

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. 3202 OF 2000

In the matter of the Representation of the People Act Chapter 2:01

And

**In the matter of a Parliamentary Election for the Electoral District
of Pointe-a-Pierre held in furtherance of an Election instituted
by a Writ of Election duly issued on the 6th day of November, 2000**

Between

FARAD KHAN

Petitioner

And

WILLIAM BEHARRY CHAITAN

Respondent

RULING

Before the Court are two representation petitions brought under section 106 of the Representation of the People Act Chap. 12:01, No 3202 of 2000 and No. 3203 of 2000.

The issue that has been agitated before this Court and which now presents itself for resolution is whether or not the Court should make an order, *ex mero motu*, that the two petitions be heard together. The arguments advanced by the opposing sides, on distillation, lie within a relatively small compass. The Court will give a schema of these rival arguments.

It was contended on behalf of the petitioners that the Court was empowered to make the disputed order by virtue of O. 4 r. 6 and also as a result of its inherent jurisdiction. It was also submitted that the respondents had brought a constitutional motion in which they questioned the jurisdiction of this Court and the applicability of the Rules of Court. The motion had been adjudicated upon by Archie J. and he asserted that this Court did, in fact, have jurisdiction and that the Rules of Court were applicable. The respondents were therefore estopped from raising these issues before this Court.

It was urged on behalf of the respondents, the attorneys having joined in their submissions, that the Court should not make that order because the applicability of the Rules of Court and the Court's inherent jurisdiction were challenged in a constitutional motion before Archie J. and his judgment had been appealed. Should the Court make the order it would be preempting the decision of the Court of Appeal on the issue of the jurisdiction of this Court. So the question whether the Court should make the order ought not to be determined until the Court of Appeal has made it clear that this Court has jurisdiction to hear and determine the two petitions. The effect of the Court making an order that the petitions be heard together would mean that the parties and their counsel would be obliged to contest both causes at the same time; it would be an order affecting the hearing and determination of the petitions. Unless otherwise advised by the Court of Appeal or the Privy Council, the position of the respondents was that this Court or any election Judge hearing an election petition did not have jurisdiction. But notwithstanding

this, the Court had a residual jurisdiction to hear submissions on the issue of adjournments.

Dr. Ramsahoye stated, however, that if the judgment of Archie J. was a final judgment it must bind the parties. What he was contending however, was that the judgment was under appeal and it was for this Court to say whether this Court will act on the judgment, despite the fact that it was on appeal and the appeal was to be heard on 24th April, 2001.

It is common ground that the respondents to these petitions were applicants in constitutional motions and the petitioners were added as respondents in those motions. Those motions were heard by Archie J. and dismissed on 9th March, 2001. An appeal was filed from that decision and an application was made before the Judge for a stay of these petitions. That application was refused. Thereafter an application was made before the Court of Appeal for a stay of these proceedings. That application was also refused. The cruciality of the judgment of Archie J. stands in no need of underscoring. There is no dispute that the question of the jurisdiction of the election court to hear and determine election petitions was considered and determined in the judgment. At page 96 it is stated:

“The Election Court constituted under section 52 of the Constitution and Part VI of the R. P.A. is the High Court. As such, it has the ability to hear and determine all issues raised in respect of the validity of the applicants’ elections including challenges to its jurisdiction to try any petition presented to itIt may resort to.....the Rules of the Supreme Court and its inherent jurisdiction to regulate the procedure for entertaining and determining election petitions.”

The issues of the jurisdiction of this Court and whether or not the Rules of the Supreme Court applied, were joined between the parties in the constitutional motions. These are the same issues raised in these matters. Those issues were decided in the motion, and the adjudication was, without question, final and conclusive. And the conclusiveness of the decision subsists and endures unless and until that decision is set aside by a Court of superior jurisdiction. The status quo is in no way affected by the filing of an appeal.

O. 59 r. 22 (1), as far as is relevant states:

“An appeal shall not operate as a stay of execution or of proceedings under the judgment or order appealed from.....”

Having given the matter full consideration the Court harbours the conviction that the issues of the jurisdiction of this Court to entertain and adjudicate upon the election petitions, and the applicability of the Rules of Court, having been decided by Archie J., there is now a valid and final judgment on those issues and the parties are estopped from raising those issues before this Court.

Let it be clearly understood that this Court is making no finding on the issue of jurisdiction. A finding has already been made by the High Court. We shall proceed on that basis. This Court is of opinion that it must severely eschew any consideration and determination of the question of jurisdiction of this Court and the applicability of the Rules of Court. Such a course would be an irreverent and contumacious usurpation of the functions of the Court of Appeal. It would be an ignoble attempt to preempt the decision of the Court of Appeal. Happily, proceedings at this stage will not have that unfortunate result, because this Court is relying on the decision of Archie J. and it is merely giving effect to a valid and subsisting order of the High Court.

Order 4, rule 6 provides:

“Where two or more causes or matters are pending in the same Court, if it appears to the Court:

- (a) that some common question of law or fact arises in both or all of them; or*
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or*
- (c) that for some other reason it is desirable to make an order under this rule, the Court may order those causes or*

matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any of them.”

The Court considered the two petitions and concluded that there were large areas of common terrain.

Both petitions claim that the nominations of the two respondents were void for the reason that at the time of nomination each of the respondents owed allegiance to a country other than Trinidad and Tobago and each swore that that was not so. The question for the Court's consideration would be whether or not the declarations made in respect of their respective nominations were false and whether that falsity vitiated the nomination. Should these matters be affirmatively decided, then the legal question whether or not a change in their status could have the effect of re validating their nomination must be addressed. Depending on the Court's decision, the Court will then consider whether it would be appropriate to declare under section 118 of the R.P.A. the petitioners be duly returned as elected in the stead of the respondents.

Section 113 (3) of the R.P.A. provides:

“The Court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.”

Parliament is clearly signaling that time is of the essence in the trial of an election petition. And this is consonant with logic and good sense. A matter of such gravity and momentousness ought to be heard with dispatch. The nation needs to be informed.

In light of these facts and in the exercise of its discretion, the Court considers it desirable, in the public interest and for the good management and expeditious hearing of these matters and the saving of costs that the two petitions be taken together. And

naturally and logically, this would mean that the applications for the stay/adjournment/postponement will be heard together.

Attorneys for the respondents informed the Court that they were consenting to the applications being heard together but they were not consenting to the petitions being heard together. The Court travailed as it sought to achieve a seamless combination of these two concepts. It is pellucid and beyond the bounds of disputation that the application for the stay/adjournment/postponement of the petition, and the petition, are one, indivisible entity. The application has its *fons et origo* in the petition. The umbilical connection between the application and the petition is real and palpable. They are not two disparate and distinct bodies.

It is noteworthy, that if attorneys for the respondents are applying to the Court for the petitions to be stayed/adjourned/postponed. And they are consenting that the two applications be heard together, then by implication, they are saying that the Court has the power and the duty to manage these petitions.

The petitions will be heard together. On the applications for the stay/adjournment/postponement attorneys will be heard in this order:

Attorneys for the respondents, followed by attorneys for the petitioners, followed by attorneys for the respondents.

Dated this 19th day of March, 2001

Melville Baird

Judge