[2025] JMSC Civ 147

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2025 CV03648

BETWEEN	**PAUL BUCHANAN**	**APPLICANT**
AND	**THE CONSTITUTED AUTHORITY**	**RESPONDENT**

IN CHAMBERS

Messrs. Hugh Wildman, Shemar Bryan, Arnaldo Brown, Maurice McCurdy & Ms Stacey Knight, instructed by Hugh Wildman & Co. for the Applicant

Ms Lisa White, Deputy Solicitor General & Mr Duncan Roye, instructed by the Director of State Proceedings for the Respondent

Heard: November 18 & December 8, 2025

JUDICIAL REVIEW – APPLICATION FOR LEAVE FOR JUDICIAL REVIEW OF DECISION OF CONSTITUTED AUTHORITY FOR ITS REFUSAL TO APPLY TO THE ELECTION COURT TO VOID THE ELECTION RESULTS IN THE CONSTITUENCY OF THE PRIME MINISTER

ELECTION PETITION ACT, SECTIONS 3, 4, 8, 37, 38

REPRESENTATION OF THE PEOPLE ACT, SECTIONS 34(4), 44(10), 44(10A), 77(1), 78(1), 78(1A), 81A, 92, 93, 99 52

WINT-BLAIR J

[1] The application before this Court concerns the general election held on September 3, 2025 and more specifically, the constituency of West Central Saint Andrew. It is

further concerned only with Mr Paul Buchanan and the sitting Prime Minister, Dr Andrew Holness, both of whom ran as candidates for their respective parties in that constituency.

[2] The Constituted Authority ("the Authority") is a public body established under section 62C of the Kingston and St. Andrew Corporation Act, section 40C of the Parish Councils Act and section 44A of the Representation of the People Act ("ROPA"). The composition of the Authority is not under review.

The Chronology and Background

[3] On September 3, 2025, at the end of the final count, the Returning Officer returned Dr Holness as the winner of the seat for the Constituency of West Central St. Andrew.

[4] On September 16, 2025, Mr Buchanan ("the candidate/the applicant" will be used interchangeably) submitted a request to the Authority, accompanied by supporting affidavits, asserting that serious irregularities and malpractices occurred on election day, compromising the fairness and integrity of that election in a substantial way. His request was made under section 52A(3) of the ROPA seeking that the Authority apply to the Election Court to void the taking of the poll held on September 3, 2025, in the constituency of West Central St. Andrew.

[5] On September 30, 2025, the Authority ruled on Mr Buchanan's request. It determined that it would not apply to the Election Court to void the result of the election, as it had determined that the alleged irregularities did not satisfy the standard contemplated by section 37(e) of the Election Petitions Act ("EPA"), nor

had the alleged irregularities satisfied the statutory standard set down in **Blake v Holness**.[1]

[6] On October 8, 2025, Mr Buchanan filed the instant application seeking leave to apply for judicial review of the Authority's decision delivered by letter on September 30, 2025 ("the impugned decision"). The applicant seeks the following orders, which have been reproduced below:

"*1. That leave be granted to the Applicant to apply for Judicial Review of the decision made by the Respondent, not to refer the Applicant's application to void the results of the election, dated the 3rd of September 2025, in the Constituency of West Central St. Andrew to the Electoral[sic] Court pursuant to section 37 of the Election Petition[sic] Act.*

2. A Declaration that the failure of the Respondent to refer the Applicant's application to the Electoral Court[sic] pursuant to section 37 of the Election Petition[sic] Act is unlawful, null and void and of no effect.

3. A Declaration that the failure of the Respondent to refer the Applicant's application to the Election Court to void the results of the election dated September 3, 2025, in the Constituency of West Central St. Andrew is irrational, rendering the said decision unlawful, null and void and of no effect.

4. An Order of certiorari quashing the decision of the Respondent not to refer the Applicant's application to void the result of the election dated September 3, 2025, in the Constituency of West Central St. Andrew to the Electoral[sic] Court set up under section 35(1) of the Election Petitions Act.

5. An Order of Mandamus compelling the Respondent to refer the Applicant's application to void the result of the election dated September 3, 2025, in the Constituency of West Central St. Andrew to the Electoral[sic] Court pursuant to section 37 of the Election Petitions Act."

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[1] Suit No. M001/98; May 28, 1998

[7] The application is based on the following grounds, the first five grounds are not in dispute:

> *"6. The Applicant challenged the result of the election on the basis of various malpractices, which the Applicant asserts, took place on election day, which compromised, in a substantial way, the fairness of that election.*
> *7. The Applicant proceeded immediately to gather all the evidence by way of Affidavit, from persons who had conduct of the election, and supplied that evidence to the Respondent, with a view, of having the Respondent, refer the said matter to the election Court set up under section 35(1) of the Election Petitions Act, and whose responsibility is to hear the evidence and determine whether the said election should be null and void and of no effect.*
>
> *8. The evidence that was supplied to the Respondent includes affidavit evidence of double voting, voter intimidation and compromising of the integrity of the ballot boxes, that contain the ballots of voters in areas that were regarded as strongholds of the Applicant.*
> *9. This compromising of the ballots occurred as a result of the variation of the route that was agreed by the Returning Officer, that was outlined to both candidates prior to the convening of the election, and which was surreptitiously changed, unknown to the Applicant on election night, resulting in the said ballot boxes being taken to an area, which was volatile and hostile to the interest of the Applicant.*
> *10. Further, the Applicant asserts that at various points, there were large gatherings of supporters of Dr. Holness, blazing music within the prohibited area of the cluster of polling stations, designed to intimidate legitimate voters who wanted to cast their vote.*
> *11. The Applicant presented all this evidence by way of Affidavit from various persons who had conduct of the election, to the Respondent, with a view, that the Respondent would act on the said evidence and have the matter referred to the election Court, which is the Court set up under the Election Petitions Act,*
> *to determine, whether in fact the evidence rose to the standard that required the voiding of the polls.*
> *12. The Respondent had 14 days to deliberate on the evidence submitted to it by the Applicant.*
> *13. On September 16, 2025, the Applicant made his application to the Respondent with supporting affidavit evidence outlining the various malpractices that occurred during the election in the Constituency of West Central St. Andrew.*
> *14. On September 30, 2025, the Respondent made its ruling and refused the Applicant's request for the matter to be referred to the Election Court, In refusing the Applicant's request, the Respondent said inter alia:*
> *8. The evidence that was supplied to the Respondent includes affidavit evidence of double voting, voter intimidation and compromising of the*

integrity of the ballot boxes, that contain the ballots of voters in areas that were regarded as strongholds of the Applicant.
9. This compromising of the ballots occurred as a result of the variation of the route that was agreed by the Returning Officer, that was outlined to both candidates prior to the convening of the election, and which was surreptitiously changed, unknown to the Applicant on election night, resulting in the said ballot boxes being taken to an area, which was volatile and hostile to the interest of the Applicant.
10. Further, the Applicant asserts that at various points, there were large gatherings of supporters of Dr. Holness, blazing music within the prohibited area of the cluster of polling stations, designed to intimidate legitimate voters who wanted to cast their vote.
11. The Applicant presented all this evidence by way of Affidavit from various persons who had conduct of the election, to the Respondent, with a view, that the Respondent would act on the said evidence and have the matter referred to the election Court, which is the Court set up under the Election Petitions Act,
to determine, whether in fact the evidence rose to the standard that required the voiding of the polls.
12. The Respondent had 14 days to deliberate on the evidence submitted to it by the Applicant.
13. On September 16, 2025, the Applicant made his application to the Respondent with supporting affidavit evidence outlining the various malpractices that occurred during the election in the Constituency of West Central St. Andrew.
14. On September 30, 2025, the Respondent made its ruling and refused the Applicant's request for the matter to be referred to the Election Court, In refusing the Applicant's request, the Respondent said inter alia:
station, she had to leave the polling station unmanned by any supporter of the Applicant.
22. The affidavit evidence of Ms. Avia Myles supports the Applicant's position that there were strong acts of intimidation consistent with section 37(E) of the Election Petitions Act.
23. The Applicant asserts, that the Respondent clearly ignored evidence contained in the exhibited affidavits, which clearly demonstrate that there was evidence tendered before it, which ought to have been referred to the Election Court for that Court to determine, whether the acts of intimidation and violence met the standard pursuant to sections 37(b) and 37(e) of the Election Petitions Act.
24. In their findings, the Respondent purported to act as if they were the election Court set up under section 35(1) of the Election Petitions Act when they concluded that the evidence presented to them did not meet the standard in the Blake v Holness case.
25. The Respondent failed to appreciate that they were not acting as the election Court and that their duty is, that once there is evidence of election

malpractice as established by the Applicant, they have a duty to refer the matter to the election Court for that Court to determine whether the standard had been met to void the election.
26. The Respondents failed to appreciate that it is not for them to determine the standard of proof, that is the job of the Election Court.
27. The Respondent asked themselves the wrong question and concluded by making the wrong determination as to the evidence that was before them.
28. The Applicant asserts that it was an irrational decision made by the Respondent not to refer the matter to the election Court for the election Court to determine whether the evidence satisfied the standard of proof outlined in section 37 of the Election Petitions Act.
29. The Respondent usurped the function of the election Court in refusing to refer the matter to the election Court. The Applicant asserts that he has acted promptly and there is no other remedy other than judicial review to challenge the decision of the constituted authority not to refer the Applicant's application before it, to the election Court."

