

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO: 349 OF 2009

IN THE MATTER OF THE CONSTITUTION OF ST. VINCENT AND THE GRENADINES

AND

**IN THE MATTER OF AN APPLICATION MADE UNDER THE CIVIL PROCEDURE RULES 2000
AND THE HIGH COURT CONSTITUTION REDRESS RULES, CONTAINED IN BOOKLET 3 TO
THE AFORESAID CONSTITUTION**

AND

**IN THE MATTER OF SECTION 2, 3, 4, 5, 6, 7, 8 AND THE FIRST SCHEDULE THEREOF OF THE
REFERENDUM (ALTERATION OF THE CONSTITUTION) ACT NO. 14 OF 2009,**

AND

**IN THE MATTER OF SECTIONS 33, 42, 45 OF THE REPRESENTATION OF THE PEOPLE ACT
CAP 6 OF THE REVISED LAWS OF ST. VINCENT & THE GRENADINES**

AND

IN THE MATTER OF THE HOUSE OF ASSEMBLY ELECTION RULES

AND

**IN THE MATTER OF APPLICATION BY IVAN O'NEAL FOR REDRESS PURSUANT TO
SECTIONS 16, 96 AND 101 OF THE SAID CONSTITUTION OF ST. VINCENT AND THE
GRENADINES FOR CONTRAVENTION OF SECTIONS 1(b) 10, 8, 34, 38 THEREOF**

BETWEEN:

**IVAN O'NEAL
SVG GREEN PARTY**

Claimants

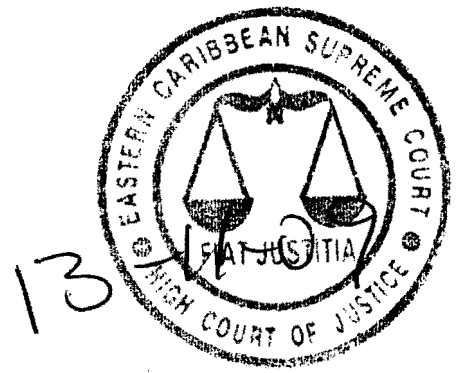
AND

**THE SUPERVISOR OF ELECTIONS OF ST. VINCENT & THE GRENADINES,
MRS.SLYVIA FINDLAY**

AND

THE ATTORNEY GENERAL OF ST. VINCENT & THE GRENADINES

Defendants



Appearances:

Mr. Parnell Campbell Q.C. for the Applicants/Defendants
Mr. Emery Robertson Sr. for the Respondents/Claimant

RULING

- [1] **REMY J.:** On the 13th November 2009, I gave oral reasons for my decision in this matter. Counsel for the Claimants requested that I give a written decision. I do so now.
- [2] By Fixed Date Claim filed on the 22nd October 2009, the Claimants sought reliefs namely declarations:
- (a) A Declaration that Section 34 empowers the Supervisor of Elections to exercise her own discretion on the allocation of symbols to candidate as well as to political parties and that in the exercise of her functions she is not subjected to the control of any person or authority or any Minister.
 - (b) A Declaration that Section 7 of the Referendum of the Constitution Act No. 14 of 2009 is contrary to Section 3 of the Constitution and Representation of the People's Act 1982 and ought to be declared null and void.
 - (c) A Declaration that Section 8 of the Act No. 14 of 2009 ought to be declared unconstitutional having regard to Section 34 of the Constitution.
 - (d) A Declaration that the Supervisor of Elections having failed to allocate symbols she has negated her duty and/or failed to exercise her discretion and the same is unreasonable and/or not reasonably justifiable in a democratic society and is wrong having regard to the requests made by the applicants to address this matter and contrary to Section 10 of the Constitution.
 - (e) A Declaration that voting by symbols is a constitutional right and in furtherance of the democratic process of free and fair elections and/or a constitutional change (a Referendum) the right to vote in a particular way ought not be infringed.

