

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.G. 115/1997

IN CHAMBERS

**BETWEEN
AND**

**BRUCE GOLDING
BRASCOE LEE**
(for and on behalf of themselves
and all other members of the
National Council of the National
Democratic Movement)

PLAINTIFFS

AND

DANVILLE WALKER

1ST DEFENDANT

AND

ATTORNEY GENERAL

2ND DEFENDANT

Lord Gifford, Q.C., Wentworth Charles and Hilaire Sobers
for the plaintiff instructed by David Wong Ken of Hamilton,
Wong Ken, Hemming & Green

Garth McBean for 1st Defendant instructed by Dennis Edmonds
of Dunn, Cox, Orrett and Ashenheim

Curtis Cochrane of the Attorney General's Department for the
2nd Defendant instructed by the Director of State Proceedings

Heard: July 8, 9, 10, 1997

**CORAM
WOLFE C.J.**

By a notice filed on the 4th day of July, 1997, the action against the second
defendant was discontinued and the defendant was accordingly discharged
from the action.

By Writ of Summons dated the 25th of June, 1997, the plaintiffs commenced proceedings against the defendant. The endorsement on the Writ of Summons claimed against the defendant for:-

1. A Declaration that the first defendant is obliged to ensure that the relevant particulars of persons qualified to vote shall be ascertained and recorded by means of house to house inquiries made by enumerators in every polling division before he may lawfully prepare an official list of electors.
2. A Declaration that the decision of the first defendant contained in a press release issued by the Electoral Advisory Committee dated 11th June, 1997, to close the enumeration exercise on the dates stated therein, was ultra vires, null and void.
3. An Injunction restraining the first defendant from bringing to an end the current enumeration exercise until such times as he shall have been ensured (sic) that the relevant particulars of persons qualified to vote shall be ascertained and recorded by means of house to house inquiries made by enumerators in every polling division.

4. Such further or other relief as may be just.

5. Costs.

Before me is a Summons for Interlocutory Injunction seeking the following order.

"An injunction restraining the first defendant from bringing to an end the current enumeration exercise until such time as he shall have ensured that the relevant particulars of persons qualified to vote shall have been ascertained and recorded by means of house to house inquiries made by enumerators in every polling division."

Election, for the purpose of electing persons to sit as members in the House of Representatives, is in the air. Constitutionally elections are due to be held before the end of March 1998. This, is therefore, the signal to all political activists to don their political garb and make ready for the Election.

A very important procedure, prior to the holding of election, is the enumeration of persons eligible to vote. This process provides the names of persons for preparation of the voters list.

The plaintiffs are the President and Secretary of the National Democratic Movement, a political party entitled to appoint scrutineers in the enumeration exercise.

The affidavit of Mr. Bruce Golding reveals that on the 10th day of December 1996, the Honourable Peter Phillips, M.P., Minister responsible for

electoral matters, announced in the House of representatives that an enumeration period would begin on January 6, 1997.

The Honourable Minister in announcing the period of enumeration said:

"Indeed I would like to take this opportunity to urge the Electoral Advisory Committee to do whatever may be possible to reduce the time needed for the completion of the enumeration so that if at all feasible, a list can be prepared before August 1997."

The Electoral Office issued the following press release on April 25, 1997.

**"ISLANDWIDE ENUMERATION EMBARGO UNTIL
FRIDAY, APRIL 25, 10.00 A.M.**

It is now official - Islandwide Enumeration resumes April 28, 1997. The enumeration exercise lasts for eight weeks in each constituency. There will be three phases:

Phase One, beginning April 28, 1997, will take place in all western parishes, i.e., St. James, Hanover and Westmoreland in addition to Northern Trelawny.

Phase Two, beginning May 5, 1997, will cover the eastern parishes i.e., Portland, St. Thomas and St. Mary, along with St. Elizabeth, Manchester and Southern Trelawny.

Phase Three, beginning May 12, 1997, will cover all other parishes, including Kingston, St. Andrew, St. Catherine, Clarendon and St. Ann.

All field work for National Enumeration should be completed by mid July, 1997.

The phased enumeration is to facilitate training and the smooth and timely implementation of the new system."

From this document will be seen the time frame in which the enumeration exercise will be conducted.

On June 11, 1997, the Electoral Advisory Committee caused the following press release to be issued.

"The Electoral Office is advising that persons who are not enumerated during the current exercise will not have their names on the new voters list and will not have an I.D. Card.