Submissions on behalf of the Applicant

[8] Mr Wildman submits that the challenge to the impugned decision is based on the fact that the Authority is a statutory body whose mandate is to receive and refer complaints of electoral malpractice to the Election Court. The Authority made a jurisdictional error by assuming the role of the Election Court when it weighed and evaluated the affidavit evidence, a function not within its purview. Its proper role was to serve as a conduit: if there were grounds to void the election under the EPA, it should have referred the matter to the Election Court.

[9] The Authority ignored material evidence and misapplied the relevant statutory provisions, viz, sections 37(b) and 37(e) of the EPA.

[10] The Authority determined that the material before it did not meet the judicial standard of proof by asking itself the wrong question and applying the incorrect standard of proof in its determination. Additionally, delay does not arise as a bar to the orders sought, and there is no alternative remedy to challenge the impugned decision.

[11] The candidate is the applicant before this Court. He presented several affidavits alleging that there was double voting in several polling divisions; personation; and

deviation from the agreed transport route for ballot boxes from Jews Avenue Primary School to Olympic Way, through an area known for volatility and hostility towards his supporters. Irregular transportation of ballot boxes after the close of polls, without the presence of his agent to convey these boxes to the designated counting station. It was further alleged that there was voter intimidation and breaches of the prohibited area provisions, including large gatherings of supporters of his opponent. These supporters were playing loud music and obstructing polling stations. There was also alleged to be intimidation within polling stations by masked men, causing his agents to vacate their assigned stations, as well as disorderly conduct and intimidation.

[12] It was argued that these are irregularities and constitute breaches of the ROPA. The Court was directed to the relevant paragraphs in each affidavit and the sections of the Act alleged to have been breached. The parties may rest assured that the Court has closely examined the evidence despite not reproducing the affidavits in this judgment.

[13] On the law, Mr Wildman submits that the ROPA was enacted to ensure, inter alia, free and fair elections in keeping with our democratic process. Various provisions in that Act seek to ensure the integrity of the polls, the ballot boxes, and the transportation of and counting of ballots on election day. Counsel highlighted sections 34(4), 44(10), 44(10A), 77(1), 78(1), 78(1A), 81A, 92, 93, 99 of the ROPA and portions of the judgment in **Blake v Holness** in support of his contention.

[14] Counsel for the applicant submits that there are two pathways under the ROPA. The first is that the Authority can act on its own volition under section 52A(1). This section grants the Authority the discretion to refer a matter to the Election Court following the conduct of an election where, in its opinion, there are circumstances to warrant such an action.

[15] Section 52A(1) is to be read disjunctively and not conjunctively with sections 52A(2) and (3). Where the Authority acts on its own volition under section 52A(1),

then it must follow section 52A(2), and accept reports from the returning officer as to the conduct of the election. 52A(2) is designed to facilitate the application made by the Authority of its own volition.

[16] The second pathway is for an unsuccessful candidate to request that the Authority refer the matter to the Election Court under section 52A(3) when there are circumstances that could constitute a breach of the ROPA. In that instance, the Authority must follow the procedure in section 52A(3) as it is mandatory. In this section, the Authority has no discretion but to refer the matter to the Election Court. That procedure opens the way for the Election Court to exercise its jurisdiction. The words "*so that the Constituted Authority may determine whether a decision ought to be made*"[2] mean that once the conditions are fulfilled, the Authority must bring the application before the Election Court as it has no discretion to refuse so to do.

[17] In support of this interpretation, counsel cited the Sri Lankan case of **Jayantha Adikari Egodawele and Others v Commissioner of Elections and Others,**[3] which he argued was referred to by the Full Court in **Blake v Holness** and accepted as applicable to Jamaican law.

[18] It is submitted that only the Election Court has the jurisdiction to determine whether there are circumstances that rise to a breach of the ROPA sufficient to void an election. The Authority failed to understand that its role under the ROPA is to act as a conduit once a request is made by the applicant under section 52A(3). (See **Jayantha Adikari Egodawele**). It is the duty of the Authority to refer a matter to the Election Court once the conditions in 52A(3) are satisfied. Counsel relied on

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[2] in section 52A(3)

[3] [2002] 3 LRC 1

Re Tanjong Puteri Johore State Election Petition; Abdul Razak Bin Ahmad v Datuk MD Yunos Bin Sulaiman & Anor[4] for this proposition.

[19] The Authority misinterpreted section 52A of the ROPA and committed jurisdictional error by refusing to refer the candidate's application to the Election Court and assuming the Election Court's role. This renders the decision irrational and liable to be quashed by way of an order granting certiorari. Once there are circumstances that could constitute grounds for voiding the election under the EPA, it is not within the Authority's purview to evaluate evidence of those circumstances, as it is not a court of law. It is not empowered to determine whether the matter should be referred to the Election Court as it must do so.

[20] The Authority arrogated unto itself the authority to decide whether the evidence was sufficient to void the election; however, only the Election Court has this power. By evaluating the evidence and finding it did not meet the criteria in **Blake v Holness**, the Authority misinterpreted the law, rendering its decision irrational, null, void and liable to be quashed.

[21] Further, in **Morgan v Simpson**[5] relied on in **Blake v Holness**, the English Court of Appeal emphasised that it is for the tribunal empowered to void an election to decide whether the evidence satisfies the standard for voiding the election.

[22] Counsel raised specific breaches of the ROPA in the affidavits before the Court and relied on what he argued were identical breaches of the law set out in **Blake**

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[4] [1988] 2 MLRH 616

[5] [1974] 3 All ER 722

v Holness[6] to submit that in that case, the Election Court voided the election result as it found compelling evidence with which to do so.

[23] Additionally, the interpretation given by Walker, J, in **Blake v Holness** to section 37(e) of the Election Petition Act means that, where there are multiple acts of malpractice, one does not have to prove multiple irregularities. Singular or collective acts will suffice. If a single act is so egregious that it would have caused the election to be compromised in a substantial way, then the election can be declared void irrespective of the result.

[24] In this case, the candidate has identified so many irregularities that what was placed before the Authority would have been construed by the Election Court as established to the requisite standard. The abundant evidence placed before the Authority ought to have prompted its application. All the candidate has to do is present the evidence to show breaches of the ROPA; he does not have to prove to the Authority that, but for the irregularities, he would have won the election. He only has to show a substantial departure from the principles of a free and fair election.

[25] The effect of all of this is that the candidate has been deprived of the opportunity to have the election declared void. It is submitted that the threshold test is a low bar which this application for leave has surmounted and gone further to demonstrate an arguable case with a realistic prospect of success, there being no discretionary bars to its grant.

[26] It was submitted that it was open to Mr Buchanan to choose any legal recourse; therefore, an election petition is not an alternate remedy. The avenue he chose was within his rights under the law, and judicial review is included. This application

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[6] Page 46

was made nine days after the Authority's ruling; there is no delay in applying to the Supreme Court for leave.

[27] Further, in response to the respondent's submission that that the applicant imported into the EPA a procedure not contemplated by the Act, they have mischaracterised the issue. The candidate is challenging the decision of the Authority by way of judicial review, which exists to review decisions of public authorities. Judicial review does not arise under the EPA but from the Civil Procedure Rules. The claimant is not attempting to use the EPA procedure, he is invoking a different and parallel supervisory jurisdiction of the Supreme Court. While judicial review is always to be a remedy of last resort, in these circumstances, there are no other mechanisms to address the core issues that the claimant faces regarding the election. On all the circumstances presented to this Court, the orders sought should be granted.

Submissions on behalf of the Respondent

[28] Ms White contends that the submissions of the other side ignore the discretion conferred by Parliament on the Authority to elect whether or not it applies to the Election Court to void an election. Under the statutory framework, an aggrieved candidate may challenge the electoral result of a general election by filing an election petition within 21 days of the taking of the poll.[7]

[29] The Authority has the power to halt the taking of the poll on grounds stipulated in section 44B of the ROPA. This dovetails with section 37 of the EPA, which empowers the Authority to make an application to the Election Court within 28 days

[7] Section 4 of the Election Petitions Act

of the taking of the poll to void the results on any of the grounds set out in section 37 of the EPA.

