

No. 53

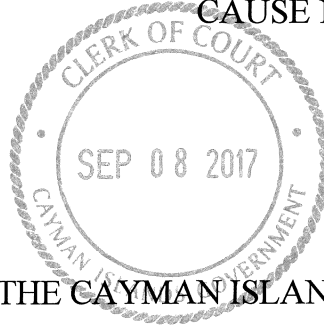
Application for Leave to Apply for Judicial Review (0.53, r.3)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 152 OF 2017

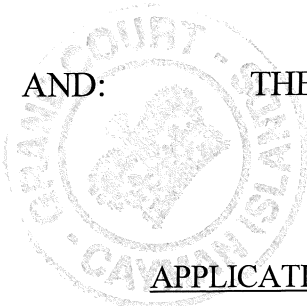
BETWEEN: JOHN GORDON HEWITT

Applicant



AND: THE GRAND COURT OF THE CAYMAN ISLANDS

Respondent



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	The Applicant, John Gordon Hewitt of 70 Billy Manderson Drive, West Bay, Grand Cayman, Cayman Islands, a citizen of Great Britain and the Cayman Islands, the Petitioner in the matter of the Cayman Islands Constitution Order 2009 and In the matter of a Petition under the Elections Law (2009 Revision) and in the Matter of an Election for the Electoral District of West Bay Held on the 22 nd May 2013 Cause No. 198 of 2013 (<i>"Hewitt v Rivers"</i>) by which the Applicant/Petitioner sought to overturn the election of Tara Rivers the 1 st Respondent therein and remove her from office on the ground that she did not meet the qualifications required for election as mandated by Sections 61 and 62 of the Constitution. If successful in having the 1 st Respondents election declared nullified the Petitioner sought the further declaration that Velma Powery-Hewitt was duly elected and ought to be returned without the need for a bye-election.

<p>Judgment, order, decision or other proceeding in respect of which relief is sought</p>	<p>The decision of the Chief Justice dated 2013 awarding costs to the 1st Respondent in Cause No. 198 of 2013.</p>
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Relief Sought

1. An order of *Certiorari* quashing the said decision of the Grand Court of the Cayman Islands;
2. An order of *Mandamus* directing the Grand Court to make no order as to costs on the basis that:
 - i) The decision was unreasonable and in breach of the rules of natural justice in that the Grand Court in relation to The Supervisor of Elections and Nicholas Da Costa Cause No. 61 of 2017 (*Supervisor of Elections v DaCosta*) brought under the Cayman Islands Constitution Order 2009 Section 61 seeking declaratory relief the essence of which was to state the legal position of the Respondent Nickolas DaCosta as it related to his eligibility to stand as a candidate for election to the Legislative Assembly made no order as to costs and in the case of The Supervisor of Elections and Alric Lindsay Cause No.60 of 2017 (*Supervisor of Elections v Lindsay*) also seeking declaratory relief as to the Respondent's eligibility to stand as a candidate for election to the Legislative Assembly costs were only awarded to the Respondent on the basis that there was no ground established and in the view of the Honourable Chief Justice of the Grand Court that application should never have been brought. Conversely in *Hewitt v Rivers* the Honourable Chief Justice observed in his introductory remarks that analysing the constitutional provisions 'is seldom a straightforward exercise of identifying and applying the literal or ordinary meaning of words, as competing arguments in this case illustrate' (page 7 para 18) He continued to note that "the question then arises what approach should be taken when the words are ambiguous or undefined and so invite more than one interpretation".(Page10. Para 29) The Honourable Chief Justice of the Grand Court in relation to the issue of allegiance to the Cayman Islands and not any foreign Government stated that "despite its antiquity, it is clear that the provision remains of crucial importance in the modern world to the preservation of the integrity of the political system howeverthe meaning of the expression "under any acknowledgement of allegiance, obedience, or adherence to a foreign power remains unsettled" In

Supervisor of Elections v Lindsay the Honourable Chief Justice of the Grand Court approached the issue of costs by observing that he was “sympathetic to the wish of the Supervisor and those advising him to seek as much clarification as possible on real matters of doubt as to qualification or disqualification to stand for election”. It is therefore inconsistent, unfair, unreasonable and in breach of the rules of natural justice for the Grand Court of the Cayman Islands to award costs against a Petitioner where there were real matters of doubt as to qualification or disqualification of a Respondent to stand for election on the one hand but distinguish an award of costs against another Applicant on the basis that the “absence as a potentially disqualifying consideration could have been resolved, as I have explained by the Applicant as a matter of the proper exercise of judgment and discretion.”(Page 12 PARA.29) clearly distinguishing a case where in the view of the Grand Court the application should never have been brought.

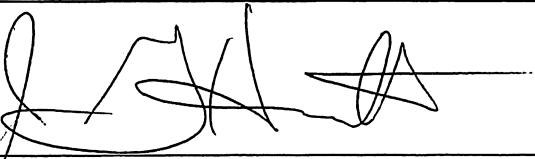
- ii) The Grand Court acted in a discriminatory and arbitrary manner and in a manner in which no reasonable Tribunal would behave by failing to provide the Petitioner with any rational or fair basis or reasons for awarding costs against him.
- iii) The Petitioner had a legitimate expectation to have his application for a declaration under Sections 61 and 62 of the Cayman Islands Constitutional Order (2009) addressed in the same consistent manner as other challenges under Sections 61 of the Cayman Islands Constitutional Order as those applied for by the Supervisor of Elections.
- iv) Such further, consequential, or other relief as to this Honourable Court seems just;

3. Costs

The address for service of the applicant

70 BILLY MANDERSON DRIVE, WEST BAY

Signed



Dated this 6TH day of September, 2017

Krystle L. Henry

Notary Public, Cayman Islands

My commission expires on January 31, 2018

Dated this 6 day of SEPTEMBER 2017

GROUND(S) ON WHICH RELIEF IS SOUGHT

The Applicant seeks leave to apply for judicial review on the basis that the decision made by the Grand Court dated2017 granting costs to the 1ST Respondent was: (i) unreasonable or (ii) irrational, because the Grand Court failed to provide reasons and in other application made under the Cayman Islands Constitutional Order (2009) costs were only awarded where there were no real matters of doubt as to qualification or disqualification to stand for election.