

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

**ANTIGUA AND BARBUDA**

**CLAIM NO: ANUHCV2020/0446**

**BETWEEN:**

**ASOT A. MICHAEL**

**Applicant /Applicant**

**and**

**(1) MARY-CLARE HURST In her capacity as General Secretary of the Antigua and Barbuda Labour Party**

**(2) LIONEL "MAX" HURST In his capacity as Chairman of the First Purported Disciplinary Tribunal and member of the Second Purported Disciplinary Tribunal of the Antigua and Barbuda Labour Party**

**(3) GASTON BROWNE In his capacity as the Political Leader of the Antigua and Barbuda Labour Party**

**Respondents/ Respondents**

**Before:**

Justice Jan Drysdale

**Appearances:**

Hugh Marshall of counsel for the Applicant/Applicant

Dr. David Dorsette of counsel for the Respondents/Respondents

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2022: October 26

December 12<sup>th</sup>

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**RULING**

[1] This is yet another legal matter between the parties for resolution by the Court. The Applicant is a Politian and the sitting representative of the parish of St. Peter in Antigua.

The Applicant for years ran on an Antigua and Barbuda Labour (hereinafter ABLP) ticket and thus far has been successful in retaining the St. Peter constituency for that party.

[2] However during the course of time, the Applicant apparently fell out of favour with the ABLP resulting in the ABLP seeking to convene disciplinary tribunals to investigate alleged disciplinary infractions committed by the Applicant and to render a decision in relation to the same. The Applicant contends that the intent was to ultimately remove him and to install another candidate for the St. Peter constituency. This has resulted in several claims filed by the Applicant.

[3] As it relates to this matter, the Applicant challenged the validity of the Disciplinary Tribunals and filed the instant Claim form. The Respondent failed to file a defence and as such the Applicant applied for judgment in the form of the undermentioned declarations:

(1) A declaration that the Antigua and Barbuda Labour Party ("ABLP") disciplinary tribunal against the Applicant referred to in the Notice of 29 September 2020 and under the hand of the 2nd Respondent (the "First Purported Tribunal") was unlawfully constituted in breach of the provisions of the ABLP Constitution.

(2) A declaration that contrary to the ABLP Constitution, the decisions of the First Purported Tribunal were tainted with actual or apparent lack of independence, impartiality and/or other unlawful bias by senior members of the ABLP, including but not limited to some or all of the members of the First Purported Tribunal.

(3) A declaration that the said First Purported Tribunal, any proceedings before it and any decisions made or purported to be made by it are null and void.

(4) A declaration that the further ABLP disciplinary tribunal referred to in the Notice of 28 October 2020 and under the hand of Mr Barry Knight ("Second Purported Tribunal") is unlawfully constituted in breach of the provisions of the ABLP Constitution.

(5) A declaration that contrary to the ABLP Constitution, the decisions of the Second Purported Tribunal are tainted with actual or apparent lack of independence, impartiality and/or other unlawful bias by senior members of the ABLP, including but not limited to some or all of the members of the Second Purported Tribunal.

(6) A declaration that the proceedings of the Second Purported Tribunal referred to in the Notice of 28 October 2020 and under the hand of Mr Barry Knight are unlawfully constituted in breach of the ABLP Constitution and proceeded in breach of the rules of natural justice, including actual and/or apparent bias, the right to a fair hearing, and the duty of procedural fairness.

(7) A declaration that the said Second Purported Tribunal, any proceedings before it and any purported decisions made by it are null and void.'

[4] A declaration is a discretionary remedy and thus it is entirely within the purview of the Court in deciding whether the same should be granted. Kerewich J in the case of **Wallersteiner v Moir**<sup>1</sup> expressed that 'a declaration by the court was a judicial act and ought not to be made on admissions of the parties or on consent, but only if the court was satisfied by evidence' Hence the Court directed the parties to provide evidence before any decision on the reliefs claimed could be made. In that vein the parties filed affidavits and each deponent was cross examined on their evidence.

## THE EVIDENCE

### The Applicant

[5] The Applicant deposed that by notice dated 29<sup>th</sup> September 2020, he was advised by the 2<sup>nd</sup> Respondent, in his capacity as Chairman of the purported Disciplinary Tribunal, of the ABLP's intention to commence disciplinary proceedings against him. He was accused of unbecoming behaviour and the details of the same was captured in the said notice. That he was further informed that a formal complaint would be issued by 5<sup>th</sup> October 2020 and he was required to respond in writing by 9<sup>th</sup> October 2020. Subsequently a second Disciplinary Tribunal was convened again with the purpose of removing him from being the candidate for the St. Peter's constituency.

