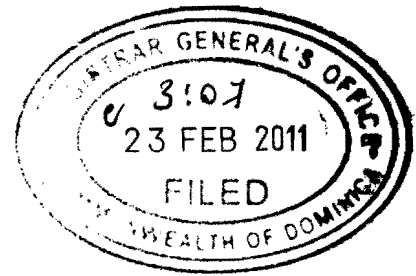


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
DOMINICA
(CIVIL)
CLAIM NO. DOMHCV 2010/0287



BETWEEN:-

BERNARD McDONALD CHRISTOPHER

Claimant

-and-

ROOSEVELT SKERRIT

ATTORNEY GENERAL OF DOMINICA

Defendants

Appearances:

Mr. Bernard McDonald Christopher in person

Mrs. Francine Baron-Royer with Ms. Tameka Hyacinth for the Defendants

.....
2010: November 22
December 6
2011: February 18
.....

RULING:

[1] **BROOKS, J:** This is an application by the Defendants for:

- (i) The Defendants to be struck off as Parties to the Claim;
- (ii) The Claim or parts thereof be struck out with costs to the Defendants
- (iii) Alternatively, in the event that the application to strike out is unsuccessful in the whole or in the part, for an extension of time to

file the answer to the matter within 14 days of the determination of the application.

- [2] This application came from the Defendants after a consent order was granted on the 22nd October 2010 granting the second Defendant relief from sanctions and leave to file and serve a defence on or before the 5th November 2010. The first hearing of the Fixed Date Claim Form was to be heard on the 22nd November 2010.
- [3] On the 5th November 2010 a defence was not filed on behalf of any of the Defendants instead the application which is being dealt with now with the affidavit in support was filed.
- [4] On the 22nd November 2010, the Court ordered that the parties to file and serve written submissions and the matter was adjourned to the 6th December 2010, when both Counsel expanded on their written submissions and the Court's decision was reserved.

The Claimant's claim:

- [5] In a nutshell, the Claimant who is a member of the Electoral Commission is seeking by way of Fixed Date Claim form filed herein on the 14th September 2010 with an Affidavit in support to obtain a number of declarations from the Court on the grounds that his constitutional rights have been violated and he is also seeking consequential relief in the form of injunctions, damages and costs.
- [6] The Claimant contends that the Defendants are in breach of various sections of the Constitution in that they have sought to direct and control the Electoral Commission ("the Commission") of which he is a member, treated him in a discriminatory manner and that the first Defendant has pursued a course of action which was calculated to hinder him from enjoying his right of freedom of association.

Defendants' application to strike the Claimant's claim.

- [7] The Defendants by way of application filed on the 15th November 2010 sought to have the Claimant's claim struck out on the following grounds:
- (i) That the allegations contained in the claim are misconceived and discloses no cause of action and are an abuse of the process;
 - (ii) That the Claimant has no *Locus Standi* to bring the matter;
 - (iii) The Claim is without merit and has no prospect of success at trial.

The Claimant's response:

- [8] In response to the Defendants' application the Claimant contends as follows:
1. That the Defendants have failed to comply with the order of Court of the 22nd November 2010 and should therefore be debarred from proceeding with the application to strike out and that sanctions should be made against the Defendants in respect of an unless order not complied with. It should be noted immediately that there was no unless order made against the Defendants and accordingly the Court will not be making any sanctions against the Defendants.
 2. That he (*The Claimant*) has *Locus Standi* to bring the applications because he is a person with the relevant interest who has been aggrieved and as such, is entitled to apply to the Court for redress. The Claimant contends that when the Defendants prevented the issue of Voter ID Cards and called him a "lazy commissioner" it resulted in him being personally disparaged and slandered.

3. That he needs an order mandamus from the Court ordering the Defendant to provide funds for the electoral commission to have the voter ID cards issued.
4. That an issue to be determined by the Court is whether the first named Defendant in his personal capacity is immune from suit for breach of Constitutional provisions.
5. That the statement of case sufficiently discloses a cause of action and when considering the striking out of the case the Court should focus on doing justice to the case of both the Claimant and the Defendants.
6. That his case is not unreasonably vague, incoherent or vexatious and that striking out his claim would be unduly harsh because it raises serious issues of fact which can only be properly determined at the trial and that he has reasonable prospects of success.

General Principles and consideration in applications to strike out:

[9] The Court has the discretion to strike out a party's statement of case either in the whole or in part. Part 26 (3) of the CPR 2000 ("CPR") provides that:

"(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that –

- a there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings;*
- b the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;*

c. the statement of case or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; ..."

