IN THE SUPREME COURT OF NAURU

COURT OF DISPUTED RETURN

YAREN

Miscellaneous Cause No. 70 of 2016
In the matter of an Election Petition in the Constituency of Meneng

IN THE MATTER OF PETITION BY

SPRENT DABWIDO	APPLICANT
LIONEL AINGIMEA AND TAWAKI KAM	FIRST RESPONDENTS
ELECTORAL COMMISSIONER	SECOND RESPONDENT

Before:	Khan J
Date of Hearing:	7 September 2016
Date of Ruling:	12 September 2016

Case may be cited as: Dabwido –v- Aingimea and Kam & Another

CATCHWORDS:

Elections- General elections in Nauru-Election petition- Whether election petition a nullity if petitioner not complying with requirement to serve the petition and notice of security for costs within prescribed period- Electoral Act 2016 and Election Petition Rules 2016.

APPEARANCES:

For the Applicant:	Mr P Nimes
For the First Respondent:	No Appearance
For the Second Respondent:	Miss A Lekenua
Amicus Curiae :	Mr J Udit (Solicitor General)

RULING

BACKGROUND

1. There was a general election held in Nauru on 9 July 2016 and Mr Lionel Aingimea (Aingimea) and Tamaki Kam (Kam) (respondents) were declared to be elected Members of Parliament for the Constituency of Meneng.

2. The applicant was an unsuccessful candidate for Constituency of Meneng. He filed an election petition on 5 August 2016 challenging the election of Aingimea and Kam on the following basis:-

   a) The unexplained failure of the Electoral Commission to tally the votes counted for Meneng brings the result into question;
   b) The unlawful activity referred to in paragraphs 3 through 7 were significant breaches of the Act that should have been but was not prevented or stopped by or on behalf of the Electoral Commissioner and were so significant that the Court should hold that they had a material effect on the election;
   c) The unlawful activity referred to in paragraphs 9 through 12 were each a major and significant breach of the Act and were such that the Court should hold that each had a material effect upon the election;
   d) In the alternative, the petitioners request that the election of Lionel Aingimea and Tawaki Kam be declared void and that the Court declares the elected candidates with the next greatest number of votes.

3. At the time of the filing of the petition and for a significant period thereafter both the respondents were out of the country, so they could not be served personally. On 12 August 2016 the petition was served at Aingimea's residence on a lady by the name of Fair. Hescekai Foilape states that Fair told him that she will give the petition to Aingimea's daughter. The other petition was served at Odn-Aiwo-Hotel in the lobby area on a female person whose name was Poinciana. Hesceki Foilape's affidavit does not state as to how was Poinciana related to Kam. In another affidavit filed by Daniel Jeremiah it is stated that Poinciana just told them that Kam was overseas and she took the document without signing it.

SUMMONS/ APPICATION

4. The applicant filed a Summons seeking the following Orders:-

   1) The service of the petition to Hon. Lionel Aingimea MP and Hon. Tamaki Kam MP at their known address in Meneng

District and Aiwo District respectively by Mr. Hescekai Foilape of Meneng District constituted substituted service pursuant to Rule 9(2)(a) of the Election Petition Rules 2016 (the Rules).

2) The petitioner intends to read and rely on the affidavit of Hescekai Fiolape and Mr Daniel Jeremiah of Meneng District attached hereto.

3) The Court, pursuant to Rule 30 of the Rules expands the time allowed for the petitioner to seek the order for substituted service made above. The reason for the delay is locating the deponents Daniel Jeremiah and Hescekai Foilape by pleader assisting the petitioner; lack of awareness of the existence of the Election Petition Rule 2016; and the unavailability for the pleader assisting the petitioner to attend to the required Summons due to the unsurmountable cases before the District Court and the Supreme Court.

ELECTORAL ACT 2016

5. In March 2016 the Electoral Act 2016 (the Act) was enacted which repealed the Electoral Act 1965. I will set out the relevant provisions of the Act which are as follows:

a) Court of Disputed Returns.

