

[2014] JMCA Civ 44

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 72/14

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE McDONALD- BISHOP JA (Ag)**

**BETWEEN JAMAICA TEACHERS ASSOCIATION APPELLANT
AND GEORGIA WAUGH RICHARDS RESPONDENT**

**Mrs Caroline Hay and Mrs Trudy-Ann Dixon-Frith instructed by Grant,
Stewart, Phillips & Co for the appellant**

Seymour Stewart for the respondent

16 October 2014

ORAL JUDGMENT

PANTON P

[1] Before us is an appeal against the judgment of Campbell J delivered on 19 August, 2014.

[2] In that judgment the learned judge ordered that there be an injunction to restrain the appellant and/or its servants or agents from proclaiming, declaring or affirming Norman Allen as the President Elect for 2014 or until further order.

[3] The learned judge in his written judgment made several consequential orders including disclosures to be made by the appellant as regards the conduct of the elections for President Elect for 2014 held in July 2014.

[4] The appeal stems from a claim filed by the respondent being a member of the appellant (JTA). The respondent claimed breach of contract between herself and the appellant so far as the conduct of the elections in June 2014 was concerned. She sought orders that the election be deemed null and void due to irregularities. She also sought a re-run of the elections.

[5] During the legal vacation this matter came before a judge of the Court of Appeal who on 20 August 2014, made several orders with a view to a speedy disposition of the matter. Among those orders were that the appellant was to file and serve full written submissions on or before 8 September 2014 and the respondent on or before 16 September 2014. The appellant was to serve the formal order on or before 26 August 2014.

[6] The appellant has complied with all orders made by Brooks JA but the respondent has not seen it fit to comply with any of the orders made on that day. Instead at the eleventh hour there was a letter addressed by counsel for the

respondent to the registrar indicating that more time was needed for instructions to be received to defend the appeal.

[7] Mr Stewart made a formal application to the court repeating the contents of his letter to the registrar. This was not an application that the court would grant. There is some urgency with regard to this matter. Further, two months have elapsed since the orders were made by the single judge. It was not in the best interest of the matter that this application be entertained. This court considered the appeal as put forward by Mrs Hay and Mrs Dixon-Frith for the appellant. There was nothing submitted for the respondent.

[8] Regrettably, since the respondent is the person who moved the Supreme Court to make this order, she having made that move, she cannot have been a non-participant in this court. We have read all the submissions and listened carefully to the oral submissions. There is a complaint on the appeal that there is no serious issue to be tried and that if the injunction is granted the substance of the relief being sought would be granted without there being a trial of the issues. In other words, the non-participating respondent would get her entire relief in her claim. The trial is scheduled for as far away as May 2015, which is one month short of when the next election is due. There is no guarantee that judgment would even be given at that time. Even if there is a serious issue to be tried, an entire year would be totally wasted.

[9] The judge made findings of fact where there was nothing to base those findings on in relation to votes that were not accounted for. We note the evidence as it was filed in the Supreme Court from the scrutineers and the Electoral Office of Jamaica and that the tally in both cases is similar and does not support the finding of fact by the learned judge. It is apparent that the judge did not take into account the tight evidence given in the affidavit of Dr Mark Nicely. In all the circumstances, we are constrained to say that in the absence of a serious issue to be tried and the clear indication that the total relief sought would be granted if the injunction is in place, the appeal is allowed and the orders made by Campbell J ought to be set aside.

ORDER

1. The appeal is allowed.
2. The order made by Campbell J that there be an injunction to restrain the appellant and/or its servants or agents from proclaiming, declaring or affirming Norman Allen as the President Elect for 2014 is set aside and the injunction is discharged.
3. Costs of the appeal to the appellant to be taxed, if not agreed.