[30] The EPA has a two-tiered approach to challenging electoral results in a general election. A candidate may file an election petition to be considered by a Judge of the Supreme Court . Also the Authority may to the Election Court of its own volition, or at the request of a candidate (though not on behalf of a candidate) to void the taking of the poll.

[31] Based on the scheme of the Act, the EPA does not require the Authority to act only on the candidate's request. The Authority can come to its own decision. The law also provides that an aggrieved candidate can bring matters complained of to the attention of the Authority.

[32] Unlike the Authority, the candidate is not restricted by the EPA as to the nature of the complaint or the reasons he can advance in an election petition to have the electoral results voided under sections 3 and 4 of the EPA. The result of a petition can lead to the voiding of the election and the holding of a by-election. Section 8 of the EPA provides that:

> "…*a petition shall state generally the grounds on which the petitioner relies for challenging the election or return, concluding with a statement of the relief sought; particulars, however, of the acts complained of as avoiding the election or return to shall be furnished by the petitioner to the respondent, within ten days after the presentation of the petition."*

[33] By way of contradistinction, section 37[8] of the EPA outlines discrete grounds which must form the basis of the Authority's application to void the electoral results.

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[8] 37.*"(a) that the total number of votes cast in a constituency or electoral division exceeds the number of electors on the official list for that constituency or electoral division;*

(b) that ballot boxes have been stolen or destroyed or have in any manner been tampered with and the number of electors on the list of electors for the polling stations is more than the difference in the number of votes cast for the candidate declared the winner and the candidate who is not declared the winner;

When one looks at sections 4 and 37, there are two ways in which the court can be approached regarding election irregularities. Based on sections 36 - 38, what is contemplated by the Authority is very swift action, and these sections must be read with sections 44A-C of the ROPA. In election legislation, timelines are critically important when it concerns whether to approach a court to consider issues alleged to have arisen on election day. By extension, the Supreme Court Judge is not constrained in the same way as the Election Court regarding possible remedies.

[34] It was submitted that even if an aggrieved candidate and the Authority agree on the Authority is not constrained or compelled by the EPA to act in accordance with the candidate's request or to apply to the Election Court. Whether or not the Authority applies does not limit in any way the aggrieved candidate's ability to file his own election petition, and there is no disadvantage to a candidate who does so. Therefore, the candidate who has identified issues with the conduct of the general election, and has obtained affidavit evidence in support of his complaint, is not constrained to apply only to the Authority to challenge the election result.

[35] The applicant has imported a procedure into the EPA that is not contemplated by the scheme of the Act. No candidate has a statutory right to go before the Election Court. The legislative scheme requires certain steps be undertaken before an application, and a candidate may only approach but cannot compel the Authority, whose decision it is to grant or refuse to make the application. Parliament intended the Authority to have a specialised remit, the Authority is composed of natural persons. It cannot observe every polling station, so it relies on information to make

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(c) that a presiding officer has, under duress, signed ballots and that the number of ballots so signed is sufficient to cast doubt on the majority of votes counted for the candidate declared elected;

(d) that votes have been polled by persons who are not born fide electors thereby casting doubt on the integrity of the votes counted for the candidate declared elected;

decisions. No candidate can force the Authority to act in a certain way; it must consider the factual matrix and decide if an application to the Election Court is warranted. The matter of an application is discretionary, not mandatory, as it concerns the Authority, which makes the determination at a prima facie level.

[36] This distinguishes Jamaica from the jurisprudence of Sri Lanka, where the legislative framework for voiding an election differs from ours. They do not have a body similar to the Authority, and the matters on which the applicant relies concern challenges to the elections. These authorities are not helpful and the legislation is dissimilar.

[37] Time is of the essence in election matters and under the EPA. Election legislation is fast-paced and unique. A candidate must act with alacrity; the Authority only exists for 6 months, and the Election Court must determine a petition within 48 hours. In the circumstances, it is not enough for a candidate to come to this Court to compel the Authority to make an application without properly advising himself of the timelines.

[38] The aggrieved candidate ought to have paid attention to the critical dates for filing an election petition, which were within 21 days of the return which was on September 10, 2025 to file a petition. The Authority would have had 28 days from the poll to make an application. The material date on which any application ought to have been made to this Court was October 1, 2025. All the affidavits are dated before October 1, 2025, and the candidate had the material in his possession upon which he now relies, but to do nothing until he filed this application on October 8, 2025. The Court cannot extend time; only the Election Court can do so, and only for 3 days.

[39] This is especially important in the context where the Authority does not have to be prompted by the candidate to apply under section 37 of the EPA. The candidate should have been aware that by the 20th day after the return, the Authority had not yet ruled, and at the very least, he could have filed an election petition to preserve

his position. He is assumed to have chosen to proceed in the manner he did under the premise that an application by the Authority could be perceived as a more substantial challenge to the electoral results. The 21 days have now elapsed, and Mr Buchanan is out of time.

[40] The Authority, by the 20th day, having not made a ruling, at the very least, the candidate could have filed a petition to preserve his position. The 21-day period has elapsed, and the candidate is now out of time. Therefore, no Court has the jurisdiction to determine an election petition or an application by the Authority, as the timeline prescribed by Parliament has expired and the law does not permit a stay. Even if there was agreement with the procedure chosen by Mr Buchanan, the Election Court could only extend the Authority's time to make an application by 3 days. That date has also passed. This means the aggrieved candidate is out of time, and the Court cannot extend it. (**see Caribbean Steel Company Ltd v Price Waterhouse (A Firm)**[9]

[41] The application for leave to apply for judicial review, and judicial review itself if granted, would be an academic exercise because the statutory period to challenge the election results has elapsed. The complaints are fact-specific, not of wider application to other constituencies, and do not raise an important point that could not be decided by an election petition. The candidate cannot pursue the matter as previous cases show failure to comply with timelines renders the proceedings a nullity. Therefore, the orders sought are inimical to the administration of justice.

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[9] [2012] JMCA App 7

[42] While the Authority as a public body is amenable to judicial review as a matter of law, the candidate does not have an arguable ground with a realistic prospect on account of the academic exercise he posits. (See **Sharma**[10])

[43] Further, section 3 of the EPA is an alternative remedy available to the candidate, and it dovetails with the wording of section 52A (6) of the ROPA and the dictum of **Blake v Holness**, Langrin, J(as he then was)[11] in his ruling on the preliminary point in that case.

[44] Section 37 of the EPA may be more attractive to an applicant who wishes to avoid satisfying the sundry requirements for the filing of a petition, as set out in section 4 of that Act. The difference between applying to the Election Court and the Supreme Court lies solely in procedure, but the effect remains the same. A challenge under section 3 of the EPA may be broader in application, while section 37 of the same Act is narrower (in that it speaks only to voiding the taking of the poll); the effect of both provisions will be the same.

[45] Ms White relied on **Deborah Patrick Gardener v Colette Roberts Risden Permanent Secretary in the Ministry of Labour and Social Security**[12] to submit that it is clear that the claimant had two remedies readily available to him: he could either file his request with the Authority or file his petition in the Supreme Court. However, the remedy under section 3 is no longer available, as it would have been statute-barred as at the 24th day of September 2025, being twenty-one (21) days after the return.

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[10] (2006) 69 WIR 379, p.387j

[11] P.51-52

[12] [2023] JMSC Civ 100

[46] The candidate's overarching remedy is an order of mandamus to compel the Authority to apply to the Election Court. However, the candidate could, of his own motion, have petitioned the Supreme Court and, in effect, challenged the election, without the Authority's intervention. This would have been an effective alternate remedy, which would have yielded the same relief as being sought in the order of mandamus. At this point, the time frame for putting the matter before the Election Court is statute-barred before the application was even filed, i.e. the 1st or 2nd day of October 2025.

[47] On September 30, 2025, the applicant became aware that the Authority had determined that it would not apply, and, given the strict timeline, his only option was to file a petition. He was not restricted in the remedies sought by way of petition; while, there are only two questions the Election Court can answer under section 36(1)(b) of the EPA regarding whether the taking of the poll is void or not.

[48] In addition, under section 3 of the EPA, the candidate is not constrained to identify what went wrong on election day. Upon receipt of the ruling from the Authority, rather than filing a petition, the applicant filed this application seeking orders which will be in effect a nullity. This leads to the discretionary bar of delay. The rules require that the aggrieved person seeking judicial review must apply to the court within 3 months. The Authority does not have 3 months to decide whether to apply therefore within the law all parties must act with alacrity after polling has been completed and the return has been made.

