

IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 861 of 2009

BETWEEN

ZENAIDA MOYA FLOWERS

APPLICANT/CLAIMANT

AND

PHILLIPA GRIFFITH BAILEY

RESPONDENTS/DEFENDANTS

DOUG SINGH IN THEIR OWN BEHALF  
AND ON BEHALF OF ALL THE OTHER  
MEMBERS OF THE NATIONAL PARTY COUNCIL  
OF THE UNITED DEMOCRATIC PARTY

BEFORE: Honourable Justice Minnet Hafiz

Dr. Elson Kaseke along with Mr. Godfrey Smith for the Applicant  
Mr. Michael Young SC along with Ms. Deanne Barrow for the Respondents

DECISION

Introduction

1. The Applicant made an application for an interim injunction to restrain the Respondents from excluding her from membership and participation in meetings of the National Party Council (NPC) of the United Democratic Party (UDP) and also to restrain the Central Executive Committee (CEC) from taking certain actions. The Applicant was removed from membership of the NPC of the UDP at a meeting held on October 3, 2009.

Brief Factual Background

2. The Applicant, Zenaida Moya Flowers is the Mayor of Belize City Council (BCC). The Respondents are members of the UDP and the NPC of the UDP.

3. On 1<sup>st</sup> October, 2009 the Applicant and three senior officials of the BCC were arraigned in the Belize City Magistrates Court on certain criminal charges relating to the financial operations of the BCC. On the said day when the Applicant was arraigned she gave a press interview outside the court building where she made certain comments which includes her views of the charges brought against her, her relationship with the Prime Minister, the leader of the UDP Party and also that the leader may have some of his minions who will try to discredit her and not want her to be part of the party.
4. The Applicant's comments were broadcasted on the radio as well as the national television. Several leading newspaper also published the contents of the interview on the front-pages of the newspapers.
5. On 2<sup>nd</sup> October, 2009 the First Respondent, Ms. Bailey telephoned the Applicant and invited her to attend a meeting of the NPC to be held on 3<sup>rd</sup> October, 2009. The Applicant did not attend the meeting.
6. On 3<sup>rd</sup> October, 2009 the Applicant received a letter signed by the first Respondent as Secretary General to inform her that the UDP met to discuss her recent defamatory statements against the Party and its leadership. Further, that a decision was taken in accordance with Article 7 section 11 and 12 (b) of the Constitution of the United Democratic Party to remove her from membership of the NPC and to refer the matter of her conduct to the Central Executive of the Party for further consideration.
7. It is under these circumstances that the Applicant sought an Interim Injunction by an amended application dated 29<sup>th</sup> October, 2009. The Applicant also issued a Claim Form dated 20<sup>th</sup> October, 2009 which was later amended. The Amended Claim Form is dated 29<sup>th</sup> October, 2009 in which the Applicant sought several Declarations.

Interim Injunction sought

8. The Interim Injunction sought is in the following terms:
- (i) *An interim Injunction prohibiting the Respondents/Defendants from excluding the Applicant/Claimant from membership and participation in meetings of the National Party Council of the United Democratic Party until the trial of the Claim or further order.*
  - (ii) *An Interim Injunction prohibiting the Defendants who are members of the Central Executive of the United Democratic Party (“UDP”) from acting on a decision of the National Party Council (“NPC”) of the UDP taken on the 3<sup>rd</sup> October, 2009 to refer the matter of the conduct of the Applicant relating to certain statements made by the Applicant to the press on the 1<sup>st</sup> October, 2009 to the UDP Central Executive for further consideration until the trial of the Claim or further Order.*
  - (iii) *An Interim Injunction prohibiting the Defendants who are members of the Central Executive of the UDP and the NPC of the UDP from taking any further steps or actions in respect of any disciplinary measures or hearings against the Applicant arising from statements made by the Applicant to the press on the 1<sup>st</sup> October, 2009 until the trial of the Claim or further Order.*

9. The grounds of the Application are:

- (a) *the NPC meeting of 3<sup>rd</sup> October, 2009 was held contrary to the UDP Constitution.*
- (b) *The decisions of the NPC taken at its meeting of 3<sup>rd</sup> October, 2009 were made contrary to the Applicant's rights to natural justice, specifically the right to be heard and to be apprised in advance of the case against her and to be given adequate opportunity to defend herself.*

