

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 109 of 2012

**YOLANDA SCHAKRON
MOSES SULPH**

**1st CLAIMANT/APPLICANT
2nd CLAIMANT/APPLICANT**

AND

**NOREEN FAIRWEATHER
(Returning Officer for the Lake Independence electoral division)
THE ATTORNEY GENERAL OF BELIZE**

**1st DEFENDANT/RESPONDENT
2nd DEFENDANT/RESPONDENT**

Hearings

2012
17th February

Ms. Lisa Shoman SC for the claimant/applicant.
Mr. Rodwell Williams SC, Mr. Michael Young SC and Mr. Nigel Hawke
for the defendants/respondents.

LEGALL J.

RULING

1. National elections in Belize have been set for March 7th, 2012. Nomination day for the elections has been set for today 17th February, 2012. The claimant Ms. Schakron, a citizen of the United States and

also a member of one of the political parties contesting the elections, the Peoples United Party, intends to be nominated as a candidate for the electoral division of Lake Independence in Belize City. She swears that she verily believes that her nomination will be objected to under Rule 8 of the Representation of the People Election Rules Chapter 9 of the Laws of Belize (the Rules). Ms. Schakron therefore filed on 16th February, 2012 this application for the following injunction:

- “1. An Order granting urgent interim relief to the claimants/applicants by way of an injunction restraining the Returning Officer or any person who deputizes for her or who is duly authorized by her as Returning Officer for the Lake Independence electoral division in Belize City from declining the nomination of Yolanda Schakron for the Lake Independence electoral division in Belize City from declining the nomination of Yolanda Schakron for the Lake Independence electoral division in Belize City from declining the nomination of Yolanda Schakron for the Lake Independence electoral division on February 17, 2012, and until this Honourable Court has heard and finally determined the issues in this claim form:
 2. An Order for an early trial of the claim.
 3. Any further order as the court deems fit.
 4. Costs.”

2. Rule 8 of the Rules states:

8.-(1) It shall be lawful for any person whose name appears on the register of electors for any division to object to the nomination of any

candidate and the returning officer shall decide on the validity of every objection made.

(2) If the returning officer disallows the objection his decision shall be final, but if he allows the same his decision shall be subject to reversal on petition questioning the election or return.”

3. A proposed candidate for purposes of the nomination has to show that he has been nominated in writing on one nomination paper signed by six persons from the register of voters for the concerned division; and that he has in writing assented to the nomination. The candidate cannot assent to nomination in more than one division at a general election; and he has to deposit a sum of \$200.00 with the returning officer. The claimant has complied with the above requirements. The Returning Officer under Rule 3(1) of the Rules is authorized to receive the nomination of any duly qualified candidate. Rule 3(1) states:

“3.-(1) On the day and at the place or places fixed by the returning officer he or any assistant duly authorized by him shall attend between the hours of ten o’clock in the forenoon and four o’clock in the afternoon and receive the nomination of any duly qualified candidate or candidates for the seat to be filled.” emphasis mine

4. Section 58(1)(a) of the Constitution states disqualifications for election as members of the House of Representatives. Section 58(1)(a) states:

“58.-(1) No person shall be qualified to be elected as a member of the House of Representatives who

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(a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or State.

5. Ms. Schakron, a citizen of the US would fall within the above section. The section expressly speaks, not of any qualification to be nominated, but of “qualified to be elected.” The question, as I see it, is whether the provisions of section 58(1)(a) of the Constitution are applicable at the nomination stage, even though the Rules do not specifically state or mention the above allegiance in section 58(1)(a) of the Constitution.
6. During the arguments in court, the court was informed by learned senior counsel for the claimant that the Returning Officer earlier today had allowed an objection to the claimant’s application to be registered as a candidate for the said division on the ground that the applicant was an American citizen and therefore owed allegiance to a foreign State. The application for an injunction then changed course and became an application for an interim declaration suspending the Returning Officer’s decision to allow the objection and an injunction preventing the Returning Officer from further declining the applicant’s nomination as a candidate.

7. Several arguments were made in favour and against the granting of the said application by learned counsel on both sides. But without detracting from the industry and scholarship of learned counsel on both sides, the crux of this matter seems to be this: What is meant by the phrase “duly qualified candidate” appearing in Rule 3(1) of the Rules above.
8. The submission was made that a proposed candidate for election would not fall within the phrase “duly qualified candidate” in Rule 3(1) if the proposed candidate is under any acknowledgement of allegiance to a foreign power or state as provided for in 58(1)(a) of the Constitution given above.
9. In my view, the returning officer in carrying out his duties under Rule 3(1) of the Rules is entitled to consider section 58(1)(a) of the Constitution in deciding whether the applicant for nomination is a duly qualified candidate, because the process to be elected to the House of Representatives commences on nomination day. In *Peters v. AG 63W.I.R. 244*, the appellants who had acquired citizenship in the USA and Canada filed nomination papers to be nominated for general elections in Trinidad and Tobago. The respondents objected to the candidacy of the appellants on the ground that they were citizens of another country, on the basis of section 48(1)(a) of the Trinidad and Tobago Constitution which is similar to section 58(1)(a) above. The court held that the qualification for election to the House of Representatives must be satisfied on nomination day rather than on polling day or some other day, and even if a ground for

disqualification which is applicable on nomination day is removed by the date of election, the person would not be qualified to be elected under section 48(1)(a) of the Constitution of Trinidad and Tobago. De la Bastide CJ held that “the qualifications for election to the House of Representatives must be satisfied at the commencement of the election process which is nomination day”: see page 289.

10. Under Rule 8(2) of the Rules, where the returning officer allows an objection, the claimant is authorized to apply to the Supreme Court to reverse the ruling of the returning officer; and on such an application the court may, if it is satisfied, reverse the ruling of the returning officer, in which case a by-election can be ordered. I take the point made by learned senior counsel for the defendants that if the view is that the returning officer erred in allowing the objection, an election petition to the Supreme Court is the proper process to take.
11. For the above reasons, I refused the applications for an interim declaration to suspend the returning officer’s decision to allow the objection and for an injunction to prevent the Returning Officer from declining the applicant’s nomination as a candidate.

Oswell Legall
JUDGE OF THE SUPREME COURT

