

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

PROCEEDING FOR AN ADMINISTRATIVE ORDER

2019-HC-BER-CIV-FDA-110

In the Matter of the Guyana Cricket Administration Act No. 14 Of 2014.

In the Matter of the Judicial Review Act, Cap. 3:06.

BETWEEN:

RABINDRANAUTH SAYWACK in his capacity as Secretary of the BERBICE CRICKET BOARD.

Applicant

- and -

1. STEPHEN LEWIS, in his capacity as Ombudsman and/or Cricket Ombudsman.
2. Dr. GEORGE NORTON, MINISTER OF SPORTS
3. THE ATTORNEY GENERAL OF GUYANA

Respondents

ORAL REASONS DELIVERED ON 27TH JANUARY 2020

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1. The Applicant is seeking the quash the decision of the 2nd Respondent, the Minister of Sport appointing Stephen Lewis as Ombudsman pursuant to section 17 of the Guyana Cricket Board Act **Guyana Cricket Administration Act Cap. 21:03 ("the Act")** on the ground, among other things, of bias.
 2. On 12th March, 2019, the 1st Respondent was appointed by the 2nd Respondent as the Cricket Ombudsman pursuant to Section 17 of the **Guyana Cricket Administration Act Cap. 21:03** (hereafter the "**the Act**").
 3. The Applicant challenged the appointment of the 1st Respondent on the ground , among others, that the 1st Respondent is clothed with actual and/or perceived bias in that he is a member of the Everest Cricket Club which is part of the Georgetown Cricket Association

and that the 1st Respondent is a Partner in the Law Firm of Forde Amsterdam Lewis, which represents and has represented certain stakeholders of cricket against other stakeholders.

4. The 1st Respondent filed an affidavit stating that he has not been a paid – up member of the Everest Cricket Club since 2016 and that he has not actively or otherwise taken part or had conduct of any of the “cricket” matters for which his Law Firm has conduct. He also denies that he is a partner in the firm of Forde, Amsterdam and Lewis.
5. There are two types of bias - actual and apparent or perceived. Actual bias is where the decision maker is a party to the litigation or has a financial or other interest in the outcome of the matter. Perceived bias arise where the decision maker's conduct, interest , allegiances or affiliations give rise to a suspicion that he is not impartial.
6. I do not find that an issue of actual bias arises in this case as there is no clear evidence upon which it can be concluded that Mr. Lewis has or will have a financial or other personal interest in the outcome of any matters he will be required to address as Ombudsman. The issue is whether Mr. Lewis is clothed with perceived or apparent bias.
7. In **R v Bow Street Metropolitan Stipendary Magistrate ex parte Pinochet Ugarte** (No.2) [2001] 1 AC 119 the House of Lords set aside its previous decision based on the possibility of bias. Lord Hoofman formed part of the 3-2 majority in the house of Lords which decided that a former Chilean leader did not have immunity from arrest. He failed to declare his connection to Amnesty International , a party to the appeal. He was an unpaid director of the charitable arm of the organisation and his wife had been an administrative assistant at one of the offices of Amnesty International. The Lordships held that “ ***The fact that a person has the necessary training and qualifications to resist any tendency towards bias is not relevant when considering whether there was an appearance of bias***”

8. In **Magill v Porter** the House of Lords used the test of "*what the fair minded and informed observer would have thought and whether his conclusion would have been that there was a real possibility of bias*" is determining whether there is perceived or apparent bias.

9. In **Gillies v Secretary of State for Work and Pensions** Lord Hope stated:¹

"The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny."

10. It is clear that the test of apparent bias is an objective one.

11. Mr. Lewis makes a bare denial of the allegation that he is a partner in the firm of Forde, Amsterdam and Lewis and offers no alternative facts regarding his status in the firm. The court is therefore left without any clear evidence as to the exact nature of Mr. Lewis' interest and involvement with the law firm Forde, Amsterdam and Lewis.

12. What is not in dispute is that Mr. Stephen Lewis practices under the firm Forde, Amsterdam and Lewis and that his name appears on the letterhead.

13. It is also not in dispute that the firm of Forde, Amsterdam and Lewis has and continues to represent various cricket stakeholders against other stakeholders. The cases include:

(1) **Albert Smith et al v Somwaru, Anand Sanasie et al** Claim No. 217 of 2017

(2) **Roger Harper et al v Anand Kalladeen , Anand Sanasie et al** Claim No. 622 of 2018. The Applicants, members of the Demerara Cricket Board, brought a claim against the officer holders of the Demerara Cricket Board for, among other things, an

¹ (Scotland) [2006] UKHL 2, para 17 cited by Lord Kerr in **Belize Bank Ltd v Attorney General of Belize** [2011] UKPC 36, para. 36,

order quashing the election of officer bearers , a declaration that the term of office of the elected officers had come to an end, and for the court to fix a date for elections of officer bearers. Mr. Roysdale Forde of Forde, Amsterdam. Lewis appeared on behalf of the Respondents.

