



PETITION NO. 14/2025

**SUPREME COURT
TURKS AND CAICOS ISLANDS**

**IN THE MATTER OF THE ELECTIONS ORDINANCE CAP. 1.05 (THE
ORDINANCE)**

**AND IN THE MATTER OF SECTION 53 OF THE TURKS AND CAICOS
ISLANDS CONSTITUTION ORDER 2011 (THE CONSTITUTION)**

**AND IN THE MATTER OF THE ELECTION OF ALL THE ELECTED
MEMBERS OF PARLIAMENT FOR, TURKS AND CAICOS ISLANDS, IN
THE GENERAL ELECTION HELD ON 7TH FEBRUARY, 2025**

BETWEEN

ROSEBELLE GIBSON

Petitioner

and

**RANDY HOWELL
SUPERVISOR OF ELECTIONS
ATTORNEY GENERAL OF THE (TCI)**

Respondents

PETITION NO. 15 /2025

**SUPREME COURT
TURKS AND CAICOS ISLANDS**



**IN THE MATTER OF THE ELECTIONS ORDINANCE CAP. 1.05 (THE
ORDINANCE)**

**AND IN THE MATTER OF SECTION 53 OF THE TURKS AND CAICOS
ISLANDS CONSTITUTION ORDER 2011 (THE CONSTITUTION)**

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MEMBERS OF PARLIAMENT FOR, TURKS AND CAICOS ISLANDS, IN
THE GENERAL ELECTION HELD ON 7TH FEBRUARY, 2025**

BETWEEN

**EDWIN ASTWOOD
ROBERT BEEN**

Petitioners

and

**SUPERVISOR OF ELECTIONS
ATTORNEY GENERAL OF THE (TCI)**

Respondents

**DECISION ON THE PETITIONERS' APPLICATIONS
TO AMEND THE PETITIONS**

Before: The Honourable Justice Chris Selochan

**Appearances: Mr. George C. Missick and Mr. Alvin Garland for
the Petitioners**

**Ms. Rhondalee Braithwaite-Knowles OBE, KC,
Ms. Clemar B Hippolyte and Ms. Khadija Mac
Farlane for the Second and Third Respondents in
Petition No. 14/25 and for the Respondents in
Petition No. 15/25**

**Ms. Akierra Missick for the First Respondent in
Petition No.14/25 and appearing amicus curiae in
Petition No. 15/25**

Venue: Court Room #1, Supreme Court, Providenciales

Hearing Date: 6th March 2025

Handed Down: 9th March 2025

BACKGROUND

1. On 7th February 2025, a General Election was held in the Turks and Caicos Islands. The declared results show the Progressive National Party (PNP) winning sixteen of the nineteen seats in the Parliament with the People's Democratic Movement (PDM) winning two. One seat was won by an Independent candidate.
2. On 14th February, 2025 Election Petitions were filed by the Petitioners in both matters (being Petition No. 14/2025 and Petition No. 15/2025).
3. Election Petition No. 14/2025 was supported by the First Affidavit of the First Petitioner, Rosebelle Gibson, annexed to which as exhibit "RG-1" is a copy of the ballot paper in Form 23 of Schedule 1 of the *Elections Ordinance Cap. 1.05 ("Elections Ordinance")*.
4. Election Petition No. 15/2025 was supported by the First Affidavit of the Second Petitioner, Robert Antonio Been, annexed to which as exhibit "RB-1" is a copy of the ballot paper in Form 18A of Schedule 1 of the *Elections Ordinance*.
5. In Election Petition 14/2025, the Petitioner was a registered voter in Electoral District No. 8 (Blue Hills, Providenciales). The First Respondent was the declared winner of the electoral district. The Petitioner has challenged the validity of the election of the First Respondent on the ground that non-compliance with the *Elections Ordinance* materially affected the outcome of the election, rendering the result unsafe and the election void. She has alleged that there were ballot irregularities which impacted the results and seeks the following reliefs:
 - i. That the counterfoils to the ballot papers and/or the ballots be scrutinized.