[6] That at the time of commencing these proceedings, the National Party Convention was held in 2015 and again in 2018. He attended both and there was no election of members to the Disciplinary Tribunal at either of those Conventions. Accordingly, the purported members of the Disciplinary Tribunal were unlawfully appointed, and it unlawfully constituted a breach of Article 8 and 11.22 of the Revised Constitution of the ABLP. The

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<sup>1</sup> [1974] 1 WLR 991

Applicant also maintained that the composition of the second Tribunal was contrary to the ABLP Constitution as the Tribunal did not comprise of two attorneys as expressly provided for by article 11.

[7] The Applicant also deposed that the members of the Tribunals and the Respondents were biased towards him. He cites their relationship to the Third Respondent and articulates certain comments made by the First and Third Respondents concerning him.

[8] The cross examination of the Applicant was relatively brief focusing primarily on whether the Applicant had admitted to a reporter that he was running as an independent candidate for the upcoming elections. The Applicant vehemently denied this stating that the article referred to by the Respondent was a fabrication by the reporter. The Applicant maintained that although he was not named as a candidate for the ABLP in the upcoming general elections that he was the candidate according to a judgment of the High Court and that this announcement by the party was contrary to that judgment.

### **The Respondents**

[9] The Second Respondent filed all affidavit evidence for and on behalf of the Respondents and submitted to cross examination. The Second Respondent denied that the Disciplinary Tribunal was unlawfully constituted. He avers that the members of the Disciplinary Tribunal were elected by the Convention and by being elected, the Disciplinary Tribunal was duly constituted. The Second Respondent provided a copy of the Minutes of the ABLP 2012 Convention as confirmation of election of the Disciplinary Tribunal.

[10] The Second Respondent further avers that the Chairperson and himself were both attorneys-at-law. He stated that that he was trained as a lawyer in the United States and stated that there was no defect in the composition of the Disciplinary Tribunal. The Second Respondent states further that there is no provision of the Revised Constitution, neither has there been any action of the National Convention has disestablished the Disciplinary Tribunal and as such the Disciplinary Tribunal that has been elected continues.

[11] In relation to the suggestion of bias by the Tribunal, the Respondents claim that the only substantive decisions of the "First Purported Tribunal" were to convene meetings and issue correspondence. That shortly thereafter the meetings, an injunction was issued against the Disciplinary Tribunal. Since then, the Disciplinary Tribunal has taken no action, nor has it made any decisions. The Second Respondent states adamantly that allegation that the Disciplinary Tribunal is "tainted with actual or apparent lack of independence, impartiality and/or other unlawful bias by senior members of the ABLP is absolutely baseless."

- [12] The Respondents suggest that the purpose of these proceedings is to prevent the Tribunal performing its functions. They also state that the Applicant according to various press reports appears to have declared himself to be an independent candidate. This they suggest would have the effect of him withdrawing his candidacy with the party.
- [13] The Second Respondent was cross examined extensively on the process for electing a disciplinary tribunal and the failure of the Respondents to submit the minutes of the conventions held in 2015 and 2018. The Second Respondent asserted consistently that he could not recall not submitting those minutes. Whilst the Second Respondent was adamant that the need to reflect a disciplinary tribunal was waived at these conventions, he also admitted that this would have been part of the minutes of those conventions.
- [14] The Second Respondent insisted that the tenure of the Tribunal was for as long as there was another election. He suggested that elections take place at the convention if the convention so decides however where there is no election the group continues. He referred to article 11.23 of the constitution as being in support of this position. When challenged that this article only referred to the tenure of the chairman, he insisted that it referred to the tribunal in whole.
- [15] Finally he admitted that for there to be a waiver it must be done by a majority vote. More importantly that this would be contained in the minutes. However, he could not assert that the minutes were not provided.

### **THE SUBMISSIONS**

- [16] Briefly the Applicant contends that his rights as enshrined under the Revised Constitution of the ABLP were breached when the Respondents jointly and/or severally took steps to convene two (2) Disciplinary Tribunals against him for the sole purpose of expelling him from the ABLP, removing him as the candidate for the Constituency of St. Peter and installing another candidate, the preferred candidate of the 3<sup>rd</sup> Respondent ahead of the next general election.
- [17] The Applicant argues that the convening of both Disciplinary Tribunals was in breach of the Revised Constitution, in particular Articles 11.22 and 8.1.2. which provide for the election of a Disciplinary Tribunal at the convention every two years. Thus, the Tribunals not being properly or lawfully constituted all decisions emanating therefrom are void and of no effect.

