

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
PUBLIC LAW DIVISION

2019/PUB/jrv/00035

IN THE MATTER OF an application for Judicial Review pursuant to a decision of the Acting Director of Labour/ Registrar of Trade Unions on the Nominations of Officers on 14th November, 2019 and Election of Officers on 22nd November, 2019 contrary to the Unions Constitution.

IN THE MATTER of the Industrial Relations (Amendment) Act, 321

AND IN THE MATTER of Sections 21 of the Industrial Relations Act and Articles 6 & 8 of the Constitution.

BETWEEN

WATER & SEWERAGE MANAGEMENT UNION

Intended First Applicant

AND

EDNEL ROLLE
(In the Capacity of PRESIDENT)

Intended Second Applicant

AND

ARLINGTON BETHEL
(In the Capacity of TRUSTEE)

Intended Third Applicant

AND

THE MINISTER OF LABOUR

Intended First Respondent

AND

ACTING DIRECTOR OF LABOUR / REGISTRAR OF TRADE UNIONS

Intended Second Respondent

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE
BAHAMAS

Intended Third Respondent

AND

THE WATER AND SEWERAGE CORPORATION

Interested Party

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Obie Ferguson Jr. for the Intended Applicants
Mrs. Kayla Green-Smith and Mrs. Yollantha Yallop for the Intended Respondents
Mr. Ferron Bethell QC and Mrs. Lakeisha Hanna of Harry B. Sands for the Interested Party

Hearing Dates: 20 March 2020, 27 May 2020, 15 July 2020

Public law – Judicial Review – Trade union – Rules – Election - Whether the Union failed to have election – Whether the Registrar had the authority to direct an election himself – Whether election null and void - Amendment of Union Constitution – Sections 17, 20, 21 Industrial Relations Act, Ch 321

The First Applicant is the Union of the Water & Sewerage Corporation. The Second Applicant was the President of the Union’s Executive Council at the material time. The Third Applicant was the Trustee of the Union’s Executive Council at the material time. These Judicial Review proceedings relate to the decision of the Registrar of Trade Unions to hold and supervise the election of new Union officers of the Union’s Executive Council after they failed to do so even after the expiry of their term in office. The Applicants challenge those decisions on the ground that the Registrar exceeded his authority by holding the election. They also say that whether he exceeded his authority or not, the election had procedural irregularities which were contrary to the Union’s Constitution and the Industrial Relations Act, Chapter 321. Therefore, they ask that the nomination and election of those officers be vacated and quashed.

The Respondents opposed the application and maintained that, following the failure of the Union’s Executive Council to hold an election, the Registrar was well within his right to cause an election to be held in accordance with Section 21 of the Industrial Relations Act, Ch. 321.

HELD: dismissing the application for judicial review with costs to the Respondents to be taxed if not agreed

1. Long after the expiry of their term of office, the Union’s Executive Council failed to hold an election.
2. Section 21 of the Industrial Relations Act confers on the Registrar the authority to step in and hold an election upon the union’s failure to do so: **Davis v. Bahamas Communications and Public Offices Union (BCPOU) in the matter of the Industrial Relations Act, Chapter 296 and in the matter of the Constitution Of The Bahamas Communications And Public Officers Union and in the matter of the purported suspension of Andrew B. Davis by the Executive Board of the Union** [1995] BHS J. No. 80 applied.

3. The Registrar is prevented from being involved in the nomination process where the election is initiated by the Union, but where the Registrar himself steps in, under Section 21, to direct that the ballot be taken, he is not prevented from being involved in the nomination process: **Bahamas Hotel Catering & Allied Services Union et al v Registrar of Trade** [2010] 1 BHS J. No. 63 distinguished.
4. In exercising his Section 21 authority, the Registrar is required to cause notice of the ballot to be published in the Gazette and in one daily newspaper. The notice must specify the day, time and place at which the ballot is to be taken. This was properly done.
5. The issue of procedural irregularities raised by the Applicants during submissions, ought to be properly pleaded. In the absence of such pleadings, the Court ought not to entertain it: **Montague Investments Limited v (1) Westminster College Ltd and (2) Mission Baptist Church** [2015/CLE/gen/00845] and **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018 (CA) relied upon. That said, the Court proceeded to consider the irregularities complained of. The procedural irregularities lack merit.

