

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

Claim No. 201 of 2012

IN THE MATTER of section 86(2) of the Belize Constitution

IN THE MATTER of the Representation of the People Act, Chapter 9

AND IN THE MATTER of an Election Petition challenging the validity of the election of Elvin Penner on March 7, 2012, as member of the House of Representatives for the Cayo North East Electoral Division

BETWEEN

ORLANDO HABET

PETITIONER

AND

ELVIN PENNER
JOSE CASTELLANOS
ATTORNEY GENERAL
GEORGE PLETT
JUAN RUANO
DAVID CARILLO
LEONARDO WAIGHT

RESPONDENTS

Before: Justice Minnet Hafiz-Bertram

Appearances: Mr. Said Musa SC along with Mr. Anthony Sylvester for the Petitioner

Mr. Rodwell Williams SC for the Respondents

DECISION

Introduction

1. The Respondents by Notice of Motion sought an Order dismissing the Election Petition dated 2nd April, 2012 of Orlando Habet, the Petitioner. The court heard this application on 15th May, 2012 and reserved its decision. Further, on 14th May, 2012 the court heard an application for a stay made by the Petitioner which was refused and promised to put its reasons in writing.

2. The Petitioner, Orlando Habet (“Habet”) and the First Respondent, Elvin Penner (“Penner”) stood as candidates in the general elections held on March 7, 2012. The second Respondent, Jose Castellanos was the Returning Officer in the Constituency and he declared Penner as the winner by a margin of 17 votes.
3. The third Respondent, Attorney General is the representative of the Government of Belize. The Fourth through seventh respondents are named as campaigners and agents of Penner.
4. Habet is challenging the validity of the election of Penner on March 7, 2012, as member of the House of Representatives for the Cayo North East Electoral Division. The court has not heard the Election Petition dated 2nd April, 2012 for which leave was granted as two applications were filed which put a halt to that hearing. On 14th and 15th May, 2012, this court heard two applications, one made by Habet dated 11th May, 2012 and one made by Penner dated 27th April, 2012.

Penner’s Application

5. By Notice of Motion dated 27th April, 2012, Mr. Penner sought an Order that the Petition dated 2nd April, 2012, be struck out on the ground that the same was not duly presented within the time prescribed by **section 60(1) of the Representation of the People Act, Chapter 9** and that it is a nullity it having been struck out by the court on April 10th, 2012.

Habet’s application

6. Mr. Habet in his application dated 11th May 2012 sought two orders:

- (a) The Notice of Motion dated 27th April, 2012 for an order by Mr. Penner to dismiss the election petition be dismissed; and
- (b) The hearing of the Petition dated 2nd April, 2012 be stayed pending the Appeal of the Petitioner, Mr. Habet, filed 2nd May, 2012. This was later amended to include a stay of all proceedings.

Background

- 7. By notice of application dated 2nd April, 2012, Mr. Habet sought leave to institute proceedings by way of Election Petition under the Representation of the People Act, Chapter 9 of the Laws of Belize (ROPA) to determine the validity of the election of Elvin Penner on March 7th, 2012, as member of the House of Representatives for the Cayo North East Electoral Division.
- 8. Leave was sought as section 86 (1) of the Belize Constitution, Chapter 4, makes provisions for determination by the Supreme Court, in accordance with the provisions of any law, of questions as to membership of the National Assembly. Section 86 (2) provides that proceedings for the determination of any question referred to in 86(1) shall not be instituted except with the leave of a justice of the Supreme Court.
- 9. The grounds of the Application for leave were stated from paragraphs 4 to 47 and include the following:
 - (i) Elections not conducted in accordance with sections 5(1) and 29(1) of the ROPA.

(ii) Election should be declared void by reason of bribery and/or treating.

10. The application was supported by eight affidavits. The affiants were Orlando Habet, Eloy Waight, Owen Codd, Rafael Ruano, Erwin Ronald Gillett, Elvia Bacab, Ricardo Alberto Garcia and Pedro Hernandez.

Preliminary Objections at hearing of application for leave

11. The hearing of the application for leave was heard on 10th April, 2012. At the hearing, Learned Senior Counsel, Mr. Williams made several objections to the application on the following grounds:
- (a) The time to issue the election petition has passed and so the court should not entertain the application to grant leave to issue the petition;
 - (b) A Petition was filed with supporting affidavits in verification of the Petition without leave being granted;
 - (c) Affidavits in support of application expressed to be in support of Petition to which no leave was given.

