

The Eastern Caribbean Supreme Court

In the Court of Appeal

Saint Christopher and Nevis

SKBHCVAP2012/0001

Between:

Lindsay Fitz-Patrick Grant

Appellant

and

- 1. Rupert Herbert**
- 2. Leroy Benjamin**
- 3. Wentford Rogers**

Respondents

Certificate of Result of Appeal

This appeal was heard on 4th December, 2017 before Her Ladyship, The Hon. Dame Janice M. Pereira, DBE, Chief Justice, Her Ladyship, The Hon. Mde. Gertel Thom, Justice of Appeal and His Lordship, The Hon. Mr. Michael J. Fay, QC, Justice of Appeal [Ag.] in the presence of Ms. Marguerite A. Foreman with Mrs. Teshari A. J. John-Sargeant for the Applicant and Mr. Anthony Astaphan, SC with Ms. Angelina Gracy-Sookoo for the Respondents.

I HEREBY CERTIFY that on the 4th day of **December** 2017 the Court made an Order as follows:

- (1) The notice of motion is dismissed.**
- (2) The applicant, Mr. Grant shall pay costs to Mr. Herbert in the agreed sum of EC\$500.00 to be paid within 14 days from Friday, 8th December 2017.**



Dated the 4th day of December, 2017

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Dep. Chief Registrar

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT CHRISTOPHER AND NEVIS

SKBHCVAP2012/0001

BETWEEN:

LINDSAY FITZ-PATRICK GRANT

Applicant

and

[1] RUPERT HERBERT
[2] LEROY BENJAMIN
[3] WENTFORD ROGERS

Respondents

Before:

The Hon. Dame. Janice M. Pereira, DBE
The Hon. Mde. Gertel Thom
The Hon. Mr. Michael J. Fay, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Marguerite A. Foreman and with her Mrs. Teshari A.J. John-Sargeant for the Applicant and Mr. Anthony Astaphan, SC with Ms. Angelina Gracy-Sookoo for the Respondents.

2017: December 4;
December 21.

Civil appeal — Leave to appeal – Appeals to her Majesty in Council in Election petition cases – Whether there is a right of appeal from decisions of the Court of Appeal to Her Majesty in Council – Whether costs form part of an election petition – Constitution of the Federation of St. Christopher and Nevis

ORAL JUDGMENT

[1] **FAY JA [AG.]:** We heard this matter on Monday, 4th December 2017. At the conclusion of the hearing we informed the parties that we would dismiss the notice

to Her Majesty in Council, and that we would provide our reasons for that dismissal in due course. We do so now and these are our reasons for dismissing the notice of motion.

Background

- [2] The factual circumstances of this matter are set out in detail in the judgment of this Court dated 14th July 2017 and no useful purpose is served by repeating them at length in this judgment. In brief, and insofar as is relevant to this notice of application, the Court of Appeal held on 14th July 2017 that:

- (a) The general rule is that the High Court's jurisdiction to deal with election petitions is a statutory jurisdiction that is separate and distinct from the Supreme Court's ordinary civil jurisdiction.

Theberge and another v Philippe Laudry [1876] 2 AC 106 applied; **Devan Nair v Yong Kuan Teik** [1967] 2 WLR 846 applied; and **Patterson v Solomon** [1960] AC 579 considered.

- (b) When the Court of Appeal in the Federation of St. Christopher and Nevis hears appeals from the High Court in election proceedings, it occupies a unique position in the court's hierarchy in that it is the final court of appeal. Section 36(1) of the Constitution of Saint Christopher and Nevis ("the Constitution") vests the jurisdiction to hear and determine cases relating to the election of members of the National Assembly in the High Court and subsections (6) and (7) deal with appeals from decisions of the High Court in election cases. The effect of subsections (6) and (7) is that there is a right of appeal to the Court of Appeal from final decisions of the High Court in election cases, and importantly for the purposes of this appeal, there is no right of appeal from a decision of the Court of Appeal to Her Majesty in Council. The Court of Appeal is the final court in election proceedings. This affects the principle of stare decisis and how this Court should deal with its previous decisions.