- [10] It is settled law that the jurisdiction to strike out is to be used sparingly and is appropriate only in plain and obvious cases.
- [11] "When dealing with such applications the Court's function is limited to the scrutiny of the statement of claim. It tests the particulars which have been given in each averment to see whether they are sufficient to establish a cause of action. It is not the Court's function to examine the evidence to see whether the plaintiff can prove his case or to assess its prospects of success..."¹
- [12] It is trite law that a Claimant who comes to the Court must state a case that is known to or created by law. The case (statement of claim or statement of case) stated must disclose sufficient facts that are material to the issue to render the claim viable and which would permit the person who has to answer the case to know what case he has to meet. Pursuant to Part 26(3) of CPR and in its inherent jurisdiction the Court can strike out a statement of case which discloses no cause of action, or parts of the case which are vague, immaterial, unknown to law, or which is found to be abusive of the process of Court or is frivolous or vexatious.
- [13] Usually such applications are made as soon as it becomes apparent to the applicant and it is not unusual for the application to be made upon receipt of the statements of case after the filing of the acknowledgement of service and before the filing of the defence.

1 Per Millet J in the **Lonhro Case** [1991]4 All E R 965

2. Per Lord Diplock in **Letang -v- Cooper** [1965] 1 QB 232 at p 242

- [14] A statement of case before the Court must disclose a reasonable cause of action which is simply stated as *"a factual situation the existence to which entitles a party to obtain from a Court a remedy against another person"*². A statement of claim can be struck out if it discloses no reasonable cause of action.
- [15] What is a reasonable cause of action? *"A reasonable cause of action is one with some chance of success when only the allegations on the pleadings are concerned."*³
- [16] In considering applications to strike out a statement of case the Court ought to bear in mind that *"so long as the statement of claim or the particulars disclose some cause of action, or raises some question fit to be decided by the judge or jury the mere fact that the case is weak and not likely to succeed is no ground for striking out"*⁴.
- [17] At this stage of the proceedings the Court is not required to carry out a detailed and minute examination of the facts, allegations and documents of the case to see whether there is a cause of action contained therein. *"...The purpose of considering an application to strike out a statement of claim, the truth of the allegations contained in the pleading is assumed"*⁵

Evidence in support of the application to strike:

- [18] The second named Defendant Mr. Levi A. Peter, the Learned Attorney General ("Mr Peter") deposed to an affidavit in support of the application to strike out. Mr. B McDonald Christopher deposed to an affidavit in

3 Per Lord Pearson in Drummond Jackson –v- British Medical Association [1970] 1 All ER 1094 CA

4 Re: Davey –v- Benton [1893] 1 QB 185, Moore –v- Lawson(1915) 31 TLR 48 CA, Wenlock –v- Maloney [1965] 2 All E R 871 (CA).

5 Per William JA in M4 Investments –v- Clico (Barbados) Ltd. (2006) 68 WIR 65 at Page 82, paragraph 36.

opposition to the application to strike. Both parties exhibited various documents in their affidavits.

[19] In summary the Defendants have through the Learned Attorney General said that:

- [i] He has read and relies on the Notice of Application filed on behalf of the Defendants and that the grounds of the application stated therein were true.
- [ii] The Claimant has not been requested or authorized by the Elections Commission to bring the claim;
- [iii] That the Defendants have not filed an answer to the claim since they believe that on the face of the claim there is no case to answer and as such they are relying on the application to strike out the claim.
- [iv] In the event that their application fails they would wish to defend the claim and accordingly he is asking to be relieved from sanctions and for leave to file the defence in 14 days.
- [v] The Claimant would not be prejudiced if the application is granted as he is fully cognizant of the Defendants' defence in the matter.

[20] In summary Mr Christopher said as follows:

- [i] That the Defendants' (Applicants') affidavit was insufficient in that it failed to adduce evidence in support of the Claimant's application. That the grounds of application are speculation and belief and not facts.
- [ii] That the right of action is his cause of action which is founded on the Defendants' contravention of the Constitution and that he is entitled to seek redress from the Court.

- [iii] That there was a legitimate expectation by members of the public that Voter ID's would be issued before the next elections.
- [iv] That the first named Defendant named him as being lazy and some members of the public disparaged him for no voter ID cards being available.
- [v] That he was named in 5 election petitions based on persons lack of qualification to vote or be voted for.
- [vi] That the 1st Defendant sought to direct and control the Electoral Commission when he [the 1st Defendant] proposed substituting National ID cards for the Voter ID cards thereby thwarting the Commission's decision.
- [vii] That he has *Locus Standi* to bring the action based on the contents of the Press Release which implicated him personally and caused him to be named in subsequent election petitions.
- [viii] That the contravention of Section 56 (11) of the Constitution by the Defendants affects him personally giving him the right to seek relief.
- [ix] That the Defendants held back funds needed for the issuance of Voter ID Cards and have in fact taken it out of the estimates
- [x] That he is a person aggrieved and with sufficient interest and standing regarding the financial affairs of the Elections Commission and that he is seeking to enforce his personal rights which have been interfered with by the current state of affairs.
- [xi] That his cause of action is that his rights under the Constitution are being contravened.
- [xii] That he has not yet disclosed all the evidence and documents in this matter which would be done at trial and for the Court to strike out the claim would be premature.