[49] Further, leave ought not to be granted as the candidate had the opportunity to but failed to petition the Supreme Court which is an alternate remedy. He had affiants available to him. It is also arguable that given the strict timelines in the EPA he failed to act with alacrity and the discretionary bar of delay now hinders this application from succeeding.

[50] In terms of judicial review, the decision of the Constituted Authority, which is the decision before this Court, was made on September 30, 2025, and the applicant

applied for leave to apply on October 8, 2025. Rules 56.6(1) and 56.3(3)(f) require that an application for leave to apply for judicial review must be made promptly and in any event within three months from the date when the grounds for the application first arose. Although he was within the 3-month timeframe allotted, the applicant had an obligation under the principles of judicial review to act promptly. In the context of election law, where timelines are strict and time is of the essence, the nine-day gap indicates a lack of promptness, and no reason for the delay has been given.

[51] This is separate from the application being made within the prescribed time in Rules 56.6(1) and (5) of the Civil Procedure Rules. Though an application for leave may be made within time, it could be considered not made promptly depending on the circumstances. (See **R v Independent Television Commission, ex parte TV Northern Ireland**[13] and **Andrew Finn-Kelcy v Milton Keynes Council & MK Windfarms Limited**[14]).

[52] Further, the Authority could not have had this matter heard within the timeframe required. Considering the legislation purposively and literally, given the strict remit of the Authority, even if the orders sought are granted, the Authority would no longer exist, as its life is for 6 months, the grant of the orders sought would not be consistent with good administration.

[53] The Authority's decision was neither irrational nor unreasonable, as its letter dated September 30, 2025, provided extensive detail on how it arrived at its conclusion. It scrutinised the affidavit evidence presented to it and identified the issues. The candidate supplied information to the Authority, which had evidential gaps. The

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[13] [1996] JR 60

[14] [2008] EWCA Civ 1067

information provided by the candidate does not bind the Authority, nor is it bound by the legislation to apply, irrespective of its opinion of the material.

[54] It is the Authority that must satisfy the subjective and objective elements to make a determination about applying to the Election Court. That does not mean they arrogate unto themselves the function of that court. The Authority has to determine whether what is before them rises to the level of supporting grounds for voiding an election. They by no means clothe themselves with the powers of the Election Court to do so.

[55] The Authority did not act ultra vires, and there is no evidence in their decision that they acted outside their remit. Sections 36- 38 of the EPA give the Authority the power to determine whether to make an application to the Election Court upon the request of the candidate, it is not compelled to submit an application. Section 37 provides that the Authority *may* apply, not *shall* make the application if the Authority is satisfied that circumstances exist during polling to refer the matter, this is an assessment and an application of an evidentiary threshold

[56] The members of the Authority have to agree by a majority that such circumstances exist; they are not obliged to file a petition even if the candidate believes the circumstances exist. If this were the case, then section 3 of the EPA would be obsolete.

[57] These discretionary powers are mirrored in section 52A(1) of the ROPA, and grant the Authority the power to make its own determination as to which matters it refers to the Election Court. The Authority has to satisfy itself of the evidentiary threshold before referring a matter to the Elections Court.

[58] A candidate is not without redress, as he can petition the Supreme Court to challenge the election if the Authority fails to do so under sections 3 and 4 of the EPA. The Authority's decision is not unreasonable in the Wednesbury sense, nor did it act unlawfully as alleged or at all, nor did it act in excess of its jurisdiction as

alleged or at all, nor did it take the place of the Election Court in rendering its decision.

[59] Whether a candidate approaches the Authority or receives reports from the EOJ under section 52A(2), it retains the discretion to apply to the Election Court. What the applicant has submitted amounts to a strained interpretation of the legislation; it would mean that the Authority has discretion under section 52A(2), which it can exercise when it receives information from the EOJ. In the next breath, it would have no discretion when a candidate requests that it apply to the Election Court. The Authority would lose its authority to exercise its discretion, this interpretation is plainly wrong.

[60] Notwithstanding whether the candidate agrees or disagrees with the decision, it cannot be said that the decision is one "*which is so outrageous in its defiance of logic or of accepted oral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it."* The respondent submits that, in all the circumstances, this application for leave must fail

The Application for Leave

[61] *"92. … the leave stage is not intended to be a full consideration of the application for judicial review: its purpose, as explained earlier, is to filter out cases which are unarguable, or which on other grounds should not be permitted to proceed.*[15]

[62] This Court must decide whether the application meets the threshold requirements as established by the Privy Council in its most recent decisions. To that end, I will explain the principles this Court has applied, as set out in the case law. The Court must apply the law and be guided by the following factors:

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[15] National Bank of Anguilla (Private banking and Trust) Ltd (in Administration) and another v Chief Minister of Anguilla and 3 others [2025] UKPC 14 at paragraph 92.

a) Whether Mr Buchanan has presented arguable grounds for judicial review

b) Whether these grounds have a realistic prospect of success (i.e. more than fanciful);

c) Whether the application is subject to a discretionary bar or "knockout blow", such as delay, the availability of any suitable alternative remedy/ies, or a statutory bar that plainly disposes of the potential claim;

d) The leave hearing is a filtering exercise, and not a trial on the merits. The Court is focused on arguability not proof.

e) The effect of granting the orders sought.

The Cases

[63] The threshold test for leave was established in **Sharma v Brown-Antoine**[16] and recently reaffirmed In **Jaiwantie Ramdass v Minister of Finance & Anor**[17], the Board said:

> *"The threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow."*

[64] Both sides have submitted Privy Council decisions decided since **Sharma,** which address the issue of leave. Mr Wildman has cited two decisions, the first is the **Attorney General of Trinidad and Tobago v Ayers-Ceasar.**[18] In that case, a dispute arose between the respondent and the President of Trinidad and Tobago. The appeal to the Board concerned whether the courts should have granted leave to bring judicial review proceedings against the President. The Board stated in

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[16] [2006] UKPC 57; [2007] 1 WLR 780, para 14(4)

[17] [2025] UKPC 4, paras 12–13

[18] [2019] UKPC 44 at paragraph 2

paragraph 2 that the test to be applied is the usual test for the grant of leave for judicial review.

> *"The threshold for the grant of leave to apply for judicial review is low. The Board is concerned only to examine whether the respondent has an arguable ground for judicial review with a realistic prospect of success: see governing principle (4) identified in Sharma v Brown-Antoine [2006]UKPC 57; [2007] 1 WLR 780, para 14. Wider questions of the public interest may have some bearing on whether leave should be granted, but the Board considers that if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage."*

[65] In **Jaiwantie Ramdass v Minister of Finance and another**[19]the Privy Council stated that:

> *5. The threshold for the grant of leave to apply for judicial review is low. Leave will be granted where there is an arguable ground for judicial review with a realistic prospect of success that is not subject to a discretionary bar or other knockout blow.*

[66] Regarding appellate review of the grant of leave, the Board held (**Ramdass**, para 16): "*A grant of permission will only be overturned on appeal where it is shown to be plainly wrong or where a clear knockout blow exists which the judge failed to recognise*."

…

30. This is a low threshold. The leave stage is, after all, designed to protect public bodies against weak and vexatious claims. It is not designed for lengthy inter partes hearings but to enable a judge to decide whether a case is arguable on a relatively quick consideration of the material available: see R v Inland Revenue Comrs, Ex p National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617 at 644A, per Lord Diplock.

31. As the Board explained in Attorney General v Ayers-Caesar [2019] UKPC 44 at para 2, although wider questions of the public interest may have some bearing on whether leave should be granted, "if a court were confident at the leave stage

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[19] [2025] UKPC 4

that the legal position was entirely clear and to the effect that the claim could not succeed, it would usually be appropriate for the court to dispose of the matter at that stage".

[67] Also cited was **National Bank of Anguilla (Private banking and Trust) Ltd (in Administration) and another v Chief Minister of Anguilla and 3 others** [2025] UKPC 14. In that case, the test was set out at paragraph 83 as laid down in both **Sharma** and **Ayers-Caesar**. Lord Reed and Lady Rose, writing on behalf of the Board, construed Lord Sales' statement that "this is a low threshold" to mean "*operated as a filter to exclude cases which are unarguable."*

[68] The Board went on to set out, in paragraph 84, what, in my view, is a modified approach to the grant of leave, which is no longer to be considered the exercise of a discretion. Now, the judge is no longer exercising a discretion; rather, the judge has to decide the application as a matter of law on the evidence presented. If the judge errs in the application of the law, then the Court of Appeal is to reconsider the matter anew rather than confining its review to whether or not the judge correctly exercised his/her discretion.