Objection on Time Limit

12. Learned Senior Counsel, Mr. Williams argued that pursuant to section 60 (1) of the ROPA the Petitioner is out of time for filing an Election Petition. Section 60 (1) provides that:

Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette:

Provided that-

- (a) an election questioning the return or the election upon

the ground of a corrupt practice and specifically alleging a payment of money or other act to have been made or done since that date by the member whose election is questioned or by an agent of the member or with the privity of the member or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, be presented at any time within twenty-eight days after the date of such payment or act;

(b) an election petition questioning the return or the election upon an allegation of an illegal practice may be presented at any time within twenty eight days after the day of such payment or other act if the election petition specifically alleges a payment of money or other act to have been made since the said day by the member whose election is questioned or by an agent of the member or with the privity of the member or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition.

13. Mr. Williams submitted that pursuant to section 60 (1), the election petition had to be brought within 21 days of the publication of the election result in the Government Gazette. Mr. Williams contended that since the notice of the said result is dated **13th March, 2012** (which is published in the Gazette dated **16th March, 2012**) the time had expired for the presentation of the Election Petition. That is, 21 days from 13th March, 2012 is 3rd April, 2012 and since the hearing is on 10th April, 2012 the time had expired for the presentation of the Petition.

14. The court did not accept Mr. Williams argument that time should begin to run from 13th March, 2012 which is the date of notice of the results in the Gazette. The court ruled that the date should commence from the date of the Gazette which is 16th March, 2012 which is the date of publication. A calculation of twenty days from the 16th March, 2012 is 6th April, 2012 which would have been the date for presentation of the Petition. This date however was Good Friday so the court sat on the next business day, 10th April, 2012 which was the last day for the presentation of the Election Petition.
15. The next objection taken by Learned Senior Counsel, Mr. Williams was that pursuant to the proviso of section 60(1) where the ground of the Petition is based on some corrupt practice alleging payment of money, such as bribery, this has to be presented within twenty eight days of the payment. That since the alleged illegality occurred from 18th January 2012, the twenty eight days had expired. Further, that where it is alleged that the corrupt practice took place on 7th March, 2012 the twenty eight days expired on 4th April, 2012 and as such the time had passed to file the Election Petition on those grounds.
16. Learned Senior Counsel, Mr. Musa in response agreed that the twenty eight days have expired from the time of the alleged act of payment of money, or bribery. However, he argued that the proviso to section 60 which speaks of “since that date” is speaking about payments made after the election or even after the Petition, but not before or during the election itself.
17. Learned Senior Counsel, Mr. Williams in reply contended that in relation to the proviso dealing with matters of bribery and payment

of money, time begins to run, not from publication of the gazette but from the event.

18. The court having heard the arguments on the time limit in relation to section 60 proviso agreed with Mr. Williams that the time begins to run from the date of allegation of payment. When section 60 is read as a whole, section 60 (b) clearly shows that the twenty eight days begin to run from the date of the payment and not the date of publication in the gazette. As such, the time for presentation of the election petition on the grounds of bribery and illegal practice had expired.
19. As a result of the court's finding that the time had expired for bribery and illegal practice, the court proceeded to hear the application for leave only on the grounds of non compliance in relation to the counting process.
20. Objection to Petition and Affidavits in support of Petition filed before leave being granted
Before the hearing of the application for leave on the counting process, Learned Senior Counsel, Mr. Williams made a further objection. Mr. Habet in an affidavit sworn to on 30th March, 2012 made in support of his application for leave to institute proceedings by way of election petition, exhibited the Election Petition to his affidavit which was marked "O.H. 1 A". The Petition is dated 2nd April, 2012 and attached to that Petition is an affidavit of Mr. Habet in support of his Petition which was sworn to on 30th March, 2012. Mr. Williams argued that the Petition with the affidavits in support of that petition ought to be struck out as no leave was given for that to be filed.

