

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

MC22/90

ELECTION PETITION

JOEL WILLIAMS	-	PETITIONER
JAMES MESSAM	-	RESPONDENT
LLOYD FINDLEY	-	RESPONDENT

RULING ON MOTION TO DISMISS PETITION

Arthur Williams, Richard Bonner, Terrence Ballentyne,
Earl DeLisser and George Soutar for Petitioner.

Maurice Tenn, Mrs. Jacqueline Samuels-Brown and
Mrs. Nichola Bonnick for first Respondent.

Dr. Lloyd Barnett and Ms. Leila Parker for second Respondent.

heard: 13th and 17th May, 1991.

CHESTER ORR, J.

This is an application by the first Respondent that:

"The Petition herein be dismissed on the Ground that the Petitioner has not complied with sec. 8 of the Election Petitions Act, in that he has failed to deliver PARTICULARS of the Acts complained of as avoiding the Election or Return within TEN (10) days after the presentation of the said Petition; in respect of Paragraphs 4, 5 and 6 of the said Petition."

The submissions for the first Respondent may be summarised thus:

Particulars under section 8 of the Election Petitions Act may be supplied in the body of the Petition or at a later time within 10 days after the presentation of the Petition.

In any event particulars must be provided within 10 days aforesaid. Further particulars may be supplied at a later date. However, the provision for supplying particulars within 10 days is mandatory: failure to do so will result in the dismissal of the petition.

Under the Election Petitions Act, the Court has no power to grant leave to extend the time for filing particulars if they are not

filed within the prescribed 10 days. Maude v. Lowley 1874 9 L.R. C.P. 165 and Stewart v. Newland 12 J.L.R. 847 were cited inter alia in support.

It was submitted that no particulars had been filed in the instant case. The Petition merely stated generally the grounds on which the petitioner relies for challenging the election but failed to give any particulars whatever. The absence of any names or any indication of the polling stations involved were cited inter alia as examples of the lack of particulars.

For the petitioner Mr. Williams submitted that the provision for furnishing particulars within 10 days was directory and not mandatory. In addition he submitted that the Petition did contain particulars. He relied on Buck v. King C.L.B. 016/77 January 3, 1980 Parnell, J. (unreported) and Lucas v. Gwyn 1889 1 O'M & H 212.

It is necessary to decide whether particulars have been furnished.

"The object of a bill of particulars is to give to the opposite party reasonable information as to the case which will be made against them; to give him an opportunity of inquiry, and to enable him, if he can, to contradict or explain the facts charged against him."

per O'Brien, J. in The Younghal Case 1870 1 O'M & H 294 at 295.

A perusal of the Petition discloses no information as to the case which will be made against the Respondent. For example -- Paragraph 4 gives no indication as to whether the valid ballots cast for the petitioner were improperly rejected by the presiding officer or whether the votes for the respondent were invalid.

In paragraphs 5 and 6 there is no indication of the location of any of the polling stations at which the alleged irregularities occurred nor has the identity been disclosed of any one person by or against whom any of the illegal acts are alleged to have been committed.

I hold that the petitioner has not furnished any particulars as required by section 8.

What is the effect of the failure to furnish these particulars within the time prescribed?

In Lucas v. Gwyn supra, Martin J. on April 8, 1869 overruled an objection that the particulars were not delivered three days before the trial of the petition. However in the South West Riding Case 1869 1 Q.M.R. 213 at 214 this same judge on April 13, 1869, five days later, ruled that a list of particulars was inadmissible as it had not been delivered within the time prescribed by the order for delivery.

In Buck v. King supra, Farnell, J. held that the provision in section 8 relating to furnishing of particulars within 10 days was directory and not mandatory. He interpreted the section in the light of the history of the Election Petitions Law 1885. He compared this Act with the English Act and the Rules made thereunder.

No time limit was imposed for filing of particulars in the English Legislation. At p. 10 of the Judgment he states:

"The 1885 Legislature, without specifically referring to Rule 6 of the English Rules to which I have referred, adopted the intention of Rule 6, when sec. 8 of the Election Petitions Act was being considered. It proceeded on the hypothesis that the stating of a general ground is to be regarded as stating some particular act or fact. Any other view would mean that the New English Governor and his brand new Legislature while intending to follow the English Act and the rules made thereunder, deliberately provided for a deviation from them."

With all respect to the learned judge this is what the legislature did - the insertion of the requirement of 10 days was a deviation from the English Legislation.

In Love v. Robinson i Stephens Reports 842 cited by Mrs. Brown, the Court said at 845:

"The conclusion involves a somewhat narrow reading of the law, but in its jurisdiction over election petitions the Supreme Court is a tribunal of limited authority, and the general rule is that in putting such a tribunal in action, the statute or law which confers the jurisdiction must be strictly and accurately followed."

In Stewart v. Newland supra, Rowe, J. as he then was, said at 851.

"The Privy Council has recently restated the principle that the interests of the public require the speedy determination of election petitions, and consequently when a statute lays down time for service of the petition, that statutory provision should be regarded as mandatory, and a failure to observe the time for service thereby prescribed rendered the proceedings a nullity (Nair v. Teik [1967] 2 All E.R. 34)".

I am of the opinion that the stipulation of 10 days in the local Act was inserted in order to achieve the object of the Act, viz. the speedy determination of election petitions.

Section 15A of the Act provides that the trial of an election petition shall so far as practicable commence within 90 days of the filing of the petition.

The scheme of the Election Petitions Act provides a timetable of 31 days. The Petitioner must file the Petition within 21 days from the date of the return to the Election and within a further 10 days file particulars of the acts complained of. He is permitted to file further and better particulars after this period.

The argument of impossibility of filing particulars within the prescribed 10 days was advanced by Parnell, J. and by Mr. Williams in respect of paragraphs 4 and 5 of the Petition.

When the Election Petition Law was passed in 1885, the Election Law, Law 21 of 1884 was in existence. By this law, provision was made for each candidate to have agents admitted within each polling station during the taking of the poll. This provision is extant. These Agents would be in a position to monitor any irregularities at the polling stations and report to the candidate or his agent.

I am unable to appreciate the impossibility of making such reports in time for particulars to be filed within 31 days of the date of the return to the Election. It must be noted that such particulars can be added to or amended on application to a Judge at a later date. In my opinion this illustrates the need for urgency in filing the particulars.

I reject this argument as a ground against the provision being given a mandatory interpretation.

This Petition in my opinion is an outstanding example of the mischief which section 3 was designed to prevent. It is now some 14 months since the election and there is not a scintilla of evidence which could identify the location or the identity of the perpetrator of any alleged illegal act.

I hold that the provision in section 3 for furnishing the particulars within 10 days after the presentation of the petition is mandatory.

The petitioner has not complied with this provision. The application is granted.

The petition is dismissed with Costs to the First Respondent to be agreed or taxed.