- [xiii] That the first named Defendant infringed on his right to freedom of association and freedom from discrimination, by his unjustified imputations about him which imputations were to promote the first Defendant's political objects. That this interfered with his rights of freedom of association.

THE ARGUMENTS

BY THE DEFENDANTS:

- [21] Counsel for the Applicants/Defendants, Mrs Francine Baron-Royer, mounted a thorough, detailed, well thought out and prepared review of the Claimant's affidavit sworn in support of his Claim, to show the Court why the Claimant's Claim should be struck out. Her submissions can be summarised as follows:

- I: That the allegations are misconceived, disclose no cause of action and are an abuse of process.**

**(a) On the alleged Breaches of Sections 56 & 38 of the Constitution –
that the Defendants by their actions sought to direct and control
the Electoral Commission:**

- [22] The Defendants' contention is that Mr. Christopher has failed to particularise the alleged violations of the Constitution as he is required to

do. Learned Counsel for the Defendants relied on the cases **Operation Dismantle –v- The Queen** ⁶ and **Amererally –v- Attorney General** ⁷ to say that it is a requirement that one must particularise and plead the alleged violations of the Constitution.

[23] Learned Counsel Mrs. Baron-Royer asked this Court to find that the Claimant's case is disjointed, inconsistent and fails to set out in a coherent manner the case that the Defendants have to answer, that the Claimant has failed to properly and sufficiently plead his case, that the Claim for relief by the Claimant is unsustainable, in that, the Claim discloses no reasonable cause of action against the Defendants.

[24] Learned Counsel Mrs Baron-Royer reviewed the Claimant's affidavit sworn in support of the application and had this to say:

[i] That the Claimant is relying on the contents of a letter written by the first named Defendant in his official capacity to the President, which letter was forwarded to the Commission and that the contents of the letter could not be construed as the Defendant "directing and controlling the commission".

[ii] That the Claimant's affidavit fails to disclose any cause of action against the first Defendant in his personal capacity as is claimed by the Claimant.

6 1986 LRC (Const) 42

7 (1978) 25 WIR 272.

- [iii] That the Claimant has failed to state any facts and or particulars that would disclose an entitlement to bring the proceedings against the Attorney General under the State Proceedings Act and that he has alleged no facts or given any particulars to identify any entitlement to join the second Defendant in the action by virtue of the said Act.
- [iv] That the Claimant in many paragraphs of his affidavit failed to give particulars of the actions that contravened section 56(11) of the Constitution as is required.
- [v] That the Claimant, at various paragraphs of the affidavit failed to disclose a cause of action against the Defendants and that the contents of many of the paragraphs are not clear as to what allegation is being made against the Defendants.
- [vi] That the Claimant has made allegations that are incapable of establishing an interference with the exercise of the function of the Commission and has failed to state how the Defendants have sought to fetter the action of the Commission.
- [vii] That the Claimant has failed to state what the function of the Commission is in respect of the Voter Identification Cards and how the Defendants have interfered with the said function.
- [viii] As it regards the breach of Section 56(11) of the Constitution by the Defendant "by requesting National ID cards instead of voter ID

Card” that the Claimant has failed to give particulars of when the request was made, how it was made and to whom it was made and by whom it was made. That the request could not possibly be seen in law to constitute an exercise of direction or control over the Commission.

- [ix] That some paragraphs of the affidavit are hearsay, irrelevant and inadmissible and do not disclose a cause of action.
- [x] As it regards the issue of the introduction of voter ID cards that the Claimant has failed to state or direct the Defendants to any law that requires the commission to introduce a card to be called a Voter ID card or that precludes the Commission from introducing an identification card to be called a National Identification Card.
- [xi] That the Claimant has stated that the first named Defendant cannot dictate to the Commission or replace its decision for Voter ID cards with National ID cards, that he has failed to say that they have sought to dictate or to allege any conduct on the part of the Defendants
- [xii] The manner in which the Claimant has pleaded his Claim would require the Defendant to seek to assume facts and particulars not pleaded in order to attempt to answer the claim which is unacceptable.

