

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No: CV 010 of 2024

BETWEEN:

FRANKLIN “KRANKA” POLONIO

Petitioner

And

[1] CARLOS “OBEAN” GALVEZ

[2] CHIEF ELECTIONS OFFICER

Respondents

**Appearances:**

Mr. Lynden Jones for the Petitioner

Ms. Samantha Matute, ASG for the second Respondent

First respondent unrepresented

-----  
2024: July 8  
August 6  
-----

**DECISION**

*Municipal Elections: Petition seeking recount – Strike out – Petition filed under Representation of the People Act – Petition unsigned and unaccompanied by affidavit – Delayed service of petition – Security*

- [1] **Mansoor J:** The Petitioner filed a petition challenging the municipal election held on 6 March 2024 in the Punta Gorda Municipality and seeking a recount of the ballots cast at the election. The respondents did not file a response. However, the second respondent filed an application to strike out the petition stating that it is an abuse of process and that there is no reasonable cause to file an election petition. This decision relates to the strike out application.

**The petition**

- [2] The petitioner’s election petition is based on the Representation of the People Act (CAP 9), revised edition 2020, and the revised Municipal Election Training Manual. The petitioner’s case is that he was leading at the initial count of votes and would have been duly elected to office. A second recounting showed a drastic drop of votes compared to the initial count. This resulted in an increase of votes to the first respondent, who is not represented in this proceeding. After the second recount, the petitioner was informed that several votes were considered void and that they did not bear the official signature. Upon closure of the election, the petitioner signed certain documents. As he was exhausted, he did not realise that he had signed the overall statement of poll. He was again informed that certain ballots were void or that they did not bear the official signature. The petitioner states that neither he nor his agent witnessed the placement of questionable ballots as a separate batch, although it is a requirement to do so when ballots are counted. In brief, that is the petitioner’s complaint.

**The application to strike out the petition**

- [3] Wilber Sabido gave an affidavit in support of the second respondent’s application. Mr. Sabido was the returning officer for the municipal elections held in the town of Punta Gorda in the Toledo district. In his affidavit he states the process that was followed in counting ballots. He states that agents representing the parties were given copies of each count after three counts were performed and that they signed the count forms; the petitioner too signed the count 3 form in acknowledgment.
- [4] The second respondent relied on several grounds on which the petition is sought to be struck out. The main grounds of the application are that the petition is an abuse of the process of court as it has been brought under an incorrect law and procedure in that the petition has been filed under the

Peoples' Representation Act, although it should have been presented in terms of the Town Councils Act (Cap 87, revised edition 2020) and its regulations.

- [5] The second respondent states that the petition is inconsistent with the prescribed form of an election petition, which must be signed by a petitioner as required by the regulations, and that in this case, the petitioner has failed to do so. As such the petition does not set out the contents as prescribed by regulation 94 of the Town Councils (Registration of Electors and Elections) Regulations ("regulations"). Furthermore, it is said, that as the petition is not supported by an affidavit as mandated, and, therefore, the petition should be dismissed on this ground alone.
- [6] Not providing security for costs in terms of regulation 120 and the failure to serve the petition timeously are the other grounds on which the petition is sought to be struck out. The second respondent states that the petition was not served within the period of 10 days stipulated by regulation 121. Instead, the petition was served on the second respondent 59 days after it was filed in court. This assertion has not been denied.
- [7] The second respondent states that there are no reasonable grounds for bringing the petition as the election was conducted substantially in accordance with the regulations for municipal elections and that no act or omission alleged by the petitioner would have affected the outcome of the election.
- [8] Both parties filed written submissions prior to the hearing into the strike out application. The submissions filed by the petitioner relates to the reliefs sought in his petition. These submissions do not address the matters raised by the strike out application and the supporting affidavit. The respondent's submissions deal only with the strike out application.
- [9] At the hearing, the counsel for the petitioner submitted that the strike out application is not properly before court as it was not served on the petitioner and the court's leave was not obtained to file the application. He submitted that leave to file the application was imperative as the court had issued orders for case management but did not refer to the specific rule on which he relied. Counsel for the petitioner declined to reply the matters raised in the strike out application except in saying that the application cannot be acted upon without the court's prior leave. For those reasons, the petitioner would not reply to submissions in support of the strike out application. He

submits that the reliefs sought in the petition should be allowed as the respondents have not filed an affidavit opposing the petition. The court does not agree.