- (3) **Rabindranauth Saywack et al v Stephen Lewis, The Guyana Cricket Board et al** Claim No. No. 2018-HC-DEM-CIV-FDA-808. In this claim the Applicant in the present proceedings brought a claim against Mr. Stephen Lewis and the Guyana Cricket Board [as then ostensibly constituted] challenging the appointment of Mr. Lewis as Ombudsman by the said Guyana Cricket Board under Section 10 of the Cricket Act. Mr. Forde of Forde, Amsterdam and Lewis represented the respondents including the Essequibo Cricket Board and the Demerara Cricket Board who applied to be added as respondents in that action. The court quashed the appointment of Mr. Lewis as Ombudsman under Section 10.
14. It is important to put in context the regulatory framework under which an Ombudsman is appointed under Section 17 of the Act ["Section 17 Ombudsman"] and the statutory duties imposed.
15. Section 17 of the Act , dealing with the first election of the Guyana Cricket Board ("GCB"), provides that an Ombudsman shall be appointed by the Minister after consultation with the West Indies Cricket Board. Section 10 of the Act also provides for an Ombudsman but this Ombudsman is elected subsequent to the Section 17 Ombudsman at an extraordinary meeting of the GCB.
16. The Section 17 Ombudsman is limited to two tasks – verifying the Register of Clubs and acting as returning officer for the first elections of the GCB. After completing these tasks he plays no further role in the GCB. The Act therefore specifically requires that at the commencement of the Act these tasks should, at the initial stage, be performed by a person appointed by the Minister rather than any of the member Boards or any other

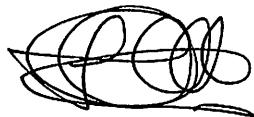
cricket stakeholder. This suggest to me that the framers of the Act envisaged the Section 17 Ombudsman to be someone who should be appointed by a neutral party.

17. One of the tasks entrusted to the Section 17 Ombudsman is the verification of the Register of Clubs. **The Act** does not set out the process by which the verification exercise is to be carried out but in its natural and ordinary meaning verification is a process of establishing the truth, accuracy, or validity of something. The Section 17 Ombudsman would therefore be in an adjudicative role with respect to verifying the register of clubs of the member boards/county boards. It appears to me that this process could include the Ombudsman determining the eligibility of certain clubs or associations to be on the register of members of the different county boards.² Membership confers a significant and important right i.e the right to vote. The verification process which the Section 17 Ombudsman is expected to carry under **the Act** would or could impact on the issue of voting delegates not only within the county boards' electoral process but also the GCB electoral process.
18. The numerous contentious issues surrounding cricket governance both at the county level and at the national level in the form of the GCB are matters in the public domain. The Section 17 Ombudsman, being the first Ombudsman under **the Act**, plays a critical role within the scheme and purpose of **the Act** and must not only be free from actual bias but also perceived bias.
19. The firm of Forde, Amsterdam Lewis - of which Mr. Lewis is a part - has been and is still involved in several contentious court proceedings among the members of the three county

² It is noted that the only the Constitution of the Demerara Cricket Board expressly refers to the maintenance of a Register of Clubs (Article 14 (e) (e)). The Constitution of the Berbice Cricket Board refers to member clubs and associations, provides for membership and the method by which a club or other body could become members. The Essequibo Cricket Board provides for 'committees' or 'area committees' which shall be members and also provides for the process by which bodies may be become members /affiliated members. Notwithstanding the different terms all of the constitutions clearly provider for membership and a process by which membership is obtained and maintained. It therefore appears to be contemplated that the county boards would maintain some record/register of their membership.

boards, among the county boards and against the GCB or persons who were holding themselves out as constituting the GCB. The firm therefore has and continues to represent the interest of one or more of stakeholder against the other. It is these same members and county boards over which Mr. Lewis would be required to sit and adjudicate as regards their membership. In his role as returning officer for the first election of the GCB he would be the person responsible for overseeing and managing the electoral process.

20. Given the role the Section 17 Ombudsman is required to play in and among the county boards in the execution of his duty, Mr. Lewis' interest and affiliation with the law firm which has and continues to represent some members and boards stakeholders in matters involving other members and boards would in my view give rise to a suspicion by a fair minded and informed observer that he may not be impartial in carrying out his duties.
21. In the circumstance I find that Mr. Lewis is clothed with perceived or apparent bias and consequently his appointment by the Minister should be quashed.
22. I therefore make the following orders:
 - (1) It is declared that the appointment of the 1st Respondent as Cricket Ombudsman by the 2nd Respondent is unlawful, null and void and of no legal effect being contrary to the rules natural justice as the 1st Respondent is clothed with perceived bias.
 - (2) The decision of the 2nd Respondent appointing the 1st Respondent as Cricket Ombudsman is quashed on the grounds that the decision was unlawful, null and void and of no legal effect being contrary to the rules natural justice as the 1st Respondent is clothed with perceived bias.

A handwritten signature in black ink, appearing to be a name, is written over a stylized, decorative flourish at the bottom left of the page.