

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2009/PUB/jrv/00016

IN THE MATTER OF an application for leave to apply **For Judicial Review**

AND IN THE MATTER OF the Constitution of The Bahamas Hotel Catering and Allied Workers Union

AND IN THE MATTER of the decision of the Executive Council of The Bahamas Hotel Catering and Allied Workers Union to take a secret ballot for the election of Officers and Members to that Executive Council on the 27th May, 2009 for 2009-2012

AND IN THE MATTER of a decision of the Registrar of Trade Unions or his designate to supervise a secret ballot for the election of Officers and Members of the Executive Council of the Bahamas Hotel Catering and Allied Workers Union on the 28th May 2009

AND FURTHER IN THE MATTER of the Industrial Relations Act, 1974 Chapter 321 of the Statue Law of The Bahamas

BETWEEN

BAHAMAS HOTEL CATERING & ALLIED WORKERS UNION (1)
(A Trade Union)

KIRK WILSON (2)
(First Vice President-BHCAWU)

LIONEL MORLEY (3)
(Second Vice President-BGCAWU)

RAYMOND WRIGHT (4)
(Assistant General Secretary-BHCAWU)

FRANCIS GRAY (5)
(Assistant Treasurer-BHCAWU)

IAN NEELY (6)
(Trustee-BHCAWU)

BRIAN COLLIE (7)
(Executive Council Member-(BHCAWU))

PHILLIPPA DIXON (8)
(Member-BHCAWU)

TYRONE BENEBY (9)
(Member-BHCAWU)

MONIQUE RITCHIE (10)
(Member-BHCAWU)

DARRELL COX (11)
(Member-BHCAWU)

TYRUS CURTIS (12)
(Member-BHCAWU)

PATRICIA MORTIMER (13)
(Member-BHCAWU)

TYRONE ROCK MORRIS (14)
(Member-BHCAWU) Applicants

AND

REGISTRAR OF TRADE UNIONS (1)
COMMONWEALTH OF THE BAHAMAS

MINISTER OF LABOUR (2)
COMMONWEALTH OF THE BAHAMAS

ROY COLEBROOK (3)
(President-BHCAWU)

LEO DOUGLAS (4)
(General Secretary-BHCAWU)

BASIL McKENZIE (5)
(Treasurer-BHCAWU)

MORGAN GRAHAM (6)
(Designated Officer of the Minister of Labour to supervise
BHCAWU Election of Officers) Respondents

BEFORE: His Lordship The Honourable
Mr Justice K Neville Adderley

APPEARANCES: Mr Keod Smith, Mr Obie Ferguson with him, for the
Applicants

Mr Harvey Tynes, QC; Mr Damien Gomez with him,
for the Third, Fourth and Fifth Respondents

Ms Melisa Wright, Mr David Higgins, Mrs Sophia
Thompson-Williams and Ms Cordell Frazier with her,
for the First, Second and Sixth Respondents

3 and 7 September 2009

DECISION

Adderley J

This is an application by summons filed 31 August 2009 on behalf of the Registrar of Trade Unions (“the Registrar”) for directions by way of clarification of the judgment of Isaacs Sr J given 31 July 2009 (“the Isaacs Decision”) on the following matters:

- a. The question of whether the Executive Council of the Union [the first applicant] should conduct new nominations for the purpose of the upcoming elections of the Union
- b. The question of whether nominations made before the judgment of Isaacs Sr J still stands
- c. The question of who is the authorized officer for the purpose of these proceedings to communicate with the Registrar on all matters relating to the upcoming elections of the Union

and for such other order or determination as the court may deem just.

The Facts

2. The proposed nomination date of 4 May 2009 had been communicated to the Registrar by Mr. Leo Douglas the General Secretary of the Union and the date of 11 May 2009 by Mr Kirk Wilson First Vice President of the Union both purportedly on behalf of the Union. In the Isaacs Decision the learned Justice found that the Registrar had failed to act judicially when he decided to use the nomination date of 4 May 2009 in preference to 11 May. He therefore voided the 28 May elections and ordered that new elections be held within 30 days following his Decision. The period was extended to 60 days by order dated 9 August 2009.

3. In the interim he ordered that the officers who were in office prior to the May 28 elections resume their duties pending the outcome of the new elections

4. An affidavit and supplemental affidavit of the Registrar filed 31 August and 1 September 2009 respectively and of Roy Colebrook filed 1 September were in support of the application and an affidavit of Kirk Wilson et al filed 3 September 2009 (“the Wilson Affidavit”) was in opposition. On the evidence purported Executive Council Meetings were held on 5 August and 25 August 2009 and a purported Special General Meeting was held on 25 August 2009.