Evidence

10. The Applicant filed four affidavits in support of her application which I will refer to briefly. The first Affidavit is sworn to on the 19<sup>th</sup> October, 2009 where the Applicant deposed as to the criminal charges brought against her relating to financial operations of the Belize City Council and the interviews she gave outside of the court building. See Exhibit **ZM 3** for a copy of transcript. The Applicant further deposed that she received a telephone call from the First Respondent inviting her to attend a meeting of the UDP scheduled for the next day, 3<sup>rd</sup> October, 2009 at the UDP Headquarters. She deposed that she did not attend because she was ill from delivering a baby and was confined to bed on the advice of a medical doctor.
11. The Applicant further deposed of the letter she received from the first Respondent and the decision taken to remove her from membership of the NPC and refer the matter to the CEC of the UDP for further consideration. See Exhibit **ZM 4** for a copy of the letter. At paragraph 12 of her affidavit she deposed that she was not given any disciplinary

charges by the NPC before the meeting and she does not know what charges made the NPC decide to expel her from its membership. Further, that the NPC never gave her an opportunity to say anything in defence to whatever charges the NPC had against her.

12. The Applicant's second affidavit was sworn on 29<sup>th</sup> October, 2009 where she deposed that many people frequently approach her and ask her to run for national office and that offering herself as a candidate for national office is a live option in her political career and future. At paragraphs 19 to 21 of her affidavit she deposed that:

*Being selected to run for national office on behalf of my political party, as my last bitterly contested convention for mayoral candidate demonstrated, demands strategic political positioning and clout within my political party.*

*As a member of the NPC I have used every opportunity to demonstrate my political acumen, skill and contribution to the UDP in order to win the support of my colleagues and better position myself within the party with a view to keeping my option of running for national office open.*

*If I am expelled from the NPC in breach of the UDP Constitution and the rules of natural justice then this has a direct negative impact on my ability to politically position myself within the UDP and influence minds and win support for myself within the party. The longer I am unable to participate as member of the NPC the more political footing and prestige I will lose and the more difficult it will be to recover it.*

13. The Applicant went on further to depose that no amount of monetary damages could compensate her for loss of political standing, prestige and clout which is important in a quest for national office. She also stated that the NPC met further to appoint members of the Ethics and Integrity Committee which is the organ of the UDP that decides upon expulsion.

14. In the Applicant's third and fourth affidavit she responded to affidavit evidence of the first Respondent which were filed opposing the application for the injunction.

Respondents evidence

15. Ms. Phillippa Griffith Bailey, Secretary General of the UDP and a member of the NPC of the UDP filed three affidavits opposing the application for the interim injunction. She deposed as to the Applicant's reaction to the criminal charges which were broadcast on radio and national television. Also, that the remarks were on front-page of the Amandala, Reporter and Belize Times and National Perspective newspapers for Friday 2<sup>nd</sup> October, 2009. See **Exhibit PB 1** for copies of the newspapers.
16. She deposed about telephoning the Applicant for the NPC meeting. At paragraph 9 of her affidavit she said that because of the widely publicized arrest and charge of the Applicant and because of her public reaction and remarks when she telephoned her on 2<sup>nd</sup> October, 2009 she specifically alerted her that those matters would be on for discussion at the meeting. She deposed that the Applicant confirmed with her the time of the meeting but she did not attend.
17. At paragraphs 12 to 15 of her affidavit Ms. Bailey deposed:

*In the course of the meeting, reference was made to Article 11 3(h) (ii) of the United Democratic Party Constitution (the "UDP Constitution") and it was noted that any disciplinary proceedings must be initiated by the Central Executive Committee of the UDP.*

*Subsequently on 17<sup>th</sup> October 2009 the Central Executive Committee held a meeting of its members. I attended the meeting as Secretary General. It was readily apparent that almost all, if not*

*all, of the members of the Central Executive Committee had seen and heard for themselves the public reaction and remarks of Mrs. Moya-Flowers on 1<sup>st</sup> October, 2009. They had witnessed her conduct through the radio, television and newspaper reports.*

*At the said meeting of 17<sup>th</sup> October 2009, the Central Executive Committee unanimously resolved, in pursuance of Article 11 3(h) (ii) of the UDP Constitution to cause an investigation to be made into the matter and that investigation has commenced. The Central Executive Committee now awaits a report of that investigation.*

*The Central Executive Committee has initiated addressing the matter of Mrs. Moya-Flowers conduct in accordance with the UDP Constitution and any further process which may be undertaken will be undertaken in pursuance of and in compliance with such Constitution (particularly Article 11 3(h) thereof).*

18. Ms. Bailey further deposed that under Article 11 3(h) the Applicant will have more than ample opportunity to make representations in response or relation to any charges which may be issued against her. On that basis she says that the injunction prayed is without foundation and would serve no useful purpose.
  
