

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2006**

Claims No. SKBHCV 2009/0133 to 0144

**In the Matter of the National
Assembly Elections Act Cap. 162
Of the Laws of Saint Christopher
And Nevis (Revised Edition 1961)**

**And in the matter of the Saint
Christopher and Nevis
Constitution Order 1983**

**And in the matter of an Election
For the Constituency 8 held on
25th day of October 2004**

BETWEEN

**EUGENE HAMILTON
ROBERT CHARLES**

Claimants

And

JOSEPH EDMEADE

Defendant

Appearances: Mr Vincent Byron for the Claimants
Mr Arudranauth Gossai for the Defendant

**2009: June 29th
July 3rd**

JUDGMENT

- [1] **BELLE J.** The Appellants filed appeals against the decision of the Registration Officer for Electoral District of Saint Christopher #8 denying the objection of the Appellants against the inclusion of Teresa Pemberton and Travia Williams in the register of voters for polling division #6 and his decision on an objection in relation to the inclusion

of Shayne Hanley, Keisha Hanley, Kiaye [Kaye] Hanley, Kelly –Anne Hanley, Carol Freeman, Nioka Morris, Damion Williams, Calvin Williams, Kristol Moton, and Petron Matthew in the Register of Voters for Polling Division #5 of the Electoral District in Saint Christopher # 8.

- [2] To fully understand the importance of these objections the process surrounding the handling of the objections and adjudication of the appeals it is necessary to review the relevant law. I begin this process with the Constitution of The Federation of Saint Christopher and Nevis (The Constitution). Section 49 of the Constitution provides for the establishment of a Constituency Boundaries Commission. The language used in the section "there shall be for Saint Christopher and Nevis a Constituency Boundaries Commission" implies that this is a mandatory provision, which must be complied with by the governing authority in the Federation.
- [3] Section 50 of the Constitution provides for the Boundaries Commission to review the number and boundaries of the constituencies into which Saint Christopher and Nevis is divided. The section provides for a report to be presented to the Governor General at intervals of not less than two nor more than five years. The reports are expected to show the constituencies into which it is recommended that Saint Christopher and Nevis should be divided in order to give effect to the rules set out in schedule 2 or state that in the Commission's opinion, no alteration is required to the existing number or boundaries of constituencies in order to give effect to the aforesaid rules.
- [4] It is presumed that the framers of the Constitution as the supreme law of the land intended that the election of members to the National Assembly should be on the basis of the level of support by way of votes received by a candidate in a general election in the constituency where he offers himself or herself as a candidate for election.
- [5] Section 48 of the Constitution provides for the general election of members of the National Assembly to be held at such time within ninety days after any dissolution of Parliament as the Governor-General may appoint.
- [6] Schedule 2 to the Constitution referred to in Section 50 contains the rules for the Delimitation of Constituencies. It provides that there shall be not less than eight constituencies in the island of Saint Christopher and not less than three constituencies

in the island of Nevis inter alia. The schedule also contains the rule that all constituencies shall contain as nearly equal numbers of inhabitants as appears to the Constituency Boundaries Commission to be reasonably practicable but the commission may depart from this rule to such an extent, as it considers expedient to take account of the following factors:

(2) The requirements of rule 1 and the differences in the density of the populations in the respective islands of Saint Christopher and Nevis

The need to ensure adequate representation of sparsely populated rural areas;

- (a) The requirements of rule 1 and difference in the density of the population in the respective islands of St. Christopher and Nevis.
- (b) The need to ensure adequate representation of sparsely populated rural areas.
- (c) The means of communication
- (d) Geographical features and
- (e) Existing administrative boundaries

[7] Section 38 (1) of the National Assembly Elections Act provides for the appointment of registration officers by the supervisor of elections who pursuant to section 43D of the said Act is the Chief Registration Officer. According to section 43E the Chief registration officer is to cause to be prepared and shall publish not later than the thirty first day of January in every year a register of voters for each constituency.

[8] The Act provides for continuous registration of voters so that every person who is qualified to be registered as a voter for a constituency may register at any time after becoming qualified to be registered as a voter, up to the time of the issue of a Writ by the Governor General under the Act. Section 43B (2) of the Act also provides that every person who is qualified to be registered as a voter for the constituency shall apply in person to the registration officer for that constituency to have his name entered on the monthly list of voters prepared for that constituency under 43F.

[9] To qualify to be registered as a voter in a constituency a person must be a citizen of Saint Christopher and Nevis of the age of eighteen years who is domiciled in Saint Christopher and Nevis or is ordinarily resident there at the date of registration. A

Commonwealth citizen who is of the age of eighteen years or upwards and has resided in Saint Christopher and Nevis for a period of twelve months immediately before the date of registration as a voter or is domiciled in Saint Christopher and Nevis and is resident therein on that date also qualifies to vote.

