

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CIVIL)
A. D. 2015**

CLAIM NO. SKBHCV2014/0169

**In the Matter of section 52 of the National Assembly
Elections Act CAP 2.01 of the Laws of the Saint
Christopher (Revised Edition 1961) (“the Act”)**

and

**In the Matter of a decision given by on the 12th day of
May 2014, by a Registration Officer (The Respondent
herein) on an objection considered by him under the
Act against the inclusion of 3 persons namely,
Mercedes Pie Nico, Marsha Lewis and Betania Pie
Nico in the Register of Voters for Polling Division #2,
#3 and #4 of the Electoral District of Saint
Christopher #4 (Challengers, Old Road, Verchilds,
Middle Island, Lamberts, Conyers, Half Way Tree).**

BETWEEN:

LAUREEN A. JAMES

Appellant

and

REGISTRATION OFFICER FOR ST. CHRISTOPHER 4

Respondent

Appearances:-

Mr. Lindsay F. P. Grant with Mr. Jonel Powell and Ms. Suzy St. Brice for the
Appellant

Mr. Sylvester Anthony and Ms. Angelina Gracy Sookoo Respondent for the
Respondent

2014: November 07
2015: March 19

JUDGMENT

- [1] **CARTER J.:** On 6th August 2014 the appellant filed a Notice of Appeal against the decision of the respondent on the 12th May 2014, whereby the respondent having heard objections by the appellant to persons named on the Register of Voters monthly List for Constituency No. 4, dismissed the appellant's objections.
- [2] At the hearing of the appeal on the 17th October 2014, Counsel for the respondent raised a preliminary objection to the appeal being heard. The preliminary objection being that the appellant had failed to give written notice of appeal to the opposite party, within the statutory time period as required by section 52 (2) of the **National Assembly Elections Act**, Cap 2:01 of the Laws of St. Kitts and Nevis (Revised Edition 2009)
- [3] The court gave directions then for the parties to file written submissions and authorities relating to the preliminary point for the court's consideration. It was agreed between the parties that the court would proceed to give its ruling based solely on those written submissions.

Issues for the Court's Consideration

- [4] The only issues which arises for the court's consideration are:
- (i) Whether it is a mandatory requirement of section 52(2) of the Act that a written Notice of Appeal be served on the Registration Officer as well as the opposite party to initiate the appeal process;

- (ii) What is the effect, if any, on the appeal if the opposite party is not served with written Notice of Appeal.

Issue 1

Whether it is a mandatory requirement of Section 52(2) of the Act that a written Notice of Appeal be served on the Registration Officer as well as the opposite party to initiate the appeal process

- [5] Section 52 (2) states that:

“(2) Any claimant or objector desiring to appeal against the decision of a registration officer shall give written notice of appeal to the registration officer and to the opposite party, if any, when the decision is given or within seven days thereafter, specifying the grounds of appeal.”

- [6] The respondent’s submission is that this section is clear and without ambiguity and ought to be given its literal interpretation. The respondent also submits that the section is mandatory in nature and that the court should not seek to alter the strict requirements of the section, so as to give itself jurisdiction where none would otherwise exist.
- [7] The respondent relies upon the authority of **Laureen James et al v Wingrove George**¹ and has invited the court to adopt the approach taken by Thomas J. (Ag.) in that case, in considering the nature of section 52(2).
- [8] The respondents further contend that the failure of the appellant to strictly comply with the requirement of section 52(2) will render the appeal null and void as the court would be without jurisdiction to hear and consider the appeal.

¹SKBHCV2010/159 to SKBHCV2010/0222

[9] The appellant in answer to the preliminary objections, submits that it is sufficient that the Registration Officer be served the notice of appeal, as the Registration Officer for all intent and purposes, represented the interest and rights of the persons being objected to by the appellant.

[10] The appellant invited the court to examine regulation 35(3) of the Act as being support for the role and duty of the registration officer under the Act, that the registration officer could be seen to be representing the interests and rights of even absent objectees and that as such, once he was duly served in compliance with the provisions of sections 52(2) of the Act, that this was sufficient to satisfy the mandatory requirement that a claimant or objector *“shall give written notice of appeal to the registration officer and to the opposite party”* under the Act.

[11] The court notes that appellant does not deny the mandatory requirement for service of written Notice of Appeal under section 52(2). Rather, the appellant's submission is that this mandatory requirement was met by the appellant in serving the Registration Officer the Notice of Appeal.²

[12] Regulation 35 states as follows:

“(1) Any person who has made a claim in the prescribed form for inclusion in or correction to the Register of Voters, Monthly List or Revised Monthly List or whose claim has been objected to and any person who objects to the inclusion of any name or claim of any person shall appear in person before the Registration Officer to show cause why the claimant's name or the name of the person whose inclusion has been objected to should be included therein or deleted therefrom.

.....

²Paragraph 11 of the Submissions on behalf of the Appellant filed on the 7th November 2014.

(3) Where the Registration Officer is satisfied from the evidence available to him or her that any person is entitled to remain registered, even if the person objected to or making the claim does not appear at the hearing, the Registration Officer may determine the matter accordingly.

(4) Agents of political parties or candidates or a representative of any person required to attend any hearing shall be entitled to attend any hearing and to make representation thereto.”

[13] On close examination of these regulations, this Court is unable to agree with the submissions of the appellant on this issue, that any duty to safeguard the rights and interests of the objectees/parties under regulation 35(3) continues when the decision of the Registration Officer is appealed. These sections do not have an relation to the duties or obligations of the Registration Officer on any appeal. Such duties or obligations are entirely within the exclusive ambit of section 52(2) of the Act. Where the provision of the legislation is clear as in this case and demands strict adherence to its requirements, this Court cannot seek to import into the provision, an implication that such legislation is somehow subject to the provisions in the subsidiary legislation. If the legislature had intended that service on the Registration Officer be sufficient evidence of service for the purposes of section 52(2) then, given the nature of the section and the need for certainty with regard to the subject matter with which the provision is concerned, the legislature would have made clear such an intent. No such intent is shown or can be implied in this case.

[14] The applicant has failed to satisfy the requirement of section 52(2) that written notice of appeal be given to the registration officer and to the opposite party if any.

Issue 2

What is the effect, if any, on the appeal if the opposite party is not served with written Notice of Appeal

[15] In **Laureen James**, the main issue before the court was whether a Notice of Appeal had been filed within the statutory time limit set by section 52(2). In that case, Thomas J (Ag.) was asked to determine whether the provision is mandatory in its import or whether the section is directory only.³ Having looked closely at the relevant context and circumstances⁴ the Learned Judge concluded that: *“Having regard to the authorities and the learning analyzed, it is the determination of the court that section 52(2) of the **National Assembly Elections Act** is mandatory and, as such the time limit of seven days for the written notification of an appeal must be complied with.”*

[16] In the instant case, the court agrees with the reasoning of the Learned Trial Judge in **Laureen James**. The requirements of the section are mandatory. The applicant has failed to file Notice of the Appeal on the opposite party in this case. As a result the appeal must be rendered null and void.

[17] The court makes no order as to costs.

Marlene I Carter
Resident High Court Judge

³ Shawn K Richards and Lindsay Grant v Boundaries Commission, Consolidated Claims no. SKBHCV2009/0159 and 0179

⁴ This was the approach to construction alluded to in *Charles v Judicial and Legal Services Commission* [2002] UK PC 34