- ii. A declaration be made that the election in Electoral District No. 8 was conducted in substantial non-compliance with the Elections Ordinance, rendering it void.
 - iii. The return of the First Respondent as the duly elected representative for Electoral District No. 8 be set aside.
 - iv. An order that a by-election be held in Electoral District 8, Blue Hills so that electors can return their representative to Parliament.
 - v. That the costs of this Petition may be the Petitioner's.
 - vi. That the Petitioner may have such further or other relief as may be just and equitable.
6. In Election Petition 15/2025, the First Petitioner was a candidate in Electoral District No. 2 (Grand Turk and Salt Cay) and the Second Petitioner was a candidate for an All Island seat. The Petitioners base their petition on the following allegations:
- i. Irregularities in the ballot papers.
 - ii. Machine malfunctions and voter disenfranchisement.
 - iii. Unlawful denial of recount request.
 - iv. Bribery and corruption.
7. The Petitioners in Election Petition 15/2025 seek the following reliefs:
- i. That the counterfoils to the ballot papers and/or ballots for the All Island be scrutinized.
 - ii. That it may be determined and declared:-
 - a. That the members purportedly elected were not duly elected as members of Parliament.
 - iii. That the election and return of the members be declared null and void.
 - iv. An order that a new Writ of Election for fresh Parliamentary elections.
 - v. That the costs of this Petition may be the Petitioners'.
 - vi. That the Petitioners may have such further or other relief as this Honourable Court deems just and equitable.
8. The Court has already given directions and set hearing dates for both petitions. In addition, the Second and Third Respondents in Petition No. 14/25 and the

Respondents in Petition No. 15/25 have filed applications for the petitions to be struck out and directions and hearing dates have also been given for these applications.

THE AMENDMENTS SOUGHT

9. In Election Petition 14/2025, the Petitioner has sought an amendment to paragraph 7 of her petition by inserting the words "*was not the prescribed form No. 23 under section 42(4) and*" so that, if the amendment is granted, the paragraph would now read as follows:

"7. Contrary to these statutory requirements, the ballot papers issued by the Elections Office on election day was not the prescribed form No. 23 under section 42(4) and contained both the Electoral District and the All Islands District candidates on a single ballot paper of uniform colour, thereby breaching section 42(7) of the Ordinance."

(I have underlined the words which the Petitioner has sought to insert).

10. In Election Petition 15/2025, the Petitioners have sought an amendment to their paragraph 4 in order to insert a new paragraph 4d so that if the amendment is granted, the paragraph would now read as follows:

"4. The ballot papers used in the election failed to comply with these legal requirements in that:

- a. A single ballot paper was used for both electoral district and All Islands votes, in contravention of the Ordinance;*
- b. The ballot paper was of a uniform colour, instead of the legally required two district colours;*
- c. the ballot papers were not published by the Supervisor of Election in accordance with section 6 of the Ordinance.*
- d. Contrary to the statutory requirements, the ballot papers issued by the Elections Office on election day were not in the prescribed form No. 23 under section 42(4)."*

(I have again underlined the words which the Petitioners have sought to insert).

11. Both applications were filed on 3rd March 2025, well outside of the statutory prescribed time limitation period of seven (7) days for the filing of an election petition as prescribed by *section 71(a)* of the *Elections Ordinance CAP. 1.05*.
12. The Respondents in both petitions have objected to the amendments for the reasons which shall be detailed below.
13. The parties filed submissions in writing and, in order to treat these matters with the urgency which they require, the applications to amend in both matters were heard together by consent by this Court on Thursday 6th March 2025. On Friday 7th March 2025 the Court gave an oral ruling on the applications, which it now reduces into writing.

SUBMISSIONS BY THE PETITIONERS

14. The Petitioners filed submissions in writing and Mr. George Missick addressed the Court on their behalf.
15. The Petitioners submitted that based on the decision of Ramsey-Hale J. (as she then was) in *Oral Isaac Selver v. Edward Emanuel Smith et al.*¹, the Court has the discretion to amend an Election Petition outside of the statutory limitation period for filing where the amendment does not introduce a new cause of action.
16. They contended that the ruling is binding and that the doctrine of stare decisis requires this court to follow that decision unless there is a strong reason to depart from it.
17. *Section 94(1)* of the *Elections Ordinance* gives the Governor the power to make regulations generally for giving effect to the Ordinance. However, no Regulations were ever made.

¹ (CL-237/12)

18. The Petitioners argued that, since the Court has jurisdiction, and in the absence of any Regulations made under the *Elections Ordinance*, it must then be guided by the *Rules of the Supreme Court 2000* to determine whether the applications should be granted. In this regard reference was made to the following:

a. *Section 74* of the *Elections Ordinance* which provides that:

- Every election petition shall be tried in the same manner as an action in the Supreme Court by the Judge sitting alone.
- At the conclusion of the trial, the Judge determines the validity of the election and certifies the result accordingly.
- If an election is deemed void, a writ for a new election is issued, and the election is considered part of the preceding general election.

b. *Section 75* of the *Elections Ordinance* which states that at the trial of an election petition, the Judge has the same powers, jurisdiction, and authority as in a civil trial in the Supreme Court.