Section 95 provides that the Supreme Court is the Court of Disputed Returns and is empowered to hear and determine a petition and s102 provides that the decisions of the Court of Disputed Returns are final and conclusive and may not be questioned or appealed to any other Court.

b) Election Petitions

Section 93(1) provides that no results of an election published under s88 may be challenged except by election petition (a) by a candidate, or (b) by a person who is qualified to vote in the election the subject of the petition. Section 93 (2) provides that a petition must be presented in accordance with the provisions of this part.

c) Contents of Petition

Section 96 provides a petition disputing an election or the declaration of an election must:

a. set out the facts relied on to invalidate the election or the declaration of the election;
b. contain a prayer asking for relief to which the petitioner claims to be entitled;
c. be signed by a candidate at the election or by a person who was qualified to vote at the election;

d. be attested by two witnesses; and
e. be filed in the registry of the Supreme Court within 30 days after the publication in the Government Gazette of the notice in relation to the election in accordance with section 88.

d) Deposit as security for costs

S97 provides at the time of filing the petition, the petitioner must deposit with the Registrar of the Supreme Court $500 as security for costs.

e) Proceedings may be stayed

S98 provides that the Court of Disputed Returns may, on the application of a respondent to a petition, order a stay of proceedings if the petitioner has failed to comply with s96 or 97.

f) Powers of the Court- Section 100

The Court of Disputed Returns sits as an open Court and its powers include the following:

a. To adjourn;
b. To compel attendance of witnesses and production of documents;
c. To grant a party to an application, leave to inspect in the presence of the Registrar of the Supreme Court and the Electoral Commissioner, the Roll and other documents used at or in connection with an election and to take, in the presence of the Electoral Commissioner, extracts from those rules and other documents;
d. To examine witnesses on all;
e. Order the Electoral Commissioner to recount the valid papers of one or more constituencies;
f. To declare that the candidate who has been declared to be elected under s88 was not duly declared;
g. To declare that the candidate who has not been declared to be elected under s88, duly elected;
h. To declare an election for constituency absolutely void;
i. To dismiss or uphold a petition in whole or in part;
j. To award costs.

Section 100(2) provides that the Court of Disputed Returns may exercise all or any of its powers under this section or on such grounds as the Court in its discretion thinks just and sufficient.

g) Real Justice to be observed

S101 provides the Court of Disputed Returns must be guided by good conscience and the substantial merits of each case without regard to legal form and technicalities and is not bound by any rules of evidence.

h) Court Rules

S107 provides for the Chief Justice may make Rules of the Court to give effect to this Part of the Act and in particular for regulating the practice and procedure of the Court and the forms to be used.

Election Petition Rules

6. Pursuant to the provisions of s107 of the Act the Chief Justice made the Election Petition Rules 2016 (the Rules). The Rules which are relevant in this particular matter are:

a. Time for giving notice

Rule 8 provides that the petition and notice of payment of security for costs must be served by the petitioner within 7 days exclusive of the day of presentation.

b. Security for Costs

Rule 7 provides that at the time of filing, the petitioner must deposit $500 in the Registry as security for costs and no petition may be processed until payment has been made.

c. Service of documents

Rule 9 provides:

(1) Service of the petition and notice of security for costs on the respondent, and on the parties in general must be personal.

(2) Despite sub-rule (1), if the Judge is satisfied on receipt of an application no later than 3 days after filing petition that all reasonable efforts have been made at service, the Judge may:

a. order what has been done constituted substituted service subject to the conditions as he or she thinks reasonable; or
b. make an order for substituted service as provided by the Supreme Court Rules.

(3) Upon filing, the petitioner must:

a. leave at the Registry a written address within the jurisdiction at which documents addressed to him or her may be left; and
b. when none is given, then subject to sub-rules (1) and (2) all other notices of objections to the recognisances and all other notices and proceedings may be given by posting them up on the notice board of the Court.

(4) In case of evasion of service, the posting of a notice of petition having been filed, stating the petitioner, the prayer and the notice of security for costs is equivalent to personal service if so ordered by the Court

d. The Court may enlarge time

Rule 30 provides that the Court may for good reason enlarge any period of time prescribed by these Rules.

7. Court of Disputed Returns

The Court of Disputed Return has enjoyed a different status in terms of jurisdiction as opposed to an ordinary civil court. In **Patterson –v- V Solomon 1962 All E.R 20** it was stated by the Privy Council by (Viscount Simonds, Lord Denning, and Lord Jenkins) as follows at page 24:

> "At once, on the opening of the appeal, learned counsel for the respondent took the objection that no appeal lay to Her Majesty in Council from the decision of the Supreme Court of the Colony in a matter affecting membership of the Legislative Council and consequently affecting also membership of the Executive Council in the office of Minister. It was open to him to do so notwithstanding that special leave to appeal had been granted. The objection can conveniently be examined on the footing that the appellant's claim had been maintained in its entirety. On this footing, it appears to their Lordships that it must be sustained. Adapting the words of Lord Cairns, L.C., in Theberge v Laudry (No 2) they are of the opinion that, on a fair construction of the Order in Council it does provide for the decision of the Supreme Court of mere ordinary civil rights, but creates an entirely new jurisdiction in a particular Court of the Colony for the purpose of taking out of Legislative Council with its own consent and vesting in that court the very peculiar jurisdiction which had existed in the council itself in determining the status of those who claim to be members of the council. If so, it follows that the determination of that Court is final, and that from it no appeal lies. Nor does this rest on the validity of the assumption that, apart from s40 of the Order in Council, the question could be determined by the council itself. In this de Silva v A.G. for Ceylon (3) it was made clear that the same principle applies whether or not the jurisdiction vested in the particular court had previously been exercised by the legislative body. As was said in that case (4), the dispute is one which
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> > "concerns the rights and privileges of Legislative Assembly, and, whether that Assembly assumes to decide such a dispute itself or it is submitted to the determination of a Tribunal established for that purpose, the subject-matter and is such that the determination must be final, demanding immediate action by the proper executive authority and admitting no appeal to His Majesty in Council."

8. In the East Caribbean case of **Ezechiel Joseph and Alvina Reynolds and others HCVAP 2012/0014 unreported** the Court of Appeal stated as follows at paragraph:

> "[18] In adopting this strict approach, our Courts have stated that the jurisdiction of the election court is a very peculiar jurisdiction one, which is not the ordinary civil jurisdiction of the court. It is seen essentially as a parliamentary jurisdiction assigned to the judiciary by the various constitutions and by legislation. It has been stated that it is not a jurisdiction to determine mere ordinary civil rights. Thus, in **Browne v Francis-Gibson and Another 1995 50WIR143**, in which this Court extensively reviewed the juris prudence of the Privy Council in the House of Lords in the foregoing and other cases, Sir Vincent Floissacc JJ stated as follows:
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> > "The Judicial Committee of the Privy Council has repeatedly affirmed that the jurisdiction conferred on local courts of a British Colony or former British Colony to determine questions as to the validity of elections and appointments to the local legislature is a peculiar and a special jurisdiction in at least 5 respects. Firstly, constitutionally the jurisdiction is essentially a parliamentary jurisdiction conveniently assigned to judiciary by the Constitution or by legislature. It is not a jurisdiction to determine the mere ordinary civil rights. Secondly, the parliamentary questions which the local courts are constitutionally or statutorily authorised to determine are expected to determine expeditiously so that the composition of the legislature may be established as speedily as possible. Thirdly, the legislature must have envisaged that the parliamentary questions would be determined either on their merits or purely on procedural grounds and without hearing evidence. Fourthly, because of the urgency of the parliamentary questions, the legislature is presumed to have intended that the decisions of the local original and appellant courts would be unappealable to Her Majesty in Council. Finally, the presumption against appeals to Her Majesty in Council is usually confirmed by imperial or local legislation declaring the decisions of the local courts to be final and unappealable. In any event, the presumption is rebuttable only by specific imperial or local legislation unequal locally authorising such appeals."

Summons

9. The summons essentially seeks 2 orders:

   a) That the service on Fair and Poinciana be treated as substituted service on Aingimea and Kam respectively pursuant to Rule 9(2) of the Rules;

b) That pursuant to Order 30 the period of time be enlarged for the making of the orders for substituted service as (a) above.

Service of Petition and Notice of Payment of Security for Costs

10. Rule 8 states that the petition and the notice of payment of security for costs must be served on the respondent by the petitioner within 7 days.

11. Rule 9 (1) provides that the service of the petition and notice of security for costs on the respondent must be personal.

12. Rule 9 (2) provides that notwithstanding the provision of Rule 9(1) to serve on the respondent personally if an application is made within 3 days after filing of the petition that all reasonable efforts have been made at service, the Judge may:

a) Order what has been done constituted substituted service subject to conditions as he or she thinks reasonable; or
b) Make an order for substituted service as authorised by the Supreme Court Rules. I note that reference to Supreme Court Rules may be an error as we have Civil Procedure Rules and not Supreme Court Rules.

13. The applicant did not make an application under Rule 9(2) and instead took it upon himself to effect service on Fair and Poincinia. The attempted service in itself was in breach of the Rules for three reasons. Firstly, he did not file an application to a Judge within 3 days as provided for by Rule 9(2), secondly, he served Fair and Poincinia on behalf of the respondents without any orders of the court and thirdly, Fair and Poincinia were only served with the election petition whereas both Rules 8 and 9(1) provides that both the petition and notice of security for costs must be served on the respondent. So the attempted service if it can be called service was an incomplete service as the petition only was served and not the notice of payment of security for costs.