19. In Ms. Bailey's second affidavit at paragraph 3 she referred to an excerpt of the interview of the Applicant which took place before the Magistrate's court building. In her third affidavit she exhibited a portion of the transcript. See Exhibit **PB 3**. She said the following exchanges took place:

*“(In response to Jules Vasquez question: “Is the Prime Minister Carrying out a vendetta against you?”*

Mayor Moya

*I feel that somebody doesn't have balls when they are going to come after me when I am on my bed delivering a child. That is how foolish it is.*

(In response to Jules Vasquez question: "Will you remain a UDP if you say the leader is out to get you?")

Mayor Moya

*I am a UDP. Nothing has changed. If the leader, that is one man, and he may have some of his minions who will try to discredit me and may not want me to be a part of the party but I don't see that coming from the rank and file. His minions and him can have whatever is their opinion, that is their opinion."*

20. Ms. Bailey then went on to say that by the Applicants own perception and words, she exudes disregard and disrespect for the Prime Minister and those whom she describes as minions. She also deposed that UDP would be exposed to serious inconvenience, prejudice, obstacles and difficulties if the Applicant were permitted to attend meetings of the NPC pending trial.

Constitution of the United Democratic Party

- 21.0 The UDP is a political body which is governed by a Constitution. See Exhibit **ZM 1** for a copy of the said Constitution. At this stage, there was no argument as to whether it is an unincorporated Association. However, in written submissions for the Applicant, the Learned Counsel relying on the Belizean case of **Cervantes v Caye Caulker Water Taxi Association BzLR Vol 4 2004**, contended that it is not

necessary at this point to definitely resolve whether or not the Defendants are members of an unincorporated association who are in law bound by their constitution. In that case Barrow J (as he then was) left the question of whether the defendant was an unincorporated association open and went on to consider the injunction. I agree that at this juncture, the Court does not have to make a determination on this point.

Relevant rules

21.1 **Article 4** of the Constitution provides for '**Membership**'. For present purposes the relevant part is:

*Every member of the UDP shall be deemed to have agreed to be bound, by this Constitution, and the Party Rules and any amendments duly adopted thereto, from time to time, and shall be bound to further the objects of the UDP to the best of the member's abilities.*

*Every individual Member or Associate Member, who acts in a manner inconsistent with the objects of the UDP or appears otherwise unsuitable for membership, may be excluded from the UDP in accordance with the provision of the Party Rules.*

21.2 **Article 7** provides for the **National Party Council**

*(1) The National Party Council shall be responsible for the conducting of the business and affairs of the United Democratic Party between sittings of the National Convention.*

*(2) The National Party Council shall be composed of:*

- (a) All members of the Central Executive Committee;*
- (b) The Chairperson and Secretary of each Constituency Committee;*
- (c) All UDP Mayors and Members of National Assembly;*
- (d) All duly endorsed UDP candidates or Constituency Caretakers.*

.....

(7) *At least fourteen (14) days notice shall be given of meetings of the National Party Council, provided that*

*(a) In cases of an emergency, the Central Executive Committee can summon a meeting at shorter notice, and ...*

(11) *Affirmative support of the United Democratic Party Objects, the Chairman and Party Leader, the national platform and the Principles shall be a condition of continuing membership on the National Party Council provided that nothing be construed to prevent or exclude criticisms made and differences expressed in good faith.*

.....

(12) *A National Party Council Member may be removed by:*

*(a) a two-thirds vote of the Party Constituency Committee of which the National Party Council person is a member, or*

*(b) a two-thirds vote of the National Party Council, or by*

*(c) a majority vote of the National Convention*

21.3 **Article 8** provides for the responsibilities of the **Central Executive Committee**

(1) *The Central Executive Committee shall be responsible for conducting the day to day business and affairs of the United Democratic Party, subject to the authority of the National Party Council and ultimately the National Convention.*

(2) *The responsibilities of the Central Executive shall include:*

.....