[10] Section 42 (2) and (3) are of some importance. I quote them verbatim:

- " (2) A person is not qualified to be registered as a voter for more than one constituency
- (3) Where a person who is registered as a voter for a constituency has ceased to reside in that constituency, he shall not on that account cease to be qualified to be registered as a voter for that constituency until he has become qualified to be a registered as a voter for another constituency.

[11] A new section 42A has created the facility whereby a person may choose to be registered as a voter in one of two constituencies in which he resides. It is presumed that that decision will be made on the basis of the residence, which he prefers.

[12] A person may be disqualified as voter for a number of reasons but he or she may remain registered as long as he does not die, or an objection against his registration is not allowed or for some other reason under another Act.

[13] The voters list for each constituency is to consist of all persons who were registered in the register of voters last published for that constituency and all persons whose names appear in the revised monthly list of voters prepared and published under 43H for the constituency since the last date of publication of the registers mentioned in paragraph 43E (2) (a) and qualified under the Act as voters, but shall not include any person who in the opinion of the Chief Registration Officer, appears since the publication of the registers mentioned in paragraphs (a) and (b) (i) to have died ; or (ii) to have become ordinarily resident in another constituency.

[14] Claims and objections to be registered or to cease to be registered or objections to persons registered are to be determined in accordance with the regulations, which have been made for that purpose.

[15] The National Assembly Elections Act was amended by the National Assembly Elections (Amended Act, 2007). Section 42 A of that Act defines ordinary residence as follows:

- (1) For the purposes of registration under this Act a person shall be deemed to reside in the constituency where he was ordinarily resident on the registration date.

The other relevant subsections are as follows:

- (2) Subject to subsection (1), (2), (4) and (5), the question whether a person is or was ordinarily resident in a constituency for any material period of time shall be determined by reference to all the facts of the case.
- (3) The place of ordinary residence of a person is, generally the place where he has always been or which he has adopted as, the place of his habitation or home, whereto when away from there he intends to return.
- (4) Where it appears by reference to all the facts of the case that a person has more than one place of ordinary residence such a person shall elect in respect of which place he desires to be registered.
- (5) Notwithstanding subsection (1), (2), (3), (4) and (5); the Chief Registration Officer or the Registration Officer for a constituency may carry out an investigation and may visit any home within the constituency for the purpose of ascertaining whether persons whose names appear in any list reside in a particular constituency or are still alive or for such other prescribed purposes as the Chief Registration Officer or the Registration Officer may require.

THE APPEALS

[16] The Appellants filed 10 appeals against the decisions of the Registration Officer denying their objection to the Registration of persons registered in the District 8, polling division #5 who they allege were not properly registered in that District because they did not have the proper qualifying address to be registered in that district indeed, according to the Appellants they resided outside of the District. They also filed two appeals in relation to the decision of the registration officer denying the objections against the registration of two voters in District 8 polling division #6 for the same reasons

[17] The first two Appeals to be addressed SKBHCV 2009/0133 and SKBHCV 2009/134 were those asking for the Registration Officer's decision refusing to delete Nioka Morris and Carol Freeman from the voters list for District 8 #5 to be overturned. The grounds of Appeal were that based on the preponderance of the evidence and the requirement

of the law these two persons were not qualified to be registered in District #8 and polling division #5 because there was overwhelming evidence that they both resided in St Pauls which is District 6 at all material times and continued to reside in St Pauls and not in District 8.

[18] Counsel for the Appellants argued in both of these cases that the reconfirmation and change of the registration District from #6 to #8 was wrong because the evidence showed that both of the voters resided in St. Pauls. They were both served at addresses in St Pauls according to a process server who gave evidence in the Objection Hearing and other witnesses who appeared before the Registration Officer and gave evidence on oath that these voters resided in St Pauls and were seen catching buses from St. Pauls in the morning to go to work in Basseterre.

[19] Counsel for the Respondents argued that the two voters could have two residences and choose to register in the #8 district. However counsel for the Appellants countered that the preponderance of the evidence was that neither one of the voters lived in District #8 indeed Carol Freeman had not attended the objection hearing and Nioka Morris even though she had attended was not a credible witness. The latter allegation was based on the fact that Morris insisted in saying that she did not reside in St. Pauls in spite of the evidence to the contrary.

[20] In each case the Registration Officer held that there was insufficient evidence that the voters did not reside in District # 8 at the time of the Registration. I have grave difficulty with this conclusion. Why would a person transfer their voting registration at the time of reconfirmation only to move back into the original constituency and reside there within months of having changed their registration particulars? In my view this should have set off alarm bells with the Registration Officer and he should have been able to demonstrate to the court that he made an independent check of the alleged residences of the voters in both constituencies before he arriving at a decision. Indeed the decision taken must smack of bias since the Registration Officer would be seen to be a judge in his own case defending his own voters list as it were rather than protecting the integrity of the voters list by leaving no stone unturned to ensure that it could stand up to close scrutiny in any election and the result of any election would be left beyond reproach.