- (f) A Declaration that the Process would be better aided by the assignment of symbols. The said Sect 5 Referendum (Alteration of the Constitution Act) No. 14 of 2009 is in conflict with Section 34 of the Constitution.
- (g) A Declaration that the failure to implement the ballot system deprives the illiterate person of an opportunity to participate in this most important constitutional step of expressing his free will by placing his vote next to the symbol of his choice.
- (h) A Declaration that by the use of the symbol the people's democratic rights to participate in the governance of their Country will be recognized and counted one way or the other.
- (i) A Declaration that since adult suffrage in 1951 the electorate of this County have voted for individual candidates as well as political parties by means of symbols and the same can well be considered as entrenched in the Constitution and the Representation of the Peoples Act and to deprive them of the opportunity to vote in this manner is contrary to the spirit and intendment of the Ballot Act and the Representation of the People's Act.
- (j) A Declaration that in accordance with the Constitution Section 34 of the Supervisor of Elections is not subject to the control and direction of any person or authority and that the Referendum Act No. 14 of 2009. Section 5(3) (4) (5) and (7) and (8) are contrary to the Representation of the People's Act and are void.
- (k) A Declaration that any regulations made or purported to be made by the Minister pursuant to Section 7(1) of the Referendum Alteration of the Constitution Act No. 14 of 2009 be declared null and void.
- (l) A Declaration that Sections 5(3) of the Referendum Amendment of the Constitution Act No. 14 of 2009 is contrary to the Representation of the People's Act 1982 and is null and void and that it cuts across the principle of fairness and the result of the poll and that Section 5(4) and (5) does not provide for public information on the results of the election until fourteen (14) days after the result of the poll and is therefore unconstitutional and void and cuts across the declaration in the Constitution

Schedule Part 2 Preamble (a) (b) (d) and the fundamental rights provisions of Chapter 1.1 (b)

- [3] They also sought Orders namely:-
- (a) That an Order of Mandamus be issued against the Supervisor of Elections to allot symbols to the "Yes" vote and the "No" vote.
 - (b) That the Supervisor of Elections do forthwith allocate symbols representing the "No" vote and the "Yes" vote.
 - (c) That an Order be made directing the Supervisor of Elections that the question posed on the proposed ballot paper be printed with symbols representing the "No" vote and the "Yes" vote accordingly and in sufficient time to inform the electorate as to the assigned symbols.
 - (d) That every facility be made available to all the political parties and other public spirited parties involved in the referendum and/or individuals to educate the general public as to the reasons why they should vote for or against a change in the constitution.
- [4] The Defendants filed a defence on the 6th November 2009.
- [5] By Notice of Application filed on the 9th November, 2009, the Defendants applied to the Court for the following reliefs namely:-
- (1) An order that the Claim be struck out for want of *locus standi* on the part of the Claimants.
 - (2) In so far as the Claim purports to constitute an application for an administrative order, and in so far as that administrative order consists of an application for judicial review pursuant to Part 56.7 (1) (b) of the Civil Procedure Rules 2000, then the Defendants pray for an Order that the Claim be struck out for non-compliance with the mandatory provisions of Part 56.3 (1) of the Civil Procedure Rules 2000, in that the Claimants have failed or neglected to apply for or to receive leave of the Court before filing and serving the Claim herein, thereby depriving the Court of jurisdiction to entertain the

said Claim in the absence of any Order made by the Court exempting the Claimants from the need to seek or to receive such leave.

(3) An Order that the Claim be struck out for failure to disclose any justiciable issue.

[6] When the matter came up for hearing on the 12th November 2009, Counsel for the Defendants Parnell Campbell Q.C. asked the Court to rule on a preliminary issue, namely that of the Court's jurisdiction to entertain the claim.

[7] Counsel Parnell Campbell submitted as follows:-

On 23rd October, the Claimants purported to file what was headed "Fixed Date Claim Form- Originating motion" in which they sought certain orders/declarations. These were set out in numbered paragraphs.

