

ANTIGUA AND BARBUDA

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: ANUHCV2016/0295

BETWEEN:

GEORGE RICK JAMES

(In person and as Secretary of the Free and Fair Election League Inc

Claimant

AND

[1] NATHANIEL JAMES

(Chairman of the Electoral Commission)

[2] GARY PETERS

[3] GLENDINA MCKAY

[4] PAULA LEE

[5] JOHN JARVIS

[6] ANTHONYSON KING

(Electoral Commissioners)

Defendants

Appearances:

Mr. Ralph Francis for the Claimant

Mrs. Emily Simon-Forde for the Defendants

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2016: September 21
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Decision

[1] **LANNS, J [Ag]:** On the 9th day of June 2016, the Claimant George Rick James filed a Fixed Date Claim headed "APPLICATION FOR JUDICIAL REVIEW".

[2] The reliefs sought were stated to be;

1. A determination that the Defendants have failed to discharge their duty under the Representation of The People (Amendment) Act 2001
2. An Order of Mandamus to compel the Defendants to produce an audited copy of the reports filed by political parties regarding election campaign contributions made by individuals and entities in respect of the 2014 general elections.
3. Costs
4. Any other order which to this Honourable Court may seem just.

[3] The Claimant has put forward one ground of application, that is, the Defendants have failed to comply with Section 43 of the Representation of the People (Amendment) Act 2001.

[4] The Claimant swore to and filed an "Affidavit in support of the Application" with several documents exhibited thereto. Mr. Nathaniel James swore to and filed an affidavit in response.

[5] The affidavit of the Claimant is lengthy consisting of 18 paragraphs. In it, the Claimant describes the organization which he represents, that is, the Free and Fair Election League Inc, (FFEL) its aims and objectives, and he gives an insight into the accomplishments of the FFEL over the years. The Claimant went on to give details of a court order in an earlier associated matter (which was discontinued), setting out events which took place following the court order in that earlier matter. The Claimant disclosed details of correspondence passed between the Claimant and the Chairman of the Electoral Commission (The Commission) and their respective lawyers. The Correspondence referred, in part, to the failure of The Commission to perform its statutory duty in accordance with Section 43 of The Representation of the People (Amendment) Act; the failure of The Commission to comply with the Claimant's request to provide an audited copy of the 2014 Campaign Finance Report; the decision of The Commission to terminate communication on the matter; the failure of The Commission to comply with paragraph 2 of the Court's order with regard to access to documents requested by the FFEL.

[6] During his presentation, learned counsel for the Claimant Mr. Ralph Francis (Mr Francis) sought successfully to amend the sole ground of application to read thus "The Defendants have failed to comply with Section 83 of The Representation of People (Amendment) Act Cap 379 as amended by Section 43 of The Representation of the People (Amendment) Act, 2001, No 17 of 2001.

[7] In the course of his presentation, and in answer to the court as to what is the Claimant's authority for requesting an audited copy of the Campaign Finance Report, Mr. Francis made reference to

Section 15 of The Freedom of Information Act which he read and submitted that none of those provisions apply to the matter.

- [8] Counsel then made reference to Section 6 (5) (b) of The Representation of the People (Amendment) Act 2001, No 17 of 2001 which deals with the functions of The Commission. That section reads:

"(5) The Commission shall:

- (a) ...
- (b) as soon as possible after polling day in a general election, prepare and furnish to the Minister a report, with special reference to the operation of section 83 of the Act with respect to that election.

- [9] In December 2001, Sections 83 and 84 of the Representation of the People Act Cap 379 (the principal Act) were repealed and replaced by Section 83 (1) side noted "Campaign Financing":

"83. (1) Every political party shall keep an account book into which shall be recorded

- (a) all monetary and other forms of contributions received by him during an election.
- (b) the name and address of any person or entity who contributes any money or other things which exceeds twenty-five thousand dollars."