[69] In the view of this Court, based on the decisions of the Privy Council, the grounds and evidence relied on by the applicant must satisfy the court at the leave stage that there are arguable grounds with a realistic prospect of success as a matter of law. The modified approach laid down by the Privy Council is that the arguable ground must survive any clear knockout blow before leave is granted. This is a matter of law.

Arguable Grounds

[70] Arguable grounds have to be considered within the context of each case on flexible terms. In **Sharma**, the Board said[20]:

> *"(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy; R v Legal Aid Board, ex parte Hughes (1992) 5 Admin LR 623 at 628, and Fordham, Judicial Review Handbook (4th Edn, 2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in R (on the application of N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468, at para [62], in a passage applicable mutatis mutandis to arguability:*
>
> *'… the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.'*
>
> *It is not enough that a case is potentially arguable; an applicant cannot plead potential arguability to 'justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen'; Matalulu v Director of Public Prosecutions [2003] 4 LRC 712 at 733."…arguability cannot be judged without reference to the nature and gravity of the issue to be argued and that the test is flexible in its application."*

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[20] (2006) 69 WIR 379 at 388

[71] In the case of the **Hon. Shirley Tyndall, O.J. et al v Hon. Justice Boyd Carey (Ret'd) et al**[21], Mangatal J (as she then was) stated:

> *"It is to be noted that an arguable case with a realistic prospect of success is not the same thing as an arguable ground with a good prospect of success. The ground must not be fanciful nor frivolous. A ground with a real prospect of success is not the same thing as a ground with a real likelihood of success. The Court is not required to go into the matter in great depth, though it must ensure that there are grounds and evidence that exhibit this real prospect of success."*

[72] Therefore, when evaluating whether the grounds, the case needs to stand on its own merits, as fishing expeditions are not permitted under the guise of judicial review. This filters out cases with only potential arguability as that cannot form the basis for the Court to grant its permission for a case to go forward to judicial review. Such an order would be founded on what is possible or prospective rather than what is arguable or and would effectively use the court's processes to strengthen a weak case for a future trial.

The electoral cases cited to the Court

[73] The Sri Lankan case of **Jayantha** was a constitutional motion. The petitioners sought and obtained declarations that their right of franchise and fundamental rights under the Constitution had been infringed in respect of the conduct of the poll at certain polling stations. The Court held that the petitioners had standing to bring the case on the basis that the infringement of the right to vote of any citizen affected the right to vote for all citizens.

[74] The **Jayantha** case stands for the principle of free and fair elections, with the Supreme Court of Sri Lanka holding that obstacles to electoral fairness, whether systemic or structural, will not only lead to personal disenfranchisement but will

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[21] Claim No. 2010HCV00474, unreported, judgment delivered on February 12, 2010

have the effect of suppressing electoral will for voters as a collective. In that case, there was widespread violence at 25 polling stations during the elections, along with serious electoral irregularities.

[75] **Jayantha** concerns a Commissioner who is empowered under section 46A[22] of the Provincial Council Elections Act to void a poll (46A(2)). The statute uses the word "opinion" with respect to the Commissioner in sections 46A(6) and 46(7)(a),

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[22] **46A. Disturbances at polling stations.**

(1) Where due to the occurrence of events of such a nature.

(a) it is not possible to commence the poll at a polling station at the hour fixed for the commencement of the poll or

(b) the poll at such polling station commences at the hour fixed for the opening of the poll but cannot be continued until the hour fixed for the closing of the poll: or

(c) any of the ballot boxes assigned to the polling station cannot be delivered to the counting officer, the presiding officer of such polling station shall forthwith inform officer who shall in turn inform the Commissioner.

(2) On receipt of an information under subsection (1) in relation to a polling station in an administrative district, the Commissioner **may** after making such inquiries as he may deem necessary to ascertain the truth of such information, by Order published in the Gazette **declare the poll at such polling station void**.

…

(6) **Where the Commissioner is of the opinion**, on receipt of a statement under subsection (5), that the result of the election for such administrative district or electorate will not be affected by the failure to count the votes polled, or the votes that would have been polled, at the polling station in respect of which an Order under subsection (2) has been made he shall direct the returning officer to make a declaration under section 58 in accordance with that statement and the provisions of that section, and the returning officer shall make a declaration accordingly.

(7) —(a) **Where the Commissioner is of the opinion**, on receipt of a statement under subsection (5). that the result of the election for such administrative district or electorate will be affected by the failure to count; the votes polled, or the votes which would have been polled, at the polling station in respect of which an Order under subsection (2) has been made, he shall forthwith appoint a fresh date for taking a poll at such polling station.

…

which is the identical word used in section 52A(1) of the ROPA. The Court said the following in respect of the role of the Commissioner:

> *"Section 46A(1)(b) of the Act required a genuine poll, viz one which continued uninterrupted from beginning to end, and compelled the* ***Commissioner to make a qualitative assessment as to whether such poll had been free, equal and secret.*** *A poll was a process of voting that enabled a genuine choice between rival contenders: necessarily, one that as free of any improper influence or pressure; equal, where all those entitled to vote (and no others) were allowed to express their choice as between parties and candidates who competed on level terms and where the secrecy of the ballot was respected."*

[76] The Supreme Court of Sri Lanka rejected counsel's argument that there was no legislative intention to confer on the Commissioner the power to assess the democratic nature of the poll and annul the poll if, in his opinion, it was not free and fair. The Court recognised the discretion given to the Commissioner by the use of the word "may" in the statute and decided that, based on the facts of that case, the Commissioner ought to have exercised his discretion to void the poll. His failure to exercise his statutory discretion was a failure to couple his powers with his statutory duty under the legislation and this infringed the petitioners' fundamental right to vote.

[77] In Jamaica, the Authority has no power to declare the taking of the poll void. The legislation is dissimilar to that of Sri Lanka. The nature of each claim is different: between the instant application, which is the permission stage of an application for judicial review, and **Jayantha**, which was a constitutional action. While **Jayantha** may appear to complement **Blake v Holness** (the latter was an election petition brought by the Authority), **Jayantha** was a constitutional claim which is broader in scope, and was concerned with the resolution of fundamental rights issues. **Blake v Holness** was an election petition, much narrower in scope and application and was limited to a single permissible applicant under specific, tailored election legislation. **Jayantha** was not based on the same procedural footing as **Blake v Holness** which is the persuasive authority.

[78] **Re Tanjong**, is an election petition case pursuant to section 32(b) of the Election Offences Act, 1954, and it is distinguishable on the facts. The High Court heard a petition brought directly by the unsuccessful candidate and the involvement of a public body is not mentioned. That Court did affirm **Morgan v Simpson**, finding that their electoral legislation was almost identical to that of the UK.

[79] In **Morgan v Simpson**, a decision of the UK Court of Appeal concerning a local government election. The petitioner sought an order that the election should be declared invalid under s 37(1)(b) of the Representation of the People Act 1949, on the ground that it had not been conducted 'substantially in accordance with the law as to elections'; alternatively that, even if it had been so conducted, the omissions of the polling clerks had affected the result.

[80] Under s 37(1)[23] an election court was required to declare an election invalid (a) if irregularities in the conduct of the election had been such that it could not be said that the election had been 'so conducted as to be substantially in accordance with the law as to elections', or (b) if the irregularities had affected the result. Accordingly, where breaches of the election rules, although trivial, had affected the result, that by itself was enough to compel the court to declare the election void even though it had been conducted substantially in accordance with the law as to elections. Conversely, if the election had been conducted so badly that it was not substantially in accordance with the election law, it was vitiated irrespective of whether or not the result of the election had been affected.

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[23] s 37(1) of the Representation of the People Act 1949, provides:

'No local government election shall be declared invalid by reason of any act or omission of the returning officer or any other person in breach of his official duty in connection with the election or otherwise of the local elections rules if it appears to the tribunal having cognizance of the question that the election was so conducted as to be substantially in accordance with the law as to elections and that the act or omission did not affect its result.'

[81] **Morgan v Simpson** was considered and applied by Walker, J(as he then was) in the Election Court in **Blake v Holness**, in setting out the applicable test in his construction of section 37(e) of the EPA.

Analysis of the Law

The Constituted Authority

[82] This application turns on the legislative framework governing the Authority. Each side argues for a different interpretation of the statutory framework governing the Authority. The applicant's main submission is that it is the Authority's duty to refer a matter to the Election Court once the candidate requests it and the conditions in 52A(3) are satisfied. The Authority has no discretion and must apply to the Election Court, which will then determine whether the circumstances alleged by the candidate amount to a breach of the ROPA warranting the voiding of the poll.

