



[2025] JMSC Civ 71

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2025CV01656

BETWEEN	ANDRE HAUGHTON	1ST APPLICANT
AND	JANICE ALLEN	2ND APPLICANT
AND	ALLAN BERNARD	3RD APPLICANT
AND	SAINT JAMES MUNICIPAL CORPORATION	RESPONDENT

IN CHAMBERS

Mr. Maurice McCurdy and Ms. Jody-Ann Morrison for the Applicants.

**Mrs. Rose Bennett-Cooper and Ms. Sidia Smith instructed by Bennett Cooper Smith
for the Respondent**

Heard: 4th and 9th June 2025

**Administrative Law- Application for Leave to apply for Judicial Review-Town and
Community (Control of Advertisement) Regulations sections 7, 9,13 and 16**

Civil Procedure Rules-Part 56

**Injunction- - Whether consent is required for advertisement during election
campaigns-the meaning of the phrase pending elections-whether damages are the
appropriate remedy**

The Constitution of Jamaica Sections 64 and 65

Statutes The Town and Community Act Sections 3 and 4 - The Town and community (Control of Advertisement) Regulations Sections 13 and 15 - The Amendment to the Representation of the People Act - Section 2

L. SHELLY WILLIAMS, SNR P. J

Background

[1] On the 29th of April 2025 the Applicants filed a Notice for leave to apply for judicial review. He also filed an application for interim Injunction with supporting affidavits on that same day.

[2] In the application for leave, he sought the following orders:

1) Leave be granted to:

- a) Apply for judicial review of the decision of the Respondent to remove the political advertisements of the Applicants which had been erected in and around the Municipal District of Saint James.
- b) Apply for an order of certiorari quashing the decision of the Respondent to remove the political advertisements of the Applicants from and around the Saint James municipal district on or around the 5th day of April 2025.
- c) Apply for judicial review of the motion passed by the Respondent on or around the 9th day of April 2025 in the finance committee meeting which
- d) prohibited the display of advertisements for parliamentary candidates in the pending election. Apply for an order of prohibition barring the respondent, its officers, servants or agents from removing or interfering with the applicants' political advertisements.
- e) Apply for an order of mandamus compelling the respondent, its officers, servants or agents to return, restore, or reinstate the Applicants' political

advertisements or signage that they removed or caused to be removed from in and around the Municipal District of Saint James.

[3] The Applicants, indicated that if granted leave, they would also plead for the following reliefs which do not require the leave of the court when seeking administrative orders;

a) A Declaration that the Respondent acted ultra vires, unlawfully and in breach of procedural fairness, in THAT;

i) It caused to be removed the advertisements of the Applicants being candidates in the pending parliamentary elections constitutionally due by December of 2025.

ii) It passed and Enforced a Motion on the 9th day of April 2025 which sought to prohibit the advertisements as detailed above which is directly inconsistent with the Town and Country Planning (Control of Advertisements) Regulation of 1978.

b) General and aggravated damages.

c) Such other and further relief as the court deems just;

d) An order for the costs of this application to be awarded to the Applicants or alternatively for costs to be costs in the claim.

[4] The grounds on which the applicants are seeking the orders are as follows:

1. Part 56(3) of the Civil Procedure Rules of 2002 (hereinafter referred to as "the CPR") requires Applicants who seek redress by way of certain remedies to include orders of certiorari, prohibition and mandamus in Administrative Orders to seek the leave of the court.

2. The respondent is a public statutory body established pursuant to the provisions of the Municipalities Act.

3. The Applicants are candidates of the People's National Party, a registered political institution for the island of Jamaica, for the upcoming Parliamentary elections. Pursuant to section 64(2) and (3) of the Constitution of Jamaica, the current Parliament, having first sat on 15 September 2020, must be dissolved on or before the 14 September 2025. The Applicants contend that general elections are therefore effectively pending within the meaning of Regulation 13 of the Town and Country Planning (Control of Advertisements) Regulations, 1978.
4. Additionally, pursuant to the Representation of the People (Amendment) Act, 2016, the campaign period is explicitly defined as commencing either from the day immediately following the expiration of fifty-four months from the government's assumption of office or from the day the Prime Minister officially announces the election date, whichever occurs first. As more than fifty-four months have elapsed since the government assumed office, a campaign period within the meaning of this statutory definition is now effectively underway, reinforcing the contention that general elections are effectively pending within the meaning of Regulation 13 of the Town and Country Planning (Control of Advertisements) Regulations, 1978.
5. The Applicants, in advancing their cause, have erected posters within their respective constituencies, which include areas within the Saint James municipal environs. The display of these posters by the applicants is similar to what is done by other candidates representing the two main political parties and is done across Jamaica and within other Municipalities.
6. By way of public pronouncements in the print media, the Applicants realized that officers of the Respondent intended to remove their posters. These officers contended that in the light of the fact that no date for the general parliamentary election had been announced the erection of these posters constituted a violation of the law.