JUDGMENT

Charles J:

Introduction

[1] This is an application for judicial review. On 13 November 2019, the Intended Applicants (collectively “the Applicants”) filed an ex parte application for leave to apply for judicial review. They challenged the written decisions of the Acting Director of Labour/Registrar of Trade Unions (“the Registrar”) mandating the Intended First Applicant (“the Union”) to conduct nomination and election of officers on 14 November 2019 and 22 November 2019 respectively (“the decision”). They seek an Order that the notice of nomination and election of officers of the Union’s Executive Council issued by the Registrar be vacated and/or quashed since the Registrar exceeded his authority.

[2] The Applicants also seek (i) an order of Mandamus directing the Registrar to carry out his statutory duty and follow the Constitution of the Union which makes provision for nominations pursuant to Articles 6 and 8 of the Constitution and (ii) to set aside nominations and election dates set for 14 November 2019 and 22

November 2019 respectively pending the determination of the application for judicial review.

- [3] On 3 December 2019, the Court granted leave for Water & Sewerage Corporation to be joined as an Interested Party in these proceedings. They maintained a watching brief throughout the proceedings which had commenced on 20 March 2020, the same day that the Governor-General issued the Declaration of the State of Emergency and Emergency Powers (Covid-19) Order. Further hearings as well as the timely delivery of this Judgment were delayed because of the pandemic. I therefore apologize for the delay.
- [4] On 17 January 2019, the Court granted leave to the Applicants to apply for judicial review. Consequently, the Applicants filed their Originating Notice of Motion on 22 January 2019.
- [5] The Intended Respondents (“the Respondents”) opposed the application. They insisted that because of the Union’s failure to nominate officers and to hold an election after the term of the members of the Executive Council had expired, the Registrar was well within his right to step in and cause nomination of officers and an election to be held pursuant to Section 21 of the Industrial Relations Act, Chapter 321 (the “IRA”).

Historical chronology

- [6] The First Applicant is the Union of the Water & Sewerage Corporation. The Second Applicant, Mr. Rolle, was the President of the Union’s Executive Council at the material time. The Third Applicant was the Trustee of the Union’s Executive Council at the material time. The First Respondent is the Minister of Labour. The Second Respondent, the Registrar, is the protagonist in this judicial review application and the Third Respondent is the Attorney General. The Interested Party is the Water & Sewerage Corporation, the Employer.

[7] The Union's Executive Council was elected in March 2016. Mr. Rolle was elected the President. In accordance with the Union's Constitution, their term in office was for three (3) years which expired in March 2019.

[8] By letter dated 8 April 2019, the Registrar wrote to Mr. Rolle advising him that the Union's Executive Council had surpassed their three (3) year term in office. His letter continued:

“Kindly provide the Registrar of Trade Unions with a valid notice as set out in Section 20 of the Industrial Relations Act indicating the date, time and place that a secret ballot would take place to elect new officers of the Water and Sewerage Management Union.”

[9] On 12 April 2019, Mr. Rolle authored a letter to the Registrar essentially saying to him that he should not meddle in the internal affairs of the Union. He again wrote on 23 April 2019 advising the Registrar that *“contrary to statements made by you in the daily press, and the inaccurate assertion of your letter dated April 8, 2019, the constitution of the Union determines when an election is called. For the record, nomination of officers will occur at the Annual General Meeting in November this year and an election will follow pursuant to the constitution of the Union”*.

[10] On 30 April 2019, the Registrar responded wherein he acknowledged receipt of the 23 April 2019 letter. He wrote:

“As you highlighted, the constitution of a union determines when an election is to be called. Please be reminded that Article 7(1) of the union's constitution states that your Annual General Meeting shall be held during the month of April, yet you're guided to call the meeting for November. Kindly revisit this decision to select a date within the month of June or sooner”. [Emphasis added]

[11] The Registrar also reminded Mr. Rolle that the tenure of the Executive Officers had ended and all Executive Officers were only “holding over” until an election is called. Additionally, he recommended that the Executive Officers *“urgently meet to decide on an appropriate date to hold the elections”*.

