

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2023/0002

IN THE MATTER of the Inherent jurisdiction of the Court

And

IN THE MATTER of an Order of Court made the 11th day of
May, 2022 sitting in Antigua and Barbuda in High Court
Civil Claim ANUHCV2021/0409

And

IN THE MATTER of the nomination of Rawdon Turner the Antigua and Barbuda Labour Party
Candidate for the Constituency of St. Peter

BETWEEN:

[1] ASOT A. MICHAEL

Claimant

And

[1] DAME LORNA SIMON

In her capacity as the Supervisor of Elections

[2] STEPHEN SAMUELS

In his capacity as the Returning Officer for the Constituency of St. Peter

Defendants

Appearances:

Mr. Hugh Marshall Jnr for the Claimant

Ms. E Patricia Simon-Forde for the Defendant

2023: January 16th;
January 17th.

ORAL DECISION

[1] **FORRESTER, J. (AG):** The Claimant in this matter seeks, by way of an Origination Motion filed on 9th January 2023 accompanied by a Certificate of Urgency, orders of contempt against the Defendants for failing to comply with the 11th May 2021 Order of the High Court in **Claim No. ANUHCV 2021/0409 Asot Michael v Mary-Clare Hurst and Others** (hereinafter referred to as **Claim No. ANUHCV**

2021/0409). That 11th May 2022 Order states the following amongst other matters which are not relevant for consideration in these proceedings:

“(1) The Defendants/Respondents are hereby restrained by themselves, their servants and/or agents or otherwise from holding out directly or indirectly, any person to represent the Constituency of St. Peter on behalf of the Antigua and Barbuda Labour Party who is not selected in accordance with the provisions of the Revised Constitution of the Antigua and Barbuda Labour Party

(2) An Interim declaration is granted that Rawdon Turner was not selected in accordance with the provisions of the Revised Constitution of Antigua and Barbuda Labour Party. The Interim Injunction to stand until the hearing and determination of this action or until there are fresh actions/proceedings initiated and conducted in accordance with the Revised Constitution of the Antigua and Barbuda Labour Party.”

[2] The following documents were filed by the parties in these proceedings:

1. Originating Motion of the Claimant
2. Affidavit of Asot Michael with exhibits
3. Affidavit of the First Defendant with exhibits
4. Affidavit of the Second Defendant with exhibits
5. Claimant's Affidavits of Service
6. Claimant's Submissions and Authorities
7. Defendants' Submissions and Authorities

Preliminary Objection

[3] The Defendants have advanced a preliminary objection to the Origination Motion on the basis that the issues arising on the Originating Motion are matters that falls within the election, therefore, with the Writ of Election having been issued by the Governor General, this matter should properly be commenced by way of an Election Petition after the holding of the General elections.

[4] The Constitution of Antigua¹ and Barbuda and the Representation of People Act (RPA)² provides the framework for the jurisdiction of the Court in relation to Election matters. In particular, Section 43 of the Representation of People Act and Section 44 of the Constitution, which respectively states:

Section 43 of the Representation of People Act as amended:

“43. (1) No election and no return to the House of Representatives shall be questioned except by a petition complaining of an undue election or undue return (hereinafter referred to as an election petition) presented in accordance with this Part.

¹ The Antigua and Barbuda Constitution Order 1981

² the Representation of the People Act CAP 379

(2) A petition complaining of no return shall be deemed to be an election petition and the High Court may make such order thereon as it considers expedient for compelling a return to be made or may allow the petition to be heard by an election court as provided with respect to ordinary election petitions."

Section 44 of the Constitution:

"(1) The High Court shall have jurisdiction to hear and determine any question whether -

(a) Any person has been validly elected as a member of the House;

(b) Any person has been validly appointed as a Senator or as a temporary member of the Senate;

(c) Any person who has been elected as Speaker from among persons who were not members of the House was qualified to be so elected or has vacated the office of Speaker; or

(d) Any member of the House has vacated his seat or is required under the provisions of section 41(2) of this Constitution to cease to perform any of his functions as a member of the House."