- [21] One legal authority which assists in an interpretation of the Registration Officer's role is the dictum of Barrow JA in **Dudley Williams v Laureen James** Civil Appeal No. 16 of 2007 where the learned Justice of Appeal said that had the Appellant given a smidgen more of evidence other than her mere assertion they may have been able to overturn the Registration Officer's decision. In the Appeal at Bar there was more than a smidgen of evidence. The evidence was not just an assertion. There was evidence of a process server and a neighbour and indeed a relative in support of the view that Ms. Morris resided in St. Pauls. There was similar evidence in relation to Ms Carol Freeman. Ms Morris attended the hearing and gave evidence but never asserted that she had two residences. She insisted that she has only one in District 8, which clearly was not true. Carol Freeman never attended the hearing to assert anything.
- [22] I can see no reason for overly protecting the voting rights of persons who conduct themselves in this way. Indeed there is no compelling reason for the Registration Officer to hold onto the old notion that he was protecting the voter's right to vote. Section 43 E 2 (b) states in part that the voters list shall not include any person who in the opinion of the Chief Registration Officer appears since the publication of the registers mentioned in paragraphs (a) and (b) to have died or to have become ordinarily resident in another constituency. The right to vote exists within a legal framework. It is the rule of law and the integrity of the voter's list, which must be protected. The Registration Officer had every opportunity to make an independent inquiry and appear to be free of his own bias in the case but he refused to do so.
- [23] It may be argued that the burden of proof in cases such as this is high. I would agree that it is based on the preponderance of the evidence rather than a balance of probabilities standard. But the standard is not beyond reasonable doubt. I have not been apprised of the evidence on which the Registration Officer relies to find that the Registration of Nioka Morris and Carol Freeman in District # 8 was in accordance with the law.
- [24] The Registration Officer appears to rely on Section 42 A (1) of the Act, which says that the address used on the date of Registration is deemed to be the place of residence of the voter. But this does not mean that evidence to the contrary is to be ignored. What this means is that people would be held to the address, which they declare and they

cannot later be heard to say that they reside elsewhere unless they wish to qualify to vote in a different constituency. It is not surprising therefore that Ms. Morris would deny that she resides in St. Pauls. But the evidence suggests she does reside in St Pauls and she therefore cannot be trusted to tell the truth.

[25] I would add that the Registration Officers are often required to remove the names of persons who are deceased from the voters list. How do they know that they are not alive? They obviously would have to check. I do not see how a Registration Officer could hold that someone was resident in a particular district at the time of the registration without evidence that the alleged residence was checked by someone from the Registration office. The Registration Officer's finding therefore runs against the weight of the evidence.

[26] Since it has been often repeated that the Appellants had not proved that the voters objected to were not resident in District #8 at the time of registration I will spend some time reviewing the relevant authorities. The Registration Officer cannot in my view rely on the decision of the ECSC Court of Appeal in **Terence Henry v Leonard O'Loughlin et al** Civil Appeal No. 12 of 1999 which turned on the interpretation of section 33 of the Elections Registration Regulations to couch his reasons for dismissing the Objections on the stated ground. Counsel for the Respondents thinks that the decision in **Dudley Williams v Laureen James** supports the Respondent's view but I think that that decision can be distinguished on its facts. Indeed Barrow J.A in the said decision reflected that had there been a smidgen of evidence more than that which was led in that case the Court may have arrived at a different decision regarding deleting the voter from the voters list. In the **Luareen James** case the objector claimed to know the voters individually and that she was able to say of her own knowledge that they never lived at the relevant addresses because she knew that they lived at other addresses. In this case the evidence is qualitatively different.

[27] Indeed there are a number of legislative provisions which point to the Registration Officer's power to remove a person from the voters list if he is satisfied that they are not qualified to be registered where they are registered. The Registration officer's decision assumes that these persons would be disenfranchised if forced to register where they reside. I do not agree. They could have applied to be transferred from the

time they heard of the objection and they would have had ample time to do so. It is also instructive that the notice, which is sent to invite voters to attend objection hearings, advises that they "shall" be removed if they do not attend the hearing. The word "may" was deliberately removed from the prescribed form by SRO 16 of 1971 and replaced by "shall." This drafting mechanism usually implies that the intention is to make the provision mandatory or at least implies a high probability of the result of failure to attend the objection hearing.

[28] Clearly as is stated in the case **Terrence Henry v Leonard O'Loughlin** it is not the law that a person who does not attend an objection hearing must be removed from the list based on an objection. However in light of the Registration Officer's power to delete their names and cause them to be registered where they reside; see Election Registration Regulations 41, 42 and 46. I think that when there is evidence which tends to show that the voter is not qualified to remain registered in a particular district the Registration Officer should be moved to put the situation right unless the elections have been called. At the time of writing the date for General Elections has not yet been announced in St Kitts and Nevis.

[29] It is argued that Mr. Liburd who visited the homes of these voters in St Pauls could not say that they did not reside elsewhere other than in St. Pauls. But this begs the question because the evidence suggests that they never lived in District #8 at the addresses where they claimed to live and there is evidence that they have always lived in St. Pauls. In those circumstances they cannot be said to have chosen an alternative residence of the two, which they now have. There is no evidence of that. Indeed the voter Nioka Morris denied, contrary to clear evidence, that she lived in District 6 (St. Pauls) and District 8. She said she lived in District 8 only.

[30] Furthermore the legislation does not simply provide that the voter can assert that he or she has chosen to reside in one of two residences. The legislation requires that we look at all the facts of the case to determine residency and where there is evidence of two residences it would be possible to so find. This conclusion cannot arise on the evidence surrounding Nioka Morris and Carol Freeman Appeals 133 and 144 respectively.

- [31] Based on these findings and in the absence of any independent evidence which would put the Registration officer's decision beyond reproach I will uphold the appeals of the Appellants in both cases 0133 and 144 and order that their names be deleted from the voters list for district #8.
- [32] Counsel for the Appellants also argued that the Registration Officer had no authority to include the names of the two voters in the monthly list for District # 8 by way of change of residency when he did. He argued that Section 43E had been suspended and there was no authority to publish a revised monthly list. While this may be true it was still the obligation of the Registration Officer to ensure the persons with the necessary qualification to register were registered. I will therefore dismiss this part of the Appeal on the basis that the suspension of Section 43E did not preclude the making of Claims for changes of residency. Indeed there could be no change of residency before confirmation. But on confirmation a new list was created and therefore based on that new list it would have been required that such changes be included in the reconstructed list. It makes no difference whether it was published before the prescribed date, because the change would have had to be recorded in the reconstructed list in any event.
- [33] In relation to the other matters namely Nos. 134 to 143 the Appellants argued that again the preponderance of the evidence supported their appeal because there was evidence that the person against whose registration they had objected were residing outside of District # 8. The Respondent rebutted that apart from the evidence of the appellant that the voters never lived in the District there was only the evidence of the process server who said he served them with notices at their residences in Shadwell Estate, and Millionaire Street Basseterre in the case of one voter.
- [34] The Appellants had also argued that the Registration officer failed to summon another witness Keithroy Edwards who had filed an affidavit but was afraid to actually attend the hearing and give evidence because he was employed by government as a postman. He therefore did not submit himself to cross-examination because he feared some victimization.
- [35] While I sympathise with any person who finds himself in the witness' position or having similar fears I cannot accede to the request to order that the Registration officer

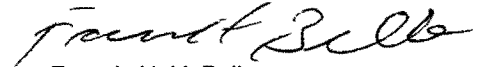
summons the witness to the Objection hearing. If a person is willing to make a statement on oath in writing then they should be willing to be subjected to cross examination on the said statement. The notion that the Appeal should be upheld or the Registration Officer should be compelled to issue summons cannot be supported by sound reasoning.

Conclusion

- [36] At this point I take note that the legislative scheme changed when the Legislature made a specific effort to facilitate greater accountability in the registration exercise by providing in section 42A (6) that the Registration Officer may investigate the residency qualification of a voter by visiting houses of the voters who come under scrutiny to ascertain whether persons whose names appear in any list reside (not have resided) in a particular constituency or are still alive etc. If the only important consideration were whether the voter resided at a particular address when he/she was registered what sense would this subsection make?
- [37] At no time does the Registration Officer say that he visited any address or house. He heard the allegations of the Appellants heard their evidence, and recognised that his notices on the voters at the alleged qualified addresses could not be served, yet he was satisfied that they were resident at the qualified addresses when they were registered, how could this be? The modern requirement of transparency in such matters as these puts an onus on the Registration Officer to do better and satisfy himself and others of the integrity of the Registration process. He failed to do so and his decisions should therefore be overturned.
- [38] My orders in this matter are as follows:
- (1) The Registration officer is to conduct his own investigations of the voters named in Appeals 134 to 143 pursuant to section 42 A (6) of the Act and reconsider his decision in light of the conclusions of his investigation and the relevant law.

(2) In Appeals 133 and 144 I am ordering that the voters' names Nioka Morris and Carol Freeman be deleted from the Register in District 8 polling division #5 because the Registration Officer's decision runs against the preponderance of the evidence which is that the voters reside in District #6.

(3) I make no award as to costs.


Francis H. V. Belle
High Court Judge