*(e) Taking all actions appropriate or necessary to carry out the directives of the National Party Council and the Resolutions and decisions of the National Convention;*

21.4 **Article 11** makes provisions for the different Committees including **The Ethics and Integrity Committee**. **Article 11 (3) (h)** states :

- .....
- (ii) *Wherever it shall come to the notice of the **Central Executive Committee** or a **Party Constituency Committee** that a member of the Party may have acted contrary to the interests of the Party, its Platform, Programs, Policies or Principles, the **Central Executive Committee** may, at its discretion, cause an investigation to be made. If, after such investigation, it considers that a charge should be made against the member, the committee shall forward to the member a statement of the charge together with particulars of the allegation upon which the charge is based. ... the Central Executive Committee may call upon the accused member to state in writing, within a reasonable time as shall be specified, but not less than seven days, any grounds on which he relies to exculpate himself.*
  
  - (iii) *If the member does not furnish a reply to any charge forwarded under paragraph (ii) above within the period specified; or if, in the opinion of the Central Executive Committee, he fails to exculpate himself, the Central Executive Committee shall cause a hearing before the members of the Ethics and Integrity Committee to inquire into the matter within 14 days of the expiry of the period specified in Paragraph (ii) above.*
  
  - (iv) *The **Ethics and Integrity Committee** shall inform the accused member that on a specified day, of which not less than seven days written notice shall be given, the charge made against him will be investigated by them and that he will be allowed to appear before the Committee and be heard.*

(emphasis mine)

21.5 **Article 11 (3) (h) (v),(vi) and (vii)** provides for the procedure at the hearing, representation of the accused and if the charge has been proven the punishments to be given. Punishments include a reprimand

or a fine or suspension from the Party for a period not exceeding one year or expulsion from the Party.

- 21.6 **Article 11 (3) (h) (ix), (x) and (xi)** provides for an appeal of the member disciplined after 30 days of the decision of the Integrity Committee. This Appeal is to the National Party Council (NPC). Here the member is also given an opportunity to be heard. On appeal the NPC can set aside the decision or dismiss the appeal or substitute the punishment. They can also review any punishment imposed by them.

**Jurisdiction to grant Interim Injunction**

22. **Section 27 of the Supreme Court of Judicature Act and the Supreme Court (Civil Procedure) Rules 2005 Part 17 and 11** confer jurisdiction on the Supreme Court to grant injunctions. It is a discretionary remedy .

**Principles Applicable for granting Interim Injunctions**

23. There is not much difference between the parties in relation to the principles of law which are to be applied in this case and so the court will be brief. The guidelines laid down by Lord Diplock in ***American Cyanamid v Ethicon [1975] AC 396*** for the grant or refusal of an injunction are:

- (a) whether there is serious question/questions to be tried;
- (b) the inadequacy of damages;
- (c) the balance of convenience;
- (d) special cases.

24. But it is to be noted, as Dr. Kaseke submitted, though the guidelines laid down by Lord Diplock are still regarded as the leading source of law on the subject, Kerr LJ pointed out in ***Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523*** that:

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines which apply in many cases. It must never be used as a rule of thumb, let alone as straitjacket ...”*

**Serious Issue to be tried**

25. The Applicant does not need to show a *prima facie* case in the sense of convincing the court that on the evidence before it she is more likely than not to succeed in her claim at trial. But she does need to show that she has a real prospect of succeeding in her claim. See ***American Cyanamid*** supra.
26. The Applicant says that there are five serious issue to be tried:
- (i) Whether the proceedings of the meeting of the NPC held on October 3<sup>rd</sup> 2009 at which it decided to remove/expel the Applicant from its membership was lawful and valid based on the UDP Constitution for the convening of meetings of the NPC.
  - (ii) Whether the failure to provide the Applicant with specifics of the charges she had to meet and adequate time to prepare her defence breached the Applicant’s right to natural justice rendering the decision to remove her from membership of the NPC unlawful and invalid.
  - (iii) Whether the NPC could be the complainant and the judge in respect of the expulsion of the Applicant from the NPC.
  - (iv) Whether the referral by the NPC to the UDP’s CEC of the statements made to the media by the Applicant was lawful and valid based on

the UDP Constitution, and whether the consideration by the UDP's CEC was lawful and valid.