[5] In written and oral submissions, Counsel for the Defendants, Ms. Forde, stated in summary that the Court has to determine whether the issues arising in the Originating motion falls within the class of questions which, relates to determining whether firstly, it is an election matter within Section 44(1) of the Constitution and Section 43 of RPA and secondly, once deemed to be an election matter, any action by an aggrieved person must be made after the election is held in a specially constituted Election Court by way of Petition - reliance was placed on the findings in the cases of **Gladys Petrie and others v The Attorney General and Others (1986) WIR 292** and **N.P. Ponnuswami v The Returning Officer, Namakkal Constituency et al Civil Appeal No. 351 of 1951 Supreme Court of India**. In particular, the Defendants contend that the matters in the Originating Motion touches and concerns the election as it seeks to deal with issues or matters concerning an election which is scheduled to take place on 18th January 2023. Further, the Originating Motion is not simply a matter of contempt as the inferences are there to be drawn that a candidate was irregularly nominated and that should not have taken place, likewise, that the Claimant seeks to ultimately have the Defendants remove a candidate from the list of nominated candidates by purging their contempt, which are election matters. The High Court in its present jurisdiction, cannot determine election matters having regard to the Constitution and the RPA.

[6] In oral submissions in response, Counsel for the Claimant Mr. Marshall stated in summary that there is a single issue before the Court which is the matter of the adherence of the Defendants to the 11th May 2022 Order in **Claim No. ANUHCv 2021/0409**. There is no issue concerning the validity of any aspect of the election process as the Court is not being asked to question the validity of that process. The Court is to confine itself to whether there is a breach of what the Claimant states is the subsisting 11th May 2022 Order in **Claim No. ANUHCv 2021/0409**. If there has been a breach of the 11th May 2022 Order, it is for the Court, in the absence of anything otherwise, to hold the Defendants in contempt and impose an appropriate sentence. In relation to the purging of contempt, Mr. Marshall states that is solely a matter for the Respondent. The Court cannot order that the contempt be purged. The Defendants may decide not to purge. The Court is not being asked to make any order

in relation to the candidate in question and or the process of the nomination process of that candidate to participate in the General election scheduled for 18th January 2023.

Findings of the Court

[7] Having considered the written and oral arguments of the parties, the Court starts by stating that it is important to note that the Originating Motion before this Court does not ask it to determine whom should be nominated as a candidate in the 18th January 2023 General Election. The Originating Motion seeks to obtain a Contempt Order against the Defendants on the basis, that there are facilitating the breach of the 11th May 2022 Order of the High Court in **Claim No. ANUHCV 2021/0409**. The Originating Motion does not seek to challenge the electoral process, as it does not invite the Court to consider whether a candidate has been validly nominated, it does not seek to have the name of the nominated individual removed from the list of candidates but instead seeks to have third parties alleged to have facilitated the breach of a restraining order of the Court held in Contempt of Court.

[8] Noting the limited parameters of the Orders sought in the Originating Motion, the Court holds that the matters arising in the Originating Motion do not fall to be determined by way of an election petition. “An election” or “during an election” as defined in Section 2 of the RPA provides that at an election “means that period of time beginning with the issue of the writ of election and ending with the return of the said writ in accordance with the provisions of this Act [the RPA].” The Constitution in Section 44 sets out the questions that are for the Court’s determination in relation to an election and none of those are the issues arising on this Originating Motion for determination. Consequently, the electoral jurisdiction of the High Court has not been triggered by the Claimant’s Originating Motion therefore, the preliminary objection of the Defendants is dismissed.

Originating Motion

[9] On considering the substantive Originating Motion, Counsel for the Claimant clarified that the Claimant was indeed seeking an order for contempt against the Defendants and not permission to file an application for contempt on the Court enquiring as to the same.