19. The Petitioners then referred the Court to *Order 1, rule 2* of the *Rules of the Supreme Court 2000* which provides:

2. (1) *Subject to paragraph (2) these rules shall have effect in relation to all proceedings in the Supreme Court.*

(2) *These rules shall not have effect in relation to proceedings in respect of which rules have been made under any other enactment.*

20. The Petitioners then pointed to *Order 20* of the *Rules of the Supreme Court 2000* which applies to the amendment of pleadings. *Order 20 Rule 5(5)* states that *an amendment may be allowed even if it introduces a new cause of action, provided that the new cause of action arises out of the same or substantially the same facts as those already pleaded.*

21. Reference was made to the decisions in *Rodriguez v Parker*² and *Mitchell v. Harris Engineering Co. Ltd.*³ which the Petitioners proffer as authorities that the provisions of

² [1967] 1 Q.B. 116

³ [1967] 2 Q.B. 703

Order 20 Rule 5(5) empower the Court to grant leave to amend a writ or pleading in these circumstances even though the application is made outside of the relevant period of limitation for the commencement of the action.

22. The Petitioners contended that their applications to amend should be allowed since the amendments serve the interest of justice by ensuring that all relevant issues concerning the conduct of the elections are properly adjudicated.

SUBMISSIONS BY THE RESPONDENTS

23. Detailed submissions in writing were filed by Attorney General Ms. Rhondalee Braithwaite-Knowles OBE, KC, Ms. Clemar B Hippolyte and Ms. Khadija Mac Farlane on behalf of the Second and Third Respondents in Petition 14/25 and the two Respondents in Petition 15/25, and the Court heard oral submissions from Ms. Braithwaite-Knowles OBE, KC.
24. Ms. Akierra Missick appeared for the First Respondent in Petition No.14/25. She was also granted leave to appear amicus curiae in Petition No. 15/25 since certain allegations of corruption were made against unnamed officials of her client, the Progressive National Party (PNP), in the pleadings. Ms. Missick addressed the Court briefly, expressed the same objections to the Petitioners' application as Ms. Braithwaite-Knowles OBE, KC, Ms. Hippolyte and Ms. Mac Farlane did, and adopted their submissions.
25. The Respondents submitted that the Court in the Turks and Caicos Islands does not have the jurisdiction to amend election petitions. They pointed out that the *Elections Ordinance* does not make provision for the amendment of election petitions, and that pursuant to *section 94* of the *Elections Ordinance*, the Governor is empowered to make regulations generally for giving effect to the Ordinance which may include the amending of any form, but there are, however, no elections regulations in the Turks and Caicos Islands.

26. The Respondents refer the Court to *Russell v Attorney-General*⁴ where Sir Vincent Floissac CJ said (at page 137):

“The jurisdiction to determine questions as to the validity or otherwise of elections to the House of Assembly and other questions referred to in section 36 of the Constitution has been excluded from the jurisdiction conferred by section 96 because the former jurisdiction is a peculiar and special jurisdiction. It is essentially a parliamentary jurisdiction conveniently assigned to the judiciary by the Constitution and by legislation.”

27. They submitted that the jurisprudence consistently supports the argument that the Supreme Court on hearing an Election Petition cannot invoke the Civil Procedure rules, as attractive as it may be to do so, to mitigate the strict application of electoral statutes. Reference was made to *Daven Joseph v Chandler Codrington et al*⁵, where they submitted that the court reaffirmed that electoral matters must be governed strictly by their statutory provisions, without recourse to the flexible remedies available in ordinary civil proceedings.

28. The Respondents contended that while certain procedural safeguards from the *Rules of the Supreme Court* (such as those relating to the taking of evidence, the swearing of witnesses, and the imposition of perjury penalties) are indeed adopted by reference, this does not extend to the full array of rules, particularly those governing amendments to pleadings.

29. According to the Respondents, the specialized nature of election petitions, which are subject to mandatory statutory timeframes and unique public interest considerations, requires that their procedural framework remain distinct, and this tailored framework is intended to ensure the swift resolution of electoral disputes, rather than to accommodate the flexible and often prolonged procedures characteristic of ordinary civil litigation. Therefore, contrary to what is being advanced on behalf of the Petitioner, this provision does not import the entire corpus of civil procedure rules into election petition proceedings. The language “as nearly as circumstances admit”

⁴ (1995) 50 WIR 128

⁵ ANUHCV2009/0147 Judgment 30 June 2009 at paragraph [55]

indicates that the application is necessarily limited and adapted to the unique context of election petitions, rather than a wholesale adoption of all procedural rules applicable to ordinary civil actions.

