

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

REGULAR JURISDICTION

OTHER PROCEEDING

Court File No. 2018-HC-DEM-CIV-FDA-808

Between:

1. RABINDRANAATH SAYWACK in his capacity as Secretary of the Berbice Cricket Board
2. ROGER HARPER in his capacity as President of the Georgetown Cricket Association [Added by order dated 4th June 2018]

Applicants

- And -

1. STEPHEN LEWIS in his capacity as Ombudsman and/or Cricket Ombudsman

1st Respondent

2. THE GUYANA CRICKET BOARD as currently constituted
[Added by Order dated 10th May 2018]

2nd Respondent

3. THE ESSEQUIBO CRICKET BOARD as represented by Faizul Bacchus, President
[Added by Order dated 15th May 20¹⁸]

3rd Respondent

4. THE DEMERARA CRICKET BOARD as represented by Rajendra Singh, President

[Added by Order dated 15th May 2018]

4th Respondent

5. THE ATTORNEY GENERAL

[Added by Order dated 15th May 2018]

5th Respondent

Appearances:-

Mr. Arudranauth Gossai for the 1st Applicant

Mr. Ronald Burch-Smith for the 2nd Applicant

Mr. Forde with Ms. Olayne Joseph for the 1st, 2nd, 3rd and 4th Respondents

Ms. Deborah Kumar and Ms. Utica John for the 5th Respondent

2019: April 3

- [1] The **Guyana Cricket Administration Act**¹ (“**the Act**”) has had a short but tumultuous existence. This result clearly runs counter to its stated aims and objectives. It was passed on 15th May 2014 and has been the subject of several court actions and public debate. This claim is another chapter but unlikely to be the last chapter in its troubled history.
- [2] The 1st Applicant commenced this claim against the 1st Respondent for the following orders:
- (1) A Declaration that the election and/or appointment of the 1st Respondent as Ombudsman and/or Cricket Ombudsman on 3rd May 2018 is null, void and of no effect being contrary to the provisions of Section 10 and 17 of **the Act**.
 - (2) A declaration that the 1st Respondent, being clothed with actual and/or perceived bias renders his election and/or appointment as Ombudsman and/or Cricket Ombudsman null, void and of no effect being contrary to the rules of natural justice.
- [3] The 2nd Applicant application to be joined as an Applicant was granted. The 2nd to 4th Respondents application to be added as Respondents was granted based on their contention that they have an interest in the matter. The court on its own initiative added the 5th Respondent.
- [4] This Fixed Date Application preceded another Fixed Date Application² filed by the Berbice Cricket Board against office holders of the 2nd Respondent (“the GCB Claim”). This application was heard together with the GCB claim since they essentially involved the same parties and both challenged whether actions taken by the Respondents were in accordance with **the Act**.

¹ No. 14 of 2014

² Berbice Cricket Board et al v Fizul Bacchus et al Claim no 1200 of 2018

Some of the issues raised were common and thus it is intended that the judgments be read together.

Preliminary Issue

- [5] Mr. Saywack commenced this action in his capacity as Secretary of the Berbice Cricket Board ("the BCB"). By virtue of **Section 9(1) of the Act** the BCB and other county Boards are established as body corporates. It can therefore sue and be sued in its own right. The BCB was named as an Applicant in the GCB Claim but not in this claim.
- [6] **CPR 19:01** states that the court must not dismiss a claim because a party who should have been made a party was not made a party. **CPR 19:02** gives the court the power on its own initiative, at any stage of the proceedings, to add a party. Taking all the circumstances into consideration, including the overriding objective and the fact that there is no evidence that the claim was brought without the authority of the Board of the BCB I would add the BCB as an Applicant.

ISSUE 1 - WAS THE ELECTION AND/OR APPOINTMENT OF THE 1ST RESPONDENT AS OMBUDSMAN AND/OR CRICKET OMBUDSMAN NULL AND VOID BEING CONTRARY TO THE GCA ACT?