- [18] The Applicant also alleges that the decisions of the Disciplinary Tribunals were tainted with actual or apparent lack of independence, impartiality and/or other unlawful bias by senior members of the ABLP. The Applicant refers to the unfavourable statements made by the first and third Respondents towards him, the appointment of certain persons by the third Respondent and the connection of various parties to each other as evidencing actual or apparent bias. The Applicant therefore maintains that his constitutional rights under the Revised Constitution of the ABLP were breached when both Disciplinary Tribunals were convened, and steps taken discipline him. Therefore he is entitled to the declaratory reliefs sought with appropriate cost.
- [19] The Respondents assert that the evidence of the Applicant does not support a declaration being granted. Further the Respondents argue that a declaration would serve no useful purpose. The Respondent suggests that it appears to be the case that the Applicant is effectively severing his ties with the Antigua and Barbuda Labour Party, and is launching himself as an independent candidate at the upcoming polls. Thus, disciplinary proceedings against him are at best a futile or academic exercise. Therefore, the Applicant, on the footing of being an independent candidate, has no legitimate or genuine interest in the internal works of the Antigua and Barbuda Labour Party. Thus no useful purpose is to be served by the granting of declaratory relief.
- [20] Finally, the Respondent contends that what is at play here is a political fight between the Applicant, a very disgruntled parliamentarian and the Respondents. The Respondents suggest that the court is not the appropriate forum to score in essence cheap political points.
- [21] Before expressing my reasoning on the application before the Court I wish to address the claim by the Respondents that the matter is a political fight between the parties and the court is not a proper forum for its determination. Whilst the parties are all within the political arena, the matter which concerns the court is an allegation of the constitution of the ABLP which in effect is a contract binding on the members of the ABLP, not being properly utilised to discipline and or effect his removal. There is a clear and legitimate cause of action with the Applicant regardless of his political status is entitled to pursue.

## **ANALYSIS**

- [22] A declaration is a discretionary remedy and should only be granted where there is a real and justiciable issue. Thus '[w]hen deciding whether to grant a declaration or not, the court should take into account justice to the Applicant, justice to the Respondent, whether the

declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration.’<sup>2</sup>

- [23] Although the Respondents contend that there would be no useful purpose in the grant of the remedies of declaratory relief I disagree. The parties are bound by the ABLP constitution a contractual document but nonetheless appear to differ on the interpretation of its terms. If the claim by the Applicant bears fruit declarations would serve to clarify the issues and also ensure that the powers exercised pursuant to the ABLP constitution is done lawfully and fairly. Further the parties being constant at loggerhead with each other over issues stemming from the disciplinary process, a declaration or the dismissal thereof would bring some finality to these issues and would serve as vindication for the successful party. Finally, the Respondents have seemingly hinged their arguments concerning this issue on the assertion that the Applicant is contesting the next general elections as an independent candidate. They rely on a newspaper article to that effect. The Applicant not being the author of that article and the article essentially being produced to prove the truth of out of court statements contained therein constitutes inadmissible hearsay. The Applicant has also vehemently denied the same. There being no credible evidence that the Applicant has impliedly withdrawn his membership opting to run as an independent candidate the Respondents have not satisfied the Court that the proceedings are academic and or would serve no useful purpose. That being said I have examined the evidence and the law I find that the Applicant has made out his case that the various tribunals were illegal in their appointment.

#### **Illegal tribunals**

- i. There was no proper appointment of the tribunal in accordance with the ABLP Constitution. Article 11.22 the ABLP Constitution establishes the Tribunal and states that the Tribunal shall ‘be elected by the Convention’. The National Party Convention is the supreme governing authority of the Party, and its decisions are binding upon every Individual and Group Member. In accordance with article 8.1.2 of the Constitution, the Convention shall be held every two years at a time determined by the Central Executive. Extrapolated from the various articles of the ABLP Constitution is that the Party/Disciplinary Tribunal should be elected every two years at the National Convention. This of course is subject to there being any waiver of this provision. From the evidence of the parties before this Court, the last time a disciplinary tribunal was documented as being formally elected was at the 2012 Convention.