- [12] On 6 May 2019, the Registrar wrote again asking Mr. Rolle to kindly disregard the contents of his letter of 30 April 2019 and highlighted that, in accordance with Article 7 of the Water and Sewerage Management Union's constitution, the Annual General Meeting ("the AGM") shall be held in August and Mr. Rolle should revisit his decision on selecting a November date.
- [13] By letter dated 9 May 2019, Mr. Rolle responded. He stated that he reviewed the letter of 30 April 2019 (which the Registrar requested to be disregarded) and that the requested notice was inconsistent with Section 21 of the IRA (the Registrar did not invoke his powers under Section 21). Mr. Rolle made no mention of the letter of 6 May 2019.
- [14] By letter dated 24 June 2019, Mr. Rolle requested that a trade dispute that was filed by the Union against the Employer be forwarded to the Minister of Labour for him to refer the matter to the Industrial Tribunal. The trade dispute was never conciliated.
- [15] By letter dated 8 July 2019, the Registrar reminded Mr. Rolle that the Union's Executive Council was presently holding over since their term in office had expired. He further advised that in order to allow the Union to return to its proper nomination and election schedule as provided for in its Constitution, that the AGM, whereby nominations for the election of officers take place, should be held in August 2019.
- [16] By letter dated 5 November 2019, the Registrar advised Mr. Rolle that due to the passage of Hurricane Dorian, he had postponed numerous elections in the weeks following and hoped that all of the Union's members who may have been affected were on the road to recovery. He reminded Mr. Rolle that the Union's registered Constitution provides that the AGM, whereby nominations are to be held, followed by the election within 60 days, have not occurred.
- [17] The Registrar further wrote:

"In accordance with Section 21(1) and (2) of the Industrial Relations Act, Chapter 321 ... I hereby direct that a ballot shall be taken under

my supervision due to failure to comply with the relevant provisions of the Constitution of the Water and Sewerage Management Union, with regards to taking of a Secret Ballot for the purpose of electing the Executive Committee.

That the Nominations of Members wanting to contest the positions ...will be held on November 14th, 2019 between the hours of 10:00 a.m. to 3:00 p.m. The foregoing nominations will be supervised by the Registrar of Trade Unions or a Designated Officer.

The Election of Officers will be held on November 22nd, 2019 between the hours of 9:00 a.m. to 3:00 p.m. The foregoing election will also be supervised by the Registrar of Trade Unions or a Designated Officer....” [Emphasis added]

- [18] In paragraph 18 of his Supplemental Affidavit sworn to on 10 February 2020, the Registrar opined that once he invoked his powers to direct a secret ballot for the purpose of electing the Executive Committee under Section 21, both the nomination process and the election process were fully his responsibility. He opined that such decision was not taken lightly due to the associated costs involved.
- [19] On 6 November 2019, the Executive Chairman, Adrian Gibson sent a *WhatsApp* message to some managers of the Union informing them that nominations were scheduled for 14 November 2019 followed by election on 22 November 2019 and it was signed off by the Registrar.
- [20] On 7 November 2019, Mr. Rolle received a letter from the Registrar advising him that, as Registrar, he had invoked Section 21 of the IRA to hold elections. The letter further advised that nominations would be held on 14 November 2019 and elections on 22 November 2019.
- [21] The Registrar caused the notice of nominations and election to be gazetted and it appeared in the Tribune Newspaper on 6 November 2019. The notice stated that the nominations and election were being conducted under the Registrar’s direction pursuant to section 21 (1) and (2) of the IRA. The notice also specified the day, time and place at which the ballot was to be taken.

- [22] On 14 November 2019, the nomination of the Union's Executive Council was held between the hours of 10:00 a.m. to 3:00 p.m. at the Department of Labour Headquarters on Rosetta Street, New Providence. A quorum of more than 12 members was satisfied as is required by the Union's Constitution.
- [23] The election of officers took place on 22 November 2019 between the hours of 9:00 a.m. to 3:00 p.m. At that election, Mr. Montgomery Miller was elected the President.
- [24] Significantly, the chronology discloses that the Registrar and Mr. Rolle held conflicting views on the date for the AGM because they relied on different versions of the Union's Constitution. Mr. Rolle was relying on a 1998 version which he believed to be valid. That version stipulates that AGMs were to be held in November. On the other hand, the Registrar, was relying on a 1997 version of the Constitution which provides that AGMs were to be held in August. This appeared to have caused the dispute between the parties. I shall return to this momentarily.