21. Mr. Musa accepted that the Election Petition was filed early out of an abundance of caution. The court thereafter ruled that the Election Petition be struck out and the affidavit in support of the Petition be struck out. As a consequence, the affidavit in support of the leave by Orlando Habet dated 30th March, 2012, at paragraph one was amended by deleting the words, “a copy of which is now produced and shown to me marked “O.H. 1 A”.

Striking out of paragraphs in Habet's affidavit

22. The court having ruled that the hearing of the application for leave will be in relation only to the counting process, purged the affidavit of Mr. Habet leaving paragraph 1 as amended through paragraph 26. All the other paragraphs were struck out. The affidavit of Owen Codd which dealt with the counting process was accepted in support of the application for the leave. All the other affidavits were struck out which did not deal with the counting process.

Court grants leave in relation to counting process

23. The court having heard both parties, ruled that there is a *prima facie* case for recounting. As such, leave was granted to file an election petition in relation only to the counting of ballots. An order dated 10th April, 2012 was perfected on the same day

Leave to appeal Order dated 10th April, 2012

24. By an application dated 2nd May, 2012 the Petitioner, Mr. Habet applied for orders that:

- (a) The court hears the Application on short time;
- (b) Leave be granted to appeal against the Order of the Supreme Court dated 10th April, 2012 granting

permission to institute proceedings by way of Election Petition to determine the validity of the election of Mr. Penner in relation only to the counting of ballots.

25. The application was supported by the affidavit of Mr. Habet sworn to on the 2nd May, 2012. The grounds of the application were that:
- (a) The Appeal has a real prospect of success;
 - (b) That a *prima facie* error of law was made by the court when it misdirected itself and held that the election petition alleging bribery, corrupt practice and misconduct must be brought within 28 days of the date of the allegations;
 - (c) The intended appeal will raise questions of general principle to be decided for the first time on
 - (i) whether notwithstanding section 86(2) of the Belize Constitution, the court has jurisdiction to hear an appeal against the grant or refusal of the Supreme Court for leave to institute proceedings by way of election petition;
 - (ii) whether the proviso to section 60(1) of the Representation of the People Act is to be interpreted to mean that all election petitions alleging bribery, corrupt practice and misconduct must be presented within 28 days of the said allegations.
 - (d) The questions of general principles are of importance and upon which further argument and a decision of the Court of Appeal would be to the public advantage.
 - (e) The court of appeal has jurisdiction to hear the appeal on the ground that an error of law has been made,

notwithstanding the constitutional ouster contained in section 86(2) of the Belize Constitution.

- (f) The trial judge erred in law in striking out the paragraphs of the Draft Election Petition, the affidavits of Erwin Ronal Gillett, Rafael Ruano, Ricardo Alberto Garcia, Elvia Bacab and portions of the affidavit of Orlando Habet which disclosed allegations of bribery, corrupt practices and misconduct;
- (g) The trial judge erred in law in refusing to grant permission to institute election petition proceedings on the grounds of bribery, corrupt practices and misconduct on the basis that pursuant to the proviso to section 60 (1) of the ROPA, those allegations occurred more than 28 days prior and therefore, Mr. Habet was out of time in presenting the petition'
- (h) On 10th April, 2012 when the leave application was heard, the Applicant was within the time for presentation of the election petition.

26. Learned Senior Counsel, Mr. Musa submitted that the application was made pursuant to section 14(1) (h) of the Court of Appeal Act which is an order not referred elsewhere in the subsection. Further that, section 14 (3) (b) of the Act provides that no appeal shall lie from an order referred to in section 14 (1) (h) except with leave of the Court.

27. In relation to the jurisdiction of the Court of Appeal to hear the appeal from the order granted by the trial Judge, Mr. Musa accepts that section 86(3) is in the form of an ouster clause denying appeal of the decision of the Supreme Court. However, learned Senior Counsel contends that the courts in Belize in at

least three occasions, in the face of ouster clauses, have nonetheless made determination before the court. Mr. Musa relied on the authorities of : **Re Decision of the Belize Advisory Council, Supreme Court (1992) 3 BLR 203; Re Ruling of Election Judge, CA (1989) 3 BLR 196; Mejia, Bull, and Guevara, CA (1996), 3 BLR 248.**

28. Learned Senior Counsel, Mr. Musa submitted that the trial judge did not act judicially in exercising her discretion in granting leave only in relation to the counting of ballots. Mr. Musa contended that the ruling that the 28 days had expired was a grievous error of law so as to put it in excess of the Court's jurisdiction pursuant to section 86(2) of the Belize Constitution. See written submissions dated May 10th 2012 for full arguments.

