[2010] JMCA App 28

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 114/ 2010

APPLICATION NO. 220/2010

BETWEEN	**NORMAN WASHINGTON MANLEY BOWEN**	**APPLICANT**
AND	**SHAHINE ROBINSON**	**1ST RESPONDENT**
AND	**NEVILLE WILLIAMS**	**2ND RESPONDENT**
AND	**RUPERT BROWN**	**3RD RESPONDENT**
AND	**THE ATTORNEY GENERAL FOR JAMAICA**	**4TH RESPONDENT**

Written submissions filed by:

Abraham Dabdoub and Dr Raymond Clough instructed by Knight, Junor & Samuels for the applicant

The Director of State Proceedings for the third and fourth respondents

2 December 2010

IN CHAMBERS

PANTON P

[1] Before me is an application seeking:

(i) an order to restrain the third and fourth respondents, their servants and/or agents from taking any poll or holding any election

for the return of a member of the House of Representatives for the constituency of St Ann North East until the determination of the appeal in this suit;

(ii) an order restraining the third respondent from accepting any nomination from any person seeking to be a candidate at "the any (sic) election called for the 20 December 2010" in respect of the said constituency; and

(iii) an order to restrain the first respondent from being nominated as a candidate at any election for the return of a member of the House of Representatives for the constituency of St Ann North East "unless and until she shall have produced to the 3rd respondent, as Returning Officer…proof of renunciation of her citizenship of the United States of America…".

Incidentally, the footnote to this application states that it will be heard by a Judge in Chambers.

[2] The appeal from which this application springs was filed on 8 October 2010. It is an appeal against an order of Jones J declaring the election of 3 September 2007, for the constituency of St Ann North East null and void and of no effect, and the seat vacant. The applicant is not happy with that order. He wishes the Court of Appeal, at the end of the hearing of the appeal, to do the following (paragraph 4 of the notice and grounds of appeal):

(i) set aside the judgment of Jones J in so far as it relates to the seat being declared vacant;

(ii) set aside the certification to the Speaker of the House of Representatives; and

(iii) make such further order or grant such relief as the court may deem just.

Although the applicant filed an amended notice and grounds of appeal on 20 November 2010, he has not amended the orders that he wishes the Court of Appeal to eventually make. There is no clear indication as to what the applicant wishes the Court of Appeal to do after it has set aside the declaration of a vacancy in the seat and the certification to the Speaker. That, I suppose, is being left for inference. The amendment made was to add a third and fourth respondent to the appeal in the form of Rupert Brown and The Attorney General for Jamaica, respectively.

[3] Since Jones J made his order on 8 October 2010, there has been much activity in the matter. Morrison JA of this court has been kept quite busy. He had an application which he heard in two segments. First, he heard a preliminary objection to the first respondent Robinson, appearing or taking part as a party in the proceedings on appeal. He heard submissions on behalf of the applicant and the first respondent on 9 November 2010, and delivered his decision on 16 November 2010. He ruled that the preliminary objection was well founded and ordered that the first respondent should remain as a respondent in the proceedings but "shall not appear or act as a party against the petition in any proceedings including this appeal". He also ordered costs against the first respondent to the applicant. Morrison JA then considered the applicant's

application for a stay of the judgment of Jones J and on 24 November 2010, he refused the application, with no order as to costs. In respect of both applications, my very learned brother gave his reasons in writing. For what it is worth, I wish to add that, having carefully read the reasons, I agree with the rulings made by Morrison JA. They are unimpeachable. It does not surprise me therefore that there has been no application to discharge the order of Morrison JA.

[4] This brings me to the current application. It was filed on 26 November 2010, that is two days after the order of Morrison JA denying a stay of execution of the judgment. With the application, the applicant filed what he termed "preliminary skeleton submissions on notice of application for restraining order". An affidavit of urgency sworn to by Mr Raymond Clough was also filed. As a result of these occurrences, on 29 November 2010 I gave instructions for the applicant to file and serve any further submissions he may have by noon on 30 November, 2010 and for the respondents to file and serve their responses by 3:00 p.m on the said 30 November 2010. At 2:55 p.m on 30 November 2010, the Registrar of the Court of Appeal received a letter from the Solicitor-General requesting that he be allowed until 10:00 a.m the next day to file his submissions. At 3:05 pm on 30 November 2010, I became aware of the fact that the applicant's preliminary skeleton arguments, though filed on 26 November had not been served on the respondents until approximately 9:00 am on 30

November. Consequently, I was constrained to allow the Solicitor-General the extension of time sought.

[5] It is quite surprising to note that paragraph 43 of the applicant's skeleton submissions in this application reads in part:

> "The Claimant submits that This Honourable Court ought to stay execution of the Judgment of the Honourable Mr. Justice Roy Jones…"

The surprise is due to the fact that that is the very matter that occupied Morrison JA for several days, and was determined by him.

[6] In matters of this nature, a single judge of the Court of Appeal acts by virtue of the provisions of Rule 2.11 of the Court of Appeal Rules. That rule is under the title "Powers of single judge". For convenience, I shall set out those powers:

> "2.11 (1) A single judge may make orders -
>
> (a) for the giving of security for any costs occasioned by an appeal;
>
> (b) for a stay of execution of any judgment or order against which an appeal has been made pending the determination of the appeal;
>
> (c) for an injunction restraining any party from dealing, disposing or parting with possession of the subject matter of an appeal pending the determination of the appeal;

(d) as to the documents to be included in the record in the event that rule 1.7(9) applies; and

(e) on any other procedural application.

(2) Any order made by a single judge may be varied or discharged by the court."

[7] For the instant application to succeed, the applicant must satisfy me that what are being sought fall within the compass of rule 2.11. The application is for me to make three restraining orders. Firstly, to restrain the respondents from holding an election in the constituency concerned, secondly, to restrain the third respondent from accepting nominations for such an election, and thirdly, to restrain the first respondent from being nominated as a candidate unless and until she produces proof to the third respondent that she has renounced her citizenship of the United States of America.

[8] Even a glance at rule 2.11 will show that for any restraining order to be made by a single judge of this court it has to be done with a view to preventing a party to an appeal from dealing, disposing or parting with possession of the subject matter of the appeal. Clearly, such restraint has to be in respect of a physical thing, or the like. The applicant's written submissions are therefore wholly off the mark and without any merit for the purpose of this application. Indeed, the application is wholly misconceived.

[9] An examination of rule 2.11 shows that the application that was made for a stay of execution of the judgment of Jones J and with which Morrison JA so ably dealt, was framed under rule 2.11(1) (b). It seems that having failed under paragraph (b), it was conceived that a fresh application should be made but this time it should be under paragraph (c). To my mind, it is most unfortunate that the court's time should be taken up with what may properly be described as a frivolous, if not vexatious, application. The courts in Jamaica have to cope with a high volume of cases, so litigants and their attorneys-at-law should be very careful not to abuse the court process as has been done by this application.

[10] The application is refused and costs are awarded to the third and fourth respondents, such costs to be agreed or taxed.