[10] The start of the Court’s consideration of the Claimant’s Origination Motion must focus on the 11th May 2022 Order of the High Court in **Claim No. ANUHCV 2021/0409**. It is worth noting, that no other aspect of **Claim No. ANUHCV 2021/0409** was presented to the Court other than solely the 11th May 2022 Order.

[11] Counsel for the Claimant, Mr. Marshall, states that the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409** is clear and unambiguous, as it clearly restrains one Rawdon Turner from being the candidate for the Antigua and Barbuda Labour Party. Further, that if there was any uncertainty in relation to the applicability of the Order, the obligation fell to the Defendants to seek directions from the Court to have that Order clarified having regard to the learning of the Privy Council in the **Attorney General v. Punch Limited and another [2002] UKHL 50** at paragraphs 43 and 44 which, states the following:

*“43. When proceedings come before a court the plaintiff typically asserts that he has a legal right which has been or is about to be infringed by the defendant. The claim having come before the court, it is then for the court, not the parties to the proceedings or third parties, to determine the way justice is best administered in the proceedings. It is for the court to decide whether the plaintiff's asserted right needs and should have any, and if so what, interim protection. If the court orders that pending the trial the defendant shall not do certain acts the court thereby determines the manner in which, in this respect, the proceedings shall be conducted. This is the court's determination on what interim protection is needed and is appropriate. Third parties are required to respect this determination, as expressed in the court's order. The reason why the court grants interim protection is to protect the plaintiff's asserted right. But the manner in which this protection is afforded depends upon the terms of the interlocutory injunction. The purpose the court seeks to achieve by granting the interlocutory injunction is that, pending a decision by the court on the claims in the proceedings, the restrained acts shall not be done. **Third parties are in contempt of court if they wilfully interfere with the administration of justice by thwarting the achievement of this purpose in those proceedings.**”*

*“44. This is so, even if in the particular case, the injunction is drawn in seemingly overwide terms. **The remedy of the third party whose conduct is affected by the order is to apply to the court for the order to be varied. Furthermore, there will be no contempt unless the act done has some significant and adverse effect on the administration of justice in the proceedings.** This tempers the rigour of the principle.”*

[12]The Claimant further contends that on a reading of the 11th May 2022 Order, which Order the Claimants evidence on affidavit confirms was before the Defendants, it was not open to the Defendants to take any steps contrary to the purpose of that Order. Accepting the nomination of one Rawdon Turner is an act contrary to the 11th May 2022 Order deliberately done by the Defendants. The Court notes there is no assertion of malice or such in these proceedings against the Defendants whom are public officials performing public duties.

[13]The Claimants contend in summary that the key consideration is that the Defendants acted with the intention to undermine the 11th May 2022 Order. An Order of the Court stands unless it is varied or set aside unless the Order has a time for expiration. If an order makes a declaration, that declaration stands, if it says you are restrained, it stands. If an order states you are restrained on certain conditions that order stands until those conditions have been satisfied. The appropriate step is to go back to Court to have the order varied. Further, only the Court can determine if an order has been satisfied so it is insufficient for the Defendants in **Claim No. ANUHCV 2021/0409** to assert compliance and that be accepted without more. That is in keeping with the position of the Privy Council in **AG v Punch**, as the parties to the proceedings are not to determine the manner in which justice is administered. A judicial determination has to be made in relation to whether there has been compliance and it cannot be made by the alleged contemnor. The appropriate procedure in those circumstances for the Defendants to follow would have been to apply to the Court for directions having been ceased with the 11th May 2022 Order, the Claimant's letter of 28th December 2022 confirming that the 11th May 2022 Order continues to stand restraining certain acts which have not been determined by a Court. Therefore, the Defendants are in contempt of Court as its

acceptance of the nomination of Rawdon Turner defeats the purpose of the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409**.

