⁴. One cannot be sure of a cheque's integrity. Senior referred me to other authorities as well.⁴⁵ The law is clear. There must be strict compliance with the provisions. Once there is a violation of a mandatory provision, the petition is regarded as a nullity. When the evidence itself was examined, it lends weight to the position that the cheque is not money. It is admitted, from the stamps on the face of the document exhibited that the issuing bank cleared the cheque was on 22nd December, 2003, in excess of three (3) days after the presentation of the petition. Senior summarized that the mere deposit of a cheque as security is fatal and it is immaterial whether it was cashed or there was evidence that it was cashed and paid to the Supreme Court's account.

[38] Mr. Martineau S.C. was brief. **AWILCO'S** case must be limited in its scope to transactions of a commercial nature. We cannot import matters of the commercial world into election petition proceedings. The election court is bound to observe strict rules of interpretation and the provisions of these statutes regarding the payment of money as one of the forms of security for costs must, not only be strictly interpreted, but also the requirements as stated therein are mandatory. The definition of cheque and the interpretation urged on this court by Mr. Mottley Q.C. ought not to be entertained. Further, in analyzing **SABGA'S CASE**, Mr. Martineau A.C. submits that when Mc Shine J.A. speaks of if there was evidence that the Registrar had cashed the cheque and in fact held the deposit of money that it might have been arguable that the issue was no longer of "practical importance", this cannot be

⁴² [1967]2 All E.R. 34 Privy Council

⁴³ See **NAIR v TEIK** *op. cit.* per Lord Upjohn at p. 36 letter C speaking about the approach of courts to election petition hearings: "... the right of appeal after the hearing of an election petition by an election tribunal to which those hearings was entrusted was severely limited, **clearly for the reason that it was essential that such matters should be determined as quickly as possible, so that the assembly itself and the electors and representatives thereto should know their rights at the earliest possible moment...**".

⁴⁴ *Op. cit.* per Lord Upjohn p. 40 Letter C

⁴⁵ **MICHAEL BROWNE v YVONNE FRANCIS-GIBSON** *op. cit.* f. n. 29 **DREW v HALL** *op. cit.* f. n. 8; **WILLIAMS v MAYOR OF TENBY (1879) 5 CPD 135**; **JOSEPH v BOWEN & ANOR.** (unreported) Civil Suit 40 of 1999 (Antigua and Barbuda) per Benjamin J.; **ABSALOM v GILLET [1995] 2 All. E.R. 661**; **STEVENS v WALWYN & ANOR. (1967) 12 W.I.R. 51**

imported in this case to buttress Mr. Prime's position. It is arguable and should not be elevated any higher than that.

[39] **ANALYSIS**

I think that the definition of cash in the **SABGA CASE** is clear. It can be open to no other interpretation. This authority weighs heavily against regarding a cheque as money because of the very nature of the instrument. The argument in **SABGA'S CASE** about the Registrar's cashing of the cheque thereby elevating it to money in purported satisfaction of the provisions of the legislation, could have been made, but it could be rebutted by evidence. Let us look at the evidence. The cheque on its face bears one stamp reading the date Dec. 19 2003 and another reading 2003-12-22, suggesting a further transaction of the instrument on the later date. This suggests that the final negotiaion took place on the later date and at that date the cheque was converted to cash. But that may not be the case. The uncertainty I believe rebuts the argument advanced in **SABGA'S CASE**. I do not think that I need dwell further on this issue.

[40] Suffice it to say that I agree with the submissions made by both Mr. Husdon-Phillips S.C. and Mr. Martineau S.C. The deposit by Mr. Prime of the cheque on 17th December, 2003 does not satisfy the provisions of Section 100(2). The intention of the legislature that the deposit must be readily available to satisfy any demands made for security for costs at short notice is not met by the deposit of a cheque. Further, since the rules are mandatory and must be interpreted strictly, and there is highly persuasive authority in this area I cannot ignore it, tempting as it may be to do so and import learning from a regime foreign to election petitions to determine issues therein.

[41] **OTHER ISSUES**

Another issue raised was should I find that the requirement that with respect to service on Mr. Nimrod as required by the applicable Rules was not complied with, the course is that I should dismiss the petition as against Mr. Nimrod and continue the hearing against the Mr.

Ashby and Mr. Samerson. I do not think that I need comment save to say that if the petition is unable to be moved against one Respondent due to procedural defects, it cannot find life in relation to the other respondents. Further, if the purpose of the election petition is to directly affect the position of the incumbent holder of the seat in Parliament, I think any order of the court will be rendered otiose if that person cannot be affected by it.

[42] **CONCLUSION**

Since the security provided by Mr. Prime has not satisfied the requirements of Section 100(1)(b) of **THE REPRESENTATION OF THE PEOPLE ACT**, and there has been an infringement of Rule 5(1) of the UK Election Rules, I must grant the Applicant's request on the Notice of Application filed herein. The Petition fails and can go no further. As far as the alternative ground is concerned, I find that the matters complained of in Paragraph 7 (ii) of the Petition are not those amenable to question on an election petition. I therefore dismiss the Petition with the following Order as to costs.

IT IS THEREBY ORDERED AS FOLLOWS:

- (1) **That the Respondents/Applicants application is hereby granted.**
- (2) **That the Petition filed herein be and is hereby dismissed.**
- (3) **That costs to be paid by the Petitioner/Respondent to the Respondents/Applicants as follows:**
 - a. **That the costs to be awarded to the First named Respondent/Applicant be certified fit for Queen's Counsel and one Junior Counsel;**
 - b. **That the costs to be awarded to the Second and Third named Respondents/Applicants be certified fit for one Senior Counsel and one Junior Counsel.**
- (4) **That the said costs be taxed in default of agreement.**

The Court gratefully acknowledges the assistance of all Counsel.

Charmaine Pemberton
High Court Judge.

I HEREBY CERTIFY TO HIS EXCELLENCY THE GOVERNOR GENERAL AND THE SUPERVISOR OF ELECTIONS THAT THE RETURN TO THE WRIT OF ELECTION FOR THE CONSTITUENCY OF CARRIACOU AND PETITE MARTINIQUE DATED 28TH NOVEMEBR, 2003 BE CONFIRMED PURSUANT TO SECTION 98(4) OF THE REPRESENTATION OF THE PEROPLE ACT NO. 35 OF 1993.

CHARMAINE PEMBERTON
HIGH COURT JUDGE.