Paragraphs 1-12 consisted of relief for declarations; paragraph 13 (with 4 sub-paragraphs) consisted of relief involving an order of mandamus. Paragraph 13 (1) specifies that an order of mandamus is sought. Paragraph 13 (2) namely "That the Supervisor of Elections do forthwith allocate symbols representing the "No" vote and the "Yes" vote, must refer to mandamus.

That paragraph 13 (4) namely "That every facility be made available to all the political parties and other public spirited parties involved in the referendum and/or individual to educate the general public as to the reasons why they should vote for or against a change in the constitution", is irrelevant.

The Claimants have therefore moved the court to grant an order of mandamus. The declarations are leading up to an order of mandamus. CPR 2000 Part 56 deals with such applications:

- 56.(1) (b)- deals with applications for a declaration in which a party is the State, a court, a tribunal or any other public body;
- 56.1 (c) - deals with applications for judicial review
- 56.1 (2) - states that such applications are referred to as "applications for an administrative order".
- 56.1 (3) - term "judicial review" includes the remedies of ...
.....
(b) mandamus.

In essence, the application is for judicial review.

- 56.3 (1)- states that a person wishing to apply for judicial review must first obtain leave.
- 56.3 (3) - states No such application for leave has been made in this case.

Rule 57.7 (1) states that an application for administrative order must be made by fixed date claim in Form 2 . The Claimants' application is predicated on the

assumption that leave must be applied for and obtained. The leading authority for this is the case of Re Blake 1994 47 WIR, which states that you must have obtained leave.

Rule 56 (3) is a straightforward command statement. Nothing can be clearer than that; there is no circumventing that rule. This is an originating application and the Claimants are obliged to comply with that rule."

Accordingly, the defendants ask the Court to strike out the application for non-compliance with a rule which is mandatory. Counsel concluded that, as of now, the Court has no jurisdiction to entertain the claim as filed in the absence of leave.

[8] Counsel for the Claimant Emery Robertson Sr. responded to Counsel's submissions as follows:-

One does not need leave to bring any application for any relief under the Constitution of St. Vincent and the Grenadines.

That the Claim is headed as follows:-

" In The Matter Of The Constitution Of St. Vincent And The Grenadines

And

In The Matter Of An Application Made Under The Civil Procedure Rules 2000 And The High Court Constitution Redress Rules, Contained In Booklet 3 To The Aforesaid Constitution

And

In The Matter Of Section 2,3,4,5,6,7,8 And The First Schedule Thereof Of The Referendum (Alteration Of The Constitution) Act No. 14 Of 2009,

And

In The Matter Of Sections 33, 42, 45 Of The Representation Of The People Act Cap 6 Of The Revised Laws Of St. Vincent & The Grenadines

And

In The Matter Of The House Of Assembly Election Rules

And

In The Matter Of Application By Ivan O'neal For Redress Pursuant To Sections 16, 96 And 101 Of The Said Constitution Of St. Vincent and The Grenadines For Contravention Of Sections 1(B) 10, 8, 34, 38 thereof."

[9] Counsel contended that this is a constitutional motion and that the Claimants are asking for certain declarations namely:-