[14] Counsel for the Defendants, Ms. Forde, states in summary, that the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409** is ambiguous, unclear, vague and too wide. Consequently, it lacks specificity as in particular, the Order does not specifically speak to details such as to nomination. The Court was referred to the case of **William Harry, Lenroy Brewster v Phillip Vaughn Claim Civil Appeal SVG No. 22 of 2001** which states that Injunctive Orders must be stated with precision so that a Defendant knows exactly what he has to do and this means not as a matter of law but as a matter of fact. In relation to the Second Defendant specifically, it was contended that Rules 9 to 12 of the RPA sets out the considerations of the Second Defendant as Returning Officer in relation to candidates being nominated and any question as to validity or invalidity of a candidate must follow Rule 15 of the RPA and be done by way of an Election Petition.

Findings of the Court on the Originating Motion

[15] The Court has considered the written and oral submissions of the parties, together with the evidence presented.

[16] It is not in dispute that the 11th May 2022 Order places no obligation on the Defendants herein as neither are parties to **Claim No. ANUHCV 2021/0409**. The issue of contempt in the context of this matter arises in relation to the purpose of the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409**. The learning from the Privy Council in Her Majesty's **Attorney General v. Punch Limited** is helpful in putting the matter into context:

“(3) ...Sometimes the purpose a court seeks to achieve in making an order against a party to proceedings may be deliberately impeded or prejudiced by the conduct of a third party. This may take more than one form. The third party may be assisting, that is, aiding and abetting, a breach of the order by the person against whom the order was made. Then he is an accessory to the breach of the order

(4) Aiding and abetting a breach of the order by the person specifically restrained by the order is not always an essential ingredient of 'third party' contempt. The purpose of a court in making an order may be deliberately frustrated by a third party even though he is acting independently of the party against whom the order was made... It is a contempt of court by a third party, with the intention of impeding or prejudicing the administration of justice by the court in an action between two other parties, himself to do the acts which the injunction restrains the defendant in that action from committing if the acts done have some significant and adverse effect on the administration of justice in that action...”

[17] The general purpose of the Court in granting an interim injunction pending a decision by the court on the claims in proceedings is so that the restrained act should not be done. Third parties may be in contempt of court if they wilfully interfered with the administration of justice by

thwarting the achievement of that purpose in those proceedings.³ That position in relation to the purpose of an interim injunction and what is applicable to third parties with regards to such an order, are equally applicable to the 11th May 2022 Order in **Claim No. ANUHCv 2021/0409**.

[18] On a plain and literal reading of the 11th May 2022 Order in **Claim No. ANUHCv 2021/0409**, it is apparent that the purpose of the Learned Judge's Order was to, restrain the Defendants in that suit from holding anyone who was not elected based on the Antigua and Barbuda Labour Party's Constitution from representing the Constituency of St. Peter. It further declared one Rawdon Turner as not being properly selected based on the Constitution of the Antigua and Barbuda Labour Party. Notwithstanding the above, the Court went a step further and stated that the interim injunction restraining the Defendants there in maintains until the hearing and determination of the action or alternatively, "*until there are fresh actions/proceedings initiated and conducted in accordance with the Revised Constitution*". The Court in the case at bar has had particular regard to the reference "*until there are fresh actions/proceedings initiated and conducted in accordance with the Revised Constitution*" since it essentially states that if such an event occurs, the injunction lapses.

[19] The evidence before this Court as seen in the Affidavit of the First Defendant, presents evidence stating essentially that there were fresh proceedings by the Antigua and Barbuda Labour Party in a convention held in July 2022 to appoint a caretaker for the St. Peter constituency which complied with the 11th May 2022 Order. Unfortunately, the Court does not have before it the Constitution of the Antigua and Barbuda Labour Party referenced in **Claim No. ANUHCv 2021/0409** and the Claimant opted not to pursue an application for contempt against third parties in **Claim No. ANUHCv 2021/0409** but, commenced this Originating Motion afresh. Further, the Court is being asked by the Claimant herein to consider these proceedings to determine contempt of court without making any findings in relation to compliance in **Claim No. ANUHCv 2021/0409** which, is a most peculiar contention to be advanced when determining whether the actions of third parties as a fact amount to contempt of Court.

