

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006 – 01280

BETWEEN

ABASEWOLU KHALABI

FIRST CLAIMANT

ANTHONY WOODROFFE

SECOND CLAIMANT

AND

TRINBAGO UNIFIED CALYPSONIANS' ORGANISATION DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

APPEARANCES:

Ms. S. Gopeesingh holding for Mr F. Scoon for the Claimants

Mr T. Guerra SC leading Mr K. Wright for the Defendant

Dated: 25 July 2012

JUDGMENT

1. The Defendant organisation was established by Act of Parliament, No. 33 of 1998. The Act provided for its affairs to be managed by its General Council whose powers would be prescribed by the organisation's constitution. This Constitution was established on 12 September 1993.

2. The claimants have a dispute with the organisation. They say they are members. The defendant says they are not and must prove it.

3. On 1 May 2005, a meeting purporting to be the Annual General Meeting (AGM) of the organisation passed certain amendments to the Constitution. The claimants were present at that meeting. The claimants say the meeting was invalid because sufficient notice of the meeting was not given, the amendment was not circulated beforehand, and there was no proper quorum. They also say the amendments were *ultra vires* the governing Act.

4. The defendant purported to classify the claimants as associate members. This then disentitled them to stand for office in the organisation. The claimants say they were not given an opportunity to be heard on this before the reclassification.

5. Given the nature of the dispute, the court had urged the parties to try to resolve this matter out of the court. But it was not. Several matters now, therefore, fall to be resolved.

6. The first issue is whether the claimants were members of the defendant organisation.

7. The defendant says the claimants cannot produce membership cards. They are, therefore, not members. The defendant, however, did not produce an up to date record of membership. Their witnesses noted that they faced difficulties with their records.

8. On this issue I find on a balance of probabilities that both claimants were members of the defendant.

9. The parties agreed each others' documents. Documents 17 and 18 of the claimant's were receipts for membership fees of the defendant. They were signed by Wayne Mac Donald, an Assistant Secretary of the defendant and a witness in the case. I found his explanation for these receipts to be unconvincing. The first claimant also produced a copy of the Zonal Monarch Registration Form of 22 June 2005 (Claimant's Document No. 35). The rules of the competition provide (rule 2) that the competition was open only to members. The first claimant produced a copy of the North Zone subscription for membership dated 18 January 2006. Membership fees can be paid into the Zones. The first claimant was also present at the AGM of 1 May 2005. He was allowed to speak and participate. No objection was taken that he was not a financial member. He also signed the attendance register as a member. He had also received a letter dated 9 October 2003 from Dorril Hector on behalf of the defendant for him to write a letter to his previous Zone (south) to indicate his change of address. His status was also being changed to Associate Member. This acknowledges that he was a previous member.

10. Regarding the second claimant, the position is equally clear. Document 19 of the claimants' bundle is his membership application form. Document 32 of the defendant is a North Zone receipt of his membership dated 18 April 2006. Document 27 of the claimants' bundle is a letter dated 18 January 2005 from the second claimant to the General Secretary of the defendant requesting the transfer of his membership from the North Zone to the Tobago Zone and the General Secretary's written approval of the request. Document 25 of the claimant's documents is his cheque for payment of membership fees for himself and others notably, Kizzy Ruiz, who it is accepted was a member of the defendant. His name also appears in the minutes of the Tobago Zone AGM as a financial member present. I found accordingly that there is overwhelming evidence that he is a member of the defendant. I did not accept the contrary assertions of the defendant's witnesses.

11. In this regard, it should be noted that no issue arises on the payments up to 2005, since membership fees were not being collected after a certain time.

12. I therefore hold that the claimants were bona fide financial members of the defendant at the relevant times.

13. The next challenge by the claimants is about the AGM of 1 May 2005. At this meeting amendments to the 1993 Constitution were purportedly passed.

14. Here three issues are concerned. The first relates to whether sufficient notice was given for the holding of the meeting. The second relates to whether notice of the proposed amendment was circulated beforehand. The third issue is whether there was a sufficient quorum for the meeting.

15. On the third issue, the Constitution provided for a quorum to be one third of the membership of the defendant. Neither side gave evidence of the number of members in the defendant as of 1 May 2005. The defendant's witnesses contend that this meeting was an adjourned meeting since the meeting was to be held on 8 January 2005. However, due to a mix up in booking the venue, the members were present, but the venue was not available so it was adjourned to 1 May 2005.

16. The minutes of the AGM state that 76 members were present when the meeting was called to order. Two sentences after, however, curiously record: "The meeting however attracted a total of ninety two (92) members." Later on, on the amendments to the Constitution, 35 are recorded for; 15 against; and, 5 abstentions. The defendant's witness, Michael Legerton noted that 76 persons were present at the meeting. For 2006, a list of financial members was published. It gave 330 members. There is, however, no direct evidence from either side of how many persons were members of TUCO in May 2005. The defendant gave no evidence on this issue. It would have been expected that they would have given evidence on this. They must have known who their members were in 2005. The failure to do so can lead to an inference against them.