[b]Breaches of sections 11 and 13 of the Constitution that the First Defendant treated the Claimant in a discriminatory manner and that the first Defendant's actions was calculated to hinder the enjoyment of his freedom of association:

[25] That Mr. Christopher claims that the first Defendant treated him in a discriminatory manner in that he was treated less favourably than others in the Commission when the first Defendant allegedly called him in public lazy and that this amounted to a breach of his fundamental right not to be discriminated against. Further, that the first Defendant's actions was calculated to disparage him in the exercise of his official function on the Commission and that this amounted to a breach of Section 11 of the Constitution in relation to him and that it was calculated to hinder the enjoyment of his freedom of association.

[26] Learned Counsel, Mrs. Baron-Royer submitted that these claims are misconceived and disclosed no cause or reasonable cause of action and the claims are bound to fail for the following reasons as detailed in her submissions:

- (i) That the Claimant failed to plead material facts to show discrimination as is required by law. Learned counsel referred to and relied on the dicta of Massiah JA in **Nielsen –v-Barker**⁸ and

8 (1982) 32 WIR 254

9 Civil Appeal No 20A of 1997 (Antigua)

the decision in **Baldwin Spencer –v- The Antigua General of Antigua & Barbuda**⁹.

- (ii) That the Claimant failed to plead allegations and particulars to show that he as a Commissioner was subjected by the first named Defendant to disabilities or restrictions to which other Commissioners were not made subject to or that the first Defendant accorded privileges or advantages to the other Commissioners which were not accorded to him. That the Claimant failed to particularise the disabilities or restrictions or privileges or advantages that the others enjoyed which were denied to him.
- (iii) That the first Defendant's statement, if it was made and if it is true and could not be taken to be disparaging of the Claimant (*none of which is admitted by the Defendants*) and cannot possibly amount to a breach of the Claimant's fundamental rights to freedom of association. Learned Counsel cited and relied on the legal principles relating to the right to freedom of association as set out by Sir Hugh Wooding CJ in **Collymore & Abraham –v- The Attorney General**¹⁰ which was approved in the local case of **Sonia**

10 (1967) 12 WIR 5

Williams et al –v-The Attorney General of the Commonwealth of Dominica¹¹

“Freedom of association means no more than freedom to enter into consensual arrangement to promote the common-interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable.”

(iv) That this aspect of the Claimant’s claim must fail for three reasons:

- (a) That there is no general right to associate with the Commission; Membership is limited to five persons who are appointed by the President pursuant to the terms of section 56(3) of the Constitution.
- (b) That the tenure of the membership of the Commission is protected by the section 56 (6) of the Constitution and a person can only be removed “...only for inability to discharge the functions thereof or for misbehaviour”.

II. That the Complainant has no Locus Standi to bring these proceedings

[27] Learned Counsel Mrs. Baron-Royer submitted that Claimant’s Claim is unmeritorious and in the circumstances it is unsustainable and therefore

¹¹ Civil Appeal no 20 of 2004 (Dominica)

the Claimant has no Locus standi before the Court. Counsel also submitted that the matters complained of do not affect the Claimant's personal interest but relate to the functions of the Commission. Counsel cited as the authority for this submission the case of **Baldwin Spencer –v- The Attorney General of Antigua and Barbuda**¹² in summary Dennis Byron CJ (ag.) as he then was stated:

“in my view the common premise on which all these decisions seem to have been based was that before any question of locus standi can arise, there must be a sustainable allegation that a provision of the constitution has been or is being contravened, and that the alleged contravention affects the interest of the applicant. ... In my view it is essential that the two requirements of the alleged contravention of the constitution and a resultant affect on the interest of the applicant must both exist”

[28] Learned Counsel Mrs Baron-Royer concluded by submitting, that the Court has to be satisfied that assuming at this stage that the facts as alleged are all true and that there is a sufficient case for the Defendants to answer, and in this case she is asking the Court to find that this is not so.

12 Supra

She is therefore urging the Court to strike out the Claimant's Claim on the whole the ground that the Claim is misconceived and fails to disclose any reasonable cause of action and as such is an abuse of the process of the Court. That the case is without merit and has no prospect of success at trial and in the circumstances that the Claimant has no *Locus Standi*.

BY THE CLAIMANT:

- [29] The Claimant who is acting in person made a two part response to the Defendant's application the first was in writing and the second orally.

Written submissions:

1. The Defendants' breach of the Court order:

- [30] That the Defendants are in breach of the Court order granting them leave to file a defence when they failed to file the defence as ordered and therefore should not be allowed to apply to the Court to strike out as they are attempting to do:

- (i) That the Defendants' have failed to obey the order of this Court to file a defence in that on the 22nd October 2010, when they were granted leave to file a defence on or before the 5th November 2010 and instead of filing same they have made an application to strike out. That he, the Claimant, on the 15th November 2010 filed an

application *in response requesting that the Defendants'* application to strike out be dismissed.