Ground for review

- [25] In their Originating Notice of Motion filed on 22 January 2020, the Applicants stated that the ground for review is that the Registrar acted outside of his statutory authority when he directed nomination and election to be held on 14 November and 22 November 2019 which is contrary to Articles 6 and 8 of the Constitution.
- [26] The Applicants also identified the following two issues namely: (1) whether the Registrar acted ultra vires the IRA by ordering nominations and elections of officers on 14 and 22 November 2019 respectively and (2) as to the balloting process, the role of the Registrar as specified in the IRA.

The issues

- [27] In my opinion, the following inter-related issues arise for determination namely:
1. Whether the Union failed to hold election;
 2. Whether the Registrar exceeded his authority by calling the election and;

3. Whether the Registrar properly executed his role as provided for in Section 21 of the IRA.

Legislative framework

- [28] The Industrial Relations Act (“the IRA”) and its subsequent amendments provide for the registration and regulation of trade unions. Part II provides for the registration and control of trade unions. Section 5 (1) creates the position of Registrar and provides for his functions and powers. It also states that there shall be a register of trade unions to be compiled and maintained by the Registrar.
- [29] Section 17 deals with amendment of the constitution of trade unions. Section 17(1) provides that a trade union which is registered under the IRA may alter its constitution. Section 17(2) provides for the procedure to be employed upon an alteration of the constitution. It provides for two printed copies of every resolution for the alteration of the constitution of a registered trade union to be sent to the Registrar by an officer of the union together with a statutory declaration by such officer stating that the provisions of the constitution regarding the amendment of the constitution have been complied with and until such resolution is registered it shall not take effect.
- [30] Section 17(3) gives the Registrar the power to refuse to register the resolution if he is not satisfied that all the provisions of the union’s constitution and all the provisions of the IRA concerning amendment have been complied with.
- [31] Section 20 provides for the supervision of ballots by the Registrar. Section 20(1) provides that “if the Registrar is not satisfied that every member of the union has an equal right and reasonable opportunity” of voting under the union’s constitution, the constitution cannot be approved by him.
- [32] In addition, by section 20(1)(a), every constitution must contain a provision for a secret ballot in connection with the election or removal of any officer or member of its executive committee or other governing body.

[33] Section 20(2) provides as follows:

“20 (2) Whenever any trade union proposes to take any ballot for any of the purposes referred to in paragraph (a) or (b) of subsection (1), not less than seven days’ notice in writing shall be given to the Registrar of the intention to take the ballot, and of the time and place at which it will be taken and the ballot shall be taken under the supervision of the Registrar or a designated officer, who shall attend at the time and place; and unless the ballot is so taken and is certified by the Registrar or a designated officer as the case may be to have been properly taken, the ballot shall be void and of no effect and the Registrar or a designated officer shall direct a further ballot to be taken. [Emphasis added]

[34] In effect, Section 20(2) provides that trade unions should follow the statutory timeline requirements whenever that union proposes to take any ballot for the election or removal of any officer or member of its executive committee or other governing body for failure to do so can affect the certification of the poll by the Registrar.

[35] Section 20(4) provides that, for the purposes of this section and Section 21, “designated officer” means a public officer designated in writing by the Minister for the purpose.

[36] Section 21 of the IRA gives the Registrar the power to hold elections of officers where a trade union fails to do so. It expressly states that:

“21 (1) Where a trade union which is registered under this Act fails to take a secret ballot for the purpose of the election of any officer or member of its executive committee or other governing body at the time set forth in its constitution, the Registrar or a designated officer may direct that a ballot shall be taken under his supervision and cause notice of the ballot to be published in the Gazette and in at least one daily newspaper printed and circulated in The Bahamas. [Emphasis added]

(2) A notice under subsection (1) shall specify the day on which and the time and place at which the ballot is to be taken.”

Discussion

Whether the Union failed to hold election?