5. At the meeting held on 3 August the Executive Council resolved that the nomination date to use for the new elections would be 11 May 2008 and for the elections 29 September 2009. On that basis Nicole Martin and her officers (called the “A” Team) who won the voided 28 May elections would be barred from offering as candidates in the elections.

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6. At the Executive Council meeting held on 25th August the decision was made to hold nominations on 31 August 2009 and the elections on September 12.

7. At the Special General Meeting held on 25 August 2009, a nomination date of 31 August 2009 and an election date of 29 September 2009 were decided.

8. The conflicting dates were communicated in writing to the Registrar by separate letters from the second applicant and the fourth respondent. In an effort to resolve the conflict, the Registrar exercised his discretion and I think rightly so, to seek directions from the court.

9. Mr Smith for various cogent reasons applied for an adjournment but having regard to all the circumstances I exercised my discretion to refuse that application.

10. Mr Smith then made three submissions *in limine*:

(1) Since the Isaacs decision has been appealed by the Registrar and Minister of Labour by Notice of Appeal filed 17 August 2009 in Appeal No. JudRev/HC/Cent/Man/Prob/Admin/105 of 2009) and by Nicole Martin et al by Notice of Appeal filed 7 August 2009 in Appeal No. JudRev/HC.Cent/Man/Prob/Admin/102 of 2009, the Court of Appeal is now seised of the matter and this court has no jurisdiction to adjudicate on matters which are the subject matter of the appeal.

(2) *Lawrie and Lees and Mellor v Swire* (1882) 30 ChD 239 which distinguished from this case..

(3) As a judge with concurrent jurisdiction as Isaacs Sr, J I have no jurisdiction to clarify his order.

11. I accept the submission (1). As a judge of concurrent jurisdiction this court has no jurisdiction to overturn any finding in the Isaacs Decision; that is the function of an appellate court.

12. The court rejects submissions (2) and (3) because in the court's view they are not supported by law.

The Law

13. In **St. George et al v Hayward et al CLE/GEN/FP/0223A and 223B/06** delivered 12 November 2008, (unreported) I construed and clarified an unperfected order of Allen Sr J with respect to the registration of shares in the parent company of the Grand Bahama Port Authority. The Court of Appeal in its ruling *International Diversified Corporation v Lady Henrietta St. George, et al* CAIS No. 147 of 2008 delivered November 18th 2008 refused to grant a stay of my decision.

14. The nature of the jurisdiction is set out in ***Mutual Shipping Corporation v Bayshore Shipping Co. (the "Montan") [1985] 1 Lloyd's Rep. 189*** where Lord Justice Goff at page 194 had this to say about the inherent jurisdiction of the court to rectify an order so as to ensure that the intention of the court is carried out:

"But, in the courts of common law, there has existed a power, exercised for hundreds of years before the passing of the Judicature Acts of 1873-1875, under which the Court would rectify an order, even when passed and entered, so as to make it carry out the intention and express the meaning of the Court at the time when the order was made provided that the amendment be made without injustice or on terms which precluded injustice."

*"...the inherent jurisdiction of the Court which always existed in the courts of common law before the Judicature Acts, and has since been recognized as always having existed in the Court of Chancery (see *Lawrie v Lees* at pp 34-35 per Lord Penzance, and *Re Swire* at p.246 per Justice Lindley), to rectify an order so as to make it carry out the intention and express the meaning of the Court when the order was made (see *Ainsworth v Wilding [1896] 1 Ch.673* at p.677, per Mr.*

Justice Romer). It is probable that the inherent jurisdiction to rectify survived the Judicature Acts by virtue of the note to the First Schedule to the 1875 Act, setting out the new rules of the Supreme Court, that where no other provision was made in the Act or the new rules, the present procedure and practice remained in force.”

15. On the issue of convening or calling meetings which featured in the Wilson Affidavit, in **Kayla Bodie et al v Roy Colebrook et al** 2008/CLE/GEN/00614 delivered 21 May, 2009 (unreported), (“the Bodie Decision“) I gave the court’s view on the question of who, under the constitution of the Union, can convene or call a valid Executive Council meeting. The effect of the Bodie Decision is that within the context of its mandate to govern the Union under Rule 8 “the Executive Council” means “members of the Council as a body duly convened in a meeting.” If an Executive Council decision is made outside a formal meeting, at common law it must be a unanimous decision of its members. Therefore, while under the constitution five members make up a quorum to make binding decisions in a meeting, the meeting itself must first have been duly convened. This, of course, does not derogate from the president’s mandate to make day to day decisions working closely with the General Secretary as authorized by the constitution.

