

## MOTION FOR DISMISSAL

This Motion for the immediate dismissal of **Mr. Clairmont Mingo**, the incumbent Returning Officer (RO) of Election District Number 4, an election officer employed with the Secretariat of the Elections Commission, on the basis of and for the following reasons:

**WHEREAS**, pursuant to Article 161A (1) of the Constitution of the Cooperative Republic of Guyana, hereinafter referred to as "*the Constitution*", the Elections Commission is responsible for the efficient functioning of the Secretariat of the Commission, which shall comprise the officers and employees of the Commission, and is vested with the power to remove and to exercise disciplinary control over such staff.

**AND WHEREAS** Section 18 of the Elections Laws (Amendment) Act, No 15 of 2000, hereinafter referred to as "*ELAA*" provides "*the Chief Election Officer and the Commissioner of Registration shall notwithstanding anything in any written law be subject to the direction and control of the Commission,*" and Section 19 provides, "*for the removal of doubts it is hereby declared that the power of the Commission to supervise the functioning of any election officer and the Commissioner or Deputy Commissioner shall include the power to issue directions to any such officer or the Commissioner or Deputy.*"

**AND WHEREAS**, pursuant to Article 162 (1) (b) of the Constitution of the Cooperative Republic of Guyana, the Elections Commission is vested with the power to issue such instruction and take such action as appear to it necessary to ensure impartiality

fairness and compliance with the provisions of the Constitution or any Act of Parliament on the part of persons exercising powers or performing duties connected with or relating to the conduct of elections.

**AND WHEREAS**, pursuant to Section 8 of the Representation of the People's Act, Chapter 1:03, the Returning Officer, hereinafter referred to as "*the RO*", took an oath to "*faithfully perform the duties of the said office according to law, without partiality, fear, favour or affection*".

**AND WHEREAS**, the Representation of the People's Act, Chapter 1:03, hereinafter referred to as "*ROPA*" specifies and contains the various statutory duties, functions and responsibilities of the RO.

**AND WHEREAS** on or about the 2<sup>nd</sup> March, 2020, during the National and Regional Elections 2020, the RO, by virtue of his office, received from the Presiding Officer for each polling station in Election District Number 4 the sealed ballot boxes, sealed packets, envelopes and a Statement of Poll, pursuant to Section 83 of ROPA.

**AND WHEREAS** Section 84 (1) of ROPA provides that as soon as practicable after the receipt of all the ballot boxes, envelopes and packages, the RO shall, in the presence of such persons entitled under Section 86 (1) to be present as attend, ascertain the total votes cast in favour of each list in the district by adding up the votes recorded in favour of the list in accordance with the Statements of Poll, and thereupon publicly declare the votes recorded for each list of candidates.

**The Grounds and Basis for this Motion for Dismissal are as follows:**

1. In breach of his statutory functions, duties, responsibilities and obligations, the RO failed and/or refused and/or neglected to duly and lawfully adhere and comply with the statutory process, to wit, Section 84 of ROPA.
2. In breach of his functions, duties, responsibilities and obligations, the CEO failed and/or refused and/or neglected to ensure that the process of ascertaining the total number of votes cast in favour of each list of candidates for Election District Number 4 by adding up the votes recorded in the Statements of Poll was done "*with dispatch*" and without "*inordinate or undue delay*" as is lawfully required by the Section.
3. The RO as the election officer in charge of the process of adding up the Statements of Poll for District 4 deliberately acted in a manner that was dilatory and he failed to keep various promises made to the candidates of the list, party election representatives, local and international observers and other stakeholders to ensure that the adding up process be concluded expeditiously.
4. Without any lawful authority or proper justification or excuse, the RO deliberately failed, refused and neglected to "*ascertain the total votes cast in favour of each list in the district by adding up the votes recorded in favour of the list in accordance with the Statements of Poll*" as is required by the Section and instead he, whether by himself or those acting with his authority or under his direction, sought to use in

the adding up process, figures/vote counts which were not disclosed in and were inconsistent with the figures/vote counts in the Statements of Poll.