7. On or around the 5th day of April 2025, the officers of the Respondent made good on their public pronouncements and removed from where they had been erected, approximately 15 posters belonging to the Applicants without any reference to them.
8. Further, the Applicants, were informed through a third party that on the 9th day of April 2025 a motion was tabled and passed at a finance committee meeting of the Saint James Municipal Corporation in relation to the prohibition and removal of advertisements of affixed by political parties or their representatives. The applicants had no prior knowledge of this meeting and were therefore unable to participate and neither were they afforded an opportunity to be represented at this meeting.
9. The Applicants have sufficient interest in the matter in compliance with rule 56(1) and 56(2) of the CPR being that they are adversely affected by the actions and decisions, in the specific instance, of the Respondent.
10. The Respondent, based on public utterances by its chairman, The Mayor of Montego Bay Councillor Richard Vernon, has relied on, in part, the fact that no date for the general parliamentary elections has been announced and contend that there are no pending parliamentary elections.
11. Regulations 13(1)(a) of The Town and Country Planning (Control of Advertisements) Regulations, 1978 (hereinafter referred to as "the Regulation") states that the display of advertisements relating to a pending parliamentary election can be undertaken without express consent from the Municipal Corporation.
12. The circumstances reveal that the general parliamentary elections which are constitutional due by or before December 2025 must be pending.
13. It would create an absurdity not to accept this period as the period for which a parliamentary election shall become pending as advertisements are a

natural part of a parliamentary campaign and form part of which a financial obligation to report would flow.

14. The Respondent is one of 15 other Local Municipality all of whom have not expressed the same interpretation of the Regulation and which interpretation lends itself to massive political interference and disturbance to the parliamentary candidates in the parish of Saint James.

15. Even without the force of the ROPA, the Regulation itself in the Proviso in Regulation 16 has cautioned against and restricted the municipalities from interfering with advertisements provided for under Regulation 13 to prevent political interference and abuse, allegations of which are inescapable to the Respondent.

16. The General force of Regulation 16 excludes advertisements undertaken under Regulation 13 from the notice of discontinuance provision and ONLY allows for same, as per the proviso, where it is required to remedy a substantial injury to the amenity of the locality or a danger to members of the public.

17. Further, the Respondent provided no reasonable justification such as public safety concerns, substantial harm to the local amenity, or obstruction that necessitated the immediate removal of the Applicants' political advertisement or signage without prior notice or an opportunity for correction. If the Respondents had genuine concerns a less intrusive alternative such as serving formal notices or providing an opportunity for voluntary compliance could have been pursued.

18. The Regulation only allow for an appeal to the Minister or the Parish Court in the specific instance of sections 16 and 19 of the Regulations. The Respondent's decision is not based on these sections and the applicants have received no notification advising them of a right to appeal the decision or a forum in which they could so appeal.

19. Therefore, there is no alternative remedy available to the applicants. Judicial Review is the only method by which the Applicants can seek redress.

20. Alternatively, given the public importance of the reliefs sought and the need for uniformity across the municipalities, this matter is best resolved by a judicial review court. Therefore, even if any alternative method of redress exists, judicial review is the most appropriate avenue.

21. The Respondent's decision to remove political advertisements without prior notice or consultation, despite less intrusive alternatives being available, constitutes a disproportionate interference with the Applicants' democratic rights to political expression and participation. This unjustifiable and excessive exercise of statutory powers significantly prejudices the Applicants' campaign.

22. The application for leave has been made within three (3) months of the date of the decision of the Respondent.

23. The Applicants will also seek Declarations by the honourable court which do not require leave in accordance with Part 56 of the Civil Procedure Rules.

ULTRA VIRES ACTIONS

24. The Applicants respectfully submit that the Respondent acted ultra vires in that;

- a. They caused the advertisements of the Applicants, which did not require express consent, to be removed.
- b. Failed to serve notice of discontinuance if there was any contention with the form of advertisement in compliance with Regulation 16.
- c. Failed to serve any enforcement notice if there was any intention to remove the notices in compliance with Regulation 19.