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<sup>2</sup> Financial Services Authority v Rouke [2021] EWHC 704

- ii. Article 16 provides that at the Party Convention, any convention shall be able to waive any provisions of the Constitution provided that the relevant motion is carried by a 2/3 majority. The Second Respondent was adamant that waivers were in fact obtained at the subsequent conventions. On cross examination the Second Respondent agreed that this would have been documented in the minutes of the conventions. However, the Second Respondent did not provide any minutes concerning the 2015 or 2018 conventions. Thus, there is no evidence in writing to support the contention that there was a waiver of the need to elect a new Tribunal post 2014.
  
- iii. The Applicant's evidence that there was no re-election or waiver of the election of the 2012 Tribunal is more credible than the Respondents denial. Despite being cross examined the Applicant was not challenged on his assertion that there was no election of the tribunal at the various conventions. It is a well-established principle that a party must challenge in cross-examination the evidence of any opposing witness of any important points if he wishes to argue that evidence given on a particular issue should not be accepted<sup>3</sup>. Failure to cross-examine to so do may lead the court to infer that the cross-examining party accepts the witness evidence. To be clear this general rule does not remove the discretion of the Court to critically examine the evidence. It only gives credence to the arguments of the unchallenged party that his assertions may be true. Having said this and critically examined the evidence in total I found the Applicant to be more credible witness than the Second Respondent. The Applicant struck me to be frank and forthright. The Applicant was also unwavering in his evidence. The Second Respondent however although generally consistent in his testimony did not appear to be credible. The Second Respondent appeared to be evading the truth as it related to the provision of the minutes for the 2015 and 2018 conventions. Whilst the Second Respondent seemed to feign ignorance of these minutes not being provided, I note that the Second Respondent was the only witness for the Respondents. It therefore waxes strange that the Second Respondent was not aware what documentation he provided to the Court for consideration. Further I also found the Second Respondent's testimony that he did not appreciate that the need for those minutes to be baffling. A mere cursory look at the Applicant's case, it is pellucid that the issue of the minutes for those conventions were made a central focus. Thus, this should have been in the contemplation of the Second Respondent in seeking to address the Applicant's claim for various reliefs especially considering the Second Respondent's testimony that he was quite critical of the Applicant's evidence. Therefore, I do not accept that the Second Respondent's assertion of being unaware on whether the minutes were

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<sup>3</sup> Browne v Dunn (1894) 6 R. 67, HL

provided to be a reflection of the truth. I am reminded of Jim Rohn who was known for cautioning that “every exaggeration of the truth once detected by others destroys our credibility and makes all that we do and say suspect” Second Respondent unfortunately by not being candid with this Court has rendered his testimony to be more suspect than that of the Applicant. I therefore accept the Applicant’s evidence in this regard over the Respondents.

- iv. What has been referred to as the second Tribunal by the Applicant has also run afoul of article 11 regarding its composition. That article provides that the Tribunal shall consist of five members two of which being attorneys. The Respondents submit that there has been compliance with this article as the Chairperson and the Second Respondent are both attorneys. Whilst the Chairperson is an attorney called to the bar in Antigua the Second Respondent is not. By his admission, he has been called to the bar in various States in the United States. There is no evidence that the Second Respondent has been qualified to practice in the OECS. Thus, whilst being legally trained in the United States the Second Respondent is prohibited from practicing in Antigua. I say this as only a recognised attorney can dispense legal advice. To do so would run afoul of the code of conduct and the law. Thus, with all due regard to the qualifications of the Second Respondent, I do not believe that the intention of the article was to have any person qualified in law despite its jurisdiction to be able to sit on the tribunal. The purpose of such a tribunal is to discuss important matters which may have dire effects on an offending party member. Legal considerations will naturally arise. It seems likely that the purpose of mandating that the Tribunal consist of two attorneys is to ensure that in accordance with the ABLP Constitution and the laws of Antigua, that proper advice is dispensed, and decisions made. I therefore cannot accept that the Tribunal was properly as comprised was provided for by the ABLP Constitution.

### **Bias**

- [24] It is no secret that some of the Respondents do not wish to have continued association with the Applicant. The Respondents have not denied that the First and Third Respondents have expressed their negative feelings about the Applicant and in any event the Applicant has provided documentary evidence of the various statements made of him by the First and Third Respondents. The First and Third Respondents were not members of the tribunals but because of their position and possible association with some of the members of the tribunals specifically the Chairperson and the Second Respondent the issue of bias has been raised.
- [25] Bias can either fall into the category of actual or apparent. The test of apparent bias is 'whether the fair minded and informed observer, having considered the facts, would

conclude that there was a real possibility that the decision making authority was biased.’<sup>4</sup>. This is premised on a fair-minded observer having all the facts and adopting a balanced approach in assessing the facts. In contrast actual bias arises where the judge is a party to the litigation or has a financial or other interest in the outcome of the litigation.