"[2] No political party shall accept any monetary or other contribution exceeding five thousand dollars unless it can identify the source of the money or other contribution to the Commission."

"(3) Every political party procuring the election of a candidate shall, within six months after the announcement of the results of the election, file a report of the contributions made by individuals and entities to the Commission."

"(4) Every political party shall grant to any officer of the Commission authorised in writing, access to examine the records and audited accounts kept by the political party in accordance with this section and, on request shall give such information as may be requested in relation to all contribution received by or on behalf of the party."

"(5) Every political party shall have its accounts audited within six months after an election that it contested."

"(6) The Commission shall impose a penalty of two thousand dollars a day on any party or organization who fails to comply with this section."

- [10] In her response to Mr Francis' presentation, learned counsel for the Defendants Mrs. Emily-Simon Forde (Mrs. Simon-Forde) submitted that the Claimant's claim or application is flawed by reason that the Claimant has failed to apply for leave to apply for judicial review; rather the Claimant has plunged right into section 83 of The Representation of the People (Amendment) Act 2001. Counsel contended that an application for leave is mandatory so that the court can exercise its discretion as to whether or not it should grant permission to the Claimant to proceed. Counsel next pointed out that the heading of the matter is not in keeping with the required format. There must be an act or omission for the court to review; there is no act or omission outlined in the application before the court, submitted counsel.
- [11] It was counsel's further submission that even if the court were to treat the matter as an application for judicial review the Claimant must present an arguable case within the ambit of the reliefs which he is seeking. As far as counsel was concerned, there is nothing in the particular sections referenced by Mr. Francis which points to any obligation or any duty to provide any Body with an audited copy of the political parties' contributions. Further, submitted Mrs. Simon Forde, Section 6 (5) (b) of the Representation of The People (Amendment) Act, 2001, No 17 of 2001 is irrelevant to the instant matter because that section speaks to a copy of the Report going to the Minister responsible for Electoral Affairs, or the Minister responsible for the administration of the Act That Minister is the Prime Minister of Antigua and Barbuda, counsel pointed out.
- [12] Mrs. Simon Forde referred to the earlier matter brought by the Claimant under the Freedom of Information Act, unlike this matter, which, in the view of counsel, was a different matter. Counsel concluded her response by urging the court to dismiss the matter as it is not properly before the court and is devoid of merit
- [13] Mr. Francis replied. Counsel was not of the view that the matter lacked merit. In fact, counsel once again referred to Section 83 of the Representation of the People (Amendment) Act as amended and maintained that the Commission has an obligation to provide to the Claimant audited copies of reports filed by political parties regarding campaign contributions made by individuals and entities in respect of the 2014 General Elections.

Disposition

- [14] Having read and considered the material before the court; And having heard counsel's submissions in support of, and in opposition to the Claim, I am entirely in agreement with the submissions of learned counsel for the Defendants. In the result, I dismiss the Claim for the following reasons:

1. The Claimant has failed to comply with the mandatory provisions of the Civil Procedure Rules (CPR) 56.3 which is to the effect that a person wishing to apply for judicial review must first obtain leave. This failure will obviate the need to consider any further issue in the proceedings as presently formulated.
2. Even if it could be said that the proceedings before the court may be treated as an application for leave for judicial review, there is no duty imposed by The Representation of the People's (Amendment) Act, 2001, No 17 of 2001 section, 6 (5) (b), on The Commission to provide audited copies of reports filed by political parties regarding campaign contributions made by individuals and entities in respect of the 2014 General Elections.
3. The court is not of the view that a breach of, or failure of The Commission to perform the statutory duty under Section 6 (5) (b) of The Representation of People (Amendment) Act, 2001, No 17 of 2001, gives rise to a civil cause of action enforceable by the Claimant in his own persona or as Secretary of the Free and Fair Election League, Inc

[15] Given the nature of the proceedings, there shall be no order as to costs.


Pearlitta E. Lannis
High Court Judge [Ag]