

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE  
FEDERATION OF SAINT CHRISTOPHER AND NEVIS  
SAINT CHRISTOPHER CIRCUIT  
(CIVIL)  
A.D. 2014**

**CLAIM NO. SKBHCV2013/0090**

**In the Matter of Section 52 (6) of the  
Constitution of St. Christopher and Nevis.**

**And in the Matter of an Application for  
Declaratory, Injunctive and Other Relief  
pursuant to Section 96 of the Constitution of  
St. Christopher and Nevis.**

**BETWEEN:**

**HON. MARK BRANTLEY  
(Leader of the Opposition)  
HON. EUGENE HAMILTON  
HON. VANCE AMORY  
HON. SAM CONDOR  
HON. DR. TIMOTHY HARRIS**

**Claimants/Respondents**

**- and -**

**HON. CURTIS MARTIN  
(Speaker of the National Assembly)**

**Defendant/Applicant**

**THE ATTORNEY GENERAL OF  
ST. CHRISTOPHER AND NEVIS**

**Intervening Party**

**Appearances:-**

Mr. Douglas Mendez, S.C. with Mr. Christopher Hamel-Smith, S.C. for the Claimants, with him Mr. Vincent Byron and Ms. Talibah Byron instructed by Mr. Delara MacClure Taylor.

Mr. Anthony Astaphan, S.C. and Dr. Henry Browne, Q.C., for the Defendant, with them Mr. Sylvester Anthony, instructed by Ms. Angelina Sookoo

Lord Peter Goldsmith, Q.C., for the Intervening Party, instructed by Mrs. Simone Bullen-Thompson, Solicitor General and Ms. Nisharma Rattan-Mack

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2015: January 19<sup>th</sup>  
January 20<sup>th</sup>  
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## RULING

[1] **CARTER J.:** This is an application filed by the defendant in this matter on the 19<sup>th</sup> of January 2015, pursuant to Rule 1 and Rule 26 and/or the inherent jurisdiction of the court seeking:

- i. *An Order abridging the time for the hearing of this Application;*
- ii. *An Order Dismissing or staying Claim No. SKBHCV2013/0090 Hon. Mark Brantley et al v Hon. Curtis Martin and the Attorney General*
- iii. *Such further or other relief as the Court deems fit.*

[2] The grounds of the application as set out by the applicant are that:

- i. *On the 16<sup>th</sup> January 2015 His Excellency the Governor General Sir Edmund Wickham Lawrence, dissolved the National Assembly by Proclamation published in the Gazette on the 16th January 2015;*
- ii. *The National Assembly is dissolved, and therefore the issues raised are no longer live issues.*

[3] The applicant swore an affidavit in support of the application detailing the matters at paragraph 2 above and exhibiting a copy of the Official Gazette (Extra Ordinary) dated 16<sup>th</sup> January 2015 in which the Proclamation dissolving the National Assembly was published.

[4] The respondents did not take issue with that part of the application seeking an abridgment of time for hearing of the application.

[5] Learned Queen's Counsel for the applicant referred the court to Sections 47 and 48 of **The Saint Christopher and Nevis Constitution Order 1983** (hereinafter referred to as 'the Constitution') noting that the effect of the dissolution of Parliament was that the National Assembly and the Speaker of the National

Assembly were no longer functional except in the exceptional circumstances of Section 47(5) of the **Constitution**.

