

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. SKBHCV2014/0111, SKBHCV2014/0112, SKBHCV2014/0126

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 14th day of May 2014, by a
Registration Officer (The Respondent herein) on an objection
considered by him under the Act against the inclusion of 30 persons
in the Register of Voters for Polling Division #5 of the Electoral
District of Saint Christopher #4 (Challengers, Old Road, Verchilds,
Middle Island, Lamberts, Conyers, Half Way Tree).

BETWEEN:

CHERITA CLARKE

Appellant

and

MERLE LIBURD

Appellant

and

LAUREEN A. JAMES

Appellant

REGISTRATION OFFICER FOR ST. CHRISTOPHER 4

Respondent

Appearances:-

Mr. Lindsay F. P. Grant with Mr. Jonell Powell and Ms. Suzy St. Brice for the Appellant
Mr. Sylvester Anthony and Angelina Gracy Sookoo for the Respondent

2014: July 04th
November 26th

JUDGMENT

- [1] CARTER J.: On 14th May 2014, the respondent heard objections by the 1st appellant to persons named on the January 2014 Voters List for Constituency No. 4. At this hearing, the respondent dismissed the appellant's objections. By letter dated May 16th 2014, the appellant's Counsel, wrote to the respondent indicating that he had received instructions to appeal the respondent's decision. On the 11th June 2014, twenty-eight (28) days after the decision of the respondent of the 14th May 2014, the appellant filed the subject Notice of Appeal. The Notice of Appeal set out six (6) grounds of appeal.
- [2] The appeal was set down for hearing on the 04 day of July 2014. At that time Counsel for the respondent raised these preliminary objections and upon the instructions of the court, the parties have filed written submissions and authorities relating to these preliminary points for the court's consideration. This ruling relates also to appeals filed by the 2nd and 3rd appellants which matters have been consolidated with this appeal it having been agreed by Counsel and the court that the appeals were based on similar grounds and that the preliminary objections would be similar in each case.

Issues for the Court's Consideration

- [3] The issues raised by the respondent for the court's consideration:
- (i) Whether Section 52(2) requires a Notice of Appeal or a notice of intention to appeal to be filed to initiate the appeal process;

- (ii) Whether the phrase “written notice of appeal” under Section 52(2) of the Act refers to the originating process document called a Notice of Appeal or to any document which contains the grounds of appeal;
- (iii) Whether service on the respondent and the opposite party was effected within the statutory seven (7) days required under Section 52(2).

[4] Issue 1

1. Whether Section 52(2) requires a notice of Appeal or a notice of intention to appeal to be filed to initiate the appeal process

[5] The respondent submits that section 52(2) is clear and unambiguous on this issue. The section stipulates that a claimant or objector “...*shall give written notice of appeal to the registration officer...*” in order to initiate the appeal process and invoke the jurisdiction of the court. The respondent’s argument is that the section does not allow an appellant to give notice of an intention to appeal to initiate that process. Further, as it relates to this appeal, the respondent submits that the letter dated 16th May, 2014 is not a Notice of Appeal as contemplated by the section. The respondent asks this Court to find that the letter only informed the respondent of the appellant’s intention to appeal and that the Notice of Appeal of the 11th June gave written notice to the respondent that his decision was appealed. Therefore, the court should conclude that the appellant has not satisfied the clear requirements of sections 52(2) for the filing of a Notice of Appeal.

[6] 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). Counsel invited the court to find that a strict interpretation of the statute is required and that the section ought to be given its literal interpretation.

[7] Conversely, the appellant submits that the letter dated May 16th 2014, properly constituted the appellant’s Notice of Appeal. The appellant’s submission on this issue is that the appellant has

¹SKBHCV2010/159 to SKBHCV2010/0222

satisfied the requirement of section 52(2) as the appellant has given written Notice of Appeal; the Notice of Appeal has been given to the Registration Officer and that the Notice of Appeal specifies the grounds of appeal. Further, the appellant contends that section 52(2) does not state that the Notices of Appeal should be filed with the Registry of the High Court and as such, the Notice of appeal filed on the 11th of June, 2014 is not the Notice of Appeal which they would ask this Court to consider on this appeal.

[8] Given the nature of the objection, the letter sent to by the appellant to the respondent is set out here in its entirety:

"May 16, 2014

*Ms. Meridth Hendrickson
Registration Officer
Electoral District St. Christopher Constituency #4
Sandy Point
St. Kitts*

Dear Mr. Hendrickson,

We act for and on behalf of Ms. Cherita Clarke of Half Way Tree Village, St. Kitts.