[83] Ms White contends inter alia, that the legislative scheme in sections 36 to 38 of the EPA and section 52A of the ROPA establishes the Authority's discretion to satisfy itself, in making a determination, whether it will apply to the Election Court. This determination is based on the evidence and whether it rises to the level that could support the grounds for voiding the taking of the poll. The Authority is not compelled to submit an application and has to assess the evidentiary threshold before deciding whether to submit such an application.

[84] In the view of this Court, the submission of Mr Wildman is unsustainable for the following reasons:

[85] First, if it is to be accepted that the Authority has no discretion once a candidate makes a request, under section 52A(1) of the ROPA, then it is immaterial what evidence is placed before it. The Authority, were this view is to be accepted (which it is not), would merely funnel the request to the Election Court as it is said to be a conduit. The evidence furnished by the candidate would not be reviewed; in fact, the affidavits could well be submitted to the Authority in sealed envelopes marked:

"For the attention of the Election Court" and need not be opened at all. The Authority's singular function would only be to collect evidence and make an application.

[86] The narrow point being made by this principal submission is that the Authority fell into error by assessing the evidence furnished to it as it has no discretion once a request is made to it by a candidate. If this is correct, then the discretion which the applicant agrees exists in section 52A(1) when the Authority makes an application of its own motion would disappear in section 52A(3) once it receives a request from a candidate.

[87] If the candidate is not disputing section 52A(2), which empowers the Authority to act on its own initiative, it is difficult to see how the challenge to the Authority's power to act upon request in section 52A(3) can be mounted based on a lack of discretion.

[88] In **Jayantha**, the Supreme Court of Sri Lanka interpreted the word "may" as meaning that the Commissioner, under their law, had a discretion that he failed to exercise. Further, the Supreme Court of Sri Lanka rejected a similar argument to the one being made in this case, that there was no Parliamentary intent to give a discretion to the Commissioner to assess whether or not the election was free and fair.

[89] The argument, as I understand it, is that the request would automatically confer the power Parliament granted to the Authority onto the candidate and, in doing so, would introduce into the law an assessment of the evidence based on the candidate's opinion that first, it is sufficient to comply with the grounds in section 37 and second, that the Authority must then submit an application as the conditions under section 52A(3) of ROPA have been met, in that, affidavits have been submitted to support the request.

[90] Second, the opinion reserved to the candidate in section 52A(1) would supersede that of the Authority, which is acting in the public interest. The objective would yield to the subjective. The candidate in section 52A can hold an opinion; this opinion is expressly preserved in section 52A(1), but it is expected to be subjective.

[91] The real challenge to the Authority's determination is that it did not form the same opinion of the circumstances during the taking of the poll as the candidate. However, the law is not centred around the candidate's opinion of the circumstances, rather on the Authority's. The deliberate use of the word "*may*" in section 52A(1) conferred upon the Authority the grant of discretion, the capacity to assess the affidavits, and the right to decide for or against the request of a candidate. The Authority acts in the public interest, and this overtakes the direct interest of any one candidate.

[92] To accept the interpretation of section 52A as has been submitted by Mr Wildman would mean that it is the candidate, once he has placed his affidavits before the Authority, who determines or judges the suitability of the affidavit evidence based on the limits of his experience. If the Authority is to be viewed as a conduit which only applies to the Election Court, then this is logical.

[93] However, it is the candidate, who, having lodged his affidavits to the Authority, then submits to the jurisdiction of that body to act in the public interest and make a *determination*, on his request and this is the very text of the provision. This *determination* is as to whether the matter should be the subject of an application to the Election Court. The Authority is empowered to determine this request in accordance with the Authority's powers under the legislative framework, as well as its composition and structure.

[94] The candidate has not been conferred with or granted either the power to decide on the sufficiency of the affidavit evidence or that any opinion, even if stridently held, can be converted into an application by the Authority. There is no statutory role or function given to a candidate. It is in the breadth and expansiveness or the

combined experience of the members of the Authority, its composition drawn from a wide cross section of the society and which in this hearing has not been the subject of any complaint, that has been given the power to render a statutory *opinion* regarding the affidavit evidence and to make a *determination* regarding an application to the Election Court. This determination can only be based on its *opinion* of the evidence presented to it by the candidate.

[95] This interpretation, which is in keeping with the legislation framework, reflects a gatekeeping function assigned to the Authority by statute and the discretion conferred upon it, is that it may act on its own or it may do so on request of a candidate, within certain strict timelines. The Authority is expected to act in the public interest to preserve the integrity of the election, to be dispassionate, and to act in good faith and in accordance with the law, should they fail to do so, the Authority is amenable to having its decisions quashed.

[96] Third, under the EPA and ROPA, if a candidate wishes to approach the Election Court, only the Authority may make that application. The candidate cannot apply to the Election Court as the law does not permit this. In the judgment of Langrin, J(as he then was) in **Blake v Holness** the learned judge discusses the following extract from the Hansard dated November 4, 1997. His Lordship quoted the speech of Dr Peter Phillips, the Leader of Government Business in introducing the Bills, and it reads as follows:

> *"It is also provided for, Mr Speaker - and this is really perhaps the more far-reaching aspect of the amendments that are before us, that it provides for the voiding of elections on an entirely new procedure. And what is significant about it, is that it recognises that the interest in ensuring that elections in any Constituency or any Parish Council Division were free and fair is fundamentally the interest of the public; while it is true that the candidates who ran and who may have lost have an interest; but that if there is an overriding public interest in ensuring that all elections are free and fair and that to that extent there needs to be* ***some Authority that can act on behalf of the public and on behalf of the public interest to ensure that where elections were found to be not free and fair*** *there could be an expeditious hearing by the Court that the matter would be brought before the Court at public expense and that it would be dealt with speedily."*

[97] The speech of Dr Phillips makes it plain that the Authority is to act on behalf of the public, it is not acting on behalf of a candidate, it was established in the public interest to make findings as to whether an election was free or fair and where they were not found to so, to refer the case, speedily to the Election Court at public expense. The word "*found*" used by Dr Phillips did not make its way into the legislation; however, it gives rise to the thinking behind the legislative intent and is the forerunner to the words "*opinion*" and "*determination*" that were included in the text of the enactments.

[98] In the opinion of this Court, there is no need for a judicial pronouncement on the meaning of the word "*found*" used by Dr Phillips in Parliament as it conveys that a finding has to be made by the public body. This Court is unable itself to find, how a body described as a conduit, could have been so heavily tasked by the legislature. I will explain.

[99] The legislative scheme sets up the Authority as a mechanism designed to protect the public interest and the integrity of elections. Parliament conferred upon the Authority the power to act as a safeguard in the public interest. The Authority is therefore to act independently of partisan interests. These powers are triggered when the Authority forms the opinion that there are circumstances which, if established, could constitute a ground under section 37 of the EPA.

[100] The test to be applied by the Authority is not whether there is proof, but whether the circumstances amount to any of the enumerated statutory grounds in section 37. There must be an objective assessment of the material supplied by a candidate, which includes an examination of the affidavits, obtaining further information from the Returning Officer where necessary and forming a reasoned determination on an objective basis as to whether the alleged circumstances constitute section 37 grounds under the EPA.

[101] The Authority's powers under section 52A(1) are engaged whenever it forms the opinion that circumstances arose during the poll which may constitute any of the

statutory grounds. The law thereby creates a public-interest safeguard distinct from, and additional to, the private interests of candidates who are directly affected.

[102] The power given to the Authority is best described as a statutory discretion, purposive in nature and exercisable within the statutory limits. Its purpose is set out in the law, and the Authority is subject to judicial review as its powers are not unfettered.