[10] In response, counsel for the respondent submitted that an advance copy of the strike out application was sent to the petitioner. However, time constraints had made it difficult to serve a court certified copy on the petitioner. This is a weak explanation, and in different circumstances the application may not have been entertained for failing to give proper notice.

[11] On the petitioner's part, no objection was raised regarding the strike out application until the day of the hearing on 8 July 2024; the date having been fixed in the presence of lawyers for both partes. It was also not brought to the court's attention when the matter was fixed for oral submissions on 28 June. On that day, the hearing of the strike out application was adjourned on the request of the petitioner's counsel.

[12] Regulation 98 (2) of the regulations requires an election petition to be tried as expeditiously as possible, and every endeavour to be made to conclude the trial of the petition within a period of two months after the date of the presentation of the petition. Counsel are expected to be diligent and act timeously to assist court in disposing matters without delay, and especially where expeditious disposal of a matter is prescribed. The petition was filed on 26 March 2024. The strike out application was filed on 6 June 2024. Neither party has shown urgency in concluding the proceeding without delay. The second respondent did not tender a hard copy of the strike out application and supporting affidavit to court in time for the hearing, as is usually done to assist the court. The documents were provided after the hearing.

[13] The failure to file an affidavit by itself will not lead to orders being made in favour of an applicant. The strike out application was taken up for hearing although notice of the application did not strictly comply with the requirement of the procedural rules. The court notes that the petitioner is before court and aware of the matters taken up in opposition to the petition by service of the strike out application and affidavit, which was acknowledged on 10 June 2024. The petitioner is not materially prejudiced in this instance.

[14] In written submissions, the petitioner submits that in terms of section 9.8.4 of the revised municipal elections training manual, questionable ballots are

required to be placed in a separate batch, and rejected ballots are to be kept in a marked envelope. The petitioner submits that the failure of the election officials to separate ballots in this way was a serious irregularity. He submits that this has given rise to speculation that there was fraudulent destruction of valid ballots, and such an inference could be drawn in terms of section 38 of the Representation of the People Act. Section 38 of the Act sets out the acts that constitute offences and the sentences for those offences. The petitioner does not say whether any proceeding was instituted under this provision for the commission of such offences. These submissions did not refer to the matters in the strike out application.

**The applicable law**

- [15] The grounds on which the election of a candidate can be declared void on an election petition is set out in regulation 92 paragraphs (a) to (e). Regulation 2 (1) of the regulations “means election of members to a Council and includes a by-election”. In terms of regulation 57, the returning officer is responsible for the proper carrying out of the provisions of the regulations in regard to the conduct of elections at the polling station. Part VII of the regulations deals with disputed elections. Part VIII deals with election petitions.
- [16] Regulation 92 (2) provides that no election would be declared invalid by reason of any act or omission by the returning officer or any other person involved in election duty if it appears to the court that the election was conducted substantially in accordance with the law as to elections and that the act or omission did not affect its result.
- [17] Regulations 94, 97, 117, 120 and 121 of the regulations are relevant to this proceeding. Regulation 94 states:
- “An election petition may be presented to the Supreme Court by any one or more of the following persons, namely–
- (a) some persons who voted or has a right to vote at the election to which the petition relates; or
  - (b) some person claiming to have been a candidate at such election”.
- [18] Regulation 97 sets out the contents of an election petition. Paragraph (e) of the regulation requires the petitioner of an election petition to sign the petition. The petitioner has not done so. The regulation states:
- “An election petition –

(a) shall state the right of the petitioner to petition within these regulations.

(b) shall state the holding and result of the election;

(c) shall contain a concise statement of the material facts on which the petitioner relies;

(d) shall set forth particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of such practice, and shall also be accompanied by an affidavit in support of the allegation of such corrupt or illegal practice and the date and place of the commission of such practice;

(e) shall conclude with a prayer as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or as the case may be, and shall be signed by all the petitioners”.

Provided, however, that nothing in the preceding provisions of this section shall be deemed or construed to require evidence to be stated in the petition”.