[37] Learned Counsel for the Respondents, Mrs. Green-Smith argued that since the Union failed to hold the election, the Registrar was constrained to step in and invoke Section 21 of the IRA which gives him the authority to do so. Learned Counsel Mr. Ferguson argued that Section 21 has no applicability to the present case and that the Registrar exceeded his power under the IRA.

[38] It is undisputed that the Union's Executive Council was elected in March 2016 for a three-year term as provided for by the Constitution. It is also undisputed that the Executive Council was holding over.

[39] Article 10(II) of the 1997 Constitution provides that the officers are to be elected triennially within sixty (60) days following the nominations at the AGM:

“The Executive Committee shall be composed of the President, Vice President, General Secretary, Assistant Secretary, General Treasurer and three (3) Trustees who shall be elected triennially by secret ballot vote, within sixty (6) days following nominations at the Annual General Meeting and shall each serve for a three year term and shall each be eligible for re-election.”

[40] Initially, the Applicants contended that the proper date for the AGM (and the nomination for election) was November. The Registrar, on the other hand, was always of the view that the proper date for the AGM was August. The reason for the divergence of opinions is because the parties advanced different versions of the Constitution. The Applicants advanced a 1998 Constitution (“the 1998 Constitution”) which provides that the AGM is to be held in November. The Registrar produced a Constitution amended in 1997 (“the 1997 Constitution”) which provides that the AGM is to be held in August. The 1997 Constitution was supported by a Certificate of Registration to properly register the amendments made therein. No such documentation supported the 1998 Constitution. In other words, there was no valid amendment of the Constitution subsequent to the one in 1997.

[41] By the end of the hearing, Mr. Ferguson properly conceded that the 1998 Constitution had not been properly registered. Notwithstanding, he urged the Court to accept the 1998 Constitution since, according to him, the Ministry of Labour/the Department of Labour had been operating under the 1998 Constitution for 21 years. Mr. Ferguson submitted that, the Registrar, as the custodian of records, must have known that the 1998 Constitution was not registered and therefore invalid. Mr. Ferguson next submitted that for the Court to find otherwise, would be tantamount to allowing the Registrar to benefit from his own wrongdoing, which he admonished the Court not to do.

[42] It is now accepted that the 1998 Constitution advanced by the Applicants cannot be relied upon as it did not comply with the requirements of Section 17 of the IRA. Since the term of the Union's Executive Council had expired in March 2019, the AGM ought to have been held in August and not November. I do not accept the Applicants' argument that the 1998 Constitution should be relied on because it was used by the Registrar for 21 years. The IRA is clear. Furthermore, Mr. Ferguson has not produced any evidence to support his submission that the 1998 Constitution was used for 21 years.

[43] To reiterate, the term of office of the Union's Executive Council expired in March 2019. From as early as 8 April 2019, the Registrar had been writing to Mr. Rolle advising him of the need to hold the AGM in August 2019. The Union did not do so. On 5 November 2019, when the Registrar gave notice that he was invoking his powers under Section 21, the Union's Executive Council had been holding over for roughly eight months. Put differently, that was three months after the proper date for the AGM. Undeniably, the Union had more than sufficient time to hold the election. Whatever the reason, be it a mistaken one or otherwise, the Union failed to hold an election when it ought to have done so.

Did the Registrar exceed his authority by holding election?

[44] Learned Counsel Mr. Ferguson submitted that the Registrar exceeded his authority by holding the election when he had no authority to do so. He correctly submitted

that both the Supreme Court and the Court of Appeal have emphasized that the IRA does not provide for the Registrar to be involved in the nomination process of trade unions. To substantiate his argument, he referred to the Court of Appeal case of **Bahamas Hotel Catering & Allied Services Union et al v Registrar of Trade** [2010] 1 BHS J No. 63 where the Court of Appeal considered the Registrar's role in elections for trade unions under the IRA. At [8], Newman JA stated:

“As to the balloting process, the role of the Registrar is specifically provided for by Section 20(2), but it is for the union to decide to take a ballot. Once it has so decided, not less than seven days' notice must be given to the Registrar of the intention, and the time and place at which the ballot will be taken. Thereupon, the Registrar or a designated officer must supervise the ballot by attending at the time and place and if satisfied the ballot was properly taken, to certify that to be the case”. [Emphasis added]

[45] Specifically, Mr. Ferguson relied on [14] which provides as follows:

“It seems to me that the legislators had in mind the range of circumstances which could fall for inquiry over an issue in connection with the nomination process, and it was such a consideration that led them to leave the supervision of the nomination process outside the statutory reach of the Registrar.”