[103] The Authority has no power to decide whether the election must be voided. Its clear statutory duty is set out in section 52A(1):

> *"52A.-(1) Where after the taking of a poll the Constituted Authority or a candidate **is of the opinion** that during the taking of the poll **circumstances existed** which could constitute grounds as specified in section 37 of the Election Petitions Act, the Constituted Authority **may**, on its own motion or at the request of the candidate, make an application under that section to the Election Court to have the taking of the poll declared void.*
>
> *(2) The Constituted Authority may, before making an application under subsection (1) on its own motion, request a returning officer to furnish it with such reports as are necessary to determine that an application ought to be made and the returning officer shall furnish the Constituted Authority with such reports.*
>
> *(3) A candidate who is desirous of having the Constituted Authority make an application on his behalf to the Election Court shall, within fourteen days of the taking of the poll, make such request and shall furnish the Constituted Authority with such evidence on which he relies, which shall be by affidavit, **so that the Constituted Authority may determine whether an application ought to be made."***
>
> *…*

[104] The Authority is required by law to form an opinion as to whether the circumstances presented in the candidate's affidavits could amount to any one of the statutory grounds in section 37 of the EPA which are:

> *"37. The Constituted Authority may, subject to section 38, apply to the Election Court for the voiding of the taking of a poll on one or more of the following grounds- (a) that the total number of votes cast in a constituency*

or electoral division exceeds the number of electors on the official list for that constituency or electoral division;

(b) that ballot boxes have been stolen or destroyed or have in any manner been tampered with and the number of electors on the list of electors for the polling stations is more than the difference in the number of votes cast for the candidate declared the winner and the candidate who is not declared the winner;

(c) that a presiding officer has, under duress, signed ballots and that the number of ballots so signed is sufficient to cast doubt on the majority of votes counted for the candidate declared elected;

(d) that votes have been polled by persons who are not born fide electors thereby casting doubt on the integrity of the votes counted for the candidate declared elected;

(e) that there is an upsurge in violence or any irregularity during election day in one or more polling stations or polling divisions or in any electoral division or constituency which would lead to a substantial distortion or subversion of the process of free and fair election."

[105] The Authority acts only in the public interest. It serves as a gatekeeper, keeping out complaints that would consume judicial resources while preserving those that fall within the statutory grounds and require a full hearing. Upon a review of the legislative framework in Jamaica, this Court can identify several reasons for this :

1. Certainty and predictability: voters, candidates, agents, and electoral officials must both know and understand the legal and factual grounds for challenging an election result and the timeline for resolving such challenges.

2. Limiting frivolous disputes: preventing floodgates of post-election petitions based on trivial administrative or politically motivated complaints.

3. Protecting the finality and legitimacy of elections: ensuring that only defined assertions within the meaning of the statutory grounds can void an election. Electoral certainty is necessary for good administration and the continuity of government.

4. Respect for the rule of law: the Authority only implements the law; it did not create the grounds under the statute, and it is limited to what Parliament said it can do.

[106] The *circumstances* before the Authority are assertions. They cannot constitute legal grounds unless they fall within the statutory categories. It is the duty of the Authority to examine whether *circumstances* are shown to exist on the affidavit evidence. Then it must give a reasoned opinion that assesses the assertions set out in the affidavits against the statutory criteria. The affidavits ought to speak to time, place, officials or people involved, numbers, documents, etc. For each circumstance, it is for the Authority to determine which statutory ground it may support. If this cannot be done, then the assertions cannot be said to fall within or to constitute a statutory ground. The law requires that the Authority formulate the grounds for any application to the Election Court.

[107] Only the Authority ***may*** determine whether to proceed with an application. This is because the statute only empowers the Authority to apply; were this otherwise, then the candidate could make the application as well. Instead, the candidate is limited to the Authority's determination. This aligns with the Authority's gatekeeping function. Therefore, submitting to the jurisdiction of the Authority is submitting to the Authority's determination of the matter.

[108] The demonstration of the Authority's discretion and power to convert circumstances to statutory grounds culminates in its "*opinion*." The word "*opinion*" in section 52A(1) must be read and understood with the words "…*so that the Constituted Authority* ***may determine*** *whether an application ought to be made*" in section 52A(3).

[109] Therefore, since it is only the Authority that is allowed by law to take the circumstances or allegations in an affidavit and convert them into statutory grounds, then that cannot reasonably be said to be the function of a conduit. So, this Court declines to accept the reasoning that the Authority is a mere funnel for an application to the Election Court once it receives a request from a candidate. If that is what the legislature had intended, Parliament in its wisdom would have said so.

[110] Where a candidate invokes section 52A(3) of the ROPA, the Authority is required to undertake an objective and thorough review of the material supplied. That review must focus on whether the circumstances described may amount to grounds under section 37 EPA. It is not the Authority's function to require that allegations be proven. In looking at the affidavits and any other material before it, the Authority must act rationally and objectively so that it is aligned with its statutory purpose; otherwise, it would render the mechanism prescribed by law under section 52A ineffective.

[111] Since the legal requirement is that the Authority must make a determination of whether a candidate's allegations fall within the section 37 grounds and only the Authority can perform this function, then it carries out its mandate under the law when it does that. This is straightforward and, in the view of this Court, requires no far-reaching legal pronouncements on the Authority's powers, role, and/or function as a statutory body acting in the public interest on electoral matters.

[112] It is against this background that the Authority's power to make a decision has been considered. Can the Authority decide that it will not refer a matter to the Election Court? Based on the foregoing analysis, the answer is yes.

[113] The alternative grounds raised by Mr Wildman are that the Authority exercised its discretion wrongly by failing to take relevant considerations into account, given the abundance of evidence of irregularities that it failed to consider. Also raised was the Authority's misunderstanding of the legislation governing its role and function.

[114] The Authority's decision was centred on an analysis of the affidavits, applying the test set out in **Blake v Holness**. The Authority said that in applying section 37(e) of the EPA, it would adopt the interpretation of section 37(e) Walker, J(as he then was) in **Blake v Holness**. Section 37(e) provides:

> *"The Constituted Authority may, subject to section 38, apply to the Election Court for the voiding of the taking of a poll on one or more of the following grounds-*

> *(e) that there is an upsurge in violence or any irregularity during election day in one or more polling stations or polling divisions or in any electoral division or constituency which would lead to a substantial distortion or subversion of the process of free and fair election."*

[115] Walker, J held:

> *Third, I agree with the submission of counsel for the applicant that on a proper construction of section 37 (e) of the Election Petitions Act the process of free and fair elections is substantially distorted or subverted when it is open to a tribunal to conclude that irregularities, either singly or collectively in the form of departures from the required procedure, have affected essential guarantees of fairness, impartiality, secrecy, regularity and public trust, whether such irregularities have also affected the result of an election, or not**. So construed section 37 (e) reflects the English common law which prescribes that if an election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected, or not: see Morgan v Simpson (1 974) 3 All E.R. 722 per Lord Denning M.R. at page 728.***[24]

[116] The Authority undertook a detailed analysis of the evidence, assessing the sufficiency of each affidavit and indicating in its reasons where salient details had been omitted. Considering that the law says that the factual matrix presented to the Authority must show that "the election was conducted so badly that it was not substantially in accordance with the law as to elections, so that the election is vitiated."

[117] The eight affidavits before the Authority particularly the candidate's and that of Dr Warren Blake were highlighted in the decision. The other affiants were Ms Powell, Ms Edwards, Ms Johnson, Mr Sands, Ms Myles, Mr Francis. The decision stated that "Although the respective deponents assert that some irregularity took place, they each stop short of providing any details which would confirm behaviour or

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situations that satisfy the requirement that 'a substantial distortion or subversion of the process of [a] free and fair election' occurred." Examples were provided in the decision.

[118] The Authority's objective assessment revealed that the omission of details meant the circumstances placed before the Authority lacked specificity and could not be converted into the statutory ground under section 37(e). In other words, the candidate did not put the Authority in a position to make an application to the Election Court on the evidence he presented, as it did not go into enough detail to show that the election was so badly conducted that there was a substantial distortion or subversion of the electoral process.

[119] Further, Mr Wildman argued that **Blake v Holness** held that any single ground could constitute a voiding of the result; there did not need to be an accumulation of irregularities, while there was such abundant evidence of irregularities supplied to the Authority that their decision was Wednesbury unreasonable.

[120] This argument was countered by Ms White, who argued that the Authority's decision was neither irrational nor unreasonable, and that it provided extensive detail on how it arrived at its conclusion. It scrutinised the affidavit evidence presented to it and identified the issues. The candidate supplied information to the Authority, which had evidential gaps. The information provided by the candidate does not bind the Authority, nor is it bound by the legislation to apply, irrespective of its opinion of the material.

[121] The abundance of evidence is not the same as the quality of the evidence. The candidate is arguing that the method used by the Authority should be based on a quantitative assessment, whereas the Authority by its decision required a qualitative assessment of the evidence in order to satisfy the requirements for applying to the Election Court. No authority has been cited by Mr Wildman for this proposition. In fact, in **Jayantha**, an authority cited by the candidate, the Supreme

Court of Sri Lanka chided the Commissioner for failing to conduct a qualitative assessment of the evidence.

Alternate Remedies

[122] The applicant disagrees that there are any alternate remedies and seeks judicial review as more suitable. However, it is the applicant's duty to state why judicial review is more appropriate, as was indicated in **Sharma**. The cases say that the applicant is to justify at this, the leave stage, whether the alternate remedy is more suitable than judicial review, meaning that the applicant is not to state a position but must demonstrate why this is so by reference to the evidence and case law. He has failed to do so. This means that, for the most part, Ms White's submissions have not been answered.