[20] It is fitting to note here that the standard of proof for contempt of court, is the criminal standard of proof beyond a reasonable doubt. If on a consideration of the evidence, the court concludes that there is more than one reasonable inference to be drawn and at least one of them is inconsistent with a finding of contempt, a Claimant should be taken as having failed to demonstrate that an Order for contempt should be made. When evidence is based on an inference to be drawn, the Court must be sure to ensure that any conclusion that a respondent is guilty of contempt of court is based upon cogent and reliable evidence from which a single inference of guilt, and only that inference, can be drawn.⁴ The status of compliance or non-compliance with the 11th May 2022 Order in Claim No. **ANUHCv 2021/0409** can maintain both inferences based on the evidence before the Court since, as the Claimant has highlighted, there has been no judicial determination of the status of the 11th May 2022 Order subsequent to it being rendered.

³ Attorney General v. Punch Limited and another [2002] UKHL 50

⁴ In the Matter of Sections 49 and 50 of the Constitution of Saint Christopher and Nevis and another v Hon. Shawn K. Richards and another - [2010] ECSCJ No. 240

[21]The Claimant having opted to proceed in this manner seeking an order of contempt for deliberate non-compliance with the 11th May 2022 order in **Claim No. ANUHCV 2021/0409** against the Defendants having regard solely to the contents of that Order on its face to establish non-compliance by the mere fact that one Rawdon Turner was nominated as a candidate on nomination day for General Elections⁵, cannot also contend that this Court cannot accept evidence of compliance with the 11th May 2022 Order on the face of all the evidence before it. Notably, that includes the evidence presented on affidavit in these proceedings by the Defendants, illustrating that it received correspondence in relation to the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409** as contained in a letter dated 27th December 2022 from Counsel for the Defendants and a Certificate of Compliance filed in **Claim No. ANUHCV 2021/0409** stating there has been compliance with the 11th May 2022 Order which evidence essentially asserts that the 11th had lapsed with there being fresh actions or proceedings to nominate a representative subsequent to May 2022 which took place in July 2022 at the Antigua and Barbuda Labour Party Convention.

[22]There is no evidence on affidavit of the Claimant asserting that there was no convention held by the Antigua and Barbuda Labour Party likewise, no evidence presented stating that subsequent to the 11th May 2022 Order, one Rawdon Turner was not properly nominated in keeping with the Constitution of the Antigua and Barbuda Labour Party to represent the Constituency of St Peter in July 2022. Whilst the Claimant conveniently highlights in letter dated 28th December 2022 to the Defendants that “A certificate of Compliance” is not a document known to the Rules of Court and a contemnor cannot assert compliance without more, it notably has not taken any issue with the actual factual contents stated in that document, but asserts a legal contention that the 11th May 2022 Order stands without having been varied and must be obeyed, that is to say, it is still for the Court in **Claim No. ANUHCV 2021/0409** to determine the status of the 11th May 2022 Order. So whilst the Court in **Claim No. ANUHCV 2021/0409** will have to determine whether the Defendants therein have breached or complied with its Order, which includes a consideration of whether the nomination of one Rawdon Turner in July 2022 was done in keeping with the Constitution of the Antigua and Barbuda Labour Party, this Court in these proceedings is not in a position to disregard the evidence presented in this matter demonstrating compliance to facilitate a finding that the Defendants in these proceedings, as third parties, have taken steps to undermine the purpose of the 11th May 2022 Order in **Claim No. ANUHCV 2021/0409** to the standard of proof beyond a reasonable doubt.

[23]This Court is therefore not satisfied that the Claimant has discharged its burden of proof. In the circumstances, the Court not being satisfied that the burden of proof for contempt has been met hereby dismisses the Originating Motion of the Claimant against the Defendants. The Claimant having failed to discharge the burden of proof, other issues raised by the Defendants in response to the Originating Motion need not be considered.

[24]The parties have agreed that there be no order as to costs.

⁵ Nomination day was 28th December 2022

**Dia C Forrester
High Court Judge (Ag)**

By the Court

Registrar