16. There is no express nor, in my view, any implied power in the constitution for a majority of the members of the Executive Council to convene or call an Executive Council Meeting. To imply such a power is not necessary and in the constitution as drafted would be a recipe for pandemonium. However, in my opinion there is a necessary implication that such a meeting can be convened by or with the consent of the president, having regard to his functions set forth in Rule 9 b).

17. If I am right, It follows that any purported meeting called solely by a majority of Council members, not by or with the consent of the president, cannot be a duly convened meeting and so any purported decisions made at such meeting could not be said to have been made by the Executive Council as I

construe it. No authority to the contrary has been cited by counsel; Isaacs Sr J has not expressed a contrary opinion, nor has the Bodie Decision been stayed or overturned by the Court of Appeal. I am open to a contrary view but am guided by that decision until persuaded by other authority.

Conclusion

18. In construing the Isaacs Decision, I must view it objectively as any other document using the canons of construction. One such canon is that words are to be given their natural ordinary meaning. Isaacs Sr J made the following statement at page 21 of his decision:

“In this regard he [the Registrar] ought to oversee the nomination process because it is a vital aspect of the electoral process. If persons are left off the ballot or otherwise not allowed to put forward themselves as candidates in the Union’s elections that deprives those persons of the opportunity to be elected and involuntarily limits the choices of the Union’s members for their officers.”

19. Furthermore in Exhibit HB2 of the 31 August affidavit of the Registrar the hand written copy notes of his attorney taken at the hearing before Isaacs Sr J on 6 August 2009 read as follows:

“Justice Jon Isaacs indicates that contrary to the representation on the radio that only those nominated on Wilson’s ballot are entitled to participate that this is not the position.”

...

“Isaacs J indicates that his judgment requires the Registrar to supervise the nomination proceedings.”

The Wilson Affidavit at paragraph 8 confirms that the applicants read the affidavit and supplemental affidavit of the Registrar yet Mr Smith nor the applicants objected to or challenged the truth of this evidence. They are therefore deemed in law to have admitted it.

20. In the circumstances the learned Judge was clearly referring to new nominations where all candidates offering for election could nominate. I do not accept, as submitted by Mr Smith in answer to my question, that the learned Judge's reference to overseeing the nomination process was a general statement of principle applicable to a hypothetical case.

21. It follows that the Amended Order dated 31 July 2009 and filed on 12 August 2009 failed to reflect the intention of the court that the Registrar should oversee the nominations on a date to be determined by the Executive Council. The order should therefore be amended accordingly.

22. It follows that the Executive Council must decide a new nomination date.

23. It is not necessary to decide the question of whether the 3 or 25 August Executive Council meetings were valid. The nomination day of 11 May is clearly invalid being in breach of the Isaacs Decision and the nomination day of 31 August decided at the meeting of 25 August cannot be carried out because the date has passed. This was due to the fact that on Friday August 28, 2009 the court had restrained the Registrar from overseeing those nominations until the determination of the issues raised in this application. Therefore a new nomination date is required. On the evidence there is unanimous agreement on the new election date of 29 September 2009.

Directions

24. Based on the foregoing, I hereby direct the third respondent, Mr Roy Colebrook to convene a meeting of the Executive Council to set the new nomination date on which all persons wishing to nominate to run for offices of the Union on the agreed election day may do so, and I direct each member of the Executive Council to attend that meeting.

25. I direct that the nomination day must be on or before Tuesday, 15 September 2009. I am favorably disposed, upon application, to enlarge the time ordered by Isaacs Sr J within which to conduct the elections, by up to 15 days, if necessary.

26. The fourth respondent as General Secretary in accordance with his constitutional mandate shall communicate all matters relating to the upcoming Union nominations and elections to the Registrar who shall thereupon oversee the nominations and elections as ordered by Isaacs Sr J.

27. Having regard to all the circumstances including the pending elections, until after the elections no member shall dissipate the assets of the Union except to pay the Union's normal on-going commitments in the ordinary course of business or amounts already ordered to be paid by the court and the proper officers namely Leo Douglas, Basil McKenzie, Kayla Bodie and or Ian Neely, trustees, are directed to sign the cheques when requested by the president necessary to make the required payments. The Union by its agents or servants is also restrained from engaging in disciplinary proceedings against any member until after the said elections.

28. The parties have liberty to apply.

Dated this 7th day of September 2009

K Neville Adderley
Justice