

N.M.L. ✓

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2004 HCV 01776

IN THE MATTER of ALSTON HUNTER  
and RUPERT KELLY, chairman and Vice-  
chairman of the Portland Parish Council.

A N D

IN THE MATTER of the Parish Councils  
Act and Regulations made thereunder.

BETWEEN	ALSTON HUNTER	1 <sup>ST</sup> CLAIMANT
A N D	RUPERT KELLY	2 <sup>ND</sup> CLAIMANT
A N D	BENNY WHITE	1 <sup>ST</sup> DEFENDANT
A N D	DEXTER ROLAND	2 <sup>ND</sup> DEFENDANT
A N D	FRANKLIN SMITH	3 <sup>RD</sup> DEFENDANT
A N D	PORTLAND PARISH COUNCIL	4 <sup>TH</sup> DEFENDANT

Paul Beswick and Arthur Williams instructed by Harold Brady and Company for Claimant.

Leon Green for first and second Defendants.

Patrick Foster Deputy Solicitor General and Mrs. Simone Mayhew for 3<sup>rd</sup> and fourth Defendants.

HEARD: 2<sup>nd</sup> and 3<sup>rd</sup> May and 23<sup>rd</sup> June, 2005

REID, J.

Following the Parish Councils' General elections in June 2003, Alston Hunter and Rupert Kelly were duly elected as Chairman and Vice-Chairman

respectively of the Portland Parish Council and designated Mayor and Deputy mayor respectively.

They now challenge the resolutions passed at a special meeting of the Council at which the full complement of nine were summoned but continued after four members had withdrawn. These resolutions purport to unseat the Applicants as chairman and vice-chairman respectively and in their stead elect the first two Defendants.

The following are issues in judicial review:

1. Was the special meeting of the Council on 15<sup>th</sup> July, 2004 properly convened?
2. Was the Chairman's declaration of adjournment of the meeting effective to preclude the re-convening by the quorum of five Councillors?
3. If the answer to (2) above is no, were the motions which the quorum remaining considered, capable of sustaining the resolution passed, namely:
  - (a) a vote of no confidence.
  - (b) the removal of the Applicants from office and elections in their stead?

As to the first issue it became undisputed that the governing by-laws of the Portland Parish Council are those passed at a meeting on 9<sup>th</sup> day of March, 1933.

By-law 11 of the 1933 By-laws provide:-

"A special meeting of the board (Council) may be called at any time by the Chairman, or the Clerk shall call such a meeting on the requisition of five members. Three days notice in writing of such meeting shall be given to each member. Five members shall constitute a

quorum at any Special Meeting”.

The Parish Council’s Act confers a power to make certain regulations and at Section 121 (1) reads:

A Parish Council may from time to time to make, alter and revoke regulations (inter alia, for) -

- (a) .....
- (z) for regulating the procedure for –
  - (i) the election of the Chairman or vice-chairman of any Parish Council;
  - (ii) the removal from office of the Chairman, vice-chairman of any Parish Council.

It has not been shown before this Court that the absence of regulations under this section has in any way inhibited the Council from achieving the same objectives under the existing by-laws. Hence by-law 22 may still be a useful vehicle for giving effect to Section 121 (1) – (z):

By law 22 provides:

“All Notices, Motions and questions shall be in writing and signed by the Members introducing them and shall be delivered to the Clerk at least seven (7) days before the meeting at which they are intended to be dealt with”.

On 10<sup>th</sup> June, 2004 at the regular meeting of the Council, all nine members assembled, Councillor Wayne McKenzie by verbal notice intimated his wish to raise a motion questioning the stewardship of the Council but in the event it went no further then. On 8<sup>th</sup> July, 2004 the Secretary Mr. Franklyn Smith received a written motion signed by Councillors Wayne McKenzie and Doreen Forbes. On 12<sup>th</sup> July a written request was presented, signed by five

Councillors, for a special meeting to be convened on July 15, 2004. The purpose was therein stated:

“The purpose of this meeting is to deal with matters relating to the motion moved by Councillor Wayne McKenzie on July 10, 2004 relating to the stewardship of the Portland Parish Council over the past year”.

The ‘printer’s devil’ underlined (ibid) is apparent; the word ‘July’ was clearly intended and not ‘June’ .

The Secretary’s internal memorandum on July 12, 2004 addressed to all nine Councillors, reads in part:

“The date requested is Thursday, 2004 July 15 at 2:00 p.m. in the Council’s Chamber. You are therefore asked to attend that meeting to discuss matters relating to the motion proposed by Councillor Wayne McKenzie in a letter received on 2004 July 8.