- [6] Learned Senior Counsel submitted that in the circumstances as outlined in the applicant's affidavit, there was now no live issue remaining concerning the motion of no confidence. He submitted that the substance of the relief sought on the claimants' originating summons, had been achieved upon the dissolution of Parliament. His contention was that this was the outcome that the claimants were seeking at its highest, the dissolution of Parliament, and therefore the issues raised on the originating summons were now moot and only of academic interest.
- [7] Learned Counsel for the applicant invited the court to look to the authorities to examine the matters upon which a court should have regard in considering whether it should exercise its discretion, in such circumstances as he had outlined, to continue with the matter and to deliver what he termed an advisory opinion.
- [8] Learned Queen's Counsel referred the court to a number of authorities in this regard including **Re Blake**<sup>1</sup>, **Regina v Secretary of State for the Home Department, Ex parte Salem**<sup>2</sup> and **R (Deeqa) Mohammed v the Local Safeguarding Children's Board for Islington and London Borough of Islington**.<sup>3</sup> From these authorities it is clear that the court does have a discretion to hear a matter on a question of public law even if by the date of hearing, there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. This discretion must be exercised with caution and matters which are academic as between the parties should not be heard unless there is a good reason in the public interest for doing so. Other matters to which a court should have regard are to guard against authorizing or endorsing the expenditure of valuable court time and cost in considering a claim, the outcome of which will be of no actual or practical benefit to the parties; that where there is no concrete or factual basis for the determination, to embark upon an exercise of detailed statutory construction may result only in a ruling that would be regarded only as

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<sup>1</sup> (1994) W.I.R 47

<sup>2</sup> [1999] A.C. 450

<sup>3</sup> [2014] EWHC 3966 (Admin)

obiter dicta and that such advisory opinions should only be entertained where there was good reason in the public interest for doing so, for example, where there was a large number of similar pending cases.

[9] Learned Queen's Counsel for the applicant submitted that upon consideration of these factors that the court should find that it should *not* exercise its discretion to continue on what was now an academic exercise to deliver an advisory opinion. He further advanced that there was now no urgency attached to the resolution of the issues on the originating summons; there was no live issue now in the public domain and further there was no likelihood or anticipation of multiple cases being brought seeking similar relief, the last motion of no confidence before the instant matter having been brought before the National Assembly in 1981. He therefore submitted that the court should dismiss the application or at least stay or adjourn the hearing until some future time. The aim and objective of the claim has now been satisfied by the dissolution of Parliament, the ultimate goal of the claimants.

[10] In his response to the application, Learned Senior Counsel for the claimants/respondents accepted that the dissolution of Parliament has affected some aspects of the claim. With regard to the motion of no confidence, an intrinsic part of the subject matter of the claim, Learned Senior Counsel acknowledged that the Motion could never again be scheduled or debated and, as he put it, the motion "had become a part of the indelible history of St. Kitts and Nevis."

[11] In this regard he indicated to the court that it was the relief that was sought at numbers 1-5 and part of number 6 of the originating summons that the claimants still wished to pursue. Relating to these items of relief, Learned Senior Counsel invited this court to find that on the particular facts of the case there was still a live issue as between the parties. He submitted that the court should still determine whether there was an implied right under the **Constitution** as the claimants assert, or not, and also go further to determine whether if such a right is declared, there had been an infringement of those rights as alleged.

- [12] He resisted the application to dismiss on the grounds that there still being a live issue between the parties; that the matter had not passed into being just an academic question for the courts advisory opinion. He was adamant that there was no acceptance by the claimants that the points to be considered on the originating summons were merely academic.
- [13] Learned Senior Counsel submitted that the court's determination in the substantive matter would impact on the manner in which affairs in this jurisdiction were governed and as such it raised fundamental issues. As against the authorities submitted by the applicant, Learned Senior Counsel invited the court to find that there was a real factual basis upon which the live issue in this case could be determined by this Court. He distinguished the instant case from that in **R (Deeqa Mohammed)** on the basis that in that case the claimant had obtained the relief that she originally sought and as such this is why the matter fell to be considered as an academic claim. He reiterated that in the instant matter the question of whether the relief sought by the claimant would be granted, had not yet been determined.
- [14] Counsel also sought to distinguish the matter of **Antigua Power Company Limited v the Attorney General of Antigua and Barbuda and Ors**<sup>4</sup>, another authority that had been cited by the applicant in support of the application to dismiss. Counsel submitted that the facts and circumstances in that case were far removed from those of the instant case as only a small part of the Antigua Power case, concerned a claim for a declaration and that on the particular facts of that case, the Privy Council did issue a declaration, there being a need to record a "potentially important constitutional point"<sup>5</sup>
- [15] He concluded by re-iterating that if this Court were to conclude that there was an implied right, that the claimants, if this right has been violated were also entitled to be vindicated upon their claim.