30. Moreover, submitted the Respondents, the legislative provision is expressly “*subject to this Ordinance*”, reinforcing that the specific statutory scheme for election petitions governs the proceedings and implying that the election court or judge exercising this election jurisdiction has no power, jurisdiction or authority to do anything which may infringe or conflict with the obligations imposed by the provisions of the Ordinance. The election court, they contend, has no power to extend time or allow amendments filed out of time unless election legislation so provides.
31. They referred the Court to the decisions in *Patterson v Solomon*⁶ and *Duporte v Freeman*⁷ where the courts reaffirmed the position that the court’s special jurisdiction over election matters means that “election proceedings” do not fall within the meaning of “civil proceedings” unless the election legislation expressly provides for its application.
32. The Respondents pointed to the case of *Quinn-Leandro v Jonas et al*⁸ as authority for the proposition that unless statute otherwise provides, an election petition, and any amendments thereto, must be perfected within the time limited for filing the petition.
33. The Respondents referenced paragraphs 16-22 of the judgment of Rawlins CJ in *Joseph v Reynolds*⁹ to illustrate that election petitions involve a peculiar and special jurisdiction of the Court rather than the ordinary civil jurisdiction of the Court, that they must be strictly in accordance with the requirement of the *Elections Ordinance*, and that time limits set in elections legislation must be strictly followed.
34. The Respondents also referred to the Privy Council decision of *Devan Nair v Yong Kuan Teik*¹⁰ where their Lordships stated, at page 45B:

⁶ [1960] AC 579 at page 589

⁷ (1968) 11 WIR at page 498

⁸ (2010) 78 WIR 216

⁹ HCVAP2012/0014

¹⁰ [1967] 2 AC 31

“In contrast, for example, to the Rules of the Supreme Court in this country, the rules vest no general power in the election judge to extend the time on the ground of irregularity. Their Lordships think that this matter was a matter of deliberate design. In cases where it was intended that the judge should have power to amend proceedings or postpone the inquiry it was expressly conferred upon him.”

35. The Respondents therefore submitted that the time for including the proposed amendments in these matters was at the stage of the drafting of the election petitions and that in the circumstances, the amendments cannot be allowed.
36. In the event that the Court does not agree with their submission on this point, the Respondents submitted that the Court should not grant the amendments due to the delay in the Petitioners making the application and their failure to establish that exceptional circumstances warranted the amendments.

ANALYSIS OF THE COURT

37. The Supreme Court’s authority to preside over and decide election petitions derives from *section 53* of the *Constitution of the Turks and Caicos Islands* which provides:

53(1) Without prejudice to section 52(1), the Supreme Court shall have jurisdiction to hear and determine any question as to whether –

- (a) any person has been validly elected as a member of the House of Assembly; or*
(b) an elected member of the House has vacated his or her seat in the House or is required by virtue of section 52(3) to cease to perform his or her functions as such member,

and the decision of the Supreme Court shall be final and not subject to any appeal.

(2) An application to the Supreme Court for the determination of any question under subsection (1) may be made by the Attorney General or by any person who is a registered elector; and an application for the determination of any question under subsection (1)(b) may also be made by any member of the House of Assembly.

(3) *Any question as to whether a person is an ex officio or an appointed member of the House of Assembly, or whether any such person has vacated his or her seat, shall be determined by the Governor acting in his or her discretion.*

38. As the Petitioners have correctly stated in their submissions, the primary question for determination by the Court is whether the Judge has jurisdiction to allow amendments to the Election Petitions after the expiry of the statutory period for the filing of these petitions.
39. If this is decided in the affirmative, the Court will then proceed to determine whether, in the circumstances, the amendments should be allowed.
40. The Petitioners submitted that based on the previous decision of the Supreme Court of the Turks and Caicos Islands in *Oral Isaac Selver v. Edward Emanuel Smith et al. (CL-237/12)*, the answer is certainly yes, the judge has such jurisdiction.
41. The Petitioners argued that, since the Court has jurisdiction, it must then be guided by the of the *Rules of the Supreme Court 2000* to determine whether the applications should be granted.
42. The Respondents disagreed that the Court has the jurisdiction to amend election petitions outside of the statutory time period for filing and have advanced a plethora of authorities in support of their position.
43. All parties agreed that the only reported decision in this jurisdiction in which the issue seems to have arisen is the aforementioned case of *Oral Isaac Selver v. Edward Emanuel Smith et al.*
44. In *Oral Selver v (1) Edward Emanuel Smith (2) Amanda A. Missick (3) Supervisor of Elections (4) The Attorney General Petition*¹¹, Ramsey-Hale J. (as she then was) in