- (ii) Mr. Christopher contended that the Defendants' failure to file a defence was intentional based on the second Defendant's averment that they have not filed a defence since they believe there is no case to answer. Mr Christopher further submitted that the Defendants chose not to adduce evidence in answer and that they have deliberately flouted the Court's order and in so doing they have impeded the course of justice. I am not certain that I understand the thrust of Mr. Christopher's argument as it regards the Defendants impeding the course of justice, however, I will say that it is the Court's understanding that applications such as this one are properly brought prior to the filing of a defence as a Defendant who files a defence on the merits in response to defective particulars of Claim is at risk of being denied its application, as that application would be inconsistent with defending the proceedings. Accordingly I will not accede to the Claimant's application in this regard and will review the Defendant's application to strike and take into consideration the Defendant's submissions and the Claimant's submissions in that regard.

2. Locus standi:

[31] Mr Christopher submitted that the core issue to be determined by the Court at this juncture, is whether the Claimant has sufficient, relevant interest and standing to obtain the orders sought and he submitted that:-

- (i) That the prohibitions under the Constitution are not addressed to anyone in particular and under sections 103 and 16 of the Constitution anyone who is aggrieved, if he has a relevant interest can apply to the High Court for a declaration.
- (ii) That section 19 of the Register of Electors Act¹³ empowers the Commission through the Chief Registering Officer to cause voter ID's to be issued. That the Defendants prevented this from happening and in so doing he suffered personal repercussions and he was disparaged and slandered.
- (iii) That he was forced to be before the Court as he was joined as a Defendant in election petitions and this was as a result of the failure by the Defendants to enact the electoral reform that was required.

[32] Mr Christopher relied on **Attorney General of St Christopher –v- Payne**¹⁴ in support of his contention that as a member of the Electoral Commission he has a relevant interest and locus standi to bring the matter before the Court.

13 Chapter 19 of the Laws of the Commonwealth of Dominica

14 **Attorney General of St Christopher –v- Payne (1982) 30 WIR 88**

3. On suing the First named Defendant personally:

- [33] The Claimant disagreed with the Defendants' contention that there is no sustainable allegation against the First Defendant that he, in his personal capacity he sought to control and direct the Electoral Commission. The Claimant submitted that the issue to be determined by the Court is whether the first named Defendant is immune from suit for breach of the Constitutional provisions as claimed. Mr Christopher told this Court that *"the Defendant is a private person performing coercive functions of the state"* and he further submitted that The State Proceedings Act attaches liability to the State only if acts and statements are done in an official capacity. *"That unauthorised acts by Governmental officials are subject to actions in the official's personal capacity."* Mr Christopher contended that he has joined the First named Defendant in his private capacity because he did acts which were unlawful and illegal and in breach of the constitution which makes him personally liable.
- [34] Mr. Christopher sought to rely on **Fort Street Tourism Village –v- Attorney General of Belize and others, Fort Street Tourism Village –v-**

Maritime Estates Ltd and others¹⁵ to support his contention that the acts by a private entity is susceptible to Judicial Control.

4. Direct and Control of the Commission by the first named Defendant:

[35] Mr. Christopher contended that there is a cause of action which has been pleaded against the first named Defendant. He invited the Court to find that, based on the emails which he has exhibited to his affidavit at BDC 2 and 3 that the first named Defendant was seeking to direct and control the Commission when he wrote to the President on the issue of the Voter ID Cards and proposed that a Parliamentary Sub Committee be put in place to interface with the Commission with a view to examining the issue thoroughly and making recommendations to Parliament on the way forward and also the Government's response to the request for funds by the Commission to introduce the Voter ID Cards. That in the circumstances the central issue to be considered by the Court was whether there is a cause of action against any person who is politically motivated and who puts Party politics in priority to the independence of the Commission which is what he is accusing the first named Defendant of.

15 Fort Street Tourism Village –v- Attorney General of Belize and others, Fort Street Tourism Village –v- Maritime Estates Ltd and others. 74 WIR 133

[36] Mr. Christopher further contended that the actions by the first named Defendant amounted to directing and controlling the Commission in his personal capacity and that in the circumstances he, the Claimant is permitted to proceed against the first named Defendant as an individual whether or not the individual acts on behalf of the Government and he cited **Hochoy –v-N.U.G.E. and others**¹⁶ his authority in this regard.