[26] Having examined the evidence and law I find that the Applicant has not made out his case of bias for the following reasons:

- i. The First and Third Respondents have not been members of the tribunals. Further there is no evidence that the Second Respondent who has been a consistent member of the tribunals, has expressed any negative commentary about the Applicant.
- ii. The Second Respondent’s membership on the disciplinary tribunals and his issuance of a notice to the Applicant is insufficient to infer bias. The Applicant alleges that the timing of the notice coincided with the derogatory comments of the First Respondent who also called for him to be disciplined. However, an examination of the evidence reveals that a complaint was made by the Chairperson of the constituency branch of St. Peter two days prior to the notice. The said constituency Chairman also wrote a more detailed letter of to the First Respondent again complaining about the behaviour of the Applicant. This was seemingly endorsed by the other members of the Constituency Branch who also affixed their signatures to that correspondence. Thus, looking at the matter as a whole, it is clear that there appeared to be a complaint against the Applicant, which entitled a Tribunal established pursuant to the ABLP’s constitution to take any appropriate action. A fair-minded person when looking at all of the circumstances would not conclude that the issuance of the notice by the Second Respondent which notice purported to inform the Applicant of the alleged breaches and his attendant rights was tainted with actual or apparent bias.
- iii. The Applicant next contends that the familial relationship between the First and Second Respondent and the adverse statements made by the First Respondent about him has resulted in bias on the part of the Second Respondent. The case of **Locabail (UK) Ltd v Bayfield Properties Ltd and another**<sup>5</sup> provides that ‘where the judge’s interest is said to derive from the interest of a spouse, partner or other family member **the link must be so close and direct as to render the interest of that other person, for all practical purposes, indistinguishable from an interest of the judge himself.**’ (emphasis mine) This is not the case here. The

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<sup>4</sup> Porter v Magill [2002] 2 AC 357

<sup>5</sup> [2000] 1 All ER 65

Applicant has not proved that the Second Respondent either by his words or conduct can be seen or inferred to have accepted the opinion of the First Respondent as true. In any event the Second Respondent struck me as being an intelligent free thinker and not easily swayed by the opinions of others. Thus it would be imprudent without more to accept this familial connection as evidence of bias.

- iv. Finally in relation to the Second Respondent I find that the fact that the Second Respondent is the Chief of Staff of the Third Respondent is insufficient to meet the test of bias. Given that there is no material to indicate any biased conduct on the part of the Second Respondent or the acceptance of the opinion of any of the other Respondents a mere professional relationship is insufficient to establish or infer bias. Further the complaints about the Applicant to the disciplinary Tribunal seem to relate largely to words spoken by him in public. Thus, it does not appear that the Tribunal is called upon to establish whether the words can be attributed to him but the effect of such words. Thus, the credibility of the Applicant should not feature prominently in any decision making of the Tribunal. Hence from the facts of the case I cannot see any reasonable inference or suggestion of bias being apparent or actual.
- v. The Applicant also alleges bias on the part of the Chairperson of the purported second tribunal. The Applicant asserts that bias can be inferred because the Chairperson the President of the Senate and was appointed to that position by the Governor General on the recommendation of the Third Respondent. As stated, before a mere professional relationship is not indicative of bias. This claim is even more tenuous where the Chairperson is a practising attorney and is aware of the need to ensure fair and impartial process and there being no suggestion that the Chairperson has uttered comments or behaved in a manner that would lead a reasonable person to conclude that it is likely there was bias.

#### **ORDER:**

It is hereby declared that:

1. The Antigua and Barbuda Labour Party ("ABLP") disciplinary tribunal against the Applicant referred to in the Notice of 29 September 2020 and under the hand of the 2nd Respondent (the "First Purported Tribunal") was unlawfully constituted in breach of the provisions of the ABLP Constitution.

2. The further ABLP disciplinary tribunal referred to in the Notice of 28 October 2020 and under the hand of Mr Barry Knight ("Second Purported Tribunal") is unlawfully constituted in breach of the provisions of the ABLP Constitution.
3. Any decisions made or purported to be made by the Tribunals are null and void.
4. The Applicant is granted prescribed costs in accordance with CPR 65.

**Jan Drysdale**

**High Court Judge**

**By The Court**

**REGISTRAR**