

**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

IN THE MATTER OF THE ELECTIONS ORDINANCE 2012

**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 PORSHA STUBBS-SMITH AS THE ELECTED MEMBER
OF THE HOUSE OF ASSEMBLY FOR ELECTORAL DISTRICT NUMBER 6, THE BIGHT, TURKS AND
CAICOS ISLANDS IN THE GENERAL ELECTION ON 15TH DECEMBER 2016**

BETWEEN:

GEORGE C.D. PRATT

Petitioner

- and -

- 1) PORSHA STUBBS-SMITH**
- 2) SUPERVISOR OF ELECTIONS**
- 3) RETURNING OFFICER (ED- No. 6)**
- 4) PRESIDING OFFICER (ED- No. 6)**
- 5) ATTORNEY GENERAL TCI**

Respondents

Mr. Ashwood Forbes for the Petitioner

Mr. Ariel Misick QC for the First Respondent

Ms. Clemar Hippolyte, Crown Counsel, for the Second, Third and Fourth Respondents

HEARD ON THE 20TH APRIL 2017

BEFORE THE CHIEF JUSTICE, THE HON. MARGARET RAMSAY-HALE

NOTE OF HEARING AND EX TEMPORE RULING ON COSTS

1. The issues in this Petition having been resolved in favour of the Respondents, the Court heard from the parties on the issue of costs. There is no issue as between the Petitioner and the First Respondent, that the First respondent is entitled to her costs.

2. As between the Petitioner and the Crown, Mr. Forbes submits the Crown should not have its costs. Ms. Hippolyte on behalf of the Attorney asserts that the Crown is entitled to costs and relies in support of her submission on section 17 of the **Crown Proceedings Ordinance, 1987** which provides that the Court has jurisdiction to award costs to the Crown ¹ in the same manner and on the same principles as in civil proceedings between citizens and submits that the Attorney General should be deprived of her costs in exceptional circumstances only. She asserts that the Court's ruling makes plain that the application was frivolous and there is no reason in the circumstances to depart from the rule that costs follow the event.
3. Mr. Forbes takes issue with Ms. Hippolyte's assertion that the Petition was frivolous and says that the Petitioner had an arguable case given the section 80 of the **Elections Ordinance 2012**, which provides that the *official list of voters* is conclusive of the right to vote, was ambiguous. He submits that the issue was one of public importance which could only have been resolved by way of a challenge to the results and for that reason, the Crown should not have its costs.
4. Although the Petitioner had conceded his liability in costs to the First Respondent for whom Mr. Misick appeared, Mr. Misick helpfully took the Court to the cases that were relied on by the Petitioner in the substantive hearing and the costs orders made therein to illustrate how the discretion to award costs has been exercised.
5. In **Hanchell v Skipplings** CL 25/2003 in which the petitioner's application was successful, the Supervisor of Elections who was found to be at fault was ordered to pay costs. In **Woodward v Sarsons and Sadler** (1875) LR 10 CP 733 where the presiding officer had, *inter alia*, made an error with respect to certain ballot papers which did not affect the result of the election such that the election petition was dismissed, costs were awarded to Sarsons, whose election was confirmed. As between the Petitioner and the Returning Officer Sadler, no costs were awarded to the Returning Officer and no costs were ordered against him notwithstanding the errors made by the presiding officer as there was no personal default by him and the result was not affected. The Court ordered each party to bear his own costs.

¹ Section 17(1), Crown Proceedings Ordinance: "*Subject to subsections (2) and (3), in any civil proceedings or arbitration to which the Crown is a party, the costs of the incidental to the proceedings shall be awarded in the same manner and on the same principles as in cases between subjects, and the court or arbitrator shall have power to make an order for the payment of costs by or to the Crown accordingly.*"

6. Mr. Misick also cited the decision of the Court in **Michelle Anne Pilling & Ors. v. Paul Reynolds and Stephen Runbelow (the Returning Officer)** [2008] EWHC 316 (QB) a case of a challenge to the rejection of a ballot paper which was concluded in half a day, Blake J. emphasised the importance of proportionality of costs orders in order to ensure that persons are not dissuaded from making such challenges. He states,

“39. ... In our judgment, public law principles for the award of costs are an appropriate guideline in the case of a legitimate and serious challenge to a ballot paper that was decisive of the outcome of an election. There is an important public interest in clarifying the legitimacy of the ballot and the vote on which the disputed paper depends. It would be contrary to public interest to deter such scrutiny because of the disproportionate consequences in costs for any unsuccessful petitioner. There is some analogy with the court’s concerns to limit the costs consequences of public interest challenges in environmental litigation or on other important [law] public law claims...

“40. ...

“41. No protective costs order was made. It is not alleged that the Petitioners have behaved unreasonably in the conduct of this litigation, but we do not conclude that there should be no adverse costs consequences for the outcome on the substantive issue. We are, however, satisfied that the Court has the power and the duty to ensure that costs are proportionate in all the circumstances and do not unduly deter access to the courts in appropriate cases of dispute, and in particular the full costs of engaging experienced leading counsel should not be visited on the Petitioners. It is for these reasons as well as specific observations on the summary assessments lodged made by the Petitioners that we have made the reductions in the costs claimed on summary assessment.”

7. I do not think the Petition can be described as frivolous. If a candidate contends that a ballot was improperly rejected, to seek a scrutiny is his only recourse. The challenge to the voter’s list highlighted an important change in the law as Section 80 of the **Elections Ordinance** made the Voter’s List, and not the Register of Electors, conclusive of an elector’s right to vote. The evidence disclosed that the List was not made under and in accordance with section 80 and the Schedule.
8. There was no merit in the ground that sought to challenge the decision by lot. Further, the submissions made with respect to the manner in which the lot was drawn by Returning Officer suggested that he acted improperly. The imputation to a public officer

of improper motive, unsupported by any evidence, should be met with an adverse costs consequence.

9. I consider that, in respect of that ground only, the Petitioner should pay the costs of the other Respondent's to the Petition and order that the Petitioner pay 30% of their costs, such costs to be taxed if not agreed.

DATED 24 APRIL 2017



CHIEF JUSTICE