

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CAUSE NO. 288 OF 2009



10-Dec-2009
(CJ)

BETWEEN
AND

1. GORDON SOLOMON
2. SANDRA CATRON
3. RONALD EBANKS
4. JEAN EBANKS
5. ROXANNE BASHAM-EBANKS
6. MICHAEL MCLAUGHLIN

PLAINTIFFS

AND

1. MARK SCOTLAND
2. DWAYNE SEYMOUR

DEFENDANTS

IN CHAMBERS
THE 9th DECEMBER 2009
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

APPEARANCES: Mr. David McGrath for the Plaintiffs

Mr. Ramon Alberga Q.C. instructed by Mr. McDuff of Thorp
Alberga for the Defendants

RULING

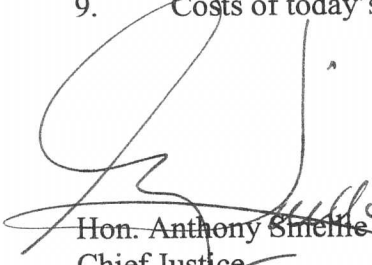
1. This is the Defendants' application for their costs of the action to be paid by the Plaintiffs who were unsuccessful. The defendants now claim their costs on the full indemnity basis which they say amounts to some USD 200,000.00.
2. The Plaintiffs urge me not to make an order for costs on the basis that the application was one brought by them in the public interest and which resulted in a judgment which has now clarified the law and procedure which they say was not clear before. In the alternative the Plaintiffs say that the costs, if they are to be awarded to the Plaintiffs, should not be awarded on the indemnity basis because

such awards are only made where a losing party has acted dishonestly or in flagrant disregard for the law or the rules of the Court.

3. Whatever view the Court might take of the public spiritedness of the Plaintiffs' action, the Defendants' rights were in question and so the Defendants were entitled to and did respond in a partisan way.
4. Thus the action became, in the view of the law, a partisan action. Legal costs incurred in such actions will at least, follow the event of the outcome of the actions and the Court can only deny a successful party his costs if he has acted in some way justifying such a sanction. That is not said by the Plaintiffs to be the position of the Defendants here. The costs must therefore follow the event of the successful outcome in their favour.
5. I do, however, accept that there was significant public interest in the proceedings and that the outcome may well have served to clarify important aspects of the law and procedure relating to election petitions. To that extent, I do not think the proceedings deserve to be described as an abuse of the process of the Court in the sense urged by Mr. Alberga now to justify the imposition of full indemnity costs upon the Plaintiffs. The finding of abuse of process expressed in the judgment was meant to describe the strict inappropriateness of the process of the Court which was adopted; that is, the Constitutional motion brought by the Plaintiffs instead of a petition as prescribed by the Elections Law.
6. For that reason, I believe Mr. Alberga's initial concession, when the judgment was delivered, by which he said the Defendants would forego their claim for indemnity costs, was not only well-intentioned; but also expressed the fair view to

be taken of the manner in which the action had been brought and prosecuted by the Plaintiffs.

7. For that reason, I do not think the Plaintiffs deserve to be visited with the sanction of an order for indemnity costs against them.
8. The order for costs will be that the Plaintiffs will pay the costs of the Defendants on the ordinary basis; to be taxed and paid forthwith.
9. Costs of today's hearing to the Plaintiffs as well, on the same basis.


Hon. Anthony Smeeth
Chief Justice



December 10 2009