[46] On the other hand, learned Counsel Mrs. Green-Smith, submitted that, in the present case, the Registrar was acting pursuant to Section 21 of the IRA which empowers him to hold elections of members of the executive council where a union fails to do so, She next submitted that Section 21 also gives the Registrar the authority to direct that a ballot **shall** be taken under his supervision and cause a notice to be published in the Gazette and in at least one daily newspaper printed and circulated in The Bahamas.

[47] Mrs. Green-Smith also contended that, in the present case, the Union failed to take a ballot after their term in office had long expired and Mr. Rolle was being cautioned by the Registrar to act. She emphasized that the intent of Section 21 of the IRA is to regularise unions that fail to follow their respective constitutions. According to her, after the Union failed to hold the election, the Registrar stepped in and once

the election was held in November 2019, even though it was held at a time contrary to the Constitution, the results allow for the term in office to begin when it ought to have, which is within the time frame stipulated by the Constitution. Therefore, those members who vied for the positions and won their respective posts will hold office from 31 August 2019 to 20 August 2022 as is specified in the Re-Issued Certificate done in accordance with Section 21. I agree that this is a correct exposition of the law but I empathize with the new members of the Executive Council as their tenure is reduced by litigation initiated by the Applicants whose term had long expired.

[48] Mr. Ferguson countered the arguments advanced on behalf of the Respondents and argued that Section 21 has no applicability to the facts of the present case. He contended that Section 21 only operates when the Union *refuses* to conduct a poll and there is no evidence that Mr. Rolle was averse to holding an election. He referenced the evidence which he alleged demonstrated Mr. Rolle's willingness to hold an election. I am afraid that I cannot accept Mr. Ferguson's argument that Mr. Rolle was willing to hold an election. In my judgment, Mr. Rolle was not prepared to accept the Registrar's correct opinion on the date for the AGM. The litany of correspondence between the parties (which I have set out in full) speaks for themselves and demonstrates quite the opposite: a man who did not wish to be told by the Registrar what to do and when was the proper date for the AGM. In his own words, he did not wish for the Registrar to "meddle" into the affairs of the Union. It is true that the Registrar should not meddle in the affairs of the Union but the Registrar does have the power to do so under Section 21 where the Union fails to hold an election.

[49] The marginal note in Section 21 reads "*Power of Registrar to hold elections of officers where trade unions fails to do so*". The language is plain: "**Where a trade union which is registered under this Act fails to take a secret ballot** for the purpose of the election of any officer or member of its executive committee or other governing body at the time set forth in its constitution, the Registrar or a designated officer may direct that a ballot shall be taken under his supervision and cause

notice of the ballot to be published in the *Gazette* and in at least one daily newspaper printed and circulated in The Bahamas.”

[50] Returning to Section 20. Unquestionably, Section 20 does not give the Registrar the power to be involved in the taking of the ballot and the nomination process but it does give him the authority to act on the Union’s decision to take a ballot. Therefore, **Bahamas Hotel Catering** [above] is distinguishable. There, the issue which confronted the court was whether the Registrar had been placed under a duty to act in the elections. Here, however, the issue is whether the Registrar had the authority to do what he did. Also, the Respondents contended that the Registrar did not exceed his authority under Section 21.

[51] Therefore, the scope of the Registrar’s powers must be considered not only against the backdrop of Section 20 but also Section 21 which comes into play when a union fails to hold election. It kicks in when there is a default of Section 20. A case which bears closer resemblance to the present case is **Davis v. Bahamas Communications and Public Offices Union (BCPOU) in the matter of the Industrial Relations Act, Chapter 296 and in the matter of the Constitution Of The Bahamas Communications And Public Officers Union and in the matter of the purported suspension of Andrew B. Davis by the Executive Board of the Union** [1995] BHS J. No. 80, Osadebay J considered the situation of the Registrar invoking his Section 21 power to hold elections after the previous election was irregular in that it did not comply with the provisions of Sections 20(2) and 20(4) of the IRA. At [38] to [39], the learned judge said the following with respect to the Registrar stepping in under Section 21:

“38 As a result and pursuant to the Court's Ruling, The Registrar stepped in under the provisions of Section 21 of the Industrial Relations Act to hold elections of officers and members of the Executive Board in place of the proper elections which should have been held in June/July of 1994.

