

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

MONTSERRAT

CLAIM NO. MNIHCV 2024/0029

BETWEEN:

[1] George Kirnon

Claimant

and

[1] The Attorney General

Defendant

Appearances:

Mr. George Kirnon Litigant in Person

Ms. Renee Morgan for the Defendant

2024: OCTOBER 15

RULING

COTTLE [AG.]:

[1] The Claimant sought to be nominated as a candidate in the upcoming general elections in Montserrat. The date fixed for nomination was 10th October 2024. He duly completed and submitted the required nomination paper and paid the statutory deposit. The Claimant was concerned that Section 51 of the Constitution of Montserrat might be construed in such a way as to render him ineligible to stand as a candidate. He enquired of the returning officer as to any procedure that would apply to dealing with objections to the nomination of any potential

candidate. He was told that upon any such objection the potential candidate in question would be allowed 48 hours in which to respond to the objection.

- [2] Having submitted his nomination papers the Claimant considered that he had done all that was needed for him to be nominated as a candidate for the elections. On Sunday 13th October 2024 the Claimant received correspondence from the returning officer. He was told that his nomination was being rejected as he did not meet with the constitutional requirements set out in Section 51 (3) (c). It was therefore not valid in the opinion of the returning officer. The Claimant approached the court on Monday 14th October 2024. He made an application ex parte. He wished to have the court declare that the decision of the returning officer was tainted with procedural impropriety. He pointed out that he had been afforded no opportunity to be heard before the returning officer made her decision. He asked that the court set aside that decision. It is unclear what the effect of setting aside the decision would be. Having seen the application this court decided against allowing the application to proceed ex parte. The Claimant was ordered to notify the Attorney General and the matter was fixed for hearing today.
- [3] At the hearing the Claimant stressed that the application was for interim relief. He argued that he had shown there was a serious issue to be tried and that damages were not an adequate remedy. He added that the balance of convenience was in favour of granting his application since if he were allowed to contest the election and succeed, the state could always challenge his election to the house of Assembly by way of bringing an election petition.
- [4] He went on to point out that at this stage the merits of the decision of the returning officer were not in issue. He was concerned that her decision was not fairly arrived at and should not be allowed to stand.
- [5] There are several reasons why this court cannot accede to the application made by the Claimant. The Claimant is in essence asking the court not merely to say that the determination by the returning officer that his nomination paper was invalid cannot be allowed to stand as it was arrived at in a procedurally unfair manner. He is asking the court to mandate the returning officer to register him as a candidate for the elections and to include his name on the ballot paper. He does not only want the initial decision quashed. He wants the court to order that a different decision be made by the returning officer. That is not the function of a court upon an application for judicial review. It is not for the court to substitute its decision for that of the returning officer. The court

in judicial review cases looks at the manner in which a challenged decision has been arrived at. The court examines whether the process adopted was fair. In this case the specific complaint is that the Claimant was not afforded an opportunity to be heard before the returning officer decided that his nomination paper was not valid.

[6] In the circumstances of this case I cannot say that the returning officer was unfair to the Claimant. She looked at his nomination paper and concluded that the particulars it revealed did not satisfy her that he was eligible to be a candidate. She specifically told him that Section 51 of the constitution required any prospective candidate to have been in Montserrat for at least 12 months in the preceding 5 years. She went on to explain that the Montserrat Immigration Department records revealed that the Claimant had been on the island for only 94 days in the last 5 years.

[7] Was her decision arrived at fairly?

[8] Madame Justice Simler in the High Court of England in the case of **Rowe et al V Commissioners for HM Revenue and Customs [2015] EWHC 2293 (ADMIN)** at para 53 put it well when she said *"Fairness will very often require that a person adversely affected by a decision should have an opportunity to make representations on his own behalf either before a decision is taken with a view to producing a favourable result or after it is taken with a view to procuring its modification."* Notice the judge said very often and not always. This encapsulates the acceptance that what is fair will depend on the particular context of each individual case. In the case of Rowe the complaint was against a notice issued to a taxpayer requiring immediate payment without having first afforded the taxpayer the chance to be heard before the notice was issued. The court held this was not procedurally unfair. Similarly, I conclude that it was not unfair to send a notice to the Claimant informing him that his nomination paper was invalid as the particulars did not show him to comply with the requirements of Section 51 of the Constitution. I emphasize that I make no pronouncement s to the correctness or otherwise of the interpretation the returning officer gave to section 51 of the constitution. I say only that in the circumstances of this case it was not unfair of her to arrive at her decision without first allowing the Claimant to make representations to her as to what he thinks the section means. The Claimant is not deprived of an opportunity to have his interpretation of Section 51 of the constitution tested in the proper forum. The section has been a part of the constitution of Monserrat since 2012. No one has approached the court to have the court's view of the interpretation of the section. Indeed the Claimant has said to the court that he has long considered that in relation to the section there

ought to be qualitative assessment and a purposive and mature approach relative to the mischief which the provision seeks to prevent rather than simple arithmetical analysis of calendar dates. The fact that the Claimant has waited until the general elections are now imminent to suggest that there might be an alternative interpretation to the section should not mean that the elections must be put on hold while this issue is litigated.

- [9] The application is not granted. I resist the urging of counsel for the Defendants to award costs against the Claimant. It is not usual in applications for Judicial Review to award costs. I do not think the Claimant has been unreasonable in bringing this application or in the way the application was conducted. I make no order as to costs.

IT IS HEREBY ORDERED THAT:

1. The application is not granted.
2. I make no order as to costs.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR