

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. 2008/0644

BETWEEN:

TANZANITE INTERNATIONAL LIMITED

Claimant

AND

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Peter Foster and Ms. Renee St. Rose for Claimants
Mr. R. Glasgow for Defendant

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2008: September 19
October 10
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JUDGMENT

[1] **COTTLE, J:** On 23rd April, 2008 a secret poll was conducted among eligible workers of Tanzanite International Ltd. In accordance with Cap 16.06 of the Revised Laws of Saint Lucia 2001. (The Registration, Status and Recognition of Trade Unions and Employers

Associations Act) Tanzanite International Limited had supplied the voters list of 74 employees to the Labour Department.

[2] During the conduct of the poll certain irregularities occurred. An agent of the trade union was seen talking to groups of employees in the vicinity of the polling place. Section 31 of the Act prohibits such activity. A complaint was made to the officer of the Labour Commissioner who was conducting the poll. He at once asked the representative of the trade union to leave the area. She complied.

[3] Also, in the course of the polling exercise employees attended to vote. It was discovered that the names of eligible employees had been erroneously omitted from the voters register.

[4] The list was reviewed by a member of the management staff of Tanzanite International Limited and the observer on behalf of the Trade Union. Two omitted names were added to the list of voters, but two other names were deleted.

[5] The polling continued. At the counting of the votes the National Workers Union was declared the winner with 39 of the 40 votes cast. This fact was communicated to the Claimant by letter of 24th April, 2008.

[6] By letter of the same date the Claimant objected to the Labour Commissioner that the votes may have been influenced by the canvassing, that the true number of eligible employees was 79 and the Union had failed to secure a majority.

- [7] Tanzanite International Limited now seeks judicial review of the decision of the Labour Commissioner to recognize the National Workers Union as the exclusive bargaining agent for the employees of Tanzanite International Limited.

The Evidence

The voters list

- [8] Mr. Hugh Jones of the Claimant swore affidavits. He is the General Manager. Before the poll he had supplied the Labour Commissioner with an agreed list of voters which comprised the names of 74 employees. On the day of the poll he had no contact with the representative of the Labour Commissioner, Mr. Ray Narcisse, who was conducting the poll. He admitted this on cross examination. However, in his evidence in chief as found at paragraphs 18 and 19 of his first affidavit he swears that three names, were added to the list bringing the total number of employees on the list to 77. He adds that subsequently he noted that two more employees had been omitted from the voters list and that the true number was 79.
- [9] He does not say that this total of 79 was agreed with the union. And, with his admission that he did not communicate these additions to Mr. Narcisse on the day of the polls it is difficult to accept Mr. Jones' evidence as it relates to the number of persons on the agreed voters list at the date of the polls. No one else for the Claimant gave any evidence as to the number of employees who made the bargaining unit for the purpose of the poll.
- [10] Mr. Ray Narcisse gave evidence for the Defendants on this issue. He swears that the agreed list comprised the names of 74 employees. During the polls he was informed that

two persons, whose names were on the voters list, no longer worked with the Claimant. Those names were replaced by the names of two present employees whose names had apparently been omitted inadvertently. Mr. Narcisse said that he discussed this with the representative of the Claimant who was present as well as the representative of the Trade Union. Both agreed. The number of eligible employees was not thereby affected. It remained at 74.

[11] When cross examined Mr. Narcisse agreed that Mr. Jones had not “signed off” on the changes to the voters list. But he was firm that he had the agreement of Mr. Blanchard who Mr. Jones had introduced to him, as the representative of the Claimant at the poll and one other member of the Managerial staff of Claimant (as revealed by the voters list). This staff member, as a departmental head, would have been ineligible to vote at the poll.

[12] On this issue I accept the evidence of Mr. Narcisse that the agreed voters list contained only 74 names.

The interference with the polls.

[13] Three employees of the Claimant gave evidence that on the day of the polls, Janice Eugene, an agent of the trade union, was in the polling premises attempting to influence them to vote in favour of the union.

[14] Mr. Ray Narcisse swore that Ms. Eugene had replaced the representative of the trade union during the polls to permit that representative to have a break for lunch. On the return of

the representative around 1:20 p.m. Ms. Eugene was excused and left the polling area. Within 5 minutes of her departure, Mr. Narcisse was informed that Ms. Eugene was elsewhere on the compound canvassing voters. He informed the representatives of the Claimant, and the union. He at once went to investigate and saw Ms. Eugene downstairs the polling area. He informed Ms. Eugene of the complaint. She denied canvassing votes and claimed that she had merely borrowed the cellular telephone of an employee to make a call. Mr. Narcisse had observed her using a telephone when he arrived. As she completed the call, he spoke with her. She thereupon left the premises. Mr. Narcisse concluded that given her explanation and the short period of time that had elapsed since she had left the polling area that no canvassing had occurred. He did not speak to any other employees of the Claimant.

The Claimant's case

- [15] Mr. Foster for the Claimants urges that court to hold that the actions of Ms. Eugene are in breach of s. 31 of the Act:

“In relation to the conducting of a secret poll a person shall not –

- (a) seek, in any premises on the day on which the secret poll is being held or within 100 yards of such premises, to influence an employee to vote or refrain from voting for a trade union;***
- (b) willfully obstruct any person from voting or carrying out any function imposed on that person under this Act”***

Her actions may well have affected the outcome of the polls. He cites the case of Morgan V Simpson 1974 3 WLR S17. That case concerned an election petition, and decides that any breach of the rules governing elections which affects the results is enough by itself to compel the court to declare an election void.

[16] There are several difficulties in accepting that argument. Firstly, this case is a claim for judicial review. It is not an election petition. The function of the court on an election petition hearing is markedly different from the function it exercises in an application for judicial review. In Morgan's case the facts were not contested. It was agreed that the failure to observe the relevant election rules did result in a different outcome to the polls. In the present case this is far from clear. Mr. Narcisse investigated the canvassing complaint. He found it unjustified. It is not for this court to substitute its own judgment for that of Mr. Narcisse unless it can be said that no reasonable tribunal or functionary would have arrived at the conclusion he did.

[17] Lord Brightman in Chief Constable of North Wales Police v Evans 1982 1 WLR 1155 at 1173 puts it well when he reminds us that:

“Judicial Review is concerned not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power”.

[18] The complaint here is that the Commissioner, in recognising the National Workers Union as the bargaining agent for the employers of the Claimant acted irrationally in arriving at his decision. That complaint is without foundation. There is no evidential basis for the Claimant's contention that the number of employees on the voters list is 79 and not 74. The union received 39 votes of the 74 persons qualified to vote. The Commissioner did not fail to investigate the complaint of canvassing. Mr. Narcisse did so on the day of the polls. No complaint was made then. I cannot say that the conclusion at which he arrived is unreasonable.

[19] The Claimant's application for judicial review of the decision by the Commissioner is accordingly denied. The stay of the decision of the commissioner is discharged.

Under CPR 2000 part 56.13 (6) I make no order as to costs.

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BRIAN S. COTTLE
HIGH COURT JUDGE