

Date Filed: 21/07/20
Time: 14:17

IN THE COURT OF APPEAL
APPELLATE JURISDICTION
NOTICE OF APPEAL
GUYANA

CIVIL APPEAL NO. OF 2020

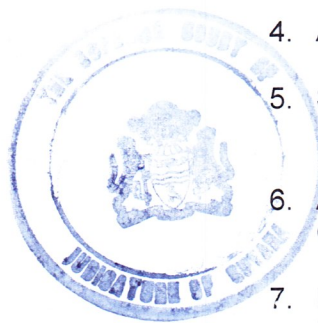
BETWEEN:

MISENGA JONES

Appellant

- and -

1. THE GUYANA ELECTIONS COMMISSION
2. CHAIRMAN OF THE GUYANA ELECTIONS COMMISSION
3. THE CHIEF ELECTION OFFICER
4. ATTORNEY GENERAL OF GUYANA
5. SHAZAM ALLY representing The Citizenship Initiative
6. ABEDIN KINDY ALI representing Change Guyana
7. BHARRAT JAGDEO representing People's Progressive Party/Civic
8. IRFAAN ALI representing People's Progressive Party/Civic
9. MARK FRANCE representing A New and United Guyana
10. LENNOX SHUMAN representing Liberty & Justice Party
11. DANIEL JOSH KANHAI representing The New Movement
12. VISHNU BANDHU representing United Republican Party



Respondents

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the decision of the High Court contained in the judgment dated the 20th day of July, 2020, in the matter of Misenga Jones v The Guyana Elections Commission et al, action No. 2020-HC-DEM-CIV-FDA-568, (Georgetown) doth hereby appeal to the Court of Appeal upon grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

AND THE APPELLANT further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

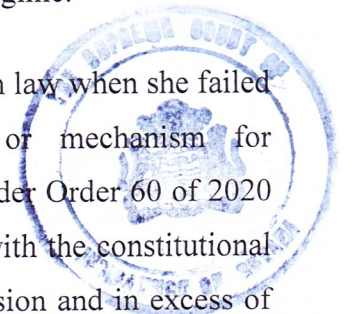
2. The whole of the decision is being complained against.

3. The grounds of appeal are:

- i) That the Honourable Chief Justice (ag) erred in law when she held that the issue of the constitutionality of section 22 of the Election Laws Amendment Act was res judicata.
- ii) That the Honourable Chief Justice (ag) erred in law when she held that the issues raised the case were res judicata.
- iii) That the Honourable Chief Justice (ag) erred in law when she misconstrued paragraphs 106 and 107 of the Judgment of the majority of the Court of Appeal in the Uilita Grace Moore V Guyana Elections Commission.
- iv) That the Honourable Chief Justice (ag) erred in law when she failed to find that the Chairman of the Guyana Elections Commission and or Guyana Elections Commission had acted outside their constitutional and or statutory powers.
- v) That the Honourable Chief Justice (ag) erred in law when she failed to properly construe the terms and provisions of Order 60 of 2020.
- vi) That the Honourable Chief Justice (ag) erred in law when she ruled that the validity of Order 60 of 2020 was res judicata.
- vii) The Honourable Chief Justice (ag) erred in law when she failed to consider that the Guyana Elections Commission had exceeded its constitutional and statutory power when it issued and established the elements, mechanism and parameters of Order 60 of 2020 and executed Order 60 of 2020 in such terms.
- viii) That the Honourable Chief Justice (ag) erred in law when she failed to consider and rely on the undisputed affidavit evidence adduced by the Applicant and admitted by the Third Named

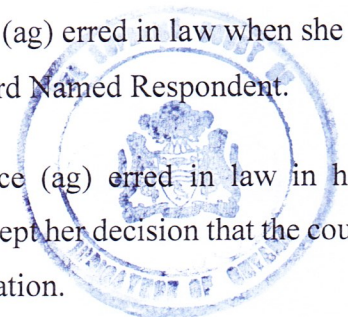
Respondent that the Returning Officers did not participate in the recount process.

- ix) The Honourable Chief Justice (ag) erred in law when she held that the Declarations of the Returning Officers made pursuant to section 84 of the Representation of the People Act had been overtaken by events, were no longer useful and could not be resurrected.
- x) The Honourable Chief Justice (ag) erred in law when she failed to consider and rely on the undisputed affidavit evidence adduced by the Applicant and admitted by the Third Named Respondent which established that the Chairman of the Guyana Elections Commission and or Commissioners, officers and or agents of the Guyana Elections Commission had changed the validity of ballots or votes during the purported recount.
- xi) The Honourable Chief Justice (ag) erred in law when she failed to consider affidavit evidence of the 7th named Respondent, Bharrat Jagdeo which would have allowed her to see that the Order for recount had its genesis in an unconstitutional attempt to challenge the lawfulness in the conduct of an election.
- xii) The Honourable Chief Justice (ag) erred in law in the interpretation of section 18 of the Election Laws Amendment Act.
- xiii) The Honourable Chief Justice (ag) erred in law in the interpretation of section 96 of the Representation of the People Act.
- xiv) The Honourable Chief Justice (ag) erred in law in the interpretation of Article 177 of the Constitution.
- xv) The Honourable Chief Justice (ag) erred in law when she failed to determine that Order 60 of 2020 was materially and substantially inconsistent with the Representation of the People Act and could not constitute a new legal regime.
- xvi) The Honourable Chief Justice (ag) erred in law when she failed to determine that the process and or mechanism for determination of a final credible count under Order 60 of 2020 was predicated on and was inconsistent with the constitutional powers of the Guyana Elections Commission and in excess of



the provisions of the Representation of the People Act as it required the application of the reconciliation process set out in Order 60 of 2020.