14. Rule 7 provides that at the time of filing the petition, the petitioner must deposit $500 in the Registry as security for costs and no petition shall be processed until the payment has been made. The petition was processed by the Registry and that would mean that the sum of $500 was paid in the Registry as security for costs.

Whether both petition and security to be served?

15. The issue is whether the service of the petition alone would suffice or would the notice of security for costs also have to be served. Rule 8 and 9 states that notice of security for costs must be served. There is no format for the notice of security of costs in the Rules or the Act. A similar issue was raised in **Ahmed v Kennedy and another and Ullah and others v Pagel and another 4 All E.R. 764 (Ahmed v Kennedy and others).** The security for costs was paid in the sum of £2,500 which was the maximum amount payable under s136(2) of Representation of the People Act 1983. Notwithstanding the payment the 2 election petitions arising out of local government elections were struck out on the grounds that the petitions in each case were a nullity as the petitioners failed to serve on the respondents a notice as required by s136(3) of

the Representation of the People Act 1983. For the sake of completeness I refer to the judgment of Hopper, J where he stated as follows at [paragraphs 3 to 14]:

"[3] We shall, for convenience call the two cases, the 'Birmingham Case' and the 'Manchester Case'. At the outset of the proceedings we struck out the part of the petition in the Birmingham case containing allegations against the second respondent, the returning officer at his request, and with the consent of the petitioner. Although allegations were made in the petition against the second respondent, the petitioner made it clear, at the time of service of the petition, that he did not intend to proceed against him.

[4] Before examining the law we set out the agreed facts relating to what was served within the time limits by the solicitors for the petitioner in the two cases. In the Birmingham case the solicitor for the petitioner sent a letter, a photocopy of the election petition and a notice of an application to fix a security. In the Manchester case the petitioner served on the first respondent, the successful candidate in the elections, a photocopy of the election petition and the application to fix a security. All that the second respondent, the returning officer, received was a photocopy of the election petition. The photocopies of the election petitions were copies of the petitions as filed and thus all bore a copy of the standard Supreme Court stamp showing the date on which the petitions had been filed. These documents were received by the respondents within the time limits laid down by the Act and the rules. There is no dispute that in both cases there was non-compliance with the provisions of the Act and the Rules. The petitioners did not seek an order extending the time limits.

[5] The thrust of the argument on behalf of the petitioners is that this court should waive the defects in the exercise of its discretion under CPR 3.10. The thrust of the case presented by the respondent is that no such waiver is possible, the requirements of the Act and the rules being mandatory. Compliance is a condition precedent to the petition proceeding and therefore the petitions in both cases are a nullity.

[6] We now turn to the relevant sections of the Act and the Rule made pursuant to s182 of the Act.

[7] Section 129(1) of the Act provides that a petition questioning the election under the Local Government Act 'shall be presented within 21 days after the date on which the election was held'. The petitioners complied with that provision.

[8] Section 136(1) provides:

' At the time of presenting an election petition or within 3 days thereafter the petitioner shall give security for all costs which may

become payable to him to any witness summoned on his behalf or to any respondent.'

[9] By virtue of s136(2) the maximum amount of security is £2,500 and shall be given either by way of a recognisance or by the deposit of money, or partly in one way and partly in the other. In this case the petitioners, within the necessary three days, obtained an order from the master that they should deposit £2,500 as security. They complied with this order in time.

[10] Section 136(3) as substituted by s24 and para 48(d) of Sch 4 to the representation of the People Act 1985 provides:

"Within the prescribed time after giving the security the petitioner shall serve on the respondent in the prescribed manner – (a) A notice of the presentation of the petition and of the amount and nature of the security; and (b)A copy of the petition."

Neither the Act or the Rules laid down a prescribed form for giving notice.

[11] The reference to the prescribed time is a reference to the time as prescribed by the rules. Mr Griffin accepted that reference to the amount and nature of the security must be a reference to the security which has been given. This made is clear in R6 which provides:

(1) "Within five days after giving the security the petitioner shall serve on the respondent within the meaning of section 121(2) or section 128(2) of the Act and on the Director of Public Prosecutions a notice of presentation of petition and of the nature and amount of security which he has given, together with a copy of the petition and of affidavit accompanying any recognisance.