We hereby write to inform you that we have been instructed by Ms. Clarke to appeal your decision at the objection hearing (having been previously postponed) of May 14th, 2014 whereby you refused to hear Twenty Four (24) objections made by her. The grounds of the Appeal are:

- 1. The Chief Registration Officer was unduly influenced by the presence of the Supervisor of Elections at the hearing and his representations therein. Section 45 (1) of the National Assembly Elections Act CAP 2.01 provides that claims and objection shall be determined by the appropriate registration officer acting with respect to the constituency to which the register or list in question relates.*
- 2. The Respondent (Registration Officer) took an unreasonable decision to disallow and refused to hear the objections of twenty four (24) persons made by the Appellant without hearing any evidence.*
- 3. The Registration Officer erred in his decision to refuse to hear the Appellant's objections for the reasons given.*

4. *It was unreasonable for the Registration Officer to disallow the said twenty four (24) matters without any evidence after it had been brought to his attention that witnesses of the Objector were having difficulties at appearing at 9 a.m. rather than the usual 5 p.m. Further, this was the first occasion that the matter came on for hearing.*
5. *The Registration Officer failed to carry out his duties under the National Assembly Elections Act Cap 2.01*

We believe that your decision is unreasonable and for these reasons we therefore reiterate our intention to appeal to a Judge of the High Court pursuant to the National Assembly Elections Act section 52 (1) of Cap 2.01.

We trust that you are guided and will act accordingly.”

[9] Having considered the letter sent on the appellant’s behalf on the 16th of May 2014, the court is not persuaded that this letter was in fact a Notice of Appeal sufficient to fulfill the requirements of section 52(2) or indeed that it was so intended at the time that it was sent to the respondent. The letter, set out above at paragraph 8, indicates that Counsel has been instructed to appeal the respondent’s decision. After stating grounds of appeal the letter goes on to reiterate the “intention to appeal to a Judge of the High Court pursuant to Sections 52(1)”. The fact that the appellant subsequently filed a document entitled Notice of Appeal on the 11th June 2014 at the High Court Registry in relation to the same said decision by the Registration Officer to dismiss the objections of the appellant, relating to the same twenty-four (24) persons as mentioned in the letter of 16 May, and that this latter document contained grounds of appeal which are different from those set out in the letter of May 16th are the matters that this Court finds relevant in coming to its conclusion, that the letter of May 16th was not the Notice of Appeal but was in fact a letter sent to notify the respondent that the appellant intended to file such an appeal. This they did on the 11th June, 2014.

[10] 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.”

[11] The court agrees with the respondent on this issue that the words of the section with regard to what is required are clear and without ambivalence. There is nothing raised in the submissions of the appellant, which would cause the court to interpret it otherwise than as clearly stated. The section states that a Notice of Appeal must be filed. The section makes no mention of a notice of intention to appeal. The court must look and interpret the section as being a clear statement of the intention of the Legislature in this regard.

[12] In *Cherita Clarke v Wingrove George*² Ramdhani J made mention of the process by which the appellate jurisdiction is invoked. *"When the Registration Officer makes a decision either allowing or disallowing the objection, there is a right of appeal under section 52, ...There is no statutory requirement that an appellant file originating process to the High Court to lodge an appeal under section 52... An appeal is properly commenced when any claimant or objector gives written notice of appeal, specifying the grounds of appeal to the registration officer..."* The appellant is therefore quite right to state that section 52(2) does not require a notice of appeal to be filed at the High Court but it does require that a claimant or objector properly file a Notice of Appeal with the Registration Officer.

[13] Issue 2

2. Whether the phrase "written notice of appeal" under section 52(2) of the Act refers to the originating process document called a Notice of Appeal or to any document which contains the grounds of appeal;

[14] On this issue, the respondent submits that the notice of appeal must take the form of the pleading referred to as a Notice of Appeal. The respondent asks the court to consider what the Act requires of the Registration Officer at Section 52(3)

" 52 (3) The registration officer shall immediately forward such notice to the Registrar of the High Court together with a statement of the material facts which, in his or her opinion, have been established in the case, and of his or her decisions upon the whole

² SKBHCV2013/0331-0339 at page 10

case and upon any point which may be specified as a ground of appeal, and shall also furnish to the Court any further information which the Court may require and which he or she is able to furnish.”