- d. Failed to satisfy the proviso in Regulation of 16 in such event that an advertisement affixed by virtue of Regulation 13 was in contention.
- e. Tabled and passed a motion that is inconsistent with the Regulation approved and Gazetted by the relevant Minister.

BREACH OF NATURAL JUSTICE AN PROCEDURAL FAIRNESS

25. The Applicant respectfully submit that the Respondent breached natural justice and procedural fairness in that they;

- a. Failed to notify the Applicants of their decision, in writing.
- b. Failed to follow the lettering of the Regulation which would have afforded the Applicants an opportunity to challenge same, thereby leaving the Applicants unheard and without alternative recourse.
- c. Deprived the Applicants of the right to have the advertisements remain in force if it is that a notice is filed and appealed against, in accordance with the Regulation.
- d. Put the Applicants in distress and causing them to be put to expense in seeking judicial review when the Regulation affords them a more rational avenue for redress.

IRRATIONALITY AND UNREASONABLENESS

26. The Applicants respectfully submit that the actions of the Respondent are irrational and unreasonable in that;

- a. The respondent's actions are not supported by the force of the law nor by the other Municipalities established under the Municipalities Act.

- b. The Respondent prejudiced the Applicants entitlement to advertise their political paraphernalia as is afforded to the other potential One Hundred and Twenty-Six (126) candidates across the Island and within the other municipal environs in accordance with the Regulation.
- c. The Respondent Acted without reason, without notice, without authority and without fairness considering the interest of the Applicants.

27. The Applicants have suffered damages and are prejudiced given the wanton breach of the Regulation and, further, that such misinterpretation was never anticipated and so no alternative remedy exist whether to the Minister or a judge of the Parish Court given that the Applicants never made an application nor were they served with any notice of discontinuance or enforcement.

28. The Applicants will rely on the joint affidavit of Andre Haughton, Janice Allen and Allen Bernard and also the affidavit of Kenroy Gordon in support of this Notice of Application.

[5] In the application for interim Injunction the Applicants sought the following orders:

-

1. An interim injunction restraining the Respondent, whether by itself, its agents, officers and/or servants or otherwise howsoever from removing, interfering with or otherwise dealing with any advertisements or signage erected by or on behalf of the Applicants within the municipal district of Saint James, in respect of the pending parliamentary elections until a final determination of these proceedings or such other period as the court deems fit.

2. An interim injunction restraining the Respondent, whether by itself, its agents, officers and/or servants or otherwise howsoever from destroying the Advertisements removed from the municipality of Saint James belonging to the Applicants.
3. A date to be set for the hearing of this inter-parties application.
4. An order that the time for the serving of this Notice of Application be abridged given the urgency of same.
5. Costs to be cost in the application.
6. Time for service of this application be abridged.
7. Such further and other relief as this honourable court deems fit.

[6] There are a series of events that led to the filing of these applications that do not appear to be in issue namely: -

- a. On the 5th of April 2025, the Chairman of the Respondent was quoted in a newspaper article that 'potential political candidates were to remove their political paraphernalia, failing which they would be removed and the candidates billed accordingly.'
- b. The Respondent, on the 9th of April 2025 proceeded to remove six campaign signs belonging to the Applicants. Following the removal of the Applicants' signs, a meeting was held of the Financial Committee of the Respondent wherein a motion was moved by the representative of the majority party prohibiting the erection of campaign posters, sign, paraphernalia in any public place in the parish of St James. The reason proffered for this motion was that there was no pending election which permitted the erection of these campaign material at this time. This motion was passed.
- c. The Applicants then caused a letter to be written to the Respondent requesting the signs be reinstalled as the country was now in the campaign

period. The Applicants were then invited to a meeting by the Respondent on the 14th of April 2025. During the meeting the Respondent indicated that a decision had been taken to remove the signs as the Applicants had not received any permission to erect them. The reasons advanced for the removal of the signs were that:-

- i. The Respondent were the owners of the parochial roads, and therefore, the permission of the Respondent is required before the erection of any political advertisement along these roads.
 - ii. The signs were affixed to Jamaica Public Service (JPS) Utility poles very loosely and impeded access to JPS service personnel.
 - iii. One of the signs was placed on the revenue board of the Respondent without the Respondent's permission.
- d. Following the meeting, the Respondent sent a letter to the Applicants indicating the decision and the reasons for the said decision. The Applicants then filed a Notice of Application for leave to apply for judicial review and the application for interim injunction.