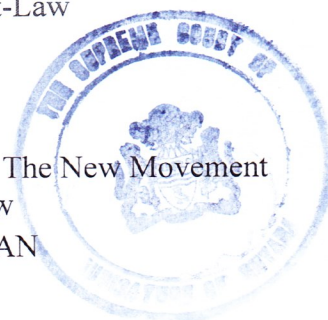
- xvii) The Honourable Chief Justice (ag) erred in law when she did not consider that at the time of the Court of Appeal's determination of *Ulita Grace Moore V Guyana Elections Commission* that there was no Order 60 of 2020 in being and as such no issue of *res judicata* could properly arise.
- xviii) That the Honourable Chief Justice (ag) erred in law when she failed to consider the distinction between the unconstitutionality of Section 22 of the Election Laws Act and acting in excess of the constitutional and or statutory powers of the Chairman of the Guyana Elections Commission and or of the Guyana Elections Commission in establishing and executing the said recount in accordance with elements, mechanism and parameters which are unconstitutional and set out in Order 60 of 2020.
- xix) That the Honourable Chief Justice (ag) erred in law when she failed to consider that the recount process as conceived and executed by the Guyana Elections Commission under Order 60 of 2020 was at substantial variance with the Representation of the People Act in that the validity of the votes was altered during the purported recount.
- xx) That the Honourable Chief Justice (ag) erred in law when she failed to consider that the purpose of and intent of Order 60 was in effect to give to GECOM the unlawful power to resolve an election dispute which Article 163 had conferred exclusively on the High Court.
- xxi) That the Honourable Chief Justice (ag) erred in law when she failed to consider that the purpose of and intent of Order 60 was to unconstitutionally alter the statutory scheme provided by Parliament in the Representation of the People Act and by the Constitution.
- xxii) That the Honourable Chief Justice (ag) erred in law when she Struck out the Affidavit of the Third Named Respondent.
- xxiii) That the Honourable Chief Justice (ag) erred in law in her decision on the whole save and except her decision that the court had jurisdiction to hear the Application.



4. The relief sought herein is that the Judgment and or order of the Honourable Chief Justice (ag) be wholly set aside/reversed.
5. Persons directly affected by the Appeal:

NAME AND ADDRESS

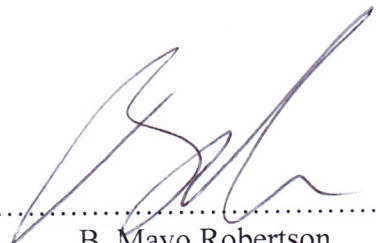
1. THE GUYANA ELECTIONS COMMISSION
41 High and Cowan Street
Kingston, Georgetown
2. CHAIRMAN OF THE GUYANA ELECTIONS COMMISSION
c/o Ms. Kim Kyte, Attorney at Law
KYTE SMALL BARKER
12 North Road, Lacytown,
3. THE CHIEF ELECTION OFFICER
c/o Mr. Neil Boston S.C., Attorney-at-Law
Boston & Boston
Croal Street, Stabroek, Georgetown
4. ATTORNEY GENERAL OF GUYANA
95 Carmichael Street, North
Cummingsburg, Georgetown
5. SHAZAM ALLY representing The Citizenship Initiative
c/o Mr. Kashir Khan, Attorney-at-Law
215 King Street, Lacytown, Georgetown
6. ABEDIN KINDY ALI representing Change Guyana
c/o Mr. Kashir Khan, Attorney-at-Law
215 King Street, Lacytown, Georgetown
7. BHARRAT JAGDEO representing People's Progressive Party/Civic
c/o Mr. Devindra Kissoon, Attorney-at-Law
London House Chambers
"A" 87 Issano Place West, Bel Air Park, Georgetown
8. IRFAAN ALI representing People's Progressive Party/Civic
c/o Mr. Devindra Kissoon, Attorney-at-Law
London House Chambers
"A" 87 Issano Place West, Bel Air Park, Georgetown
9. MARK FRANCE representing A New and United Guyana
c/o Kamal Ramkarran, Attorney-at-Law
Cameron & Shepherd
2 Avenue of the Republic
Georgetown, Guyana
10. LENNOX SHUMAN representing Liberty & Justice Party
c/o Mr. Hari N. Ramkarran, Attorney-at-Law
Cameron & Shepherd
2 Avenue of the Republic, Georgetown
11. DANIEL JOSH KANHAI representing The New Movement
c/o Mr. Timothy Jonas, Attorney-at-Law
De CAIRES FITZPATRICK & KARRAN



79'B' Cowan Street, Kingston, Georgetown

12. VISHNU BANDHU representing United Republican Party
c/o Devesh Maharaj, Attorney-at-Law
Devesh Maharaj and Associates
Mansfield Chambers (1st Floor)
No.24 Abercromby Street
Port of Spain, Trinidad, W.I.

Dated this day of July, 2020


.....
B. Mayo Robertson
Attorney-at-law for the Appellant