(2) Service shall be effected in the manner in which a claim form is served and a certificate of service shall be filed as soon as practicable after service has been effected."

[12] Neither the Act or the rule gives any guidance as to what a 'notice of the presentation of the petition' should contain. Atkin's Encyclopaedia of Court Forms in Civil Proceedings (18)(1) Court Forms (2nd edn) (200 issue) 263, Form 13 includes a suggested notice. The notice reads as follows:

'Notice of presentation of petition

....TAKE NOTICE that an election petition, a true copy whereof is annexed hereto, relating to the abovementioned election was duly

presented to the Court by A.B., the petitioner therein mentioned on …….. 20..

AND FURTHER TAKE NOTICE that [security has been given or is intended to give security] as required by Section 136 of the Representation of the People Act 1983 (recognisance to be entered into by N.O of [address] and PQ of [address] as security in the sum of [£....] or deposit by payment into court of the sum of [£...].

Dated ….. 20……

[signature] of [address]
Solicitors for the petitioner AB

To ... of [address]

[13] It will be seen that in the first paragraph of the form the solicitor is attesting to the fact that the election petition has been presented and when it was presented. The second paragraph is dealing with the requirements on a petitioner to inform the respondent "of the nature and the amount of security which he has given".

[14] No such form was used in this case. In the Birmingham Case the letter accompanying the petition said 'I enclose an election petition by way of service.' As we have already said, the copy petition which was served had the Supreme Court stamp showing when they had been issued. Although both respondents in the Birmingham Case and the first respondent in the Manchester Case received a copy of the application for an order fixing the amount of security, the respondents did not receive any document which would have shown them "the nature and the amount of the security which had in fact been given. In the Birmingham Case the required certificate of service was inaccurate as to what had been served."

Appeal to Court of Appeal

16. Ahmed v Kennedy and others was subject to an appeal to the Court of Appeal [2003] 2 All ER 440). In its judgement the Court of Appeal held that:

> "Part 3 of the 1983 Act, within which s136 fell, and the Rules made thereunder together comprised a discrete and purpose built statutory scheme which covered the High Court's role in the procedure. Where the legislation intended to provide for the softening of any mandatory requirement, it expressly said so. The Act expressly provided for rules of procedure for the purposes of Pt 3, and it was plain that those bespoke rules had inevitably to prevail over general rules in the CPR. Accordingly Rule 19 trumped CPR 3.10 and

3.1(2)(a). It was true that not every typographical and other error would necessarily constitute non-compliance with the legislative requirements but where a notice was served which failed to address each of these 2 specified statutory requirements, as had occurred in the instant case, it was could not be said that there was timeous compliance with the legislation. That failure required the striking out of the petition as there was no discretion in the Court to do otherwise. Timeous service was imperative, R19 be mandatory."

The Court of Appeal considered amongst other cases the cases of Williams v Mayor of Tenby (1879 5CPD135, DC) and the case of Nair v Teik [1967] 2 All E.R. 34 and at paragraphs 14 and 15 it stated as follows:

Williams v Mayor of Tenby

[14] Section 13(4) of the Municipal Elections Act 1872 was again in substantially the same terms as 136(3) of the 1983 Act. No notice was ever having been given under the subsection the respondent successfully applied to Lopes J to strike out the petition, that order being upheld by the Court of Common Pleas (Grove J, together with Lopes J). Grove J said this 1879 5CPD 135 at [137-138]:

"It is said that there would be hardship supposing deposited, if mere omission of notice should prevent a petition. I see no more hardship than my occur in any case where a definitive time is to be observed, and I see good reason why it should be so. There are two alternatives given, that it is reasonable that the parties should know which has been adopted, viz, deposit or recognisance, and if the letter that it should be sent instantly on inquiry whether the securities are good and valid or not. [The Judge then referred to the relevant rules which provided for any objection to the proposed scrutiny to be made within 5 days.] So not only is the person depositing security limited by the rules as to time, but the person objecting to security is limited likewise. If we were to cover this procedure what is permissive and what is peremptory, we should launch persons into greater litigation than even they embark on, for we should be asked to vary the particular time in each case. I think the petitioners in these cases are advised by competent persons, and ought to pursue the provisions of Act. One other argument was founded on rule 44, that "all interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a Judge, who shall have the same control over the proceedings under the [1872 Act] as a Judge at Chambers in the ordinary proceedings of the superior courts..." That rule seems to leave the question where it is. If it is a matter of procedure, then the judge will have some powers. But if the Act does not give these powers, then he has them not. The question still is whether the provisions of the Act are or are not peremptory. I think they are peremptory, and the terms are not complied with are

conditions precedent, which ought to be complied with before the petition could be presented. The appeal must be dismissed."