- [15] The respondent contends that a letter or any ordinary document cannot be accepted as being sufficient to be regarded as a document originating the process of the appeal and that to do so would make nonsense of section 52(2), if it is found sufficient to move a court and in particular the appellate jurisdiction of the court.
- [16] The appellant's submission is that the Act and section 52(2) being silent as to the form and format of the notice of appeal, that the court should look to the intent of the Legislature in granting this right to appeal to any objector, which includes an ordinary lay person. The appellant contends that the Legislature must have envisaged that written notice in the form of a letter or any ordinary document for that matter would be sufficient to constitute the Notice of Appeal required by the section.
- [17] In considering this issue the court is mindful of the strict nature of the statutory provision as well as the process which it initiates: an appeal to the court regarding the possible disenfranchisement of a resident or citizen. In *Joseph Parry and Ors v Mark Brantley*³, Mitchell JA [AG] considering certain provisions of the National Assembly Elections Act, referred to such provisions of this Act governing the exercise of the right to vote, as having “a constitutional pedigree”⁴. Such pedigree demands certainty of the process. The provisions of the instant sections are clear as to its requirements and the court should not seek to interpret them otherwise.
- [18] This Court has carefully considered the nature of the proceedings that are being instituted, the gravity of the matters to be dealt with and the fact that the appellate jurisdiction is to be engaged by this Notice of Appeal. However the court is of the view that the very nature of the proceedings must call for an interpretation of the provisions that preserves and facilitates the appellate process envisioned by the Section. The argument that the Legislature was seeking by this section to ensure

³ HCVAP2012/003-005

⁴ *ibid* at page 31

that a notice of appeal in the form of the pleading referred to as a Notice of Appeal would have been better bolstered if the section stipulated that the objector had seven days within which to appeal to the High Court without more. In this case the fact that the notice of appeal is to be notified to the Registration officer lends the court to the view that a notice of appeal under section 52(2) is not the pleading referred to as a Notice of Appeal. The objector can notify the Registration Officer that he is dissatisfied with his decision and appeals against that decision by presenting the Registration Officer with a written form that clearly and unequivocally states that he is appealing and gives the grounds upon which his appeal is based. This can be done in the form of a letter or any ordinary document that satisfies these requirements. The section is intended to ensure that a claimant or objector who may be an ordinary layman as the appellant submits is not locked out of this process whereby the right to vote may be retained or lost.

- [19] The provisions of section 53(3) seek to buttress the process by giving clear guidelines to the Registration Officer as to his role in the appellate process. The strict compliance with the provisions of the statute is an obligation that is not only placed on the claimant or objector as to the manner and time within which they must appeal to invoke the court's jurisdiction. It is also placed on the Registration Officer to ensure the integrity of the court's process, a matter that could be greatly influenced by the timeliness of his actions in accordance with Section 52(3) of the Act.

Issue 3

3. Whether service on the respondent and the opposite party was effected within the statutory seven (7) days required under Section 52(2).

- [20] The respondent submitted that the starting point for the court on this issue must be the nature of the section; the nature of this section is such that its provisions must be strictly applied. The respondent further states that in the instant case, the appellants have not given Notice of Appeal within the strict seven (7) day requirement under the section as the letter of May 16th was not a Notice of Appeal as contemplated by section 52(2). This being so, the submission is that a document entitled Notice of Appeal was only filed on the 11th of June 2014 and as such the Notice

of Appeal having been filed some twenty-four (24) days after the respondent's decision was rendered, the appeals were null and void.

- [21] In *Laureen James*⁵, 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 was asked to determine whether the provision is mandatory in its import or whether the section is directory only. Having looked closely at the relevant context and circumstances⁶ 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."*
- [22] The respondent also referred the court to the case of *Pierre Augustin*⁷ as authority for the further proposition that the time limit for giving notice of appeal having been prescribed by the statute, that such time could only be extended, by the authority of a statute. It has not been suggested by the appellant that the court should extend the time but the Court notes the principle as stated therein.
- [23] Given the court's finding that section 52(2) requires that a Notice of Appeal must be filed and that the letter of 16th May was not a proper notice of appeal but only a statement of the appellant's intention to file a Notice of Appeal, the Court concludes that the appellants did not file the required Notice of Appeal within the stipulated period given for filing of an appeal against the decision of the registration officer in the instant case. The section is strict in its application as to time.
- [24] There being no reason shown to the court why it should depart from the interpretation of Thomas J in *Laureen James*, the court finds that the Notice of Appeal having been filed on the 11th day of June 2014, twenty-four (24) days after the date upon which the decision was rendered, that the said appeal is rendered null and void.

⁵ SKBHCV 2010/159 to 2010/0222

⁶ This was the approach to construction alluded to in *Charles v Judicial and Legal Services commission* [2002] UK PC 34

⁷ *Pierre (Augustin) v R* (1993) 45 WLR 156

[25] With regard to the 2nd appellant, the Notice of Appeal having been filed on the 11th day of June 2014 in respect of the decision of the respondent of 12th May 2014, this appeal having also been filed outside the time stipulated by section 52(2), it is null and void.

[26] With regard to the 3rd appellant, the Notice of Appeal having been filed on the 24th day of June 2014 in respect of the decision rendered by the respondent on the 12th day of May 2014, this appeal was filed outside the time stipulated by section 52(2) of the Act and is null and void.

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

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Justice Marlene I Carter
Resident Judge