5. In this regard and despite repeated objections, from the persons representing the political parties authorized to be present, used an unauthorized document of unknown origin, known as a Spread Sheet, as the basis for the tabulation of the votes recorded in favour of each list in the District. Worse yet, the figures that the RO repeatedly announced as total votes cast in favour of each list materially differed from the Statements of Poll of the identical Polling place in the possession of the representatives of the political parties participating in the exercise.
6. This blatant departure from the requirements of the Section 84, by the RO, of ROPA consistently resulted in more votes for the APNU/AFC than were disclosed by the Statements of Poll. Despite repeated objections from the party representatives who were participating in the tabulation exercise, the RO continued this unlawful process to its conclusion.
7. In breach of his statutory duty and obligations, the RO failed to appoint a proper official to undertake in his absence the important task of conducting or supervising the conduct of the tabulation or adding up of the Statements of Poll and he left and appointed Ms. Michelle Miller, a senior clerk, to supervise the process.
8. The RO failed and/or refused and/or neglected to ensure that the elections officers and/or staff who continued to process of adding up the votes for District 4 acted properly and in compliance with the statutory provision.
9. In fact and indeed, the unauthorized elections officers and or staff who continued the adding up of votes for District 4, as authorized by the said RO, in his absence,

continued the exercise in flagrant violation of Section 84 of ROPA by doing exactly what the RO did, that is to say, continuing to use a Spread Sheet, an unauthorized document of unknown origin as a basis of the tabulation exercise, instead of the Statements of Poll.

10. Like in the case of the RO, the figures that were being called by these officers from the Spread Sheet were radically different from those contained in the Statements of Poll in the possession of the representatives from the various political parties.
11. Despite objections from the representatives of the various political parties these two officers continued the process and like in the case of the RO, the figures that they called from the Spread Sheet consistently gave the APNU/AFC more votes than were recorded on the Statements of Poll.
12. The aforesaid unlawful process complained of above culminated on the 5<sup>th</sup> March, 2020, and before the completion of the tabulation of all the votes cast for District 4 the RO proceeded to the upper floor of Ashmin's Building, where the exercise was being carried out, and purported to declare the purported final results for District 4. The document constituting the said declaration of the purported results of District 4, inexplicably, bore what is purported to be the signature of Volda Lawrence, one of the Assistant Chief Scrutineers of the APNU/AFC.
13. As a result, the **Honourable Chief Justice Roxane George SC** on the 11<sup>th</sup> March, 2020, in the case of **Reaaz Holladar v. Returning Officer, Clairmont Mingo; the Chief Election Officer; and Guyana Elections Commission (2020-HC-DEM-CIV-FDA-360)** vacated and set aside the declaration made by the RO for District 4 as being unlawful and in breach of Section 84 of ROPA and the Chief Justice

further ordered that the Returning Officer/Deputy Returning Officer to comply with the requirements of the said Section and further granted an injunction restraining GECOM from declaring the results of the election until the Section has been complied with.

14. In spite of and in breach of the Orders, guidance and directions of the **Honourable Chief Justice Roxane George SC** given on the 11<sup>th</sup> March, 2020, in the **Reaaz Holladar Case**, the RO again failed and/or refused and/or neglected to ensure due adherence and compliance of Section 84 of ROPA and instead he again used a spreadsheet to announce fictitious and fraudulent figures/vote counts that were not disclosed in and inconsistent with the Statements of Polls in order to declare a higher number of votes for APNU/AFC than that party obtained for Region 4.
15. As a result, contempt proceedings were instituted against the RO and in the hearing of the said contempt proceedings, on the 13<sup>th</sup> day of March, 2020, the Chairperson appeared before the Chief Justice and gave an undertaking that the votes for District 4 shall be recounted.
16. While the said Contempt hearing was ongoing in the High Court on the morning of the 13<sup>th</sup> day of March 2020, and while the RO was present in the High Court, two persons authorized by the RO were continuing the said tabulation exercise in the identically flawed manner, outlined above, using the impugned Spread Sheet and calling out numbers that were different from those on the Statements of Poll.
17. During the Contempt hearing, in open court, the Chief Justice explained at length to the Court, including the RO, that the Statements of Poll must be the only basis upon which the tabulation exercise is to be carried out and further advised that the

process must either start over, using all the Statements of Poll as the basis, or must be resumed from the time that the last Statement of Poll was used as the basis for the tabulation: that it is open to the RO to determine which option he chooses to adopt.