[19] In addition to the requirement to sign the petition in paragraph 97 (e), the form of the petition prescribed under regulation 113 also denotes the signature requirement. Regulation 94 (d) requires a petitioner to support the petition by affidavit evidence. The petitioner has not done so. It has been signed by his Attorney at Law.

[20] Regulation 120 requires a petitioner to pay security for costs. Where the petitioner fails to do so, the regulation states that no further proceedings shall be had on the petition and the respondent may apply to the judge for an order directing the dismissal of the petition and for the payment of the respondents' costs. The petitioner has not given security for costs.

#### **Can the petition be sustained?**

[21] The jurisdiction of the election court is special and exclusive in the determination of questions as to elections as noted by Blenman J in **Dean Jonas v Jacqui Quinn Leandro** in the High Court of Justice of Antigua and Barbuda<sup>1</sup>. The legislation lays down a procedure to bring an election dispute before the election judge. Procedural laws permit a petition or a pleading to be struck out if it discloses no reasonable cause of action or if there is an abuse of the process of court; the second respondent contends

---

<sup>1</sup> Claim No. ANUHCV2009/0141

that the petition can be struck out on either ground under civil procedural rules. The ordinary principles concerning the striking out of proceedings are well settled and need no elaboration here.

- [22] Section 2 of the Representation of the People Act defines a candidate as a person who is nominated as a candidate at an election or is declared by himself to be or acts as a candidate for election to any seat in the House of Representatives. An election is defined under the Act as an election for the purpose of electing a member of the House of Representatives and includes a general election. Section 2 of the Town Councils Act defines election as an election held by reason of the expiration of the term of office of a Council.
- [23] The introduction to the Municipal Elections Training Manual states:  
“This Training Manual is designed for the purpose of assisting election officers to better execute their duties in the most poised manner as possible and should therefore be used only as a GUIDE for quick reference. This Training Manual shall not be substituted for the Representation of the People Act, Cities and Town Councils Acts or any other Acts or regulations governing elections”.
- [24] The training manual clearly sets out its purpose, which is to assist election officers, and at most it can be used as a guide. The introduction makes it obvious that no rights can be derived from the training manual for the purpose of filing an election petition.
- [25] The petitioner was within his rights to present an election petition under regulation 94 alleging irregularity in the counting of ballots of the municipal election in which he was a candidate. One of the fundamental objections to the petition concerns the legal basis upon which the petition has been presented.
- [26] The petition relies upon the Representation of the People Act and refers to section 38 of that Act. The petitioner has not sought to amend the petition. Nor is it said that the reference to the Representation of the People Act is an oversight. There is no mention in the petition of the Town Councils Act and its regulations. The petitioner’s written submissions filed on 25 June 2024 (after the filing of the strike out application) also do not refer to the Town Councils Act and its regulations. The second respondent vigorously objects to the petition based on the Representation of the People Act.

- [27] The Town Councils (Registration of Electors and Elections) Regulations lays down the procedure by which an election petition may be presented. The courts have been strict in requiring compliance with the special procedure stipulated by the regulations. The failure to file the petition and comply with the regulations must be seen as fatal. It suffices to deal with the matter on this issue alone. Nevertheless, the court considers it proper to deal with the other matters raised by the second respondent.
- [28] The petitioner's failure to sign the petition and tender an affidavit in its support was a cogent basis to the strike out application.
- [29] The second respondent cited the decision in ***Orlando Habet v Elvin Penner***<sup>2</sup> in which the court struck out an election petition filed under the Representation of the People Act. The petition was not signed, and the court stated that section 51 (e) of the Act required a petitioner to sign an election petition and that the language in the provision made the requirement mandatory.
- [30] The language in regulation 97 (e) is mandatory. The petitioner's failure to sign the election petition is a fatal omission. So is the failure to tender an affidavit. Regulation 97 (d) makes it mandatory to provide an affidavit in support of the allegation of corrupt or illegal practices and detailing the date and time at which these were committed. The failure to do so means the petition can be struck off for not complying with either of these provisions.
- [31] The failure to provide security for costs as required by regulation 120 is a factor that affects the maintainability of the election petition. These omissions and the significant delay in serving the petition on the second respondent show that the petitioner has not been diligent in presenting his petition. The authorities show that time limits and conditional requirements in elections statutes are to be strictly followed. Where there has been a failure to comply, the courts have not been sympathetic.
- [32] In ***Lindsay Fitz-Patrick Grant v Glenroy Fitzroy Philip***<sup>3</sup>, the Eastern Caribbean Supreme Court cited the following passage by Rawlins J in ***Ferdinand Frampton v Ian Pinard***:  
"The general principles state that the time limits set in elections legislation are conditions precedent, mandatory and peremptory. They must be strictly followed. A petitioner must file and perfect the petition within the