[37] Mr Christopher further contended that the Court is not required at this stage to examine the evidence “*in limine*” to see if the Claimant can prove his case or to assess its prospects of success, but that the Court’s function is to examine the Claim to see if there is sufficient to establish a cause of action. Mr Christopher referred to **Lonrho –v-Fayed**¹⁷ and noted that the dictum of this case was applied in **M4 Investments –v- Clico Holdings**¹⁸

[38] Mr Christopher contended that even though the first named Defendant is a servant of the state within the confines of the State Proceedings Act¹⁹ that the memorandum to the President signed by the first Defendant as Prime Minister linked him to the main Claim of the action under section 103 of the Constitution that he is being sued personally because “as

16 **Hochoy –v- N.U.G.E.** 7 WIR 174

17 **Lonrho –v- Fayed** *supra*

18 **M4 Investments Inc –v- Clico Holdings** (2004) 68 WIR 65

19 **State Proceedings Act Chapter 7:80** of the Laws of Dominica

Prime Minister he has the authority and opportunity to perform coercive functions personally.”

[39] Mr Christopher contended that he is seeking redress for his protected Constitutional rights against the first Defendant personally and that section 16 of the Constitution enables him to do so, and he is Claiming monetary compensation as well as other redress and that there is no other adequate means of redress available to him on the facts and circumstances given. That the first named Defendant cannot be sued in his official capacity and this is the only way the Claimant’s protected Constitutional rights could be enforced against him.

[40] The Claimant submitted that striking out is a summary remedy that should be applied only in plain and obvious cases and the Claimant should not be driven from the judgment seat. That the summary process should not take the place of the trial where there would be full disclosure and cross examination of the witnesses.

[41] Mr Christopher contended that his Claim disclosed a cause of action his claim is not unreasonably vague, incoherent or vexatious. That striking out would be unduly harsh as the Claim raises serious issues of fact which can only be properly determined at the trial and that he had a reasonable prospect of success he urged the Court when considering the application to focus on the justice of the case to both Claimant and Defendants.

Oral submissions:

[42] Mr Christopher in his oral submissions in response to Mrs Baron-Royer's submissions made the following points:

- (i) That the rules of pleading means a Statement of Claim and does not apply to an originating motion supported by an affidavit (*which is what he has filed*) and that it is the CPR that gives him the right to file an affidavit instead of a statement of Claim. In support of this submission Mr Christopher cited the statement of De La Bastide CJ as he then was in the **Attorney-General –v- M M Bookers Ltd.**²⁰

“Evidence, whether written or oral, is not subject to the technical rules applicable to pleadings”.

- (ii) That the issue of Direction and Control by the Defendants in contravention of Section 56(11) of the Constitution. Mr Christopher said that direct and control means to use ones power to dominate, censure and give command and that the letter to which he referred

²⁰ (1996) 50 W I R 462

in his skeleton arguments came from the first named Defendant. That when the letter was received by the Commission the arrangements were already made for the Voter ID cards and all that was needed was the money to implement it. That the constitutional powers of the Commission is to be responsible for registration of voters which included the issue of Voter ID Cards and that the law is already in place and so he disagreed with Learned Counsel Mrs Baron-Royer that there was no need to go to the Parliament to get any law to implement Voter ID Cards and that Mrs. Baron-Royer's arguments are misconceived that she is confusing the normal recommendation sent by the Commission to the President that is recommended changes to the existing legislation and the issue of the issuing of Voter ID Cards. Mr Christopher submitted that there is no need to amend the law to issue the Voter ID Cards. That the law is already in place ²¹ and as such Mrs Baron-Royer's submission about the need for amended Legislation is misconceived.

- (iii) On the requirement for him to apply for leave of the Court to seek an order of mandamus it being a "specie" of judicial review. Mr Christopher submitted "that there is new procedure under CPR 56

21 Tab D (of Mr Bernard Macdonald Christopher's written submissions) – The Constitutional Authority.

Tab E – The Registration of Electors Act Section 19. Tab F The Registration of Electors Registration – Regulation 15.

... and apart from that, under the inherent jurisdiction of the Court one does not have to come for leave. That once an application is made it is just like any mandatory injunction and the Court has the power to grant it.” Mr Christopher went on to say to the Court that “Mandamus is quite separate and distinct from the new procedure for judicial review. It’s a very old prerogative power from the Modern day prerogative writs.”

