



Form 23: Notice of Appeal

THE EASTER CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL
TERRITORY OF THE VIRGIN ISLANDS
(CIVIL)



Civil Appeal No. *BVIHCVAP 2019/0002*

Claim No. BVIHCV2019/0087

IN THE MATTER OF SECTIONS 7, 67(3) (a) OF THE BVI CONSTITUTION ORDER
IN COUNCIL (2007)

AND IN THE MATTER OF THE ELECTIONS ACT

BETWEEN:

JULIAN WILLOCK

THE SPEAKER OF THE HOUSE OF ASSEMBLY

Appellant/Defendant

And

MARK VANTERPOOL

1st Respondent/ Claimant

THE ATTORNEY GENERAL

2nd Respondent/Interested Party

NOTICE OF APPEAL

(Filed pursuant to Section 87 (6) of the Constitution of the Virgin Islands)

TAKE NOTICE that the Appellant (being the Defendant in the court below) hereby appeals to the Court of Appeal against the decision of the Honorable Madam Justice Ann Marie Smith contained in the order dated 2nd May 2019 [a copy of which is attached to this Notice].

1. Details of order appealed:

The Orders of the Honorable Madam Justice Ann Marie Smith made on 2nd May 2019 ordering that:

- i. *The Court hereby declares that the Applicant Mr. Mark Vanterpool be granted the redress sought and be sworn in as the Representative of the Fourth Electoral District.*
- ii. *The Issue of costs will be dealt with at the convenience of Counsel.*

2 Details of findings of fact in the judgment which are challenged:

- i. The finding of fact that the Applicant has indicated on more than one occasion and in more than one forum that he is ready, willing and able to take the oath in accordance with the Constitution thus allowing him to do so having regard to the will of the people of the Fourth Electoral District. [para. 83 of the judgement]
- ii. The finding of fact that in the second affidavit of the Applicant filed on 11th April 2019 at paragraph 4 the Applicant stated that on 12th March 2019, he received many calls from his constituents and that they expressed great concern and asked him to reconsider his decision to proffer his resignation and that this was a significant point which weighed on the Court's mind.[para. 84 of the judgement]
- iii. The finding of fact that the 2019 Election was held on 25th February 2019 and since that day the people of the Fourth Electoral District have been without representation and that the Applicant has not been able to represent his constituents nor contribute to the Budget Debate. [para. 85 of the judgement]

3 Details of findings of law in the judgment which are challenged:

- i. The finding of law that an elected member who has not taken the oath is prohibited from taking part in the proceedings of the House after the election of the Speaker and Deputy Speaker and that section 75 of the Constitution is applicable so that: -

- (a) Mark Vanterpool could not constitutionally resign as there is no constitutionally recognized right conferred on him to resign during the interval between the general election and the date on which the House of Assembly convened on 12th March 2019;
- (b) The letter dated 5th March 2019 written by Mark Vanterpool and addressed to the Clerk of the House of Assembly is not the constitutionally recognized and proper manner of resignation prescribed by section 67(3)(a) of the Virgin Islands Constitution Order 2007;
- (c) The proper way to effect a resignation in the Court's view was to have then issued a new notice of resignation addressed to the Speaker and this was never done.
- (d) The purported acceptance of that letter by the Speaker by letter dated 13th March 2019 does not create a vacant seat for the Fourth Electoral District, especially so in the light of the letter from the Clerk of the House of Assembly dated 13th March 2019 and that of Mr. Vanterpool's dated 14th March 2019 respectively.

[para 81 of the judgement]

- ii. The finding of law that the Applicant is entitled to seek redress under Section 87 of the Constitution of the BVI. [para. 82 of the judgement].
- iii. The finding of law that while this case for the matter to have been dealt with by the House as a whole rather than by the Speaker when the House of Assembly was subsequently convened, the strict requirements of **section 67(3) (a)** of the Constitution had not been complied with and section 7 having no legal effect, the Speaker could not unilaterally by acceptance or a declaration determine that a vacancy exists and proceed to exclude a member of the House of Assembly without a formal proceeding of the House of Assembly. [para. 86 of the judgement]

3. Grounds of Appeal:

- i. The decision is contrary to law and against the weight of the evidence;
- ii. The court erred in finding that the Respondent's letter of resignation dated 5th March 2019 addressed to the Clerk of the House (because no Speaker had been elected) was invalid and ineffectual;
- iii. The Court erred in finding that there was no constitutionally recognized right to resign during the interval between the general election and the date on which the House of Assembly convened on 12th March 2019;
- iv. The court erred in finding that the Respondent/Claimant's resignation letter addressed to the Clerk of the House was "not constitutionally recognized" because it did not comply with section 67 (3) (a) of the Constitution and hence, a new/fresh notice of resignation addressed to the Speaker should have been issued;
- v. The court erred in finding that the acceptance of the Respondent/Claimant's resignation letter by the Speaker did not operate to create a vacant seat for the Fourth Electoral District;
- vi. The court erred in placing reliance on the uncorroborated evidence of Mr. Vanterpool that he had received many calls from his constituents expressing concern and asking him to reconsider his resignation. Such evidence was irrelevant to the legal issue of the constitutional validity of his resignation;
- vii. Having correctly found that "this was as compelling as any case for the matter to have been dealt with by the House as a whole" and that "it is doubtful whether the Speaker could unilaterally by acceptance or a declaration determine that a vacancy exists and proceed to exclude a member of the House of Assembly without a formal proceeding of the House of Assembly" the learned judge erred by proceeding to grant

substantive relief instead of remitting the matter to the House for it to determine. In so doing the court failed to have any or any proper regard to the undisputed evidence of the Appellant (supplemental affidavit filed on 15th April 2019.) that he was prepared to put the issue to the House for it to decide once it was properly raised in accordance with the Standing Orders of the Parliament.

- viii. The Court had no power and/or jurisdiction to “grant the redress sought” by the Respondent/Claimant. Likewise, it had no power and/or jurisdiction to order/direct that the Respondent/Claimant “be sworn in” as the representative of the 4th Electoral District. The Court’s jurisdiction was limited to determining the question of whether the Respondent/Claimant had vacated his seat in the House of Assembly with the grant of appropriate declaratory relief.

4. Orders sought:

- a. That the Orders of the Learned Judge be set aside and the claim be dismissed with the Respondent to pay the Appellant’s costs both here and in the court below;
- b. Alternatively, that the matter be remitted and left for the House to decide;

6. Details of the other parties to the proceedings in the court below:

- i. Mr. Mark Vanterpool, the Respondent/Claimant– Road Town, Tortola, British Virgin Islands;
- ii. Mr. Edward Fitzgerald QC/Mr. Patrick Thompson, Attorneys at Law for the Claimant- PST Law, Fresh Water Pond, West End, Tortola, British Virgin Island;

- iii. The Attorney General, Intervenor- Attorney General Chambers, TTT Building, Road Town, Tortola, British Virgin Islands.
- iv. Mr. Julian Willock, the Appellant/Defendant- Sea Cow's Bay, Tortola, British Virgin Islands;

Dated this 7 day of May 2019.



Mr. Valston Graham

VERITAS LAW

Attorneys at Law for the Appellant

The court office is located at Road Town, Tortola, British Virgin Islands telephone number 284-494-3492, FAX 284-494-6664. The office is open between 9:00 am and 4:30 p.m Mondays to Fridays except public holidays.

Address for service of the Appellant is: Suite #003 Emiles Plaza, Major Bay, East End, British Virgin Islands.

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*FILED BY: Veritas Law
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