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<sup>4</sup> [2013] UKPC 23

<sup>5</sup> Ibid, at paragraph 60

- [16] Lord Goldsmith, Learned Queen's Counsel for the Attorney General, the intervening party, supported the application to dismiss or stay the proceedings. He urged the court to find that the purpose, for which the motion of no confidence had been filed, had now been resolved by the dissolution of Parliament. Lord Goldsmith, invited the court to question whether it would be of any value to know the principle underlying the case at this juncture, and in the circumstances where Parliament has now been dissolved. He respectfully cautioned the court to guard against the risk of the court being seen to be descending into the political arena and reiterated that the court should, in determining this application, pay heed to the separation of powers doctrine. Finally, Lord Goldsmith concluded, that there was no urgency attached to the hearing of the substantive matter and that there was no reason for the matter to be heard within what he described as "the currency of the campaign."
- [17] The question on this application is whether this Court should, because of matters that have now arisen, the dissolution of the Parliament, say to the claimants that the matters and issues that they raise on the originating summons are no longer of such significance as to provoke the court to inquire, that the matter should be dismissed. The central issue is whether the dissolution of Parliament has impacted the matter, so that a court should find that what is being sought, should or could not now be pursued.
- [18] The principles have been well articulated as to the matters to which the court must pay heed in the exercise of its discretion, whether to hear and determine what may result in a judgment of only academic interest. It is not disputed that up to this point there are no other motions of no confidence in the pipeline. There is no slew of cases wherein similar legal issues may need to be heard and determined by this Court. However, this court can only move to consider whether to exercise such a discretion if it finds that the matter has passed from being a live matter into the realm of being only an academic exercise.
- [19] Having read the notice of application and the affidavit in support and having listened to the very helpful submissions of Learned Counsel for all parties, I am not

persuaded that the dissolution of Parliament has made the claim and therefore the proceedings in this matter merely academic. There is no need to consider the exercise of the discretion whether to hear a matter which is only of academic interest, as that does not arise in the circumstances of this case. There are live issues left to be determined as between the parties. At issue remains the claimants' assertion that there is an implied right, a constitutional right for an elected member to bring and move a motion of no confidence in the National Assembly. The claimants seek further to have this Court declare if it finds that there is such a right, that this right has been infringed by the defendant.

[20] Much time and resources have already been expended by the claimants, the defendant and indeed the court in this case. Final written submissions have been prepared and it remains only for the court to hear oral submissions and to then make a decision on the issues. The court is mindful that the urgency which up till a short time ago attenuated the matter, no longer remains.

[21] This Court cannot ignore the history of this matter, that an application to strike the entire claim has been dismissed<sup>6</sup> or that the Court of Appeal dismissed the appeal against that decision<sup>7</sup>. While I am mindful that I am in no way bound by the findings or determinations previously made, it remains that the issues raised have been found to be of sufficient gravity, that they should be inquired into at a Hearing. The dissolution of Parliament, may have affected the force of the claimant's arguments as to the urgent need for a resolution of those issues but it has not impacted their entitlement as citizens of St. Kitts and Nevis to an audience before this Court.

[22] This matter brings to the fore, one of the main features of our constitutional democracy, the doctrine of the separation of powers. It is entirely within the exclusive purview of the Legislature and the Executive under the **Constitution** to dissolve Parliament. It is the court's exclusive purview as guardians of the same **Constitution** to interpret the **Constitution** and to declare the law.

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<sup>6</sup>SKBHCV 2013/0090

<sup>7</sup>SKBHCVAP2014/0005 and SKBHCVAP2014/0006

[23] For these reasons the instant application is dismissed. The costs on the application will be costs in the cause. The matter will be set down for hearing on a date to be notified by this Court.

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**Marlene I. Carter**  
Resident Judge