39 That meant that any officers elected in the August elections of 1994 held office as if elected in June/July, 1994 when the proper elections ought to have been held at the Convention. Therefore, the elections will be due in June/July convention of 1997 and not 1995 as

contended by Counsel for the Plaintiff. The wording of Section 21(1) of the Industrial Relations Act makes it clear that the Registrar can only step in to regularize matters by supervising a ballot in place of that which ought to have been done but not done.”

[52] At paragraph 20 of the Judgment, Osadebay J acknowledged that Section 21 gives the Registrar the authority to “step in” to hold elections. In that case, what gave rise to the Registrar’s stepping in was the Union’s failure to comply with Sections 20(2) and 20(4) of the Act. In this case, it was the Union’s failure to actually hold an election which gave rise to the Registrar invoking Section 21.

[53] Having determined that the Union failed to hold elections by the date set in the Constitution (August 2019), it follows that the Registrar was entitled after that time to invoke his right under Section 21 to direct that a ballot be taken.

Additional ground raised but not pleaded

Procedural irregularities

[54] During oral submissions, Mr. Ferguson raised another ground, that there were procedural irregularities which offended the provisions of the IRA. Mrs. Green-Smith submitted that the Applicants are bound by their pleadings and the Court should not entertain an issue which has not been pleaded. I can address this point briefly by referring to a plethora of cases which adequately deal with the purpose of pleadings.

[55] In **Montague Investments Limited v (1) Westminster College Ltd and (2) Mission Baptist Church** [2015/CLE/gen/00845], Judgment delivered on 31 May 2020, this Court dealt with the purpose of pleadings. At paragraphs [15] to [18], it was stated as follows:

“[15] The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.

[16] In *Bahamas Ferries Limited v Charlene Rahming* SCCivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At para. 39 of the judgment, Sir Michael Barnett JA (as he then was) stated:

“The starting point must always be the pleadings. In *Loveridge and Loveridge v Healey* [2004] EWCA Civ. 173, Lord Phillips MR said at paragraph 23:

“In *Mcphilemy vs Times Newspapers Ltd.* [1999] 3 ALL ER 775 Lord Woolf MR observed at 792-793:

‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’
“[Emphasis added]

[17] At paragraph 40 of the Judgment, Sir Michael went on to state:

“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what preparations are necessary for trial.”

[18] Thus, pleadings are still required to mark out the parameters of the case that is being advanced by each party so as not to take the other by surprise. They are still vital to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader and the court is obligated to look at the witness statements to see what are the issues between the parties.”[Emphasis added]

[56] I therefore agree with Mrs. Green-Smith that since the issue of procedural irregularities was not pleaded, this Court should not consider it.

[57] In the event that I am wrong to come to this conclusion, I shall carry on with the issue.

[58] Learned Counsel Mr. Ferguson argued that there were several procedural irregularities in the election which took place under the Registrar’s direction. These irregularities, he submitted, were contrary to the Constitution and contrary to the

very Section 21 which Mrs. Green-Smith relied upon to support her position that the Registrar had the authority to hold the election. Mr. Ferguson argued that notice of the ballot was not gazetted as required by the IRA. However, the Supplemental Affidavit of John Pinder filed on 18 March 2020 exhibited the notice of nomination and election which was posted in the Tribune Newspaper on 6 November 2019. The notice disclosed the date and time of the nomination and election as required by Section 21(2). I am satisfied that there has been compliance with the IRA.

[59] Mr. Ferguson further argued that whether or not the notice of the poll was actually published, the Gazette produced by the Respondents was defective in that it did not contain a ballot. This is not probative because this is not a statutory requirement.

