

IN THE SUPREME COURT OF JUDICATURE, JAMAICA.

IN THE HIGH COURT OF JUSTICE

IN COMMON LAW

SUIT C.L. A084/1980.

Attorney General v. O.H.P. Stephenson

and D. H. Thompson

In the matter of the Election Petitions Act

(Constituency of Western St. Andrew)

Summons seeking leave to withdraw Election Petition pursuant to Section 13 of Election Petitions Act.

(matter listed for Chambers but removed into open Court)

~~Heard:~~ 27th April, 1981.

A.B. Edwards, Acting Solicitor General and with him, R. Langrin, Crown Counsel for the applicant;

Hugh Small & Miss J. Lynch for the respondent Thompson

O. H. Stephenson not present or represented.

Parnell, J:

~~(Oral judgment delivered 2.16 - 2.47 P.M.)~~

What is before me is a summons taken out by the Attorney General seeking leave to withdraw an election petition which he filed against Mr. Dudley Thompson and Mr. Owen Stephenson.

Before I go further, I think it will be better if I were to relate certain facts. In the Jamaica Gazette Extraordinary of the 11th of November, 1980, notice is given that the Attorney General filed an election petition, suit number CL A034 of 1980, in which he claimed that the election of Owen Stephenson, as the duly elected member of parliament for the constituency of Western St. Andrew, be declared null and void.

In the petition, there is one main ground of complaint. In paragraph I of that petition - and there are only two paragraphs in that petition - he states that:

"an election was held on the 30th of October, 1980 in that constituency when Owen Harcourt Stephenson of the Jamaica Labour Party, and Dudley Joseph Thompson of the People's National Party, one Beverley Wright and one Maria Wyles, both independent candidates, were the candidates and that the returning officer, Mr. Roy Knight, had returned Owen Harcourt Pike Stephenson as being duly elected."

The petition was filed in the Supreme Court - the stamp shows that it was on the 7th of November, 1980. What happened after that? It will soon emerge.

The Jamaica Gazette Extraordinary of the 29th of January, 1981 contains the copy of the election petition filed by Mr. Owen H.P. Stephenson, naming ^{Mr.} Dudley Thompson and the other candidates to which I have already referred, namely Beverley Wright and Maria Wyles as respondents. The Returning Officer, Roy Knight, is also named, and it is addressed to the Registrar of the Supreme Court.

An examination of the petition shows that after the declaration by the Returning Officer of Mr. Stephenson as the candidate elected in that constituency, there was an application for a magisterial recount on behalf of Mr. Thompson. The Magistrate duly held the recount.

The second paragraph of the petition, states:

"that on the sixth day of January, 1981, the Returning Officer returned Dudley Thompson to the Director of Elections as being duly elected".

So. there was what we will call a change of position.

As I have already said, that election petition was filed on the 26th of January, within the time allowed by law for the filing of an election petition, there having been a magisterial recount.

In view of certain submissions that Mr. Small made before me this morning before the luncheon adjournment, I requested a certain file from the Registrar of the Supreme Court. The file is 01 of 1981 -

Stb

Owen Stephenson and Dudley Thompson - this Supreme Court file shows that on the 13th of February, 1981 Mr. Thompson duly filed what is referred to as "an answer and cross-petition" in respect of the petition of Mr. Stephenson. In paragraph two, to which I have already referred, of the petition of the Attorney General, when both Mr. Stephenson and Mr. Thompson were named as respondents, there is one compendious statement that is relied on, it covers a lot of omissions and commissions, that on election day,

"there was within the constituency impersonation, exclusion of duly appointed agents of candidates from the polling station, thus preventing them from performing duties, tampering with ballots and ballot boxes, double voting, persons lawfully entitled to vote were prevented from casting votes, malfeasance on the part of a number of persons, fraud, mistakes and other irregularities which affected the outcome of the election".

Everything under the sun pertaining to the running of a free and fair election is thrown into that paragraph.

The petition of Mr. Stephenson is a lengthy one. There are nineteen paragraphs, and I do not intend to cite all these paragraphs, but from paragraph nine to nineteen, that would make eleven separate paragraphs, he makes certain allegations which when properly examined, cover in more details what the Attorney General did allege in his petition. So, on the first view, on the first impression that is made on the mind of a person looking on both petitions, one finds that, substantially, the same complaint is made and that was one of the points Mr. Edwards made this morning.

On examination of the cross-petition of Mr. Thompson, he too, has outlined certain particulars suggesting that the election in this constituency was not conducted in the manner allowed by law, or in the alternative that there were certain acts committed which could have affected the result. So, it seems to me that both Mr. Thompson and Mr. Stephenson and the Attorney General, although they have put the

matter in different words, one is very economical in words - one paragraph for the Attorney General - the other more detailed, they have complained about the election in that constituency. What is also to be observed, as I have tried to glean from these petitions, is that no specific allegation is being made against any of the candidates personally. The allegations are all concerned with the conduct of the election either by the electoral officer or by persons not connected with the running of the election, like gunmen, for instance, according to Mr. Thompson, who held up certain stations.