¹¹ No. CL 237/12

giving her ruling on the Second Respondent's application to strike out an election petition, said, at paragraph 26:

"With respect to the second issue raised, which is the matter of the Petitioner's failure in the Petition to state that he is a registered voter, I do not think it is fatal as Mr. Missick QC suggests in the circumstances where the Electors Register for 2012 is exhibited to the Petition and clearly shows that he is so registered. I concur in the view that no amendment could be allowed to add a new cause of action outside the time limited for the presentation of a Petition, but I am satisfied that Court has the power to grant leave to the Petitioner to make the amendments in the terms sought."

45. This paragraph is the only one in the judgement in which the issue of amendment is addressed, since the decision dealt primarily with an application to strike out. As such, in the absence of more, it is difficult to appreciate the context in which the application to amend was permitted. However, the learned Ramsey-Hale J, as she then was, appears to have ruled that it was permissible to amend an Election Petition outside of the statutory time limit for filing same provided that the amendment does not seek to add a new cause of action. I note however that the amendment was to simply state in the Petition that the Petitioner was a registered voter, and this was already clear from an exhibit to the Petition itself (as opposed to an affidavit in support of the Petition).
46. The Petitioners have urged the Court to follow this decision, which it considers to be binding precedent for the proposition that the Court has the jurisdiction to amend election petitions outside of the statutory time period for filing, and to therefore go on to consider the second question, namely whether in fact the amendments should be granted.
47. The Respondents have however, respectfully submitted, that the learned judge erred in her ruling, and have pointed to authorities from other Commonwealth jurisdictions in support of their position that the Court does not have the jurisdiction to allow the amendments.

The peculiar nature of election petitions

48. I begin by looking at the peculiar nature of Elections Petitions and, in this regard, I find the words of the Privy Counsel in *Joseph Theberge and Another v Philippe Laundry*¹² to be helpful.

49. In *Joseph Theberge and Another v Philippe Laundry*, an appeal from the Supreme Court of Canada, the Privy Council said, at pages 105 to 106, the following in respect of the Quebec Controverted Elections Act 1875 and the 1872 Act which the former had repealed (and which was intituled “An Act to provide for the Decision of Controverted Elections by the Judges, and to make better Provision for the Prevention of Corrupt Practices at Elections”):

“These two Acts of Parliament, the Acts of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular Court of the colony for the purpose of taking out, with its own consent, of the Legislative Assembly, and vesting in that Court, that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive, and enable the constitution of the Legislative Assembly to be distinctly and speedily known.”

50. The dicta in the preceding paragraph¹³ underscores the unique and special nature of election petitions and for the need for them to be determined expeditiously and conclusively. One can well understand why this is the case. The purpose of a General Election in most democracies is to determine the composition of the legislature. In

¹² (1876) 2 App Cas

¹³ (which has been quoted with approval in numerous subsequent decisions e.g. *Patterson v Solomon* [1960] AC 579 at page 589)

countries like the Turks and Caicos Islands, as in many others, there is an overlap between the legislature and some principal office holders in the executive. As such, the Premier and Cabinet Ministers in the Turks and Caicos Islands invariably come from the political party which secures the most seats in the General Election. A successful election petition can have the effect of a by-election being held for a constituency or, depending on the challenge, General Elections being held afresh. Whilst election petitions are pending, there is therefore a degree of uncertainty amongst electors about who will ultimately be their representatives, or, depending on the challenge, their government. Needless to say, this uncertainty cannot be allowed to pervade for a protracted period.

51. I move on to consider the authorities.

52. The Court found the judgment of the Court of Appeal of the Eastern Caribbean in *Joseph v Reynolds*¹⁴ to be particularly instructive.