Application for leave to apply for judicial review

[7] The first issue to be addressed in granting leave for judicial review is whether the Applicants have standing to make the application. Part 56.2 (1) of the Civil Procedure Rules 2002 (CPR) states that: -

An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application. (2) This includes –

(a) any person who has been adversely affected by the decision which is the subject of the application;

(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);

(c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;

(d) any statutory body where the subject matters falls within its statutory remit;

(e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application; or 291 Administrative Law (f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.

The Applicants would have standing to file the application for leave for judicial review as they are person adversely affected by a decision of the Respondent.

STANDARD BY WHICH LEAVE IS TO BE GRANTED

- [8] The test that must be satisfied when applying for leave for judicial review was set out in in the Judicial Committee of the Privy Council in the case of **Sharma v. Brown – Antoine** (2006) P C Appeal No. 75 of 2006; In that case the Chief Justice had sought to challenge a decision to prosecute him on the basis that it was unfair and /or an abuse of the process of the Court. Lords Bingham and Walker at paragraph 787(4) of the decision stated that: -

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 it is not subject to a discretionary bar such as delay or an alternative remedy, - R v. Legal aid Board, ex parte Hughes (1992) 5 Admin L.R. 623 at 628, Fordham, Judicial Review Handbook (4th Edn, 2004), p. 42. 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.

*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.” (**our emphasis**)*

- [9] Mrs. McDonald –Bishop JA in the case of **Private Power Operators v Industrial Disputes Tribunal et al** [2021] JMCA Civ. 18 adopted a similar position when she stated at paragraphs 70 that:

It is well established that the review court is to fix its gaze on questions of lawfulness or unlawfulness of the decision, that is, matters primarily pertaining to jurisdiction and procedure, inclusive of fairness of the IDT's processes, reasonableness of its decision in the Wednesbury sense and

its adherence to the rules of natural justice. This would, necessarily, involve an assessment of whether the IDT's decision was arrived at based on errors of Law.

- [10] Mangatal J (as she then was) in the case of **Digicel (Jamaica) Ltd v. The Office of Utilities Regulation** (2012) JMSC Civ. 91 sought to give some perspective as to how the Court should approach the issue of whether leave should be granted when she stated at paragraphs 20-21:

Judicial Review is the Court's way of ensuring that the functions of public authorities are carried out in accordance with the law and also that these bodies are held accountable for any abuse of power or unlawful or ultra vires acts. It is the process by which the private citizen can approach the Courts seeking redress and protection against unlawful acts of public officers or authorities, and acts carried out in excess of jurisdiction. Public bodies must exercise their duties fairly. In a constitutional democracy, one of the roles of judicial review is the vindication of the rights of the individual against abuse of power carried out by public officials.

[21] On the other hand, the requirement of leave is one of the aspects of the court's function to act as a filter in relation to judicial review claims. As Michael Fordham Q.C. eloquently describes it in his invaluable work Judicial Review Handbook, 5th Edition, at paragraph 13.1: "Public authorities have an important role and function. There must necessarily be questions which it is for them, rather than judges, to decide. In considering whether a public body has abused its powers, Courts must not abuse theirs. In constitutional terms, just as judicial vigilance is underpinned by the rule of law, so judicial restraint is underpinned by the separation of powers". It is part of the Court's function when it dons its "review hat" to be astute to avoid applications being made by busybodies with hopeless, weak, misguided or trivial complaints. Public authorities need protection from unwarranted interference and plainly, the business of government could grind to a halt and good administration be adversely affected if the Courts do not perform this sifting role efficiently and with care.

- [11] There are a number of questions/issues that have arisen in this case stemming from the decision of the Respondent to remove the Applicants' signs. These include: -

- a. Did the Respondents breach the Town and Community (Control of Advertisement) Regulations (the Regulations) by not serving the Applicants with a notice?

- b. Were the Applicants denied a right to appeal the decision of the Respondent?
- c. Did the signs erected fall under the exception to the Regulations where the Applicants did not require express permission to erect them?
- d. Should an injunction be granted?
- e. Would damages be an adequate remedy?

Did the Respondent breach the Regulations?