The following is the schedule for the closure of the enumeration exercise:

Phase I: Covering North Trelawny, St. James, Hanover and Westmoreland, will close on Saturday, June 29, 1997.

Phase II Covering Portland, St. Thomas, St. Mary, along with South Trelawny, St. Elizabeth and Manchester will close on Sunday, July 6, 1997.

Phase III Covering Clarendon, St. Ann, St. Catherine along with Kingston and St. Andrew will close on Sunday, July 13, 1997."

The Electoral Office says an overall review of the enumeration exercise will take place during the week of June 16 - 20, 1997.

The complaint of the plaintiffs is that the schedule of closure of the enumeration exercise is unlawful in that a number of persons eligible to be enumerated and thereby eligible to vote will be disenfranchised. This is so, say the plaintiffs, because the time frame proposed by the schedule of closure does not permit enough time for all the eligible persons to be enumerated. The time frame does not provide the enumerators with sufficient time to visit every house and collect the relevant particulars of persons qualified to vote.

Mr. McBean for the defendant took a preliminary objection to the summons being heard on the following grounds that:

- (i) The Writ of Summons discloses no cause of action. He submitted that an injunction cannot stand on its own unless it falls within one of the established exceptions.

He cited and relied upon *Associated Newspaper Groups P.L.C. v. Insert Media* [1988] 2 All E.R. 420 at 422.

He submitted that the basic requirement for the grant of an injunction does not exist.

- (ii) The incorrect procedure is being used. The plaintiffs should have come by way of Judicial Review. This is so because the matter at hand is one of public law. There was no infringement of any private law rights alleged on the pleadings and even if there were the rule in *O'Reilly and Others v. Mackman and Others* [1983] 2 A.C. 237 would apply.

- (iii) the plaintiffs have no locus standi -

It was submitted that an aggrieved person could not sue in his own name for an injunction for infringement of a public right whether such right is by virtue of statute or common law.

In such a case the aggrieved party should bring a relator action.

See (i) *A.G. ex rel McWhirter v. Independent Broadcasting Authority* (1973) Q.B. 629.

(ii) *Gouriet v. Union Post Office Workers* (1978) A.C. 435.

I over ruled the preliminary objection.

For the Plaintiffs, Lord Gifford, Q.C., pointed to section 13 (2) of *The Representation of the People (Amendment) Act 1996*, which states:

- “(2) Each enumerator shall, in the following division or polling divisions assigned to him by the returning officer -
- (a) carry out a house-to-house enquiry of persons who have not been registered at a registration centre; and
 - (b) verify the addresses of persons who have been registered at a registration centre.”

The affidavit of Mr. Bruce Golding, in support of the summons, forms the basis of the application. In the said affidavit, he refers to the matters which make it necessary to extend the enumeration exercise. They may be summarized as follows:

- (i) Enumeration process made more lengthy because of the need to take ten finger prints from each person enumerated.

- (ii) There has been very little publicity as to the existence and location of fixed centres. Only 37,632 out of a total of 482,879 persons registered so far were enumerated at fixed registration centres.
- (iii) The Enumeration exercise has been beset with difficulties and delays due to -
 - (a) Inadequate Training of enumerators
 - (b) Insufficient Number of Enumerators
 - (c) Shortage of Essential Materials.
- (iv) Hundreds of N.D.M. Scrutineers have reported that there remains a large number of dwellings in most polling divisions which have not yet been visited. The scrutineers are adamant that within the time left before the scheduled closure of the enumeration exercise in each phase it is humanly impossible to visit all those households to enquire of and identify those persons who are qualified to be registered.
- (v) The figures show an alarming situation and a wide disparity of results in different constituencies, e.g.
 - (a) In phase 1 with two weeks remaining - 35% of the estimated total of those likely to register have not been registered. The figure is almost 50% of St. Thomas Western and over 56% for St. Mary Western.
 - (b) In phase II with three weeks remaining 44.25% remain to be registered.

- (c) In phase III with four weeks remaining out of a total of 566,000 estimated as being likely to register 224,153 persons have been registered leaving 341,847 or 60% to be registered.

In St. Andrew Western only 9.95% has been registered.

- (vi) The Electoral Advisory Committee estimates is based on a simple rounding of the 1992 figures; which is an under estimate for two reasons:

- (a) Information available from the Statistical Institute of Jamaica shows that the adult population of Jamaica has increased.
- (b) The 1992 list itself covered only about 80% of the population of voting age.