55. In *Joseph v Reynolds*, the Court of Appeal of the Eastern Caribbean was invited to determine certain questions which were referred to it, primarily to determine whether the *Civil Procedure Rules 2000* (“CPR 2000”) created under section 17 of the *Supreme Court Order of 1967* (now Cap 2.01 of the Revised Laws of Saint Lucia, 2001) were applicable to elections proceedings. With respect to question 1.1 of the reference, the Court of Appeal stated that the rules of civil practice and procedure are only applicable to election petition proceedings to the extent that there is an express statutory provision that permits the rules to apply. Sir Hugh Rawlins CJ said at paragraph 16:

[16] “A plethora of cases decided over the years in the courts for this jurisdiction, have consistently held that election proceedings invoke a very peculiar and special jurisdiction of the court. According to that jurisprudence, the provisions that are made and the time limits prescribed in elections legislation enacted by Parliament, in particular, provide a comprehensive and exclusive statutory scheme, with mandatory procedural rules for challenging the validity of an election or the return of a candidate

¹⁴ HCVAP2012/0014

as the elected representative in an election. Election petitions must therefore be brought strictly in accordance with the requirements of the statutes. Failing this, a petition would be a nullity and would be struck out as such."

Rawlins CJ went on to say, inter alia, at paragraphs 18, 20 and 21:

[18] "In adopting the strict approach, our courts have stated that the jurisdiction of the election court is a very peculiar jurisdiction one, which is not the ordinary civil jurisdiction of the court. It is seen essentially as a parliamentary jurisdiction assigned to the judiciary by the various Constitutions and by legislation. It has been stated that it not a jurisdiction to determine mere ordinary civil rights..."

[20] "In keeping with the strict approach, our courts have generally insisted that the provisions in elections legislation must be strictly complied with because the paramount public interest is that election petition challenges should be determined as quickly as possible so that the assembly and the electors should know their rights at the earliest possible time. Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirements. Accordingly, the consistent result is that failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form. The jurisprudence in our courts states that time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory. The election court has no power to extend time or allow amendments filed out of time unless election legislation so provides.

[21] It was on the foregoing bases that the Dominica election court stated, in Ferdinand Frampton and Others v Ian Pinard and Others¹⁵, that a petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. The petitioner must enter security for costs in the manner and within the time prescribed. A petition must be served within the prescribed time. An election court has no power to extend time or to permit amendment of the process after the time limited for filing and perfecting the process has expired, unless those powers are expressly conferred in the elections legislation enacted by Parliament..."

¹⁵ Claim Nos. DOMHCV2005/0149, 0150, 0151, 0152 and 0154, High Court of the Commonwealth of Dominica (delivered 28th October 2005, unreported)

53. In *Albert Joseph Arzu v Allan Edmund Arthurs and Another*¹⁶, an appeal to the Privy Council from the Supreme Court of British Honduras, Lord Pearce, in quoting from the 1888 case of *Kennedy v. Purcell*¹⁷ to illustrate that an election petition does not follow the course of an ordinary suit but is subject to a special procedure and limitations of its own, said, inter alia, at pages 678 C-E:

“...In 1888 in Kennedy v. Purcell Lord Hobhouse, delivering their Lordships' judgment, declined to give leave to appeal in respect of an election petition and having referred to Théberge v. Laudry and two other cases said:

‘In all three cases there is the broad consideration of the inconvenience of the Crown interfering in election matters, and the unlikelihood that the Colonial Legislature should have intended any such result. In all three there is the creation of a special tribunal for the trial of petitions in the sense that the litigation was not left to follow the course of an ordinary law suit, but subjected to a special procedure and limitations of its own, and in all three there is the same expression of the intention to make the colonial decision final.’ “

54. The public interest for the speedy determination of election petitions has led to the courts adopting a very strict interpretation of statutory provisions or rules governing them. This was illustrated in *Devan Nair v Yong Kuan Teik*¹⁸, an appeal to the Privy Council from the Federal Court of Malaysia, where the Petitioner had failed to comply with Rule 15 of the Election Petition Rules (which provides for the service of an Election Petition) in that there was no personal service and no notice in the Gazette within ten days of the presentation of the petition. It was held that the provisions of Rule 15 were mandatory and that there was a need for strict compliance. Lord Upjohn said, inter alia, at page 40 paragraph G:

¹⁶ [1965] 1 WLR 675

¹⁷ (1888) 4 T.L.R. 664; 59 L.T. 279, P.C.

¹⁸ [1967] 2 All ER 34

“On the whole matter their lordships have reached the conclusion that the provisions of r. 15 are mandatory, and the respondent’s failure to observe the time for service thereby prescribed rendered the proceedings a nullity...”