29. Learned Senior Counsel, Mr. Williams in response submitted that **section 86(2)** of the Belize Constitution is a final order and the court has no jurisdiction to grant leave pursuant to **section 86 (3)** of the **Belize Constitution.**

30. The court having heard the arguments on both sides ruled that pursuant to 86 (3) of the Belize Constitution, the court has no jurisdiction to grant leave to appeal. As such, the application for leave to appeal the decision of the Supreme Court to grant leave only in relation to the counting of ballots was refused.

Application dated 11th May, 2012 by Petitioner to dismiss
'Notice of Motion'

31. Mr. Habet in his application dated 11th May 2012 sought an order to dismiss the Notice of Motion dated 27th April, 2012 in which Mr. Penner sought to dismiss the election petition.
32. Mr. Musa submitted that the 'Notice of Motion' used for the dismissal of the Election Petition is not the correct procedure as it should have been by way of 'Notice of Application' as provided by Statutory Instrument 1999 No. 1352 which is an amendment to the UK Election Petition Rules 1960.
33. Mr. Williams submitted that section 62 (2) of the ROPA provides that if any matter of procedure or practice on an election petition shall arise which is not provided for by the Act, the procedure or practice followed in England on the matter shall be followed if it is suitable for application to Belize. As such, he submitted that the applicable rule is section 13 of the UK Election Petition Rules 1960 which was in place at the time the ROPA Act came into force. Section 13 provides that an application by a respondent to stay or dismiss a petition shall be made by motion to the election court.
34. The court ruled that pursuant to section 62(2) of the ROPA the applicable rule is section 13 of the Election Petition Rules 1960. The court's view as stated in the ruling is that the amendment to the Rules by Statutory Instrument 1999 No. 1352 is inapplicable as it was made by the Civil Procedure Rules Committee after the implementation of English Civil Procedure Rules 1998 and since Belize has its own Civil Procedure Rules, the court will not apply the amendment to the 1960 Rules. It was also stated in the ruling

that in the event the court is wrong, the objection made on the procedure is a matter of form and not of substance. As such, the application to dismiss the Notice of Motion dated 27th April, 2012 was refused.

Application for Stay by Petitioner

35. On 14th May, 2012, Mr. Habet in his application dated 11th May 2012, also sought an order that the hearing of the Petition dated 2nd April, 2012 be stayed pending the Appeal filed on 2nd May, 2012. In court, an application was granted to amend the application to read 'stay of the entire proceedings regarding the Election Petition'. This means that the Petitioner also sought to stay the Notice of Motion made by Mr. Penner to strike out the election petition. The court refused the stay and promised to put the reasons in writing. I do so now.
36. Learned Senior Counsel, Mr. Musa submitted that the Petitioner is entitled to a stay under the normal rules of court since there is an appeal of the order made by the Supreme Court Judge. See section 16 of the Court of Appeal Rules relied on by Learned Counsel which provides for a stay on a judgment appealed pending determination.
37. Mr. Williams opposed the application for a stay on several grounds which include that Mr. Habet should not be allowed to stay his own Petition. Further, that pursuant to section 13 of The Election Rules 1960, an application to stay or dismiss a Petition can only be made by the Respondent. Learned Counsel submitted that a stay is not available to the Petitioner nor a dismissal. Further, that a Petitioner is only allowed to withdraw his Petition.

Reasons for refusal to grant stay

38. Mr. Habet's application is to stay his own Petition in which he was granted leave on 10th April, 2012 to institute proceedings by way of Election Petition to determine the validity of the election of Elvin Penner as member of the House of Representatives, in relation only to the counting of ballots. It is my view, that it is unnecessary to have this Petition stayed as the counting of ballots is not the subject of the appeal. Further, the duty of the court is to try the election petition as expeditiously as possible and conclude the trial within two months after presentation of the Petition. **Section 52 (2) of the ROPA** provides the following:

*Every election petition shall be tried as expeditiously as possible and every endeavour shall be made to conclude the trial of such petition **within a period of two months** after the date of the presentation of such petition. The election Judge shall make his order deciding such petition without undue delay after the date of the conclusion of the trial of such petition. (emphasis added)*

39. This court granted leave to file the election petition on 10th April, 2012 and the Petition was filed on the said day. On the date of the hearing of this application for a stay, 14th May, 2012, over one month had elapsed. An election petition is an urgent and serious business and pursuant to section 52(2) of the ROPA, it must be tried as expeditiously as possible. In my view, pursuant to section 52 (2) the court must not delay the hearing unnecessarily. A pending appeal which does not have any impact on the counting process is not a good reason to delay the trial and grant a stay.