(v) Whether the Ethics Committee established by the NPC is lawful.

27. Though it is not determinative at this stage that the UDP is an unincorporated association, I agree with Learned Counsel for the Applicant that the rules of an unincorporated association form a contract between the members of that association. The Applicant would therefore have a cause of action before the courts based on the UDP Constitution which form a valid and binding contract among its members. See the cases of *Fountaine v Chesterton The Times August 20<sup>th</sup> 1968*; *John Rees (1970) CH 245*; *Lewis v Heffer (1978) 1 WLR 1061*.
28. The first issue is whether the proceedings of the meeting of the NPC was based on the UDP Constitution for the convening of meetings of the NPC. This is also the Applicant's first ground in support of her Application. According to **Article 7** at least fourteen (14) days notice shall be given of meetings of the National Party Council. The evidence is that meetings are held every three months and the date is set at the meetings for the next meeting. The Applicant was given a reminder of the meeting of the 3<sup>rd</sup> October by telephone. The question to be determined is whether there was adequate notice. Thus, I find that there is a serious issue to be tried as to whether the Applicant received adequate notice as required by Article 7 and consequently whether the decision to remove the Applicant at that meeting was valid.
29. The second through fourth issues are based on the second ground of the Application which is that the decisions of the NPC were made contrary to the Applicant's rights to natural justice, specifically the right to be heard

and to be apprised in advance of the case against her and to be given adequate opportunity to defend herself.

30. The second issue is that she was not provided with any charges she had to meet and to prepare her defence. The third issue is whether the NPC could be the complainant and the Judge. The fourth issue is the validity of the referral to the CEC and whether on that referral the consideration of the CEC was lawful and valid. The evidence before the court is that the Applicant did not attend the meeting of the 3<sup>rd</sup> October, 2009. There is no dispute also that the Applicant was not given any charges. The UDP Constitution does not make any provision for charges to be given for removal from the NPC. There was a discussion at that meeting and a decision was taken as evidenced by the letter to the Applicant. The letter which is written on a United Democratic Party letter head - **Exhibit ZM 4** states:

*October 3, 2009*

*Her Worship Mayor Zenaida Moya-Flowers  
Mayor of Belize City  
City Hall  
Belize City, Belize*

*Dear Mayor Moya-Flowers:*

*This letter is to inform you that on Saturday, October 3, 2009, the National Party Council of our United Democratic Party **met to discuss your recent defamatory statements against the Party and its leadership.***

*Accordingly, a **decision was taken in accordance with Article 7 section 11 and 12b to remove you from the membership of the National Party Council** and to refer the matter of your conduct to the Central Executive of the Party for further consideration.*

*Regards*

*Philippa Griffith-Bailey MBE, JP.S (Sgd.)  
Secretary General*

(Emphasis mine)

31. This letter without a doubt shows that there was a discussion and a decision was taken pursuant to the Rules of the Constitution. **Article 7 section 11 and 12b** were invoked without giving the Applicant notice of same. Section **12 b** says that an NPC member may be removed by a two-thirds vote of the National Party Council. However, there are no provisions for a hearing in the Constitution for removal from membership of the NPC for conduct which shows no support for the United Democratic Party Objects, the Chairman and Party Leader and the national platform. (See **Article 7 section 11 and 12 (b) at paragraph 21.2** above).
  
32. The UDP Constitution provides for charges to be given and an opportunity to respond and if necessary hearing whenever it comes to the notice of the Central Executive Committee or a Party Constituency Committee that a member of the Party may have acted contrary to the interests of the Party, its Platform, Programs, Policies or Principles. But in these cases the punishment could be either a fine, suspension or expulsion from the Party. (See **Article 11 at paragraph 21.4** above). This Article does not address removal from the NPC membership.
  
33. The evidence shows that it was never brought to the attention of the Applicant that **Article 7 section 11 and 12(b)** would have been invoked to remove her from membership. She knew from Ms. Bailey that the remarks to the media would be on for discussion but she did not attend the meeting. Should the meeting have been adjourned to give the Applicant notice that the said Article would have been invoked and give her an opportunity to show cause why she should not be removed from membership? In my view, this is an issue for trial.