55. In *Quinn-Leandro v Jonas, Maginley v Fernandez, Spencer v St Clair Simon*¹⁹ election petitions were brought by the three respondents challenging the validity of the election of the three appellants to serve in the legislature of Antigua and Barbuda. Rawlins CJ gave the judgment on behalf of the Court of Appeal of the Eastern Caribbean States and said, inter alia, the following, at paragraph 32 (pages 231-232):

“...Unless statute otherwise provides, an election petition, and any amendments thereto, must be perfected within the time limited for filing the petition. The rationale is that it would otherwise defeat the underlying virtue of the mandatory nature of elections legislation, which is intended to ensure that the validity of the election of a member of the legislature is dealt with expeditiously, in the public interest. Voters need to know who their lawfully elected representatives are as soon as possible after an election.”

56. The following principles in respect to election petitions, which I consider to be applicable to the Turks and Caicos Islands, can be extracted from these authorities:

- a. Election petitions invoke a very peculiar and special jurisdiction of the court.
- b. Statutory provisions relating to election petitions must be strictly complied with.
- c. There is the need for elections petitions to be determined expeditiously so that the constitution of the Parliament can be distinctly and speedily known.
- d. Civil procedure rules are not applicable in these proceedings in the absence of express legislation that provides for their application.

¹⁹ (2010) 78 WIR 216

57. The next issue that requires determination then is whether the relevant legislation provides for the application of the Rules of the Supreme Court and, if so, to what extent.

58. In this regard, I return to *sections 74* and *75* of the *Elections Ordinance*:

Section 74 of the *Elections Ordinance* provides as follows:

- (1) *Every election petition shall be **tried** in the same manner as an action in the Supreme Court by the Judge sitting alone.*
- (2) *At the conclusion of **the trial**, the Judge shall determine whether the member of the Parliament whose return of election is complained of or any, and what, other person was duly returned and elected, or whether the election was void, and shall certify such determination to the Governor and, upon his certificate being given, such determination shall be final. The return shall be confirmed or altered, or a writ for a new election issued, as the case may require, in accordance with such determination.*
- (3) *If the Judge determines that an election was void and a writ for a new election is issued, that election is deemed to be held as part of the last general election held preceding the issue of the writ.*

Section 75 of the *Elections Ordinance* provides:

***At the trial of an election petition** the Judge shall, subject to this Ordinance, have the same powers, jurisdiction, and authority and witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, **as in the trial of a civil action** in the Supreme Court, and such witnesses shall be subject to the same penalties for perjury.*

59. I have emphasised the words “tried’, ‘the trial’, ‘at the trial of an election petition’, and ‘as in the trial of a civil action’.

60. It is clear to me that that *sections 74* and *75* permit the Rules of the Supreme Court to be utilised **at the trial** of an election petition. The words in the legislation are unambiguous and the word ‘trial’ is used three times. There is nothing to suggest that the word ‘trial’ in the legislation should not be given its ordinary literal meaning. I am

emboldened in this view by references to the subpoenaing and swearing of witnesses in *section 75*.

61. The rules governing civil proceedings would therefore apply at the trials of the petitions and in respect of matters ancillary to the trials, such as directions in respect of evidence. They cannot apply to matters such as the amendment of pleadings.
62. It follows that, having regard to the clear principle derived from the authorities that rules governing civil proceedings are not applicable in these proceedings save and except where there is express legislation that provides for their application, in the absence of Regulations governing the amendment of Petitions and in the absence of any provision in the statute permitting same, the Court is not permitted to consider an application for an amendment outside of the statutory limitation period of seven (7) days for the filing of a petition.
63. I therefore find myself, most respectfully, differing from the decision of the learned Madam Justice Ramsey-Hales (as she then was) in so far as it appears to rule that the Court has the jurisdiction to amend an Election Petition outside of the statutory limitation period for filing where the amendment does not introduce a new cause of action. Since her decision was given at a time when she was presiding over a Court of equal jurisdiction, I am permitted to depart from it if I form a contrary opinion.
64. I turn to another issue raised by the Petitioners. Counsel for the Petitioners, Mr. Missick, has argued that the Respondents cannot have it both ways in that they have filed an application to strike out the petitions while at the same time are saying that interlocutory proceedings are not covered by the Rules of the Supreme Court.
65. However, it must be remembered that the Court always has the inherent power to control its process, and in this regard has the power to strike out proceedings. In *Bremer Vulkan Schiffbau und Maschinefabrick v South India Shipping Corporation*

*Ltd.*²⁰ Lord Diplock, at page 977 D, confirmed that the court has a general power to control its procedure to prevent it being used to achieve injustice:

“...The High Court’s power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice...”