An Overview of the Act

- [7] The long title of **the GCA Act** states that it is an Act "*to provide for the incorporation of an autonomous national cricket administrative organisation as the supreme cricket administrative organization and other cricket administrative organisations in Guyana and for matters connected therewith.*" It establishes the Guyana Cricket Board ("the GCB") as a body corporate.
- [8] The stated aims and objectives³ are to:
- (1) advance and improve cricket in Guyana by the organisation, promotion and control of first class and other cricket competitions;

³ Section 4

- (2) to arrange, control and regulate inter-territorial and international tournaments promoted or sanctioned by the West Indies Cricket Board directly or through appointed agents or representatives;
- (3) to promote, control, regulate and supervise all cricket in Guyana organised under the auspices of the Guyana Cricket Board; and
- (4) to perform all such other acts or things as may seem to the Cricket Board to be necessary or conducive to the welfare of cricket in Guyana and the West Indies in general.

[9] The executive authority of the GCB is established as the Executive Committee.⁴ Section 12 of the Constitution of the GCB also states that the Executive Committee shall be the executive authority of the Board "*which shall carry out the decisions of the superior authorities of the Board namely the Annual General Meeting, the Ordinary General Meeting and any Special General Meeting and such organisational responsibilities arising from the playing of regional and international cricket matches in Guyana derived from the relationship with the West Indies Cricket Board.*"

[10] Sections 17 and 18 of the Act states:

Part VII – HOLDING OF FIRST ELECTION

" 17. The Minister, after meaningful consultation with the West Indies Cricket Board, shall :

(a) be responsible for the appointment of a Cricket Ombudsman, who shall be responsible for the verification of the Register of Clubs and for performing the functions of Returning Officer for the first election of the membership of the Guyana Cricket Board;

(b) have no part to play in respect of the holding of subsequent elections of the said Cricket Board and the election and appointment of the Ombudsman."

18. Subsequent elections to the Guyana Cricket Board shall be held in accordance with the provisions of this Act (sections 7 and 8) and subsequent elections of the Ombudsman shall be held in accordance with Section 10."

⁴ Section 6

[11] Section 17 therefore requires the Minister to appoint a Cricket Ombudsman who is required to (a) verify the Register of Clubs ; and (b) perform the functions of returning officer for the “*first election of the membership of the Guyana Cricket Board.*” Section 18 provides that subsequent elections of the Ombudsman shall be held in accordance with Section 10 of **the Act**.

[12] Section 10 of **the Act** states:

“(1) There shall be an authority known as the Cricket Ombudsman who shall hold office for a period of three years after the Ombudsman has been elected by a two thirds majority of the members present and voting at an extraordinary meeting of the Guyana Cricket Board.

..

(3) The primary task of the Cricket Ombudsman for the duration of his appointment shall be the responsibility for the verification of the Register of Clubs and for performing the functions of returning officer for the elections of the membership of the Guyana Cricket Board.

(4) The other functions of the Ombudsman and the rules of procedure of his office shall be prescribed by regulations. “

Discussion and Analysis

[13] It is not in dispute that the Minister appointed Dr. Winston McGowan as Ombudsman pursuant to Section 17 but the appointed Ombudsman resigned before performing the functions set out in Section 17.

[14] Learned Counsel for the 1st to 4th Respondents submits that Section 17 vests the Minister with the power to appoint an Ombudsman only once. Consequently, in the event that the Section 17 Ombudsman dies, resigns or otherwise fails to discharge the responsibilities set out in **the Act** the Minister is not empowered to appoint another Ombudsman. Counsel provided no legal authority in support of this proposition.

[15] There is nothing in **the Act** which prohibits the Minister from appointing another Section 17 Ombudsman in the event that the Ombudsman first appointed dies, resigns, is removed or is for some other reason unable to carry out the tasks set out in Section 17. To interpret the absence of an express provision giving the Minister the power to do so to mean that the Minister is prohibited from so doing would in my view not give effect to the clear intention of Parliament that an Ombudsman appointed by the Minister, as distinct from the Section 10 Ombudsman, should perform the functions set out in Section 17.