- (iv) As it regards the capacity in which he has sued the first named Defendant, Roosevelt Skerit, Mr Christopher submitted that he is being sued in personal capacity because the first Defendant, Mr Skerit did that which he was not authorised to do that is “name calling” and he has sued him and he has sued him through the Attorney General and the State proceedings Act in his official capacity for acts which he has done in his official capacity.
- (v) Mr Christopher then briefly addressed on the fact that the Court should exercise its discretion to strike out sparingly. And that the Court should make every effort to save the proceeding where it is just and reasonable to do so.²²

Analysis:

22 Attorney General –v- Siewch and Ramroop (2005)66 W I R 334

[43] I understand Counsel to be saying that he has filed an originating motion in this matter with a supporting affidavit which is not subject to the technical rules of pleading relied on by Mrs Baron-Royer in her application to strike and in the circumstances his affidavit cannot be struck on the grounds claimed.

[45] The Claimant is seeking declarations from this Court for alleged breaches of provisions of the Constitution. Section 103 of the Constitution of the Commonwealth of Dominica permits him to do so²³

[45] I am, in matters such as these, that is in matters of Public Law required to first determine the nature of the alleged violation of the constitution.

[46] The Claimant, Mr Christopher has alleged the following violations of the Constitution:

- (i) Breaches of Sections 56 & 38 of the Constitution – and he has contended that the Defendants by their actions sought to direct and control the Electoral Commission;

23 Section 103 of the Constitution states ... "any person who alleges that any provision of this Constitution has been or is being contravened may if has a relevant interest apply to the High Court for a declaration and for relief under this section."

- (ii) Breaches of sections 11 and 13 of the Constitution that the First Defendant treated him the Claimant in a discriminatory manner and that the first Defendant's actions were calculated to hinder the enjoyment of his (the Claimant's) right to freedom of association:

[47] As I understand it, the question for decision is whether the Claimant would be entitled to such relief based on his case as put in his affidavit.

The general principles are as follows:

- (a) That the Claimant who seeks to claim breach of constitutional provisions should show on the face of the pleadings the nature of the alleged violation or contravention that is being asserted.²⁴

- (b) The allegations grounding this violation must be serious.²⁵

[48] In the case at bar, Counsel for the Defendants, Mrs Francine Baron-Royer has applied for the Claimant's claim to be struck out because the allegations contained therein are misconceived, that the claim discloses no cause of actions against the Defendants and is an abuse of the process of the Court.

[49] Firstly, that the applicant is contending that Mr Christopher's allegations are misconceived, disclose no cause of action and are an abuse of the process of the Court.

24 Basu on the Constitution of India (5th Edition) Vol 1 p 494 as quoted by Crane JA in *Amerally & Bentham –v- Attorney General et al* (1978) 25 WIR 272 @308

25 *ibid*

- [50] Secondly, that the Claimant failed to plead material facts to show discrimination as is required by law. Learned counsel referred and relied on the dicta of Massiah JA in **Nielsen –v-Barker**²⁶ and the decision in **Baldwin Spencer –v- The Attorney General of Antigua & Barbuda**²⁷.
- [51] Thirdly, that the Claimant failed to particularise the disabilities or restrictions or privileges or advantages that the others enjoyed which were denied to him as is required.
- [52] Fourthly, that the first Defendant's statement; if it was made and if it is true and could be assumed to be disparaging of the Claimant; (*none of which is admitted by the Defendants*) cannot possibly amount to a breach of the Claimant's fundamental rights to freedom of association.
- [53] On the other hand, Mr Christopher who appears on his own behalf is saying that he has a good cause of action before the Court and his claim should be allowed to stand.

Findings

- [54] I have considered each submission made in the matter and I have made a finding that effectively disposes of the application:
1. That the allegations are misconceived, disclose no cause of action and are an abuse of process. I have reviewed learned counsel, Mrs Baron-Royer's submissions on this point and agree with her. I find

26 (1982) 32 WIR 254

27 Civil Appeal No 20A of 1997 (Antigua)

that Mr Christopher's claim as stated in his Claim and supporting affidavit failed to show any cause of action against the first named Defendant for these reasons.

(a) That the Claimant's case as stated is disjointed and inconsistent. The Court experienced great difficulty in following the Claimant's case and his reasoning and finds that there is no cause of action pleaded. The Court fails to see how the memorandum which the Claimant is seeking to rely on as the major ground for his application can be construed as that the Defendants are attempting to direct and control the Commission. Further the Court fails to see how the words allegedly uttered by the First named Defendant could amount to a breach of the Claimant's constitutional right to freedom of movement and association as alleged.

(b) I agree with learned Counsel Mrs Baron-Royer that the Claimant failed to plead material facts to show discrimination as is required by law. Learned counsel referred and endorsed her reliance on the dicta of Massiah JA in **Nielsen**

–v-Barker²⁸ and the decision in **Baldwin Spencer –v- The Attorney General of Antigua & Barbuda**²⁹.