The affiant estimates that there are some 1.5 million persons who are qualified to vote. He is convinced that a large number of persons will be disenfranchised if the schedule of closure is maintained which will adversely affect the interest of the National Democratic Movement.

The Defendant in his affidavit joins issue with Mr. Golding in respect of headings (i), (ii), (iii), (v) above.

He, however, agrees that there are some 1.5 million persons eligible to be enumerated but says that he estimates that some 20% of that number will not wish to be enumerated either because of religion or apathy with the political system.

I quote verbatim paragraphs 13 and 14 of the Defendant's affidavit.

- "13. With respect to paragraph 16 of the affidavit of Bruce Golding, the Electoral Advisory Committee and I never did, and do not now, preclude extending the date of closure of enumeration in any phase based on an assessment from time to time of the progress of the enumeration in each phase so as to ensure that all houses are visited."
- "14. I am aware as a member of the Electoral Advisory Committee, that account is taken of all relevant factors determining whether or not the enumeration exercise in any phase should be extended. I am also aware that assessment of whether to extend the enumeration exercise in any phase has to be done from time to time because the rate of enumeration in any phase is continuously changing. I am provided by Returning Officers on a weekly basis with reports of the progress of enumeration in every polling division in every constituency. I am aware that any pronouncement of closing dates for enumeration exercises is based on the then current assessment of the current and likely future rate of progress of an enumeration exercise and does not preclude myself and the committee deciding to extend the date of closure of an enumeration exercise (as it has been recently) based on its assessment of then current information on the progress of the enumeration exercise."

Against the back ground of paragraphs 13 and 14 quoted above, paragraph 7 of Mr. Bruce Golding's affidavit is of great significance and I quote it in part:

"7 In previous enumerations my experience has been that although the Electoral Office has usually set administrative deadlines for the conduct of house-to-house enumeration, these deadlines were intended to create a sense of urgency and have always been extended in some instances two or three times based on credible reports or complaints and an assessment

which indicate that qualified electors have not yet been visited."

This paragraph, indeed, recognises the need for deadlines. It admits that the Electoral Office has never approached the dead lines as if they were cast in concrete or as if they were like the laws of the Medes and Persians, which changeth not. It supports the defendants that the Electoral Advisory Committee has a very flexible approach to closure schedules. To leave the period of enumeration open indefinitely as is prayed by the applicant is to encourage lethargy among persons eligible to be enumerated. In this process, while it is important that every eligible person be afforded the opportunity to be enumerated, yet time is of the essence in the exercise in order to ensure that election is held within the Constitutional frame work.

The defendant, having expressed his resolve to comply with the law by granting such extensions as are necessary to ensure that every qualified person is enumerated, the question for this Court, is whether it ought to exercise its discretion to make an order which mandates the defendant to do that which he says he will do in any event?

In *Attorney General v. Manchester Corporation* [1893] 2 Ch 87 at p. 92, it was said in relation to obtaining a quia timet injunction.

"The plaintiff must show a strong case of probability that the apprehended mischief will in fact arise and where no actual damage is established, there must be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial"

See *Fletcher v. Bealey* (1885) 28 Ch.D 688 at p. 698.

In *Hooper v. Rogers* (1975) Ch 43 at p. 49, Russell L.J. opined that the word - "imminent" indicates -

"that the injunction must not be granted prematurely."

In the light of the evidence of the Director of Elections, which I accept to be sincere, that the schedule of closure is open to review from time to time and the evidence of extensions which have been granted in the current enumeration exercise, I am of the view that to grant an injunction at this time would be to disregard the caution advocated by the great Judge Russell L.J.

Finally. Let me recall the words of *Buckley J. In Bridlington Relay Ltd. v. Yorkshire Electricity Board* [1965] Ch. 436 at p. 445.

"It would be wrong for this court in quia timet proceedings to grant relief by way of an injunction to compel this defendant to do something which it appears to be willing to do without imposition of an order of the Court."

I am convinced on the evidence before me that the defendant will act reasonably and will review the enumeration exercise from time to time and will grant such extensions as are necessary to ensure that every qualified person who wishes to be enumerated will be afforded the opportunity so to do.

In the circumstances, I will not exercise my discretion in favour of the plaintiffs. The relief sought is denied and the summons is accordingly dismissed with Costs to the defendant to be taxed, if not agreed.