[16] I am not persuaded that the Section 10 Ombudsman is empowered to perform the same functions as the Section 17 Ombudsman and thus, in effect, can be substituted in place of the Section 17 Ombudsman and carry out the functions of the Section 17 Ombudsman. The Section 17 and the Section 10 Ombudsman differ in material respects, namely:

(1) Manner of Appointment. The Minister appoints the Section 17 Ombudsman while the Section 10 Ombudsman is appointed by a 2/3 majority vote at the "Extraordinary General Meeting" of the GCB.

(2) Function. The function of the Section 17 Ombudsman's is limited to that set out in Section 17 i.e the verification of the Register of clubs and acting as returning officer of the "*first election of the membership of the GCB*". Upon completion of those tasks he plays no further role in the GCB. Upon appointment the Section 10 Ombudsman carries out his/her function for a period of three (3) years. While his/her primary tasks are the verification of the register of clubs and acting as returning officer for subsequent elections of the membership of the GCB he/she is not limited to those functions. Other functions may be prescribed by regulations.

[17] It is significant that the Section 10 Ombudsman is appointed at an "Extraordinary General Meeting" of the GCB. It follows that the Section 10 Ombudsman can only be appointed at a *validly* convened "Extraordinary General Meeting" of the GCB.

[18] *What then is the procedure for the holding of meetings of the GCB?* Section 9 (a) of the GCB Constitution provides that **the Executive Committee** shall convene an *Ordinary General Meeting* in the months of June and October or each year. Section 9 (c) states that the Executive Committee shall convene a *Special General Meeting* on a written request by at least two County Boards or by the Executive Committee itself. An Annual General Meeting shall be held during the month of January as decided by the general membership of the Board at the October Ordinary General Meeting.

[19] Neither **the Act** nor the Constitution of the GCB appear to define "*Extraordinary General Meeting*" but it is clear that *any* meeting of the GCB, whether annual,⁵ ordinary⁶ special⁷ or otherwise would have to be convened by the Executive Committee - the executive authority of the Board⁸ of the GCB. It is therefore mandatory that an Executive Committee be in place for the convening of meeting and the carrying out of its other functions set out in **the Act**.

How is the Executive Committee to be Elected ?

[20] Section 17 of **the Act** states that the Ombudsman appointed under that section shall, *inter alia*, be responsible for the "*first election of the membership of the Guyana Cricket Board*". Section 18 of **the Act** provides that "*subsequent elections to the Guyana Cricket Board*" shall be held in accordance with the Sections 7 and 8 of **the Act** and *subsequent elections* of the Ombudsman shall be held in accordance with Section 10.

[21] **Section 7** provides that *the first election* of the Executive Committee shall be held in accordance with **Section 17** on the date appointed in writing by the Minister acting in consultation with the West Indies Cricket Board, while subsequent elections will be held on the date appointed by the Executive Committee by notice in the daily newspapers of wide circulation in accordance with the relevant provisions of **Schedule 1**.

⁵ Section 8 of the Constitution of the GCB

⁶ Section 9 of the Constitution of the GCB

⁷ Section 9 of the Constitution of the GCB

⁸ Section 6 of the GCA Act

[22] It is noted that Section 17 refers to the first election of "*the membership of the Guyana Cricket Board*" while Section 18 refers to elections " *to the Guyana Cricket Board*". However having considered the provisions of **the Act** including that :

- (1) Section 18 uses the word "*subsequent elections*" thus appearing to mean an election held subsequent to that referred to in the preceding Section 17;
- (2) Section 18 refers to the said subsequent elections being held in accordance with Section 7; and
- (3) that Section 7 relates to the first election of the Executive Committee and refers back to Section 17 for the process by which the said first election of the Executive Committee shall be held,

I find that the "*first election of the membership of the Guyana Cricket Board*" referred to in Section 17 of **the Act** refers to the **first election of the Executive Committee of the GCB** which is required to take place in accordance with Sections 7 and 17 of **the Act**.