40. In relation to the application to stay the Respondents' Notice of Motion to dismiss the election petition, the court refused to grant the stay as the Petitioner did not provide any good reason as to why it should be stayed. The fear of not having a Petition is not a good reason to put a halt to the hearing. The court had to proceed to hear the merits of the application.

Notice of Motion for Order dismissing Election Petition

41. By Notice of Motion dated 27th April, 2012, the Respondent, Mr. Penner sought an Order that the Election Petition dated 2nd April, 2012, be struck out on the ground that it was not duly presented within the time prescribed by **section 60(1) of the Representation of the People Act** and that the Petition is a nullity it having been struck out by the court on April 10th, 2012.
42. The application is supported by the affidavit of Julie-Ann Ellis Bradley which was sworn to on 27th April, 2012. At paragraph 4 of her affidavit, Mrs. Bradley deposed that at the time of the hearing of the application for leave to present the election petition, the court struck out the election petition dated 2nd April, 2012 by Orlando Habet, supporting affidavit by Habet sworn March 30th 2012, supporting affidavits by Owen Codd sworn March 30, 2012, supporting affidavit of Eloy Waight sworn March 28th, 2012, and supporting affidavits by Rafael Ruano, Erwin Ronal Gillett, Ricardo Alberto Garcia, Elvia Bacab and Pedro Hernandez all sworn on March 30th, 2012, since those were presented without leave.
43. Mrs. Bradley further deposed at paragraph 5, that the Election Petition of Habet dated 2nd April, 2012 and his supporting affidavit sworn on March 30th 2012 are the same and or substantially the

same election petition struck out by the court. At paragraph 6 and 7, the deponent said that the election petition is again presented to the court without leave of the court as required by law. Further, the date of the said election petition and the affidavits preceded the granting of leave to present the election petition and it is not the election petition for which leave was granted.

Submissions by Mr. Williams SC

44. In written and oral submissions, Learned Senior Counsel, Mr. Williams, pointed out to the court the following about the Petition which was filed on 10th April, 2012:
- a) The Petition dated 2nd April 2012 is mis-numbered. There is no paragraph 4 and after paragraph 5, there is paragraph 43.
 - b) the signature page of the Petition dated 2nd April, 2012 is the same page of the Petition dated 2nd April, 2012 which was struck out on 10th April, 2012.
 - c) the affidavit of Orlando Habet sworn on 30th March, 2012 and struck out by the court has 45 paragraphs whereas the affidavit of Orlando Habet sworn on 30th March, 2012 presented on April, 2012 is one and the same signature page and affidavit.
 - d) the signature and last page of the struck out affidavit of Orlando Habet and the affidavit of Orlando Habet presented on 10th April, 2012 is one and the same signature page and affidavit;

- e) the affidavit of Owen Codd sworn on 30th March, 2012 presented on 10th April, 2012 comprise 16 paragraphs, the same amount of paragraphs as the struck out affidavit of Owen Codd sworn on 30th March, 2012.
- f) the signature and last page of both affidavits of Owen Codd sworn on 30th March, 2012, the struck out affidavit and the affidavit presented on 10th April, 2012 are one and the same.

