

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCv102/2006

BETWEEN:

CYBELLE CENAC - MARAGH

Claimant

AND

UNITED WORKERS PARTY

Defendant

Appearances:

Mr. Mark Maragh for Claimant
Mr. Bertram Commissiong
Ms. Leonne Theodore for Defendant

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2006: January, 23
2006: January, 27
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DECISION

MASON J:

[1] There are three (3) applications before the Court.

1. By the Respondent by way of Notice of Motion for the discharge or dissolution of the injunction

2. by the Petitioner for the substitution in the name of the Respondent and
3. by the Petitioner for a continuation of the injunction

[2] With regard to the first application i.e. that by the Respondent = five (5) grounds have been set out and I shall deal with them seriatim and very briefly.

- (a) that the Respondent is not a legal or juridical entity and therefore has no legal capacity to be a party to a contract or to be a party to legal proceedings.

[3] This ground will be dismissed based on the application by the Petitioner for a substitution of parties and given that substitution of parties can take place at any time.

[4] This in accordance with Parts 19 and 21 of the Civil Procedure Rules 2000. And this is so stated in spite of the fact that this application for an injunction was made under Code of Civil Procedure. Briefly stated it is thus because the relevant articles of the Code of Civil Procedure 170-172, have been replaced by Part 19 of Civil Procedure Rules 2000.

[5] The second ground of Respondent's application namely that the Court has no jurisdiction to grant the injunction because:

- (a) the injunction is an injunctive order (that is a command from the court).
- (b) The injunction purports to have been granted under articles 841 – 851 of the Code of Civil Procedure and

- (c) those articles expressly authorize an application for and the grant of an injunction by way of the issue of the writ of injunction (that is a command in the name and by or on behalf of the Sovereign) and the articles do not authorize an application for or the grant of an injunction by way of an injunctive order (that is a command from the Court) without notice.

[6] The Court is satisfied that articles 841 to 851 give to the Court the discretion to grant an injunction ex parte. This injunction can be ad interim, until further order of the Court or without limitation of time. A total reading of Section V would seem to suggest that one can apply for an injunction separate and apart from a writ injunction. The Court also took into the nomenclature of the application namely: In the matter of a Petition for an injunction etc.

[7] On this basis, the Court rejects this contention.

[8] The third ground of the Respondent's application was that the Court acted contrary to article 23 of CCP in that:

- (a) the Petitioner prayed for an order asserting an alleged estoppel.
- (b) an injunction was not included in the prayer of the Petitioner and
- (c) in granting the injunction, the Court adjudicated beyond the prayer of the Petitioner

- [9] Article 23 Criminal Code Procedures provides the Court cannot adjudicate beyond the conclusions of a suit, but may grant them only in part.
- [10] The prayer of the Petitioner is that the Respondent be estopped from carrying out acts detrimental to the Petitioner.
- [11] The Court is of the opinion that whether the word “estoppel” or “injunction” is used , the effect of its order operates to prevent/restrain the Respondent from doing the act complained of.
- [12] The effect therefore is the same. The Court would also disallow this ground of the application.
- [13] The fourth ground of the Respondent is application is that since the purpose of an injunction is to enforce or protect a contractual, legal or equitable right, the injunction could be justified only on this basis (which does not exist) that the Petitioner has an irrevocable contractual, legal or equitable right to be and to continue to be the Respondent's endorsed candidate for the Castries North constituency.
- [14] The Constitution of the United Workers Party of which the Petitioner is a member has set out the procedure in Article 18 for electing persons as candidates to contest elections.
- [15] This process having been duly gone through, the Petitioner having been endorsed by the relevant body, no review or appeal of the process having been lodged, the Petitioner in

addition to having the legitimate expectation that she would be the one to face the electorate, must she be able to enforce what is clearly her right.

[16] Because where there has been agreement between parties, provided the agreement is not void or voidable on grounds of illegality etc., a party has the right to sue to enforce that agreement.

[17] The court therefore is of the opinion that this ground also fails.

[18] The fifth ground of the Respondent's application states that since the injunction purports to be an interim injunction (which inherently presupposes an existing or contemplated actions or claim), the Court exceeded its jurisdiction by granting the injunction contrary to Part 17.2(5) of the CCP(that is without requiring the Petitioner to give an undertaking to issue and serve a claim form by a specified date) , so as to ensure that this Petitioner contemplated an action or claim.

[19] The application clearly states that it was brought under the Code of Civil Procedure and so reference to Civil Procedure Rules 2000 in this instance is not relevant.

[20] However by Article 843 the injunction may be granted ad interim which presupposes that there is either an action already begun or one likely to be brought.

- [21] That article 843 provides that the injunction may be granted until further order of the Court which would permit the Court to make an order that the injunction should continue until the Petitioner files his substantive action.
- [22] The Court therefore rejects this submission by the Respondent.
- [23] Counsel for the Respondent also argued that the injunction having been made on 20th February, that when application for continuation was made on that date, the injunction was immediately dissolved.
- [24] This would indeed have been the case had not the peculiar circumstances of that day prevailed.
- [25] On 20th February, the court did not sit formally but however from Chambers, gave instructions that all matters set down for the day would be heard on 23rd February.
- [26] This is the opinion of the Court was tantamount to a valid order for continuance and in the case of the injunction, no application for continuation would or should be necessary.
- [27] Counsel for the Respondent also argued that the terms of the Order were too wide and that the order gives the Petitioner an unequal advantage over the Respondent by making use of the words “doing anything”.

[28] The Petitioner stated in the Affidavit in support of the Petition, that in spite of having won her appeal to the Board of Trustees, she "is of the opinion that it is the intention of the Party to seek an amendment to its constitution for the purpose of removing her as the candidate for Castries North".

[29] "Doing anything" in the Court's order can only relate to this purported act by the party to prevent the Petitioner from being the endorsed candidate.

[30] The court therefore is satisfied that the terms of the order are not impossibly wide as suggested by the Respondent.

[31] In light of the foregoing, the Notice of Motion by the Respondent is hereby dismissed.

The Order of the court is therefore;

- 1) The application by the Respondent to dissolve the injunction is dismissed.
- 2) The Petitioner shall within seven (7) days file and serve her claim
- 3) the hearing of the matter is set for 17th day of March, 2006
- 4) Cost of this application to the Petitioner.

SANDRA MASON Q.C.

High Court Judge