34. In written submissions by Counsel for the Applicant, they relied on the case of **Cervantes v Caye Caulker Water Taxi Association**, supra where Barrow J (as he then was) said:

*The courts will be astute to ensure that there has been compliance with the rules of natural justice wherever this requirement can be established. Even if there is a discretion and the full natural justice principle may not apply, the body in question must act fairly; Josling and Alexander The Law of Clubs, 4<sup>th</sup> ed. p34.*

35. Mr. Young conceded that there is a serious issue to be tried in relation to the decision taken by the NPC. The right to natural justice for the removal from membership of the NPC where provisions of the Constitution were invoked without giving notice to the Applicant, in my view, is a serious issue to be tried. Thus, I find that there is a serious issue to be tried in relation to the decision taken by the NPC to remove the Applicant from membership of the NPC.
36. There is also the referral of the matter by the NPC of the Applicant's conduct to the CEC of the Party for further consideration. There is no evidence before the court that the CEC has acted on the said referral. The evidence shows that they have acted *ex proprio motu* (of its own accord). But, there is also no evidence that the referral to the CEC by the NPC was withdrawn. As such, there is still a decision by the NPC taken in accordance with **Article 7** to refer the matter of the Applicant's conduct to the CEC for further consideration.
37. It can be seen from **Article 11 (3) (h) (ix), (x) and (xi)** that after disciplinary action is taken and punishment is handed down, a member can appeal to the NPC. Thus, I find that there is a serious issue to be

tried in relation to the decision by the NPC to refer the matter of the Applicant's conduct to the CEC for further consideration.

38. With regards to the fifth issue, that is, whether the Ethics Committee established by the NPC is lawful, I am not satisfied with the evidence before me that such Committee was established. I find that there is no issue to be tried in relation to the Ethics Committee.
39. The Applicant has shown with regards to the first through fourth issue that she has a real prospect in succeeding in her claim as stated in her amended Claim Form dated 29<sup>th</sup> October, 2009. But, this is in relation only to the decision taken by the NPC. The Court will have to consider later whether the CEC, a different organ of the Party can be restrained from taking any action whatsoever.

*The inadequacy of damages*

40. As submitted by the Counsel for the Claimant, the real test as to the adequacy of damages for the aggrieved party in injunction cases was judicially stated by Sachs L.J. in ***Evans Marshall v Co. Ltd. v Bertola S.A. (1973) 1 WLR 349*** at 379 H which is "*Is it just, in all the circumstances, that a plaintiff should be confined to his remedy in damages?* In a more recent case **Jetpak Services Ltd. V. BWIA International Airways Ltd (1998) WIR, Vol. 55 p. 362** a Court of Appeal case of Trinidad and Tobago, De la Bastide CJ (as he then was) had this to say at page 67:

*Firstly with regard to the law, I think that the Judge in focusing exclusively on whether damages were adequate and quantifiable, adopted an approach that was far too narrow. .... I would prefer, with respect, the way in which the matter was put by Sachs LJ in*

*Evans Marshall Co Ltd v Bertola SA (1973) 1 WLR 349n at page 379 when he suggested that:*

*The standard question in relation to the grant of an injunction, “are damages an adequate remedy? might perhaps in light of the authorities or recent years, be rewritten: “Is it just in all the circumstances that a plaintiff should be confined to his remedy in damages?”*

41. Would it be just to confine the Applicant to her remedy in damages? I agree with the submissions by the Applicant’s Counsel that the case does not involve monetary claims or monetary loss. The case is about her removal from membership which she says will affect her prestige, standing, reputation and prospects for election to national office. The Applicant has been removed from the second highest decision-making body of her political party, namely, the NPC. The Applicant’s evidence is that there is a live option in her political career and future that she will offer herself as a candidate for national office. Further, to run for national office this entails strategic political positioning and clout within her political party. As such, it is my view that it will not be just to confine the Applicant to her remedy in damages. I find that damages will not be an adequate remedy for the Applicant.
42. There is no evidence by the Respondents that they will suffer any loss if the Interim Injunction is granted. However, there is a possibility that damages may be suffered. The Applicant in her evidence has undertaken to abide by any order of damages. It is to be noted that the Belize **CPR Rule 17.4 (2)** states:

*Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any*

*order as to damages caused by the granting or the extension of the order.*

*Balance of convenience*

43. In the **American Cyanamid** case supra, Lord Diplock said that:

*It would be unwise even to attempt to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone suggest the relative weight to be attached to them. These will vary from case to case.*

44. An assessment of what Lord Diplock said, was done in the case of **National Commercial Bank Jamaica Ltd. v Olint Corp. Limited (Jamaica) (2009) UKPC 16**, a case relied on by Mr. Young SC. At paragraph 17 Lord Hoffmann said that:

*The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other.*

45. The Applicants referred to two cases which I find helpful also. In the case of **Cayne v Global Natural Resources Plc (1984) 1 All ER 225** at 237 H, May L.J. stated that the balance of convenience is better described as the “*balance of the risk of doing an injustice*”.

46. The Applicant’s evidence is that the longer she is unable to participate as member of the NPC the more political footing and prestige she will lose and the more difficult it will be to recover it. The Respondent’s evidence on the other hand is that because of the Applicant’s words to the media she exudes disregard and disrespect for the Prime Minister and those whom she describes as minions. As a result, the UDP would be exposed to serious inconvenience, prejudice, obstacles and difficulties if the Applicant were permitted to attend meetings of the NPC pending trial.

47. Learned Counsel, Dr. Kaseke submitted that the Applicant's reputation and prestige is on the line and the Defendants tend to lose nothing whatsoever, neither financially or politically. Learned Counsel, Mr. Young SC in looking at the circumstances of the case submitted that the Applicant's case is filled with inconsistencies and ironies. He referred to the Applicant's evidence where she said that she was a politically ideal candidate for Mayor in the eyes of the UDP because she demanded from the then Government transparency and accountability. But then went on to say that it is ironic that the Applicant herself was charged with matters relating to financial irregularities and accountabilities. However, Mr. Young SC thereafter, rightly pointed out that the Applicant is entitled to the constitutional presumption of innocence until proven guilty. This is in relation to the criminal charges.
48. The Court therefore, has to do its best to seek a balance of justice. The Court will not embark on any exercise to interpret the spicy words used by the Applicant but will only go so far to say that the Applicant was definitely referring to members of her own party which has caused them to feel that there will be obstacles and difficulties if the Applicant were permitted to attend meetings of the NPC pending trial. However, the court in contemplating the possibility that the Applicant may succeed in her substantive claim resulting in her returning to membership of the NPC, has to take the course which will cause the least irremediable prejudice. In doing so, it is my view, that the balance of justice tilts in favour of the Applicant. I find that the balance of convenience lies in favour of the Applicant for the granting of the injunction in relation to the decision taken by the NPC.

Whether the CEC can be restrained from taking any disciplinary measures against the Applicant in relation to the statements made to the press on 1<sup>st</sup> October, 2009?

49. The third order sought is in these terms as shown above and is worth while repeating:

(iii) *An Interim Injunction prohibiting the Defendants who are members of the Central Executive of the UDP and the NPC of the UDP from taking any further steps or actions in respect of any disciplinary measures or hearings against the Applicant arising from statements made by the Applicant to the press on the 1<sup>st</sup> October, 2009 until the trial of the Claim or further Order.*

50. Learned Counsel Dr. Kaseke raised the issue of bias - *nemo debet esse judex* - in his arguments because the members of the CEC are also members of the NPC. Learned Counsel, Mr. Young SC in his arguments referred the court to the case of **John Rees (1970) Ch 245** at paragraph 387 and 388 which states:

*“... the question is that of the terms of the rules of that association, as constituting the contract which binds the members to each other ..... Certainly I do not think it is necessary to bring home to every member when he joins exactly what the rules of the association are. I do not see why someone who joins a club should not do so on the basis that he would be bound by the rules of the club, whatever they may be .... ..”*