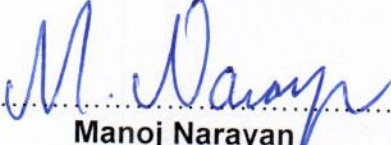
18. Notwithstanding the clear admonitions rendered by the Honourable Chief Justice and the undertaking given by the Chairperson, the RO returned to the tabulation center and blatantly continued the unlawful exercise of using the Spread Sheet as the basis for the tabulation.
19. Only after vehement objections and the threat of imprisonment for Contempt of Court, that the RO stopped the exercise and announced that he will resume the exercise at 5pm but in the compound of GECOM headquarters at High Street, Kingston, Georgetown.
20. At High Street, Kingston, Georgetown, when the exercise was resumed by the RO, a different method was used for the tabulation, that is to say, a make shift screen was erected and the RO projected what appears to be Statements of Poll against that screen. However, the writings on the Statements of Poll projected were clearly and visibly altered and again the numbers shown on those purported Statements of Poll were radically different from the numbers contained on the Statements of Poll in the possession of the representatives of various political parties.
21. Significantly, the process was done with such speed that it was impossible for the representatives of the political parties to decipher the true numbers that were being shown on the screen.

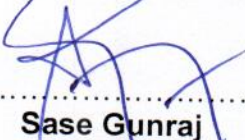
22. Multiple and vehement objections to this process by the representatives of the political parties were futile and in the end, the RO purported, again, to make final declarations of purported results of District 4, expectedly, declaring more votes than they had in the District.
23. Additionally, legal proceedings were filed by **Mr. Bharat Jagdeo** and **Reaaz Holladar** against the RO, CEO and GECOM to set aside the second declaration by the RO. In the course of hearing this case, it was announced that the leaders of the major political parties had agreed for a full recount of all votes by a Caricom team. This recount process later produced results that were consistent with the figures in the Statements of Poll and against the inflated figures declared by the RO for the APNU/AFC list.
24. Throughout the process of adding up the votes for each list from the Statements of Poll, the RO himself breached and violated the requirements of Section 84 of ROPA and he either condoned and encouraged such breaches to be committed by GECOM staff whom he appointed to continue the process in his absence or he failed to take any action to remedy such breaches.
25. By the aforesaid conduct, actions and omissions of the RO, he has not only violated but has discarded the oath of office which he has taken to faithfully discharge the duties of his office and to act fairly and impartially or legally in the discharge of those duties. The foregoing actions of the RO cannot be reasonably seen as acting impartially and fairly.
26. By the aforesaid conduct, actions and omissions of the RO, he has caused a loss of public confidence and public trust in the electoral process and he has failed,



neglected and abdicated his functions, duties and responsibility to ensure both compliance with the provisions of the Constitution and the electoral legislative framework and the essential criteria of impartiality, transparency, fairness and credibility to the operations of the Elections Commission and its Secretariat.

27. The RO is currently facing criminal charges being prosecuted by the Guyana Police Force in respect of his numerous infractions of the law and regardless of the outcome of those charges, the Commission must take all necessary steps to restore credibility, transparency, public confidence and public trust in its institution and its constitutional and statutory mandate.
28. In light of the foregoing, this Motion is moved for the immediate dismissal of the RO, **Clairmont Mingo**.

  
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**Manoj Narayan**  
**Commissioner**

  
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**Sase Gunraj**  
**Commissioner**

Dated this 1<sup>st</sup> day of June, 2021.