- 45. Learned Senior Counsel, Mr. Williams submitted that no leave was granted for the presentation of the purported petition dated 2nd April, 2012 and so it ought to be struck out.
- 46. Further, Learned Counsel submitted that a Petition presented after leave has been granted has to be dated, sworn and presented on a day and date not preceding April 10th 2012. That the purported petition dated 2nd April, 2012 presented on the 10th April, 2012 pre-existed the granting of leave and therefore cannot be treated as the petition for which leave was granted. Also, that the affidavits sworn in support of the petition also pre-existed the grant of leave. Learned Counsel contends that this is an abuse of process as the Petitioner presented the same struck out petition and affidavits once more without any explanation.
- 47. Mr. Williams further argued that the purported Petition dated 2nd April, 2012, presented on 10th April, 2012 is without any leave and so is a nullity and must be struck out. In support of his arguments that the election petition dated 2nd April, 2012 is an abuse of process, a nullity and further that there is no power in the court to

cure this fundamental defect, Learned Senior Counsel relied on the following authorities:

Devan Nair v Yong Kuan Teik (1967) 2 All ER 34;
Claim No.SKBHCV 2010/0026 Lindsay Fitz-Patrick Grant v Glen Fitzroy Phillip et al. ECSC; Pritchard v Deacon and Others (1963) Ch 502; Bernstein and Another v Jackson and Another (1982) 1 W.L.R. 1082; Leal v Dunlop Bio-Processes Ltd (1984) 1 W.L.R. 874; Henderson and Another v Archila 37 W.I.R. 90; Halsbury's Laws of England 4th Edition Volume 37 para. 434, 435 and 436; Janov v Morris (1981) 3 All ER 780.

Submissions by Mr. Sylvester in response

48. Learned Counsel, Mr. Sylvester for Mr. Habet the Petitioner, submitted that there is no rule or practice which supports the proposition that an election petition and affidavit must be sworn before leave is granted. Further, that there is no rule in the Fourth Schedule of the ROPA which requires that a petition and supporting affidavit must be dated prior to the granting of leave. That there is no contravention of **rule 3 and 4** found in the **Fourth Schedule** which provides for the manner of presentation of the petition and the form of the election petition, respectively. Further, Learned Counsel submitted that the date is immaterial.
49. Mr. Sylvester further contended that in all of the authorities relied on by Mr. Williams in support of his argument on the ground of nullity, there was a non-compliance with a specific statutory rule and as such the court deemed the proceedings to be a nullity. That in the case at bar, there has been no breach of any rules.

50. Learned Counsel further argued that the election petition dated 2nd April, 2012 was not struck out by the court and so the argument made by Mr. Williams is falsely premised.

51. Learned Senior Counsel, Mr. Musa who assisted Mr. Sylvester in this application argued that the Election Petition was a 'draft election petition' and he supported his argument by referring to the affidavit of Mr. Sylvester sworn on 11th May, 2012 in support of the Notice of Application for an order to dismiss the motion and to stay proceedings. Mr. Musa referred to paragraph 5 of that affidavit which states that the election petition is a draft.

5. In compliance with the said court order and because of the limited time available from the conclusion of the court hearing to the time of the close of business of the Registry (even though extended by the court to 5:00 p.m.) draft petition duly signed and verified by the Petitioner dated 2nd April, 2012 was amended by omitting the grounds which the court had struck out leaving only the ground for which leave was granted.

52. Mr. Sylvester further argued that since the Election Petition was exhibited to an affidavit, it could only have been a draft.

Mr. Williams in reply

53. Mr. Williams in reply argued that the Election Petition dated 2nd April, 2012 was not a draft and it is inaccurate for Learned Counsel to say that it is a draft.

Issues for consideration

1. Whether the Election Petition dated 2nd April, 2012 and supporting affidavits were struck out by the court.
2. Whether the election petition dated 2nd April, 2012 was a 'draft election petition'.
3. Whether there was a breach of section 51(e) of the ROPA and section 4 of the Fourth Schedule of the ROPA.
4. Whether the truncated election petition should be struck out for breach of the election rules.

Issue 1

Whether the Election Petition dated 2nd April, 2012 and supporting affidavits were struck out by the court.

54. Mr. Sylvester argued that the Election Petition dated 2nd April, 2012 was not struck out by the court and so the argument made by Mr. Williams was falsely premised. I disagree with Learned Counsel Mr. Sylvester as the court's records show otherwise. At the hearing of the application for leave to file an election petition, Learned Senior Counsel, Mr. Williams objected to Mr. Habet's affidavit sworn to on 30th March, 2012, made in support of his application for leave to institute proceedings by way of election petition, in which he exhibited the Election Petition to his affidavit which was marked "O.H. 1 A". The Petition is dated 2nd April, 2012 and attached to that Petition is also an affidavit of Mr. Habet in support of his Petition which was sworn to on 30th March, 2012. Mr. Williams argued that the Petition with the supporting affidavit ought to be struck out as no leave was given for that to be filed.