- [12]** Counsel for the Applicants submitted that the Town and Country Planning (Control of Advertisement) Regulations provide clear guidance for the affixture and removal of posters. Counsel submitted that the Regulations themselves describe a process in which the Respondent can discontinue the erection of a poster or enforce its removal. Counsel argued that the said section of the Regulations gives a right to the owner of the poster to appeal the decision of the Respondent to the Minister if they are of the view that the Respondent's action was unreasonable.
- [13]** Counsel argued that to-date, the Applicants have not received any such notice and, therefore, cannot appeal the decision of the Respondent to the Minister. Counsel's position was that the failure of the Respondent to obey by the Regulations meant that their actions were unlawful.
- [14]** Counsel for the Respondent argued that in the case at bar, the Applicants erected six (6) advertisements in breach of the Town and Planning Act and the Town and Country Planning (Control of Advertisement) Regulations and as such they are not entitled to any recourse from this court. Counsel relied on the case of **Clunis v Camden and Islington Health Authority [1998] Q.B .978** in support of this point.
- [15]** In addressing this issue I first questioned whether the signs could be defined as advertisements. I found the definitions of advertisements and hoarding to be useful to the discussions. The Town and Country Planning Act defines advertisements and hoarding as :-

“advertisement” includes any sky sign and any notice, bill, placard, poster and other similar publication;

“hoarding” includes any structure used as an advertisement or for exhibiting any advertisement;

From this definition it clear that the signs that were erected by the Applicants can be defined as advertisements.

[16] The next issue to be addressed is who is responsible for regulating these advertisements? Sections 3 and 4 of the Town and Community Act states: -

3.No hoarding shall be erected and no advertisement shall be exhibited upon any hoarding or on any wall, tree, pole, fence, gate or other place so as to be visible from any public place in the Island except in accordance with the provisions of this Act and of any regulations made thereunder.

4. The Chief Technical Director may erect or authorize the erection of hoardings and advertisements and may, upon the application in writing of the person responsible therefor, authorize the use of hoardings and advertisements existing at the date of the coming into operation of regulations made under this Act. Every such authorization shall be given for such period not exceeding five years as the Chief Technical Director may determine.

The Minister, then, promulgate Regulations relating to advertisement namely the Town and Planning (Control of Advertisements) Regulations (the Regulations).

[17] The Town and Country Planning (Control of Advertisements) Regulations, 1978 (the Regulations) specifically deals with the procedure for advertisements to be erected. The Regulations details two scenarios in which advertisements can be erected. The first scenario is where a person or entity seeks express consent for advertisements. Sections 7 of the Regulations details how an application can be made for express consent, whilst Section 9 speaks to the Power of the Respondent to deal with/grant such applications. Section 13 (1) (a) of the Regulations speaks to the second scenario where advertisements can be erected without express consent.

[18] What then is the procedure for the removal of signs that were erected without consent? Section 16 of the Regulations state that: -

Power Require the Discontinuance of the Display of Advertisements Displayed with Deemed Consent.

16. – (1) Subject to these Regulations, the local planning authority, if they consider it expedient to do so in the interests of amenity or public safety, may serve a notice under this regulation (referred to in these Regulations as a "discontinuance notice") requiring the discontinuance of the display of an advertisement with consent deemed to be granted under these Regulations, other than an advertisement of a description specified in regulation 13.

Provide that, in relation to the display in accordance with the provisions of regulation 13 of an advertisement of a specified class, the authority shall not serve a discontinuance notice unless they are satisfied that the service of such notice is required to remedy a substantial injury to the amenity of the locality or a danger to members of the public.

(2) Where the local planning authority serve a discontinuance notice, the notice—

- (a) shall be served on the advertiser and on the owner and occupier of the land on which the advertisement is displayed; and*
- (b) may, if the local planning authority think fit, also be served on any other person displaying the advertisement.*

(3) A discontinuance notice shall—

- (a) specify the advertisement to the display of which it relates;*
- (b) specify a period within which the display is to be discontinued and*
- (c) contain a statement of the reasons why the authority consider it expedient in the interests of amenity and public safety that the display should be discontinued.*

(4) Subject to paragraph (5), a discontinuance notice shall take effect at the end of such period (not being less than one month after the service thereof) as may be specified in the notice:

Provided that if an appeal is made to the Minister under section 13 of the Act the notice shall be of no effect pending the final determination or withdrawal of the appeal.

(5) The local planning authority by a notice served on the advertiser may withdraw or vary a discontinuance notice at any time before it takes effect or may where no appeal to the Minister is pending, vary a discontinuance notice by extending the period specified therein for the taking effect of the notice.