51. **Article 7 (2)** of the Constitution provides that the NPC shall be composed of all members of the CEC and other members as stated in that Article. The Applicant in her claim has not challenged the composition of NPC or the CEC. There is no challenge at all to the constitutional provisions.
52. In any event, **Article 4** states that every member of the UDP shall be deemed to have agreed to be bound by the Constitution. See principle in **John Rees** which I find applicable. In these circumstances, there can be no issue of bias where members of the CEC are members of the NPC and the CEC has initiated its own process as provided by Article 11 of the Constitution. Through this process, there is no referral from the NPC. See Article 11 at paragraph 21.4 above.
53. I do agree with the submissions of Learned Counsel for the Respondents, Mr. Young SC that the NPC and the CEC are two separate and distinct bodies, or “*administrative divisions*” as they are called of the UDP. So that even if the NPC is found to act improperly in making their decision, this does not affect the decision of the CEC to begin due process mechanism as provided for in **Article 11(3) (h) (ii)** where it states that the CEC may at its discretion cause an investigation to be made. The CEC as submitted by Learned Counsel, Mr. Young is vested with the power and jurisdiction to cause an investigation to be made and to initiate and manage proceedings by which a member may be disciplined. Thus, the CEC does not have to act on a referral from the NPC and there is no evidence that they have acted on such referral. The evidence before the court is that they have acted within **Article 11 (3) (h) (ii)**.
54. The evidence by Ms. Bailey shows that on 17<sup>th</sup> October 2009, the CEC unanimously resolved, in pursuance of **Article 11 3(h) (ii)** of the UDP Constitution to cause an investigation to be made into the matter and that investigation has commenced. The Central Executive Committee now

awaits a report of that investigation. The Court therefore, has no jurisdiction to restrain the CEC where at its discretion it caused an investigation to be made. Further, the Court cannot prevent the NPC as an appellate body to do its duties in accordance with the Constitution. See the case of ***Pringle & Ors v Callard (2007) EWCA Civ 1075*** where the court said at paragraph 33 that “... *it is unnecessary to decide whether it is appropriate for the court as an interim remedy to prevent the company from exercising its undoubted statutory right to remove a director by an ordinary resolution.*” Likewise this court will not interfere with the process under the Constitution of the UDP which governs its members. The Applicant by the third order sought is seeking to impede a process which involves application of the principle of natural justice such as a statement of charges, opportunity to exculpate herself, opportunity for a hearing. In any event, in the substantive claim the Applicant is not seeking a Declaration with regards to the CEC where it acts in pursuance of Article 11. Accordingly, I find that there is no issue to be tried in relation to the CEC acting at its own discretion pursuant to **Article 11 3 (h) (ii)** of the UDP Constitution. Thus, the application for the third restraining order is refused.

## 55. **Conclusion**

I find that there is a serious issue to be tried as to whether the Applicant received adequate notice as required by Article 7 of the UDP Constitution and consequently whether the decision to remove the Applicant at that meeting was valid.

I find that there is a serious issue to be tried in relation to the decision taken by the NPC to remove the Applicant from membership of the NPC.

I find that there is a serious issue to be tried in relation to the decision by the NPC to refer the matter of the Applicant's conduct to the CEC for further consideration.

I find that there is no issue to be tried in relation to the Ethics Committee.

I find that damages will not be an adequate remedy for the Applicant.

I find that the balance of convenience lies in favour of the Applicant for the granting of the injunction in relation to the decision taken by the NPC.

I find that there is no issue to be tried in relation to the CEC acting at its own discretion pursuant to Article 11 (3) (h) (ii) of the UDP Constitution. Thus, the application for the third restraining order is refused.

Accordingly, the interim injunction granted is in the following terms :

56. **Order**

- (i) *An interim Injunction prohibiting the Respondents/Defendants from excluding the Applicant/Claimant from membership and participation in meetings of the National Party Council of the United Democratic Party until the trial of the Claim or further order.*
  
- (ii) *An Interim Injunction prohibiting the Defendants who are members of the Central Executive of the United Democratic Party ("UDP") from acting on a decision of the National Party Council ("NPC") of the UDP taken on the 3<sup>rd</sup> October, 2009 to refer the matter of the conduct of the Applicant relating to certain statements made by the Applicant to the press on the*

*1<sup>st</sup> October, 2009 to the UDP Central Executive for further consideration until the trial of the Claim or further Order.*

57. The Applicant is to give an undertaking in damages in the event the Respondent is to suffer any as a result of this order.
58. Cost in the cause.

.....  
Minnet Hafiz  
Supreme Court Judge

Dated this 17<sup>th</sup> day of December, 2009