Nair v Teik

"[15] Rule 15 of Sch 2 of the Election Offences Ordinance of Malaysia [number 906 1954] provides:

'Notice of presentation of petition, accompanied by a copy thereof shall within ten days of the presentation of the petition, be served by the petitioner on the respondent.'

[16]The rule provides in certain circumstances for service of a notice published in the Gazette but such notice was in the event out of time. In giving the opinion that the respondents appeal should be allowed and the petition struck out Lord Upjohn [1967] 2 All ER 34 at 40, [1967] 2AC 31 at 44-45] on behalf of the Privy Council said this:

So the whole question is whether the provision of r.15 are "mandatory" in the sense in which that word is used in the law, i.e., that a failure to comply strictly with the times laid down renders the proceedings a nullity; or a "directory", i.e., that literal compliance with time schedule may be waived or excused or the time be enlarged by a Judge... circumstances which weigh heavily with their lordships in favour of a mandatory construction are: (i) The need in an election petition for a speedy determination of the controversy and ..... (ii) In contrast, for example to the rules of the Supreme Court in this country, the rules vest no power in the election judge to extend time on grounds of irregularity. Their lordships think that this omission was a matter of deliberate design .....The case of Williams v Tenby Corpn (1879) 5CPD 135) which has stood the test of ninety years and seems to their Lordships plainly rightly decided, strongly supports the view that the provisions of r.15 are mandatory.... their Lordships cannot attribute weight to the circumstances that the rules contain no express power to strike out a petition for non- compliance within r.15".

What is the position with respect to service?

17. As I mentioned in paragraph 7 above and I reiterate that the Courts of Disputed Returns enjoys a very special jurisdiction which is essentially a parliamentary jurisdiction assigned to the judiciary by the Constitution and legislature. It is mandated to determine the disputes expeditiously so the composition of Parliament can be established and the government can continue with the governance of the country. Its decisions are not subject to appeal which is again a special feature to bring finality to the election disputes. The Act reflects the special jurisdiction of this court. The Rules made by Chief Justice reflects the urgency in the service of the documents so that the petition can be dealt with expeditiously. Rule 8 states that the document must be served within 7 days whilst rule 9(1) says that it must be personal.

So if a respondent knows that a petition will be filed against him/her or has been filed could easily leave the country to frustrate service of the documents, and, thus delay the entire process. The court process does work not at the whim of a respondent who may decide to depart the country and frustrate service. His absence will not stop the court's proceedings and the proceedings will continue regardless. Under rule 9(2) the petitioner can make an application for substituted service and effect service on the respondent in accordance with the order for substituted service made by court. All that a petitioner has to establish is that reasonable efforts were made to serve the respondent. This applies to a respondent who is within the country and is evading service and also applies to a respondent who is out of the country. However under r. 9(2) the petitioner is required to make the application to the court not later than 3 days after the filing of the petition and this in my view this reflects the urgency of the matter and the need to have it resolved expeditiously so that the Parliament can continue with its business. In the circumstances I am compelled to conclude the service of the documents under Rules 8 and 9 is mandatory and failure to comply with those rules will render the proceeding to be a nullity.

18. In view of the strict nature of Rules 8 and 9 I cannot envisage, as to how Rule 30 could be used by a petitioner to seek enlargement of time. Mr Nimes submitted that the Act is a new piece of legislation for this jurisdiction and urged upon me show some compassion, as the practitioners are unfamiliar with the legislation and the rules and he submits that itself is a 'good reason' as stipulated in Order 30. I am afraid I unable to assist as compliance with rules 8 and 9 is mandatory and petitioner's failure has rendered the proceeding to be a nullity and Order 30 cannot revive the proceedings.

CONCLUSION

19. In light of the matters discussed above I find that the provisions of R.8 and 9 are mandatory and the failure of the petitioner to comply with the timelines laid therein rendered the proceeding to be nullity and the petition is struck out.

ACKNOWLEDGEMENT

20. Despite the odds being against him, Mr Nimes mounted a very courageous argument and I thank him for all his assistance. I also thank the Solicitor General for appearing as amicus curiae and his submissions were of great assistance to the court as it embarks on this new jurisdiction.

DATED this 12 day of September 2016

Mohammed Shafiullah Khan

Judge