55. Mr. Musa accepted that the Election Petition was filed early out of an abundance of caution. The court thereafter upheld the objections raised by Mr. Williams and ruled that the Election Petition and the affidavit in support of the Petition be struck out. Since the Petition and its supporting affidavit was an exhibit to Mr. Habet's affidavit in support of the leave application, paragraph one which exhibited the Petition and supporting affidavits was amended by deleting the words, "*a copy of which is now produced and shown to me marked "O.H. 1 A"*".
56. Accordingly, I find that the Election Petition dated 2nd April, 2012 together with all the supporting affidavits were struck out by the court during the application for leave proceedings to institute election proceedings.

Issue 2

Whether the Election Petition dated 2nd April, 2012 was a 'Draft Election Petition'.

57. The Petitioner says that the Petition dated 2nd April, 2012 is a 'Draft Election Petition'. Mr. Sylvester in his affidavit sworn on 11th May, 2012 in support of the Notice of Application for order to dismiss the motion and to stay proceedings, at paragraph 5 deposed that a Draft Petition was signed by the Petitioner.
58. A perusal of Mr. Habet's affidavit sworn to on 30th March, 2012, in support of his application for leave at paragraph 1 shows the following:

*1. I am the Applicant herein and I make this affidavit in support of my application for **leave to institute proceedings***

by way of election petition, a copy of which is now produced and shown to me marked "O.H. 1 A" to determine the validity of the election

59. A perusal of the Petition exhibited as "O.H.1 A" shows that it is headed "Election Petition". Also, Commissioner of the Supreme Court, Mariana Verde before whom the affidavit was sworn stated:

"O.H. 1A"

This is the ELECTION PETITION marked "O.H.1 A" and referred to in the Affidavit of Orlando Habet sworn to at Belize City, this 30th day of March, 2012.

60. It is therefore clear from the examination of Mr. Habet's affidavit and the Election Petition itself, dated 2nd April, 2012 which was struck out by the court, that it was not a 'Draft Election Petition'. Further, I respectfully disagree with Learned Counsel, Mr. Sylvester that since the Election Petition was exhibited to an affidavit, it could only have been a draft. I find that the the Election Petition dated 2nd April, 2012 was not a 'Draft Election Petition'.

Issue 3:

Whether there was a breach of section 51(e) of the ROPA and section 4 of the Fourth Schedule of the ROPA..

61. Learned Counsel for the Petitioner, Mr. Sylvester argued that there has been no breach of any statutory rules in presentation of the election petition. Mr. Williams argued that the purported petition dated 2nd April, 2012 and the affidavits sworn in support of that

petition presented on the 10th April, 2012 pre-existed the granting of leave and therefore cannot be treated as the petition for which leave was granted. Further that this is an abuse of process as the Petitioner presented the same struck out petition and affidavits once more without any explanation.

62. The Election Petition dated 2nd April, 2012 and the supporting affidavits which were before the court in the hearing of the application for leave, were 'cut and paste' electronically on 10th April, 2012. The explanation given for this by Mr. Sylvester, at paragraph 5 of his affidavit sworn to on 11th May, 2012, is that because of limited time available, the petition which was duly signed and verified by the Petitioner dated 2nd April, 2012 was amended by omitting the grounds which the court had struck out and leaving only the ground for which leave was granted. Further, at paragraph 6, Mr. Sylvester deposed that:

*The said **amended Petition** was duly presented on the said 10th April, 2012 within the time prescribed by section 60(1) of the Representation of the People Act. (emphasis added).*

63. It is clear from the evidence that because of time constraints the Petition which was struck out by the court was truncated ('Truncated Petition') and filed on the same day, which was the last day to file the election petition, as prescribed by section 60(1) of the ROPA. In the process, errors were made but the most fundamental of all, is the signature page of the Petitioner. Mr. Williams rightly pointed out all the errors made such as the mis-numbering of paragraphs and use of the struck out petition which is evidenced by the date it was signed by Mr. Habet.