(6) The local planning authority shall on serving on the advertiser a notice of withdrawal or variation under paragraph (5) send a copy thereof to every person who was served with the discontinuance notice.

(7) Notwithstanding the provisions of paragraph (1), but without prejudice thereto, a discontinuance notice may require the discontinuance of the use of land for the display of advertisements with consent deemed to be granted under these Regulations or other advertisements of a description specified in regulation 13: and in relation to a notice served in pursuance of this paragraph there be substituted for reference in these Regulations to the display of advertisements references to the use of land for the display of advertisements.

- [19]** Section 16 clearly indicates that if signs are erected without the requisite consent from the Respondent, then a notice of discontinuance is to be served on the party that erected these signs. The minimum time period to be given in relation to these notices is one month. The Respondent did not serve the Applicants with a notice of discontinuance. What is of importance in this case is that as Section 16(4) the signs of Applicants should not have been removed until the end of the period allotted under the notice of discontinuance. Section 16(5) goes further to state that the notice of discontinuance would have no effect until the final determination of the Appeal.
- [20]** The Applicants therefore have an arguable case that the failure to serve them with a notice of discontinuance denied them the right to appeal to the Minister as per Section 16 of the Regulations. This would amount to a breach of natural justice.
- [21]** Not only were the Applicants not served with a notice of discontinuance, but the signs erected by the Applicants were removed prior to any meeting with the Respondent. It was not disputed that it was only after the Applicants' attorney wrote to the Respondent that a meeting was held between the Applicants and the Respondent. I find that based on the failure to serve the Applicants a notice of discontinuance, which resulted in a denial of the right to appeal the decision of the

Respondent would give rise to a viable argument that this was also a breach of natural justice. Based on this view, the Applicants have an arguable case for leave to apply for judicial review.

- [22] I then turn to the issue of whether the Applicants required express consent to erect their signs. The Regulations allow for an exception where consent is not required to erect signs and advertisements ie under Section 13(1)(a). Section 13(1)(a) states that: -

The display of advertisements of the following description may be undertaken without express consent.

- a. *any advertisement relating specifically to a pending parliamentary or local government election, not being an advertisement to which sub- paragraph (b) applies.*

- [23] Counsel for the Applicants submitted that the application before the Court rest largely on the definition of the word pending as per Regulation 13 (1) (a) of the Town and Community (Control of Advertisement) Regulation. Counsel argued that the motion of the 9th of April 2025, was passed in error. He urged the Court to adopt the definition of campaign as detailed in the Amendment to the Representation of Peoples Act and the Electoral Commission Act. Counsel submitted that the Court should adopt the position as laid down in the case of **Estates Ltd, H&K Enterprises Ltd v The Commissioners for her Majesty's Revenue [2015] UKUT 0130 (TCC)** in support of this position. Mr. McCurdy's position was that it was unacceptable to ignore "campaign period" established under the 2016 Amendment to the Representation of Peoples Act in a belief that it was not applicable retro-actively.

- [24] Counsel for the Respondent made two submissions as it related to the definition of pending. Mrs Cooper Bennett submitted firstly that: -

- a. pending meant the date that is announced for the elections.
- b. The Court could adopt the timeline defined in Section 15 of the Regulations for the meaning of pending elections.

[25] I considered the submissions of Counsel for the Respondent in relation to the definition of pending in Section 15 of the Regulations. Section 13 of the Regulations speaks specifically to pending local and general elections whilst Section 15 of the Regulations speaks to events including political events. I was not convinced that this approach could be adopted.

[26] I then turned to the definition as to the word pending, or the phrase pending elections. In the absence of a definition embodied in the statute, words should be given their literally meaning. The Oxford dictionary defines pending as:

'Waiting to be decided or settled.'

If this meaning is imported into Section 13 (1) (a) of the Regulations, it could lead to an interpretation that general and local elections are always pending and as such these categories of advertisements could always be erected without express consent.

[27] The Constitution of Jamaica gives some guidance as to the timeline in which general elections are held. Section 64 of the Constitution states that:

1) The Governor-General may at any time by Proclamation published in the Gazette prorogue or dissolve Parliament.

(2) Subject to the provisions of subsection (3) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.

(3) At any time when Jamaica is at war, Parliament may from time to time extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than two years.