---

<sup>2</sup> Claim No.201 of 2012

<sup>3</sup> Claim No. SKBHCV2010/0026



time limited in the legislation for the presentation of the petition. The petitioner must enter security for costs in the manner and within the time prescribed. A petition must be served within the prescribed time. An elections court has no power to extend time, or to permit amendment of process, after the time limited for filing and perfecting the process has expired, unless these powers are expressly conferred in the elections legislation.”

- [33] Another passage in the judgment of *Lindsay Fitz-Patrick Grant* attributed to Rawlins J states that normal civil procedure rules are not applicable unless the election statute made provision for the application of those rules. Quoting from the Privy Council decision of *Devan Nair v Yong Kuan Teik*, Rawlins J went on to state that the rules of the Supreme Court did not vest general power in the election judge to extend the time on the ground of irregularity, and agreed with the Privy Council’s view that the provisions were a matter of deliberate design. In *Lindsay Fitz-Patrick Grant* Rawlins J is quoted to state:

“The rationale for the foregoing statements is that provisions for the litigation of election petitions are a matter of substantive law and, like the Statute of Limitation, cannot be dispensed with by the court. The statutory time limits provide a rigid timetable to ensure that everything is done, in a timely manner, to bring these petitions to trial because the public interest requires it.”

- [34] In *Devan Nair v Yong Kuan Teik*<sup>4</sup>, which was an appeal from the Federal Court of Malaysia, one of the issues concerned the service of the petition. The Privy Council stated:

“The election judge must, however, have an inherent power to cleanse his list by striking out or better by dismissing those petitions which have become nullities by failure to serve the petition within the time prescribed by the rules”.

- [35] In *Ahmed v Kennedy and Ullah v Page*<sup>5</sup> the petitioners did not give notice to the respondents of the sum and nature of the security they had given. The petition could not be maintained. In *Arzu v. Arthurs*,<sup>6</sup> the Supreme Court of British Honduras had dismissed an election petition on procedural

---

<sup>4</sup> [1967] 2 A.C 31

<sup>5</sup> [2002] EWCA Civ 1793; [2002] All ER (D) 171

<sup>6</sup> [1965] 1 W.L.R 675 at 679

grounds. In dismissing the appeal from the Supreme Court, the Privy Council stated:

“Nor can they find a distinction in the fact that the dismissal of the petitions was based on procedural grounds. If the decision in this peculiar jurisdiction is to be final such finality must apply irrespective of the reasons for the decision.

The fact that no evidence has been heard does not affect the general principle. The court in the present case did not refuse jurisdiction; it decided in its peculiar jurisdiction that the petitions were defective. As a result the petitions were dismissed. A dismissal based on a procedural matter is none the less a decision in an election petition, even where the matter has not proceeded to the hearing of evidence”.

- [36] The petitioner's omissions are such that the petition can be struck out under rule 26.3 (1) (b) or (c). In the absence of a valid petition or affidavit there can be no reasonable grounds for bringing the petition. The failure to give proper notice under regulation 121 and give security as required by regulation 120 amount to an abuse of the process of the court. Once an abuse of process has been shown, the court has a duty to put an end to the proceeding by striking it out unless in the exercise of its discretion it concludes that its duty to do so is outweighed by other considerations<sup>7</sup>. The petitioner chose not to explain to court the reasons for these omissions. The petitioner's election petition is struck.

### **ORDER**

- A. The petition is struck out.
- B. The petitioner is to pay the second respondent's costs as agreed or assessed.

**M. Javed Mansoor**

Judge

---

<sup>7</sup> Johnson v Gore Wood & Co [2002] AC 1