64. The court's finding above is that there was no draft petition before the court and that the petition dated 2nd April, 2012 was struck out. As such, I find Mr. Sylvester's evidence inaccurate that an 'amended Petition' was presented on 10th April, 2012. There can only be an amended petition if there was a petition which was already duly presented. The document before the court which was filed on the 10th April, 2012 is a truncated copy of the Election Petition which was struck out by the court.
65. The question that follows is whether there has been a breach of the statutory rules in presenting a truncated election petition which was struck out by the court along with its supporting affidavits. Mr. Sylvester argued that the date on the election petition is immaterial and that there has been no breach of Rules 3 and 4 of the Fourth Schedule of the ROPA. **Rule 3** provides for the manner of presentation of the petition which is done by delivery to the office of the Registrar and in my view is of no relevance to the issue at hand. **Rule 4** provides for the form of the electoral petition. This form shows that the Petitioner must show, inter alia, the facts and grounds on which he relies and he must sign the Petition. Even further, **section 51** of the ROPA provides for the contents of the Petition and this includes a concise statement of material facts which the petitioner relies, full particulars of any corrupt or illegal practice and that it shall be signed by the petitioner. Section 51 (e) provides that the petition *shall conclude with a prayer ...that the election should be declared void, ... and shall be signed by all petitioners.*
66. It is without a doubt as shown by the evidence of the Petitioner themselves that the Truncated Election Petition presented on the 10th April, 2012 was not signed by the Petitioner, Orlando Habet.

What did Orlando Habet sign? Mr. Habet signed a Petition on 2nd April, 2012 with grounds which included bribery, illegal practice and misconduct. The date 2nd April, 2012 is in fact material as it shows it was signed before leave was granted, that the said Petition was struck out and that the grounds included bribery, corrupt or illegal practice and misconduct. The truncated petition which excluded grounds that were struck out by the court was not signed by Mr. Habet. It is not his Petition. The last page of the struck out petition was taken and stapled together with the other pages of the truncated election petition. In the circumstances, I find that the truncated election petition presented on 10th April, 2012, breached section 51 (e) of the ROPA and section 4 of the Fourth Schedule as it was not signed by Mr. Habet.

Issue 4

Whether the truncated election petition should be struck out for breach of the election rules.

67. The finding of the court is that the truncated election petition was not signed by Mr. Habet as provided by section 51(e) of the ROPA. As shown above, section 51 (e) provides that the petition ***shall be signed by all petitioners.*** In my view, 'shall' in this section is mandatory. As such, the truncated election petition cannot proceed as it was not signed by Mr. Habet and this makes it defective.
68. A second reason that makes the truncated election petition defective is that it is part of the election petition that was struck out by the court. I agree with Learned Senior Counsel, Mr. Williams that the purported petition dated 2nd April, 2012, presented on 10th April, 2012 is without any leave and so is a nullity and must be

struck out. I also agree with Mr. Williams that there is no power in the court to cure this fundamental defect. Accordingly, I find that the truncated election petition dated 2nd April, 2012 is defective and should be struck out.

69. Summary of findings on application to dismiss election petition

1. The Election Petition dated 2nd April, 2012 together with all the supporting affidavits were struck out by the court during the application for leave proceedings to institute election proceedings.
2. The Election Petition dated 2nd April, 2012 that was struck out by the court was not a 'Draft Election Petition'.
3. The truncated election petition presented on 10th April, 2012, is in breach of **section 51 (e)** of the **ROPA** and section 4 of the Fourth Schedule as it was not signed by Mr. Habet.
4. Mr. Habet signed the election petition dated 2nd April, 2012 which was struck out by the court and the signature page of the said Petition was appended to the truncated election petition.
5. The truncated election petition dated 2nd April, 2012 with grounds on the counting process is defective as it was not signed by Mr. Habet and it is a product of the election petition which was struck out by the court. This defective election petition cannot be cured by the court.

Accordingly, the following order is made:

70. **Order**

The Election Petition dated 2nd April, 2012 is struck out.

71. **Costs**

The cost of \$10,000. is awarded to the Respondents for both applications heard on the 14th and 15th of May, 2012.

Dated this 24th day of May, 2012.

Minnet Hafiz-Bertam
Supreme Court Judge