Now, with the change of fortune, in the case of Mr. Stephenson, he lost the seat which he thought he had gained from the election. He was "unseated" as a result of the magisterial recount. Mr. Stephenson having filed his own petition, the Attorney General now applies to this Court for leave to withdraw the petition that he filed on the 7th of November, 1980, and as I understand the position, Mr. Small, on behalf of Mr. Thompson, is not opposing the withdrawal of that petition. There is no dispute on that point. What Mr. Small is saying is that the respondent, Thompson, is entitled to his costs incurred, he having been made a respondent. Mr. Small has based his request that costs should be awarded against the Attorney General on the wording of Section 13 of the Election Petitions Act, and the relevant portion reads thus:

"If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent".

And then Mr. Small submitted, too, that the petition of the Attorney General, is to be regarded as a matter separate and apart, quite different from the petition of Mr. Stephenson. With reference to Mr. Stephenson, who is not present today, nor is he represented by counsel, Mr. Small has argued that, depending on the interpretation which the Court puts on the last paragraph of Section 13, there may be some defect in that we do not know the position being taken by

Mr. Stephenson. No opportunity is given to the Court to say whether or not he consents, and the relevant portion of the Act reads:

"Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners."

Mr. Small has argued that that section is open to a possible interpretation to cover a situation which is before the Court in which the Attorney General has filed a petition and Mr. Stephenson has also filed another one separately. So, in the wording of the section, there are more petitioners than one. On that particular point, Mr. Edwards argued that such a construction would be inconsistent with an earlier section, namely Section 4(a) of the Election Petitions act, which states:

"The petition should be signed by the petitioner, or all the petitioners, if more than one".

I am afraid I do not accept the argument of Mr. Small in suggesting that a possible interpretation of this section could cover the situation before me. Plainly, the section refers to a case where say three, four or five of the electors in a constituency jointly present an election petition to the Court, seeking a declaration or an order that the election held in that constituency is null and void. Once it is remembered and noted that an election petition does not concern merely the petitioner and the respondent, but it concerns the public at large, one can see the reason why if two or more persons should present an election petition, and one seeks to withdraw the petition, the others should also agree. The question of collusion may arise, the question of corruption may arise, the question of whether or not the public interest would be served can also arise. So, it is only fair that in those circumstances those who signed that election petition should agree.

We in Jamaica have not put it on a statutory basis, but in England the position is that where more than one person should sign the petition and an application is made for a withdrawal, not only

must they consent, but each of them must file an affidavit stating why he is consenting for the withdrawal, and stating clearly that there is no collusion at all with anybody to have this petition withdrawn.

So, I return now to the main point here. The mere fact that the applicant, the Attorney General has asked - in the circumstances, outlined in the affidavit filed by the Solicitor General - the Court to grant leave for the petition to be withdrawn, so that Mr. Stephenson may prosecute his complaint; does this fact alone give rise for an order for costs?

Is the respondent, Thompson, entitled to any costs?

In the wording of the Section:

"If a petition is withdrawn, the petitioner should be liable to pay the costs of the respondent".

This is not a case where there is a withdrawal of the petition simpliciter. In other words, something is being put in its place. This is not a case in which allegations of a personal nature, touching the conduct of Mr. Thompson or of any particular person having been made, the petition is being withdrawn on the ground that there is nothing to support it. This is simply a case where the Attorney General, to use the words of Mr. Edwards, as *parens patriae*, having been informed of a certain situation that had taken place in the constituency, filed a petition to declare what had taken place null and void. He was acting for and on behalf of the public generally. He has argued that events have taken place subsequently, in which the fortunes of one candidate have changed and he has taken upon himself to file and prosecute his own petition. The allegations generally remain the same. So then, the Court asks itself this question: what has been put before it, so that its discretion may be exercised in ordering costs against the Attorney General? What is the matter that has been put before the Court?

In my view, I haven't seen anything, nothing of any substance. There is nothing at all other than a reference to the power which the Court has and a suggestion that these petitions are separate and distinct.

In my view, the cross-petition by Mr. Thompson -- and at the moment, I am not prepared to make any remark as to whether or not a cross-petition is appropriate in an election petition -- is relevant on the question of costs. There is a thing called putting up recriminatory evidence by ^arespondent against a petitioner, where the petitioner claims the seat. But that is something quite different from a cross-petition. However, for the purpose and the point that I am making, Mr. Thompson, himself, in his own cross-petition has put forward facts to show that there is a good cause for an election petition to be filed by somebody, touching the election that was held in this very constituency.

So, for these reasons, first of all, that which is not contested, leave will be granted to the Attorney General to withdraw the election petition which was filed on the 7th of November, 1980; secondly, there will be no order as to costs.