

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 72/2014**

**APPLICATION NO 145/2014**

<b>BETWEEN</b>	<b>JAMAICA TEACHERS ASSOCIATION</b>	<b>APPLICANT</b>
<b>AND</b>	<b>GEORGIA WAUGH RICHARDS</b>	<b>RESPONDENT</b>

**20 August 2014**

**Considered on paper pursuant to rule 2.10(3) of the Court of Appeal Rules**

**IN CHAMBERS**

**BROOKS JA**

[1] On 19 August 2014, Campbell J granted an injunction restraining the Jamaica Teachers Association (JTA) “from proclaiming, declaring or affirming Mr Norman Allen as its President Elect for 2014 until further order”. The JTA contends that the learned judge erred in this decision. It has, therefore, filed an appeal seeking to have this court discharge the injunction. It faces a particular difficulty however. The investiture of the president-elect is scheduled to take place on or before 23 August 2014, but the court is presently on its long vacation, which will last until 22 September 2014. In this application, the JTA requests that the court breaks its vacation to hear the appeal or, in the alternative, hears it during September 2014.

## **Background**

[2] The dispute leading to the appeal arises from a contested election held in July 2014 for the post of president-elect of the JTA. The contestants included Mrs Georgia Waugh Richards and Mr Norman Allen. In the initial count of the ballots, done on 1 July, Mrs Waugh Richards was said to have secured the greatest number of votes, having amassed 6,079 votes. Her nearest competitor was Mr Allen who had secured 83 votes less, namely 5,996 votes. She was, therefore, preliminarily declared the winner of the contest.

[3] Mr Allen requested a recount of the votes and the recount was conducted by the Electoral Office of Jamaica on 18 July. The result of that exercise was a reversal of fortunes. Mr Allen was found to be the leading candidate with 5,977 votes while Mrs Waugh Richards secured only 5,798 votes. The reduction in the number of votes in her favour led Mrs Waugh Richards to file a claim in the Supreme Court and to make the application for the injunction that Campbell J granted.

## **The application**

[4] The current president of the JTA, Dr Mark Nicely, swore to an affidavit of urgency in support of the present application. In his affidavit he indicated that the JTA's annual conference will be held between 21 and 23 August 2014, and that during the conference the change in officers is scheduled to take place. That change involves, he deposed, the present president-elect becoming the president, the present president

becoming the immediate past president and the victor of the July election being invested as the president-elect for the ensuing year.

[5] Dr Nicely stressed the importance of the post of president-elect and contended that unless the post is filled during this year's change-over of the officers, the JTA will suffer serious dislocation. At paragraph 17 of his affidavit, Dr Nicely said, in part:

“...The absence of the President-Elect is not merely incidental. It is critical to the JTA and forces the onset of other circumstances which overall undermine our ability to protect the union interests of our 24,000 members. In particular, the operations of the JTA will be severely affected and the ability to effectively carry out its functions greatly diminished as there [will be] no person occupying one of the critical posts within the JTA for the smooth execution of its functions. Indeed it is the [President] Elect that carries out the administrative and executive duties of the President in the latter's absence, as customarily the President is required to frequently travel overseas to execute his duties. Therefore, the operations of the JTA would be in effect halted if a President Elect is not in place.”

Dr Nicely deposed that the JTA would immediately be faced with those challenges if the president-elect is not invested by 23 August 2014. He said that all those matters were brought to the learned judge's attention when the matter of the balance of convenience was being canvassed before him.

### **The analysis**

[6] Although the court's long vacation runs from 1 August to the Monday after 16 September in any year, rule 1.4(2) of the Court of Appeal Rules (CAR) allows the court to sit during vacations. Applications for such a sitting may be considered by a single

judge of the court, but it is necessary for the applicant to demonstrate that it is urgent that the matter in dispute be heard.

[7] The prerequisite of urgency for the court to sit during vacations, particularly the long vacation, has a long history. The reason for court vacations and the results that vacations were intended to achieve were explained by Chambers J, in his informative work, *Essays on the Jamaican Legal System*. He pointed out, at page 129, that business during the long vacation is restricted to urgent matters. In the course of his analysis, he cited **Re Showerings, Vine Products and Whiteways Ltd** [1968] 3 All ER 276 as demonstrating the judicial approach to this issue. The issue was also considered in **Esso Petroleum Co Ltd v Dawn Property Co Ltd** [1973] 3 All ER 181 and was more recently assessed in **Ocean Chimo Limited v RBTT Bank Jamaica Limited and Another** 2010 HCV 02413 (delivered 23 August 2011).

[8] A perusal of the JTA's articles of association does not support Dr Nicely's assertion that this is a matter of urgency. Article 38 stipulates that the officers of the JTA are the president, president-elect and immediate past president. Whereas it is the president who is the chief officer of the JTA and it is the president that directs the affairs of the JTA, the president-elect only acts in the absence of the president or performs "such other duties as the Conference, Council, Executive or President may prescribe" (article 38.0(3)). In addition the president-elect is an ex-officio member of all of the JTA's committees. It does not seem, therefore, that postponing a hearing of the appeal to the first half of the coming court term would cause the JTA irreparable harm because of the absence of a president-elect.