66. In all of the circumstances, the Court therefore agrees with the Respondents that it does not have the power to amend the Petitions outside of the statutory limitation period.
67. I hasten to add that, even if the Court had formed the view that it had to power to amend a petition outside of the statutory limitation period, having regard to the statutory framework and the need for the expeditious determination of these matters such an amendment would only be allowed in exceptional circumstances and where the application was made without delay, and would not be permitted where the effect will be to introduce a fresh complaint. Bearing in mind these matters the Petitioners would have faced the following hurdles:
- a. The proposed amendment in 14/25 appears to be inconsequential and unnecessary.
 - b. The proposed amendment in 15/25 is of a more material nature and no proper explanation has been forthcoming about why paragraph 4d was not included in the original petition in 15/25.
 - c. The petitions were filed since 14th February 2025, and although counsel for the Petitioner had previously stated that the Petitioners were considering amending the petitions, the applications were not filed until the afternoon of 3rd March 2025. No explanation has been forthcoming for this delay which, in the context of election petitions, is quite substantial.
 - d. The Court has already given directions on the substantive matters and if the applications are allowed the Respondents would likely require an opportunity to file affidavit evidence in response to the new allegation in 15/25. This would disrupt the directions given by the court for the filing of affidavits and the hearing of this matter,

²⁰ [1981] AC 909

thereby causing further delays and impugning the principle of the expeditious determination of election petitions.

RULINGS OF THE COURT

68. In the circumstances, both applications are dismissed.

69. After the delivery of its oral decision, the Court then proceeded to hear the parties on the issue of costs.

Submissions on costs by Ms. Akierra Missick for the First Respondent in Petition No.14/25

70. Ms. Missick submitted that it is a long established principle that costs should follow the event and that the unsuccessful party should pay costs.

71. She contended that the submissions and hearing caused the parties to embark on a lengthy process which incurred significant costs and that, as such, the Petitioners should bear the Respondents' costs.

Submissions on costs by Ms. Clemar B Hippolyte for the Second and Third Respondents in Petition No. 14/25 and for the Respondents in Petition No. 15/25

72. Oral submissions were made by Ms. Hippolyte since the Attorney General was unable to attend on the date of the delivery of the decision.

73. Ms. Hippolyte referenced *Order 62 r.3(3)* of the *Rules of the Supreme Court* which provides:

(3)" If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the

Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

74. She also made reference to the case of *Bahamas Maritime Connexion Ltd v Calvin Missick*²¹ as authority for the general rule that costs should follow the event.

75. She indicated that on 3rd March 2025 she had formally written to the Petitioners explaining why they should withdraw the applications. She added that the Respondents’ submissions, which were very time-consuming, should therefore not have come as a surprise to the Petitioners.

76. According to Ms. Hippolyte, in the absence of the Respondents showing any special circumstances, costs should follow the event and the Petitioners, being unsuccessful in the applications, should pay the Respondents’ costs.

Submissions on costs by Mr. George Missick for the Petitioners

77. Mr. Missick submitted that the award of costs was in the discretion of the Court.

78. He contended that prior to the Court’s decision, there had only been one authority from this jurisdiction on the issue of whether the Court has the jurisdiction to amend an Election Petition outside of the statutory limitation period for filing where the amendment does not introduce a new cause of action (being *Oral Selver v (1) Edward Emanuel Smith (2) Amanda A. Missick (3) Supervisor of Elections (4) The Attorney General*). That authority, he continued, supported the Petitioner’s position but this Court has now departed from it.

²¹ SCCivApp & CAIS No. 90 of 2021

79. Mr. Missick further submitted that these are matters of public interest, that the submissions and ruling will assist in developing the jurisprudence in the Turks and Caicos Islands and that, in the circumstances, the appropriate Order should be costs in the cause.

Ruling on Costs

80. The Court has taken note that the matters involved a hearing and submissions, both oral and in writing. The Respondents have clearly therefore incurred costs for these matters, for which the Petitioners should be liable.

81. Whilst the issue of public interest would be more relevant to a substantive hearing than these applications, the Court has also taken into account the Petitioners' submission that prior to this application there was only one reported matter in the jurisdiction in which the issue of whether the Court has the jurisdiction to amend an Election Petition outside of the statutory limitation period for filing was considered. On the face of it, the authority could be construed as supporting the Petitioner's position on this issue.

82. However, the Court also notes its findings that there were certain weaknesses in the Petitioners' applications which made it unlikely that the applications would have been successful even if the Petitioners had succeeded in convincing me that I had the power to grant an amendment at this stage.

83. Taking all these matters into account, the Order of the Court is that the Petitioners shall pay two thirds of the costs of incurred by the Respondents to be taxed in default of agreement.

Justice Chris Selochan