By-law 11 reads:

“A special Meeting of the Board may be called at anytime by the Chairman, or the Clerk shall call such a meeting on the Requisition of five members. Three days notice in writing of such special meeting shall be given to each member. Five members shall constitute a quorum at any Special Meeting.”

I hold that the prescriptions as to time in both by-laws 11 and 22 were complied with. It follows that the meeting had been properly convened.

Councillor McKenzie’s intimation on June 10, 2004 of his intention to raise “a motion to assess the stewardship of the Chairman and vice-chairman of the Council” is expressly alluded to in paragraph 11 of Chairmain Hunter’s affidavit

dated July 19, 2004. The purpose of the special meeting was known to him and his vice-chairman and other members must have been privy to this information..

Did the Chairman bring a proper conclusion to the special meeting?

Averring at the commencement that the notice convening the meeting should properly have been addressed to him, the Chairman clearly misinformed both himself and the Council assembled. He should have relied on the Secretary for advice. The by-laws could surely not have been to hand then. Prefacing his intention to seek the advice of the Attorney General he peremptorily concluded:

"The motion being the only order of business,  
it is now put aside and the meeting is now  
adjourned."

Sounding his gavel, he rose and left the Chamber, the vice-chairman in tow and two members emulating them.

Undoubtedly, the video-graph replay in court together with the testimony of Mr. Colin Bell the lone videographer identifies the voice of Counciller Gloria Silvera - "I second" , a virtual "echo-in-conjunction" to the Chairman's announcement.

Ingenious and engaging was Mr. Beswick's submission that the meeting was for all practical purposes over. "Not so", responds Mr. Foster, Deputy Solicitor General demonstrating the departure from the time honoured practice, and citing also that the authority conferred on the Chairman to adjourn unilaterally had not arisen inasmuch as by-law 40 provides:

"If any disorder shall arise at any meeting  
and the Chairman fails to restore order, he  
may at his discretion adjourn such meeting  
for a fixed time or sine die." (Underlinings supplied)

Supervening disorder was not the reason cited by the Chairman in his attempt to truncate the meeting. The quorum of five preserved, the meeting was properly reconstituted after the short recess which the Chairman's action precipitated. And so, it purported to continue by virtue of Section 94A of the Act. This section and the preceding sections are instructive.

Would the absence of the Chairman and Vice-chairman be an obstacle to the remaining Councillors electing one of their number to preside? Section 92 (5) assures the tenure of the Chairman in office subject to sub-section (6) by which his removal may be effected. By section 93(4) and (5) similar provisions apply to the vice-chairman. Section 94 speaks to the death, absence or incapacity of both office holders. Section 94A appears more case-specific.

“The Chairman or in his absence the vice-chairman shall preside at the meeting of the Council, and in the absence of both..... the Councillor's present at any meeting shall elect one of their number to preside thereat. The person presiding at any meeting shall have an original and a casting vote.”

To my mind, the 'absence' referred to here is *de facto* absence.

The walk out by the Chairman and vice-chairman left the remaining members free to re-assemble.

Third question - Which, if any resolution was sustainable ?

Just as by-law 11 enabled the convening of a special sitting, so was by-law 22 the conduit for the motions at that meeting.

The written motion signed by the two Councillors, and duly acknowledged by the Secretary, itemizes a list of considerations. It ends with two resolutions to be moved namely:

- (1) That for a vote of no confidence.
- (2) That for the removal of the office holders and for election in their stead.

The letter requesting the convening of the meeting does not expressly re-iterate the two resolutions nor was it circulated with the memorandum of July 12, 2004. The reference in the memorandum reads:

“.....to discuss matters relating to the motion prepared by Councillor Wayne McKenzie in letter received on 2004 July 8.”

However, It must have conjured to the minds of all, the issue of stewardship raised on 10<sup>th</sup> June, 2004 at a meeting when only Councillors Doreen Forbes and Philip Thomas were absent. But these two are signatories to the request for the special meeting. On the issue of stewardship all were forewarned; hence, that motion was debatable and clearly capable of sustaining a vote of ‘no confidence’. And so I do hold.

The motion for the removal of Chairman and vice-chairman would not inexorably ensue on the passing of the resolution of ‘no confidence’. The five Councillors requesting the special meeting would have been privy to the written document delivered to the Secretary on 8<sup>th</sup> July, 2004. Express notification to all nine members was essential for a debate on an issue so serious as contemplating the removal of officers. The Claimants may well have suspected that following an assessment of stewardship the question of their tenure in office

might arise. That was not enough to sustain a debate and, *a fortiori*, a resolution for their removal from office.

Accordingly I hold that the motion removing the Chairman and vice-chairman was not properly tabled and the purported removal from office was ineffective. The former *status quo must* be restored.

To that extent the order of certiorari is made and in all the circumstances it is only fair to order each party to bear his own costs .