[123] In **Regina (on an application by JD Wheatherspoon Plc) v Guilford Borough Council** Beaston, J said:

> *"The test of whether a claimant should be required to pursue an alternative remedy in preference to judicial review is the 'adequacy,' 'effectiveness' and suitability of that alternative remedy. See ex parte Cowan R v Devon CC, ex parte Baker (1985) 1 All ER 73 at 92, 91 LGR 479, 11 BMLR 141. In R v Leeds CC ex parte Hendy (1994) 6 Admin LR at 443 it was said that the test can be boiled down to whether 'the real issue to be determined can sensibly be determined' by the alternative procedure and in R v Newham LBC ex parte R 1995 ELR 156 at 163 that it is whether the alternative statutory remedy will resolve the question at issue fully and directly."*

[124] The ROPA and EPA provides a legal framework for conducting elections and challenging their results. Except in the most exceptional cases, it is in the public interest to follow this procedure. The question, which the applicant sought to have answered—namely, whether the Authority erred in the ways above stated — was answered by examining the statutes governing challenges to election results.

[125] In this case, section 52A(6) of the ROPA provides that a request by a candidate relating to the voiding of a poll shall be without prejudice to any right enjoyed by that candidate under section 3(b) of the EPA. The candidate does not lose or waive his rights to petition the Supreme Court by lodging his request with the Constituted Authority. That request under section 52A(1) is separate from the filing of an election petition, and a candidate is not prevented from later filing a petition under section 3(b) of the EPA. These are two separate processes. Therefore, by making an application to the Authority, the candidate cannot be said to have waived, elected, or abandoned his right to petition the Court, as the inclusion of section 52A(6) preserves the right to petition the Court even after the Authority has made its determination.

[126] In this application, the timeline shows that for the first 13 days, there was no application for leave, no petition to the Supreme Court and no request to the Authority.

[127] Timelines are a critical consideration in this application. Any delay is a factor that requires explanation. The taking of the poll was September 3, 2025, and the application to the Authority was submitted on September 16, 2025. There is no indication in Mr Buchanan's affidavit in support of this application to explain why the application to the Authority was filed when it was. In other words, why did it take 13 days to lodge the request with the Authority? This is vital evidence which was not placed before this Court and it is considered a material omission. This is against the backdrop that electoral legislation is time-sensitive, and any approach to a Court must be within the timeline set down in the law.

[128] This begs the question whether the candidate, in lodging his application 13 days after the poll, could realistically have put the Authority in a position to meet the statutory timeline for applying to the Election Court (28 days). The application has to be viewed in context, and the context here is the rigid timetable set out in the electoral law.

[129] What is also plain is that up until September 15, 2025, the Authority did not itself see a basis for an application to the Election Court and made no application of its own motion. Up to that date, the candidate had neither petitioned the Supreme Court nor brought his request to the Authority. This period of inaction between September 3 -15, 2025, remains unexplained by Mr Buchanan.

[130] It is for Mr Buchanan to show that there are grounds for judicial review in the decision-making process of the Authority, as the Court is not concerned to correct the decision made by the Authority.

[131] In this application, this Court is being asked to make orders compelling the Authority to apply to have the election result voided; however, this Court has not received material evidence from the candidate concerning the delay in making the request to the Authority.

[132] The candidate is expected to be aware of the electoral law, having exercised his lawful right to approach the Authority, for which I emphasise he cannot be faulted; the consequence of that choice was that there was a limited timeframe within which an application could be made to the Election Court. The law says that only the Authority can apply to the Election Court; Mr Buchanan cannot apply. So, any tardiness on the candidate’s part left less time for the Authority to perform its function.

[133] Additionally, the alternative option of an election petition was still available to Mr Buchanan before he decided to approach the Authority. He also had the option to petition the Court after receiving the Authority's ruling on 30 September 2025, but did not do so. The decision to proceed in the chosen manner under section 37 means that the timelines became even more crucial.

[134] Section 52A(6) expressly preserves the right of a candidate to bring an election petition under section 3(b) of the EPA. This clause ensures that the Authority’s refusal does not operate as a bar, waiver, or limitation on the candidate’s statutory

right to petition the Supreme Court if a decision goes against his interest, meaning that a decision by the Authority not refer the matter to the Election Court as the grounds do not fall within those set out in section 37 of the EPA did not prevent Mr Buchanan from filing his petition in the Supreme Court thereafter.

[135] The inclusion of the words "without prejudice" signals to the Court that there should **not** be a narrow interpretation of access to the court's electoral jurisdiction. This interpretation is consistent with the jurisprudence affirming that the conduct of elections is not solely a private matter between candidates, but rather of significance to the electorate as a whole. In **Morgan v Simpson** the Court recognised that irregularities affecting the fairness of a poll engage a public interest transcending the concerns of the individual litigants. Widgery CJ emphasised that the rules governing elections exist "to ensure that elections are conducted so as to achieve a free and fair result."

[136] Timelines are critical in electoral matters. Dilatory applications cannot hold up the administration of the nation, nor can any lack of promptitude escape the scrutiny of the Court without explanation. The Authority, by sections 52A of the ROPA, read together with sections 37 and 38 of the EPA, has a mandatory time frame within which to make an application to the Election Court, whether on its own motion or on behalf of a candidate. The application shall be made within 28 days of the taking of the poll. (See section 38 of the EPA.)[25]

[137] Judicial review is the remedy of last resort. The fact that the applicant could have pursued other proceedings does not, in itself, mean that it has a suitable alternative remedy in the claim it wishes to bring, namely, challenging the Authority's decision-

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[25] Section 38 of the Election Petition Act: "Where under section 37 the Constituted Authority makes an application to the Election Court, the application shall be made within fourteen (14) days of the taking of the poll."

making process. The test is whether the real issue to be determined can be sensibly determined by the alternative procedure.

[138] Ms White contends that instead of filing this application, Mr Buchanan should have filed his petition in the Supreme Court. She emphasised the timelines in electoral law and the futility of engaging in this application, given the effect of an order this Court will make. She is correct. There has also been no answer from Mr Wildman regarding the timelines.

[139] Mr Buchanan is entitled to know what factors were taken into account by the decision-maker. He does know these factors, as he has been provided with a written ruling from the Authority. Mr Buchanan is entitled to examine it.

[140] Mr Buchanan, as well as the public, has a direct interest in the outcome of the election. The statutory framework recognises this and provides for challenges to any irregularities. Above the interests of the candidate and the public is the clear and overriding principle that elections must be conducted freely and fairly, with the integrity of the process transparent. Both the ROPA and the EPA provide mechanisms to safeguard these principles. The law goes further to create a public authority with the power to act on behalf of the public; its role is greater than the interests of any one candidate, and its purpose is to trigger judicial oversight. This is to be read in the context of the parallel routes of a candidate driven election petition under the EPA and the public interest driven application by the Authority under the EPA and RPA.

[141] In electoral matters, time is of the essence. Therefore, not only must this Court be satisfied that the threshold test for leave has been surmounted, but there must also be an overlay of electoral realities as a matter of law. An examination of the law discloses that there is a rigorous timeline within which an application to void a poll must be made. The Election Court is itself subject to extremely short timelines for its consideration (6 months from the date of the taking of the poll) and for the delivery of judgment within 48 hours after the completion of arguments.

Remedy

[142] "Judicial review is concerned, not with the decision, but with the decision-making process."[26] This Court must also consider whether there are effective remedies given the time limits in electoral matters. Ms White's submissions related to the time limits are unassailable, and I agree with her in relation to the effect of the time limits under electoral law on this application.

[143] The unexplained delay in taking any steps to prosecute the electoral matter did not make judicial review an effective remedy when viewed within the legislative scheme. Rule 56.16 (2) does give the court the power, if it decides to quash a decision by granting an order of certiorari. However, what the court cannot do is direct the decision maker to make a particular decision. The effect of making the orders sought is in short:

1. This Court cannot extend the time set down by Parliament in the laws governing elections.

2. The period during which the Authority could have applied to the Election Court has passed, and any application is statute-barred.

3. The effect of compelling the Authority to make an application is therefore futile.

4. There is a need for finality in electoral matters. This protects the legitimacy, integrity and certainty of resolutions concerning electoral disputes.

5. The time frame set down by the law is a knock-out blow to the success of this application.

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[26] Chief Constable of the North Wales Police v Evans [1982]1 WLR 1155 at 1173

[144] This Court finds that the threshold test has not been surmounted. The grounds before the Court do not demonstrate pass the test of arguability based on the foregoing.

[145] **Orders**:

1. The orders sought in the Notice of Application filed on October 8, 2025 are refused.

2. No order as to costs.

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Wint-Blair J