(c) I also agree that the Claimant failed to particularise the disabilities or restrictions or privileges or advantages that the others enjoyed which were denied to him.

(d) I further agree that assuming that the first Defendant made the statement as alleged I find that even taken at its highest that it could not possibly amount to a breach of the Claimant's fundamental rights to freedom of association and I adopt the legal principles relating to the right to freedom of association as enunciated by Sir Hugh Wooding CJ in **Collymore & Abraham –v- The Attorney General**³⁰ which was approved in the local case of **Sonia Williams et al –v- The Attorney General of the Commonwealth of Dominica**³¹

“Freedom of association means no more than freedom to enter into consensual arrangement to promote the common-

28 (1982) 32 WIR 254

29 Civil Appeal No 20A of 1997 (Antigua)

30 (1967) 12 WIR 5

31 Civil Appeal no 20 of 2004 (Dominica)

interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable.”

[55] I agree with Learned Counsel Mrs Baron Royer’s submission that Claimant’s claim is unmeritorious and in the circumstances it is unsustainable and therefore the Claimant has no Locus standi before the Court. That the matters complained of do not affect the Claimant’s personal interest but relate to the functions of the Commission as decided in the case of **Baldwin Spencer –v- The Attorney General of Antigua and Barbuda**³² . I respectfully adopt the dicta of Dennis Byron CJ (ag.) as he then was to wit

“in my view the common premise on which all these decisions seem to have been based was that before any question of locus standi can arise, there must be a sustainable allegation that a provision of the constitution has been or is being contravened, and that the alleged contravention affects the interest of the applicant. ... In my view it is essential that the two requirements of the alleged contravention of the

32 Supra

*constitution and a resultant affect on the interest of
the applicant must both exist"*

[56] I do not agree with the Claimant that the letter written by the first Defendant in his official capacity as Prime Minister constitutes or amounts to direction and control of the Commission. Further that the first Defendant cannot be not personally liable for the contents of the said letter as the Claimant seems to want to suggest.

[57] Further I do not agree with the Claimant that the failure to make a budgetary allocation for the issuance of Voter's Identification cards can be construed as to amount to direction and control in breach of the Constitution in part or at all.

[58] I reject the Claimant's contention that the words complained of amounts to a breach of the constitution on the part of the First Defendant. I am not convinced by the affidavit evidence that the Claimant's complaint is justified.

[59] On the question of an application for mandamus made by the Claimant, the Court does not agree with the Claimant that part 56 of the Civil Procedure Rules [CPR] provides a new procedure to apply for Judicial Review and apart from the provisions of CPR and that a person can come under the inherent jurisdiction of the Court to seek mandamus. I understand the Claimant to be saying that "Mandamus" is quite separate and distinct from modern day prerogative writs and is more in the nature of

a mandatory injunction and in the circumstances one does not have to seek the Court's leave to apply for same.

[60] Part 56 (3) of CPR 2000 states: *"The term "Judicial review" includes the remedies (whether by way of writ or order of-*

(a) *Certiorari, for quashing unlawful acts*

(b) *"mandamus" – for requiring performance of a public duty, including a duty to move a decision or determination, or to hear and determine a case and ...*

[61] 56.3 says: *"A person wishing to apply for judicial review must first obtain leave."*

[62] Therefore the Claimant's application must fail in that he has not sought to comply with the mandatory requirements of CPR 56.3 to apply for leave and therefore paragraph 5[x] of the Claimant's claim is struck out.

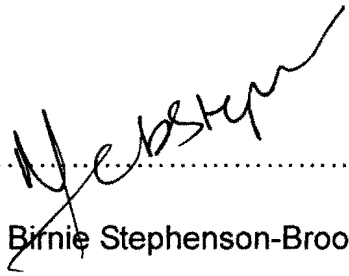
Conclusion

[63] In my view the Claimant's case contains views that are political rather than justiciable questions which involves the question of the Voters list, the issue of Voter ID cards as against the possible issue of National ID cards and accordingly he has failed to plead or establish any cause of action for which the Defendants could be called to answer, further that the claim on the face of it does not raise issues of fact which can be properly

determined at trial. I also find that the case as set out and the arguments presented by the Claimant was confusing, difficult to follow and does not properly present itself as a case that the Defendant could properly answer.

[64] The Court's concern at this juncture is to determine whether a reasonable cause of action is made out in order that the issues may be tried on its merits and apply the principles of law as laid down in the cases cited, it is my finding that the Claimant has not established a reasonable cause of action as is required and accordingly the Defendants application to strike out is granted with no order as to costs.

[65] I would like to express my thanks to Counsel for their assistance rendered in this matter.


.....
M E Birnie Stephenson-Brooks
High Court Judge