(4) If, between a dissolution of Parliament and the next ensuing general election of members to the House of Representatives, an emergency arises of such a nature that, in the opinion of the Prime Minister, it is necessary for the two Houses or either of them to be summoned before that general election can be held, the Governor-General may, by Proclamation published in the Gazette, summon the two Houses of the preceding Parliament and that Parliament shall thereupon be deemed (except for the purposes of section 65 of this Constitution) not to have been dissolved but shall be deemed (except as aforesaid) to be dissolved on the date on which the polls are held in the next ensuing general election.

(5) In the exercise of his powers under this section the Governor-General shall act in accordance with the advice to the Prime Minister: Provided that if the House of Representatives by a resolution which has received the affirmative vote of a majority of all the members thereof has resolved that it has no confidence in the Government, the Governor-General shall by Proclamation published in the Gazette dissolve Parliament.

[28] Section 65 of the Constitution goes on to indicate the date by which general election must be held. It states that:

1) A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the Governor General, acting in accordance with the advice of the Prime Minister, shall appoint by Proclamation published in the Gazette.

(2) As soon as may be after every general election the Governor-General shall proceed under section 35 of this Constitution to the appointment of Senators.

[29] Section 64 clearly indicates that Parliament has a lifespan of five years; however, Parliament may be dissolved and an election declared prior to the five-year deadline. The five-year life span of Parliament commences from its first sitting. The first sitting of the current Parliament was in September 2020 Which means that Parliament ought to be dissolved by September 2025. Section 65 of the

Constitution gives a deadline of three months after Parliament is dissolved to hold an election ie by December 2025.

[30] Section 2 of the Representation of the Peoples Act (ROPA) defines campaign as:

A. A general election, the period of

i) commencing on the earlier day of –

a. The day immediately following the last day of the period of fifty-four months from the commencement of the term of office of the Government (or such other period as the Commission may, by order, subject to affirmative resolution prescribed); or

b. the day on which the date for an election is officially announced by the or on behalf of the Prime Minister.

ii) ending twenty-four before the time fixed for the opening of the poll on election day

[31] Counsel for the Respondent, without referring to ROPA, submitted that the phrase ‘pending elections’ is to be defined as the period after an election date is announced by the Prime Minister. By making this submission, the Counsel for the Respondent was: -

- a. seeking to rely on one of the definitions in ROPA,
- b. was asking the Court to equate the word campaign with the words pending election,
- c. and was asking the Court to adopt this meaning.

[32] Counsel for the Applicants sought to rely on Section 2 (a) (i) of ROPA. Mr. McCurdy urged the Court to adopt the position, as per ROPA, that fifty-four months have elapsed since the commencement of the term of the Parliament and that the campaign period has already commenced. Mr. McCurdy had submitted that the Government’s term of office commenced in September 2020, and as such fifty-four months would take one to March of 2025. He further submitted that the Applicants’ signs were erected within the campaign period.

[33] Section 2 of ROPA seems to limit the period in which campaigns for general elections can be conducted. There is merit in the submissions that Section 2 of ROPA should be utilized in the definition of the phrase pending elections. If this definition is adopted then the campaign would be limited to a set date being announced for general elections, or in the absence of a date, then fifty-four months after the first sitting of Parliament. This would prevent a limitless campaign period and would set an even playing field for candidates to be aware as to when consent would not be required to erect advertisements. Based on

- a. the literal meaning to be given to the word pending.
- b. The definitions of campaign in Section 2 of ROPA

I find that the Applicants would have an arguable case as it relates to the phrase 'pending elections.'

[34] I find that based on the test set out in cases such as **Sharma** that the Applicants have an arguable case. I find that the application for leave to apply for judicial review was filed in a timely manner ie nineteen days after the motion passed in the Finance Committee of the Respondent. I find that the Applicants have standing to file this application as they can be deemed to be persons who are adversely affected by the decision/ motion of the Respondent. I find that due to the nature of the issues that have arisen and are the subject of the application, that there is no other form of redress. I therefore, grant the application for leave to apply for judicial review.

The Application for Injunction

Claimant's Submission

[35] Counsel for the Applicants submitted that based on the principles enunciated in the case of **America Cyanamid Co (No1) v Ethicon Ltd [1975] AC 396**, there exist a serious issue to be tried, in that the actions of the Respondent threatens to undermine the integrity of the democratic process. Counsel submitted that based

on the circumstances of this case that damages would not be an adequate remedy. Counsel argued that not granting the injunction would lead to irreparable damage. Counsel submitted that the balance of hardship rests in favour of the Applicants for the granting of the injunction.