Section 36(1) of the **Constitution of Saint Christopher and Nevis**,
Cap.1.01, Revised Laws of Saint Christopher and Nevis 2009 applied.

The application

- [3] It is not necessary, for the purposes of the notice of motion before us, to consider the judgment dated 14th July 2017 other than to record that the consequences of the majority decision of this Court on the said date, was that the decision of the first instance judge to quantify the costs to be paid by Mr. Grant to Mr. Herbert by determining what costs were reasonable for him to pay rather than by determining the costs in accordance with the **Civil Procedure Rules 2000** ("CPR") Part 64 and 65 was upheld and the appeal was dismissed.
- [4] The application before us was a notice of motion filed on 3rd August 2017 by Mr. Grant seeking leave to appeal the decision of this Court dated 14th July 2017 to her Majesty in Council.
- [5] Ms. Foreman, who appeared with Ms. John Sargeant, for Mr. Grant put her case forcibly and with great skill. The difficulty that she faced is found in sections 36(1), (6) and (7) of the Constitution which provide, insofar as is relevant to this matter, as follows:
- “(1) The High Court shall have jurisdiction to hear and determine any question whether:
- (a) Any person has been validly elected as a Representative
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) An appeal shall lie as of right to the Court of Appeal from any final decision of the High Court determining any such question as is referred to in subsection (1);
- (7) No appeal shall lie from any decision of the Court of Appeal in the exercise of the jurisdiction conferred by subsection (6) and no appeal shall lie from any decision of the High Court in proceedings under this section other than a final decision determining any such question in subsection (1) of this section”

[6] This Court has already found at paragraph 27 of its judgment dated 14th July 2017 that:

"The effect of subsections (6) and (7) is that there is a right of appeal to the Court of Appeal from a final decision of the High Court in election cases, and importantly for the purposes of this appeal, there is no right of appeal from decisions of the Court of Appeal to Her Majesty in Council."

[7] Prima facie, that would appear to be fatal to the prospects of the notice of motion before us. However, Ms. Foreman sought to urge on us that the costs do not form part of the election petition. Her submission was to the effect that the election petition proceedings were long past, and all that was before the Court was an issue of costs. This submission is not one that appears prima facie attractive, and Ms. Foreman was unable to take us to any authority, whether in an election petition case or any other form of legal proceedings in which the issue of costs had been held to be a separate proceeding to the substantive proceedings.

[8] Ms. Foreman also sought to persuade us that the determination of the quantum of costs was not, for the purposes of section 36(6) and (7) a 'final decision of the High Court determining any such question as is referred to in subsection (1)' because it was a decision on costs and not a final decision on 'whether any person has been validly elected as a Representative'.

[9] In our view, the incidence and quantification of costs ought to be canvassed as part and parcel of a question arising under section (36)(1) as to whether a person has been validly elected as a representative. Moreover, if it was not part of such a question, section 36(7) would operate to preclude any appeal to the Court of Appeal¹ and would mean that the High Court either had no jurisdiction to award costs on a determination of that question, or that the High Court was the final court for the purposes of the incidence and quantification of costs in election proceedings.

¹ Absent a statutory power to appeal to the Court of Appeal, there would be no right to any appeal.

- [10] However, we do not need to decide that point in order to dispose of this notice of motion because, irrespective of whether the incidence and quantification of costs is part of the section 36(1) question, we have no doubt whatsoever that it is part of the election proceedings. Section 36(7) does not provide that there shall be a right of appeal from a decision of the Court of Appeal, whether with leave or not, to her Majesty in Council. It provides only for an appeal from a final decision of the High Court to the Court of Appeal – it follows that no such leave can be granted.

Order

- [11] We therefore dismissed the notice of motion and that Mr. Grant shall pay costs to Mr. Herbert in the agreed sum of EC \$500 to be paid within 14 days from Friday 8th December 2017.

I concur.
Dame. Janice M. Pereira, DBE
Justice of Appeal

I concur
Gertel Thom
Justice of Appeal

By the Court


Jeg. **Chief Registrar**