[9] Article 38 also provides for the eventuality of a president-elect being unavailable to be invested at the JTA's annual conference. It stipulates that the investiture may be done at another time. It states in this regard:

“...A President-Elect who was unavailable to be invested at the Annual Conference may be invested at a special conference or at a special meeting of the General Council called for the purpose.”

Dr Nicely did address the possibility of an investiture at a special conference but asserted that such an investiture would be an expensive affair, costing in the region of \$5,000,000.00. He did not, however, address the cost of a special meeting of the general council.

[10] There is no reason that an investiture other than at the annual conference should be the expensive venture that Dr Nicely fears that it would be. Although the general council comprises over 30 persons (article 15.0(1)), it is mandated to meet quarterly for regular meetings. The members of the council being already gathered for a general meeting, it would be cost-effective as well as convenient to also hold a special meeting at that time. A special meeting is not difficult to convene. It may be called by the president in response to one of three possible requests, including a request of not less than 50% of the members of the general council (article 15.0(4)). It is difficult to conceive that the council would not choose that option in preference to a special conference.

[11] It is also important to note that the operation of the JTA is not wholly dependent on its officers. Article 39 of the articles of association provides for the JTA to have

administrative personnel, including a secretary general. Article 39.0(3) stipulates that the secretary general is the chief administrative officer of the JTA. The duties of the secretary general are wide ranging and important:

“The Secretary General is the chief administrative officer of the Association and shall be responsible for the carrying out of the policies of Conference and the decisions and directives of conference; General Council and Central Executive. He/she shall be responsible for the overall administration of the Association and shall coordinate the activities of the other secretaries and also the work of the Committees...”

[12] Articles 15, 38 and 39 of the articles of association demonstrate that the absence of a president-elect pending the hearing of the appeal would not be catastrophic or widely detrimental to the JTA. They also demonstrate that a delayed investiture would not be financially onerous to the association nor halt the operations of the JTA as Dr Nicely fears. Those conclusions must then be looked at in the context of the court’s timetable; both as set by Campbell J and by the CAR.

[13] Campbell J’s order provided for a number of steps to be taken with a view to having Mrs Waugh Richard’s claim settled. The relevant orders are as follows:

- “(1) An injunction to restrain the Defendant and/or its servants or agents from proclaiming, declaring or affirming Mr Norman Allen as its President-Elect for 2014 until further order.
- (2) An Order that the Defendant discloses to the Claimant within 7 days of the date hereof the reason why [sic] the Claimant had fewer votes than Mr Norman Allen after the recount of the ballot on 18<sup>th</sup> July 2014 in its President-Elect election.

- (3) An Order that the Defendant discloses to the Claimant within 7 days of the date hereof the Minutes of its General Council meeting held on 28<sup>th</sup> June 2014.
- (4) An Order that within 7 days of the date hereof the Defendant gives a full account of the number of ballots given to the Electoral Office of Jamaica for the recount that was done on 18<sup>th</sup> July 2014.
- (5) An Order that this claim proceed as if commenced by Claim Form....”

It is evident from orders two, three and four, above, that the parties will swiftly be in a better position to assess their respective stances going forward and that this court will be in a better position to assess the appeal.

[14] By virtue of rule 1.3 of the CAR, this court will resume regular sittings on 22 September 2014. The appeal may be heard as soon thereafter as the registrar of the court can arrange a hearing. I am informed by the registrar that there is no convenient time available in September, as the JTA requests, as an alternative to the vacation sitting. The alternative request must, therefore, also be refused.

### **Conclusion**

[15] For the reasons stated above, the application for a sitting during the long vacation has not been supported by the urgency that requires such a sitting. There is no indication that the JTA would suffer irreparable harm if the appeal were not heard during the vacation. The application must, therefore, be refused. There is a need for the appeal to be quickly heard, however, and therefore orders, with that end in mind, are made below.

## **Costs**

[16] The application being considered on paper, and Mrs Waugh Richards not having filed any documents in response to the application, this is a proper case to refrain from making an order as to costs.

## **Order**

- (1) The application for a sitting during the long vacation or in September 2014 to hear the appeal filed herein is refused.
- (2) The record of appeal filed on 20 August 2014 shall stand.
- (3) The applicant shall file and serve the requisite copies of the record of appeal on or before 30 August 2014.
- (4) The applicant shall file and serve on or before 8 September 2014 full submissions in support of its appeal.
- (5) The respondent shall file and serve on or before 16 September 2014, full submissions in respect of the appeal.
- (6) The appeal shall be heard on a date to be fixed by the registrar.
- (7) One and a half hours is allotted for the hearing of the appeal.
- (8) The appellant shall be limited to 45 minutes for oral submissions.
- (9) The respondent shall be limited to 35 minutes for oral submissions.
- (10) The appellant shall be limited to 10 minutes to reply if necessary.
- (11) The appellant shall file and serve the formal order hereof on or before 26 August 2014.
- (12) No order as to costs.