[36] Mr. McCurdy submitted that the Court should take into consideration in granting the injunction:

- a. Whether or not there are serious issues to be tried
- b. Whether or not damages are adequate remedy
- c. Whether or not the applicants will face the balance of hardship if the restraining order is not granted.

Counsel for the Applicant relying on the case of **Westminster City Council v Brian Haw [2002] EWHC 2073** submitted that there are serious issues to be tried as the Respondent's actions are unlawful, unconstitutional and infringed upon the Constitutional Rights of the Applicants.

The Respondent's Submission

[37] Counsel for the Respondent submitted that before an interim injunction can be granted the Court must be satisfied in accordance with the principles outlined in the cases of **American Cyanamid** and **NCB V Olin Corp Ltd [2009] UKPC 16**.

[38] Mrs Bennet-Cooper argued that in establishing whether there was a serious issue to be tried, regard must be had as to whether the Applicants have a real prospect of succeeding at trial in the claim for a permanent injunction. In support of this position counsel relied on the authority of **Re Lord Cable (deceased) Garrat and Others v waters and Others [1977] 1 W.L.R 7**.

[39] Counsel argued that in the case at bar the Applicants erected 6 advertisements in breach of the Town and Planning Act and the Town and Community (Control of Advertisement) Regulations and as such they are not entitled to any recourse from

this Court. Counsel relied on the case of **Clunis v Camden and Islington Health Authority [1998] Q.B .978** in support of this point.

Analysis

[40] The issues to be addressed in granted an interim injunction are:-

- a. Whether or not there are serious issues to be tried
- b. Whether or not damages are adequate remedy
- c. Whether or not the applicants will face the balance of hardship if the restraining order is not granted.

Whether there are serious issues to be tried?

[41] The issues in this case as detailed above concerns whether procedures as laid down in the Regulations were breached by the Respondent, and if this led to the Applicants being denied an avenue for Appeal. A second issue that was raised speaks to the meaning to be given to the phrase 'pending elections.' These issues touch and concern candidates having an opportunity to erect signs and advertisements in relation to a general election. This application for judicial review and the ensuing application for injunctive relief cannot be deemed frivolous or vexatious. I find these are serious issues to be tried.

Whether damages are adequate?

[42] Counsel for the Applicants had argued that not granting the injunction would place the Applicants at a disadvantage that no award in damages would compensate. Counsel for the Respondent argued that damages would be an adequate remedy in this case. Mrs. Bennette-Cooper pointed to the fact that the Applicants themselves had requested damages with respect to their application for leave to apply for judicial review

[43] In deciding whether or not damages would be an adequate remedy in this case I firstly considered the impact of the failure to grant an injunction on the Applicants, and what the impact would be on the Respondent if the injunction is granted. If the injunction is not granted the Applicants would, certainly for a significant period, be deprived of the opportunity to introduce/present their candidates for the next general election using the medium of advertisement. The loss of opportunity to do so would be immeasurable in relation to damages and could well be irremediable if at the end of the day, a decision was to be made in the Applicants favour. The fact that the Applicants have sought damages in their fixed date claim form does not speak conclusively to the adequacy of damages as an interim relief. In the alternative, if the injunction is granted, the Respondent would be curtailed from removing signs related to candidates for the upcoming election.

[44] I find, after weighing the balances that an injunction should be granted. I find that in a free and democratic society, the exercise of one's electoral interest, duties and rights is not amenable to compensatory relief in the form of damages. I therefore do not agree that damages would be adequate compensation in this case.

Conclusion

[45] I will grant the following orders: -

1. I will grant leave to apply for judicial review.
2. The Applicants are to file their Claim within 14 days of the order.
3. An injunction restraining the Respondent, whether by itself, its agents, officers and/or servants or otherwise howsoever from removing, interfering with or otherwise dealing with any advertisements or signage erected by or on behalf of the Applicants within the municipal district of Saint James, in respect of the pending parliamentary elections until a final determination of these proceedings or such other period as the court deems fit.

4. An injunction restraining the Respondent, whether by itself, its agents, officers and/or servants or otherwise howsoever from destroying the Advertisements removed from the municipality of Saint James belonging to the Applicants.
5. The injunction should remain in place until the judicial review is determined.
6. I will add the proviso to the injunction that all signs are to be secured to the relevant fixtures and that signs are not to be attached to revenue earning Boards unless the relevant fees have been paid.
7. The Applicant's attorneys are to prepare file and serve the order.