- (a) A declaration that Section 34 empowers the Supervisor of Elections to exercise her own discretion on the allocation of symbols to candidates as well as to political parties and that in the exercise of her functions she is not subjected to the control of any person or authority or any Minister.
- (b) A Declaration that Section 7 of the Referendum of the Constitution Act No 14 of 2009 is contrary to Section 34 of the Constitution and the Representation of the People's Act 1982 and ought to be declared null and void.
- (c) A Declaration that Section 8 of Act No.14 of 2009 ought to be declared unconstitutional having regard to section 34 of the Constitution.
- (d) A Declaration that the Supervisor of Elections having failed to allocate symbols she has negated her duty and/or failed to exercise her discretion and the same is unreasonable and/or not reasonably justifiable in a democratic society and is wrong having regard to the requests made by the applicants to address this matter and contrary to Section 10 of the Constitution.
- (e) A Declaration that voting by symbols is a constitutional right and in furtherance of the democratic process of free and fair elections and/or a constitutional change (a Referendum) the right to vote in a particular way ought not to be infringed.
- (f) A Declaration that the Process would be better aided by the assignment of symbols. The said Sect 5 Referendum (Alteration of the Constitution Act No 14 of 2009 is in conflict with Section 34 of the Constitution.
- (g) A Declaration that the failure to implement the ballot system deprives the illiterate person of an opportunity to participate in this most important constitutional step of expressing his free will by placing his vote next to the symbol of his choice.

- (h) A Declaration that by the use of the symbol the people's democratic rights to participate in the governance of their Country will be recognized and counted one way or the other.
- (i) A Declaration that since adult suffrage in 1951 the electorate of this Country have voted for individual candidates as well as political parties by means of symbols and the same can well be considered as entrenched in the Constitution and the Representation of the Peoples Act and to deprive them of the opportunity to vote in this manner is contrary to the spirit and intendment of the Ballot Act and the Representation of the People's Act.
- (j) A Declaration that in accordance with the Constitution Section 34 (6) the Supervisor of Elections is not subject to the control and direction of any person or authority and that the Referendum Act No.14 of 2009 Section 5 (3) (4) (5) and (7) and (8) are contrary to the Representation of the People Act 1982 and are void.
- (k) A Declaration that any regulations made or purported to be made by the Minister pursuant to Section 7 (1) of the Referendum Alteration of the Constitution Act No. 14 of 2009 be declared null and void.
- (l) A Declaration that Sections 5 (3) of the Referendum Amendment of the Constitution Act No. 14 of 2009 is contrary to the Representation of the People's Act 1982 and is null and void and that it cuts across the principle of fairness and the result of the poll and that Section 5 (4) and (5) does not provide for public information on the results of the election until fourteen (14) days after the result of the poll and is therefore unconstitutional and void and cuts across the declaration in the Constitution Schedule Part 2 Preamble (a) (b) (d) and the fundamental rights provisions of Chapter 1.1 (b).

[10] Counsel contended that all of these are matters of law, to which one does not need leave. One has a right to approach the Court. That the Claimants do not need leave so long as they can show that they have a relevant interest.

That any person can bring a constitutional motion for a violation of the Constitution.

All of the above are declarations which are sought.

That having a referendum is for the people, not for the party in power.

That the Defendants are squarely under the Constitution and are not under that rule.

That the court does not throw out any case because of non-compliance with a rule.

That the Court should note Part 26.9 (1) of the rules as this is the non-compliance rule.

That the Supreme Court Act, Section 20, overrides the rules.

That Section 22 of the Eastern Caribbean Supreme Court Act, Cap 18 states that "No action shall be open to objection on the ground that a mere declaration or other order is sought."

That all the Claimants seek are declaratory orders and any consequential order which will be made as a result of any declaration sought. Counsel's application to strike out is ill-conceived.

That the defendants are seeking a relief.

That the Court must not exercise its discretion to strike out whimsically.

[11] Counsel for the Defendants Parnell Campbell Q.C. responded as follows:-

That the case of **Ashley v White** is irrelevant.

That in the case of **John Doe v Attorney General of Guyana**, the Court ruled that if the law prescribes a remedy but the law does not describe a procedure to commence proceedings, it is permissible for an applicant to come before by any remedy available.

That Section 20 of the Eastern Caribbean Supreme Court Act is not relevant to the objection made because all Section 20 prescribes is the availability of all remedies to persons who appear to deserve those remedies in so far as giving a remedy.

That at Section 20 was meant to counter the old English rule when forms of action were invoked - was meant to broaden the jurisdiction of the High Court and Court of Appeal.