[23] The Section 10 Ombudsman – who is appointed by election at the "extraordinary general meeting" - can therefore only be appointed after the Section 17 Ombudsman has carried out his function under Section 17 which includes the holding of the **first** election of the Executive Committee. Following the constitution of the Executive Committee it is for the Executive Committee to convene meetings of the GCB and this would in my view also include any "extraordinary general meeting" of the GCB to facilitate the election of the Section 10 Ombudsman.

[24] A Section 17 Ombudsman was therefore required to , among other things, act as returning officer for the first election of the Executive Committee of the GCB. There is no evidence that the first election of the Executive Committee in accordance with Sections 7 and 17 of **the Act** has yet taken place. Specifically, there is no evidence that the Section 17 Ombudsman performed the statutory duty of returning officer at the first or any election of the Executive Committee of the GCB.

- [25] There is no provision in **the Act** or the GCB Constitution for the County Boards or any other person or bodies to convene and hold the *first election* of the Executive Committee as provided for in Section 17 or to convene a meeting (whether general, annual or otherwise) of the GCB of their own accord and elect a Section 10 Ombudsman due to the Minister's failure to appoint another Section 17 Ombudsman or for any other reasons.
- [26] The Minister appointed a Section 17 Ombudsman. That Ombudsman resigned. It is not in dispute that the Section 17 Ombudsman appointed by the Minister resigned before completing the functions set out in Section 17 of **the GCA Act**. There can be no "first election" of the Executive Committee as provided for in Sections 7 and 17 without a Section 17 Ombudsman being in place to perform the statutory functions set out in Section 17. There is no evidence that the *first election* as provided for in Section 17 has been held.
- [27] In the absence of an Executive Committee elected in accordance with Sections 7 and 17 of **the Act** any meeting convened would not be convened by a duly elected Executive Committee and would be null and void. Mr. Lewis was purportedly appointed at a meeting convened by persons or bodies with no authority to do so under **the Act**. The purported appointment of Mr. Lewis as Cricket Ombudsman is therefore null and void and of no legal effect.
- [28] There has been a failure by the Minister to appoint another Cricket Ombudsman in accordance with Section 17 for reasons which are unknown to the court. The consequence is that there continues to be turbulence in the administration of cricket which does not promote the stated aim of improving and advancing cricket. This most unfortunate state of affairs will hopefully be remedied forthwith to give effect to the Act and advance its aims and objectives. The advent of the Judicial Review Act would appear to provide some remedy for persons or bodies affected by the action or inaction of the Minister.

[29] In all the circumstances it is declared that the purported appointment of the 1st Respondent as Ombudsman is null and void and of no legal effect.

[30] In light of my finding on the first issue I find no need to address the second issue.

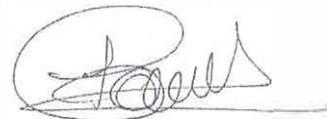
[31] It is therefore ordered as follows:

(1) The Berbice Cricket Board is added as an Applicant.

(2) It is declared that the election and/or appointment of the 1st Respondent as Ombudsman and/or Cricket Ombudsman on 3rd May 2018 is null, void and of no effect being contrary to the provisions of Section 10 and 17 of The **Guyana Cricket Administration Act No 4 of 2014**.

[32] I thank counsel for the 1st Applicant and counsel for the 1st to 4th Respondents for their helpful submissions.

[33] The court will hear the parties on the issue of costs.

A handwritten signature in black ink, appearing to read 'Fidela Corbin Lincoln', written in a cursive style with a horizontal line underneath.

Fidela Corbin Lincoln

High Court Judge