[60] Mr. Ferguson argued that there was another irregularity of the election in that the Constitution requires 14 days' clear notice and this did not occur. It seems to me that, under Section 21, there is no requirement for the Registrar to give 14 days' clear notice.

[61] Learned Counsel Mr. Ferguson also complained that the nomination of the Executive Council was conducted by the Registrar in his office. In support of his position that the Registrar is not entitled to be involved in the nomination process, Mr. Ferguson referred to Newman JA in **Bahamas Hotel Catering**. At [14] to [15], the learned Justice of Appeal stated:

“14 It seems to me that the Legislators had in mind the range of circumstances which could fall for inquiry over an issue in connection with the nomination process, and it was such a consideration that led them to leave the supervision of the nomination process outside the statutory reach of the Registrar.

15 It can be noted that he is not empowered to carry out any investigations into contentious facts and issues arising out of the conduct of members of the governing authority of the Union.”

[62] Mr. Ferguson emphasized that the Registrar is averted from being involved in the nomination process. However, the issue here is whether the same position obtains where the Registrar holds the election under Section 21 of the IRA in circumstances where the Union failed to do so. This question must be answered in the negative. The facts of the present case are therefore distinguishable from the facts in **Bahamas Hotel Catering**. In that case, the issue which the Court was confronted with was whether the Registrar had been placed under a duty to act in the elections. Because the facts did not entail the Union's alleged failure to hold elections, Section 21 was not considered. In **Bahamas Hotel Catering**, the Registrar was in fact acting in the exclusively supervisory role contemplated under Section 20 because the decision to hold elections had been made by the Union. I therefore agree with the reasoning of the Court of Appeal in **Bahamas Hotel Catering** that the IRA does not contemplate the Registrar being involved in the union's decision to call a ballot nor with the nomination process for candidates but that situation is only limited to elections which are directed by the Union.

[63] In the instant case, however, the Registrar directed the holding of the election in accordance with Section 21 because the Union failed to do so. Therefore, the complaint that the nomination of the Executive Council was conducted by the Registrar in his office has no merit.

[64] With respect to the issuance of the Election Certificate, on 26 November 2019, the Registrar issued a Certificate pursuant to Section 20 of the IRA. Then, by letter dated 20 January 2020, he advised Mr. Ferguson, as Counsel for the Union, that he rescinded that Certificate. He continued: ***"However, the results of the Election of Officers for The Water and Sewerage Management Union remain the same."*** Mr. Ferguson argued that since the Registrar rescinded the Election Certificate, it is open to the Court to sanction what the Registrar did and vacate that Certificate which was executed by officers who were not designated officers as mandated by Section 20(4) of the IRA. Mrs. Green-Smith, in response, relied on the Third Affidavit of John Pinder filed on 3 June 2020 wherein at paragraph 17, the Registrar asserted that:

“In December 2019, it was realized that there was a clerical error and that the Union was issued a Section 20 Certificate rather than a Section 21 Certificate. Therefore, by letter dated January 20th, 2020, we advised the Applicants’ Counsel that the Section 20 Certificate was rescinded, though the results remained the same and provided a copy of the Section 21 Certificate that the duly elected President had received. The date and results of the Election ballot remain the same”.

[65] I accept the Registrar’s assertion that it was a clerical error.

[66] Finally, Mr. Ferguson relied quite heavily on an Order made by the Court of Appeal in **Anthony Bain & Ors. v Registrar of Trade Unions** [2010] 1 BHS No. 3. That case turned on its own facts which are dissimilar from the facts of the present case. The case is therefore of no assistance to the Court.

Conclusion

[67] Since the Registrar was properly exercising his authority under Section 21 of the IRA by stepping in after the Union’s failure to hold the election, he did not exceed his authority. The Applicants’ further un-pleaded ground of procedural irregularities also fails. The Election Certificate dated 30 December 2019 and issued by the Registrar pursuant to Section 21 of the IRA is valid. The persons elected were properly elected. Their term of office shall be from 31 August 2019 to 30 August 2022.

[68] For all of the reasons given, I will dismiss the application for judicial review. The Respondents, being the successful party in these proceedings, are entitled to their costs to be taxed if not agreed.

Dated this 29th day of June 2021

**Indra H. Charles
Justice**