That the essence of what the Claimant is asking is a demand for symbols on the ballot paper .

[12] Further, argued Counsel, some of the reliefs which the Claimants seek are not permissible against the defendants. Counsel stated that, for instance, the second declaration sought namely , "A Declaration that Section 7 of the Referendum of The Constitution Act No. 14 of 2009 is contrary to Section 34 of the Constitution and the Representation of the People's Act

1982 and ought to be declared null and void” , is not permissible against the 2nd defendant, namely the Supervisor of Elections of St. Vincent & the Grenadines, Mrs. Sylvia Findlay. Similarly, that the third declaration sought, namely “A Declaration that Section 8 of Act No.14 of 2009 ought to be declared unconstitutional having regard to section 34 of the Constitution”, is not permissible against the 2nd defendant.

[13] Counsel further contended that the essence of the complaints by the Claimants is that the Supervisor of Elections had a legal/constitutional duty to provide symbols. She has not done so, so they are asking the Court to order her to do so. This, argues Counsel, amounts to an order under judicial review proceedings for which they need leave .Further, the granting or refusing of leave is a substantial process. It is not an irregularity to be waived; the consequences are too serious.

[14] Counsel for the Claimants Emery Robertson Sr. re-iterated that the Claimants are dealing with constitutional matters. Counsel cited the cases, namely:-

- (a) **The Queen v Greater London Council, ex parte Blackburn** 1976 3 ALL ER, page 184
- (b) **Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd.** 1981 2 ALL ER, page 93
- (c) **Attorney-General (on the relation of McWhirter) v Independent Broadcasting Authority** 1973 1 ALL ER, page 689

[15] I informed the parties that I was reserving my decision. Counsel pleaded that the matter was urgent and I agreed to give my decision at 10 a.m. the following day. Counsel Emery Robertson said that he would make available to me the authorities to which he had referred by 3.30 that day.

[16] The Court noted that, of the above-mentioned cases:-

R v Greater London Council ex parte Blackburn dealt with locus standi.
Inland Revenue Comrs v National Federation of Self-Employed and Small Businesses Ltd. similarly dealt with locus standi. The issue there was whether the applicant for judicial review had a "sufficient interest" in the matter.

FINDINGS

[17] Part 56.1 (1) of the Civil Procedure Rules 2000 (CPR) deals with applications:-

- (a) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory
- (b) for a declaration in which a party is the State, a court, a tribunal or any other public body.

In the present case, the Claimants do not merely seek declarations in a vacuum. What they seek from the Court is that, having made the declarations, that the Court grant the remedy by way of an order, namely an order of mandamus.

[18] Part 56.1 (3) (b) states that the term "judicial review" includes....

- (b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case . Leave is therefore required.

Part 56.3 (1) states that a person wishing to apply for judicial review must first obtain leave.

[19] Counsel for the Claimants seeks refuge from Part 26.9 (3) of CPR which he states is the "non-compliance rule". Part 26.9 (3) states that "if there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right."

[20] Counsel, however, should have been mindful of Part 26.1. Part 26.1 (1) states .." the list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment." Part 26.1 (2) states:- "Except where these rules provide otherwise, the court may (i) dismiss or give judgment on a claim after a decision on a preliminary issue."

[21] Counsel should also have been mindful of Part 26.3 (1) which states" 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."

ORDER

[22] My Order is as follows:-

1. On the preliminary issue which Counsel for the Defendants has asked the Court to consider. I find therefore that, the Claimants not having sought and obtained leave, which is a pre-requirement, the Court has no jurisdiction to entertain the proceedings, as there is nothing before the Court.
2. With respect to the oral application of Counsel for the Claimants for leave to appeal, leave is granted.
3. The application for a stay is refused.
4. Costs to the Defendants in the sum of \$1500.00



.....
Jennifer Remy
HIGH COURT JUDGE