17. However, it is to be noted that no issue was taken by the claimants on the day of the meeting that there was no quorum. It is not recorded as a concern in the minutes. The court also cannot conclude based on the 2006 membership list that there were in excess of 300 members in May 2005. There was no membership list produced for before 2005. I am unable to hold on the evidence therefore that there was not a quorum for the meeting of the 1 May 2005.

18. Of significance, however, is that the meeting purported to proceed on the basis that the persons present were all financial members. There was apparently no list of financial members. It must therefore be presumed that all the persons who were allowed to append their names to the register were in fact financial members. I should note for completeness that the quorum issue was not raised by the claimants on the pleadings.

19. The next issue concerns the notice for the meeting and the notice of the resolution amending the Constitution.

20. The Constitution of the defendant at Article 25 provides that 21 days notice must be given for the holding of the general meeting. That said article provides that the accidental omission to give notice of a meeting or the non-receipt of notice of the meeting shall not invalidate the proceedings in such meetings: Article 25(3) (b).

21. The claimants indicate that they did not get this requisite notice of the meeting. Nonetheless they attended. No issue was made of this. While notice of a meeting is important, this requirement can be seen as an irregularity which the membership appeared to have waived at the meeting. It appears well established that if all members of an organisation are present at a meeting they can waive any insufficiency of notice: ***Re Express Engineering Works Ltd* [1920] 1 Ch 466, CA; *Re Oxted Motor Co* [1921] 3 KB 32.**
22. A different colour must, however, be given to the resolution to amend the Constitution, which was in the nature of a substantive matter. This amendment proposed the far reaching change of the replacement of Articles 1 to 33 by new Articles 1 to 24.
23. Article 24.4 (b) of the 1993 Constitution provided that a member could submit a resolution to any general meeting provided that at the prescribed time before the meeting he had served on the organisation a notice in writing containing the proposed resolution.
24. Further, it provides: “Thereafter the General Secretary shall include in the notice of the meeting, and shall in any other case issue as quickly as possible to the members entitled to notice of the meeting, notice that such resolution is proposed.”

25. Mr Guerra in his written submissions has quite correctly accepted that the amendment to the TUCO Constitution was an important decision for which members should have been given notice: paragraph 11 of his submissions dated 10 November 2011. At paragraph 12 of his submissions he stated:

“Thus the non compliance to the requirement to the giving of notice of the amendment of the 1993 TUCO Constitution was detrimental to the making of the amendments but should in no way invalidate the proceedings at such meeting.”

26. Put another way, the meeting could go on, but the required notice of the resolution proposing the amendments having not been given to the members, that particular business of amending the Constitution could not go forward.

27. The defendant has not contended that notice of the resolution was given before the meeting. The claimants' evidence suggests, which I accept, that notice of the amendments was only given on the day of the meeting. At paragraph 13 of his witness statement, the first claimant stated that Selwyn James on 1 May 2005 at the meeting proposed the amendment of the Constitution. Most of the members had not seen it before. There were insufficient copies to circulate. This has not been properly refuted by the defendant. There had not, therefore, been adequate notice, in keeping with the Constitution, of the proposed changes.

28. In these circumstances, I hold that the proposed amendments were not properly before the meeting for consideration. Any purported passing or adoption of those amendments was, therefore, invalid. The appropriate course would have been to adjourn this matter for consideration pending adequate notice being given.

29. It follows from this finding that the purported change in classification of the claimants' membership was invalid since these were made under the provisions of the amended Constitution.

30. In any event, I would have held that the purported reclassification of the claimants to associate members was also invalid. They were members of the defendant organisation before. They were not given a hearing as to whether they also fell into the classification of "calypsonian" as provided for under the proposed amendment to the Constitution. Previously, membership was wider and not restricted only to persons who were calypsonians. Further, no transitional provisions were contained in the proposed amendment to deal with persons who would have previously enjoyed full membership and who were now being relegated to associate membership. They were, in effect, being disenfranchised without being given an opportunity to advance a case why they ought not to be.

31. Given my decision on the invalidity of the proposed amendments, it is not necessary to make any findings on the substantive amendments on whether they are in contravention of Act No. 33 of 1998. I would note, however, that it would, in general, be inappropriate to make any amendments to the governing rules of the defendant that are in contravention of the plain meaning and intent of Act No. 33 of 1998.

Order

32. With the passage of time certain of the orders sought by the claimants are no longer called for and it is also necessary to refashion the original reliefs claimed to suit the evidence and findings. I will therefore make the following order:

(i) It is declared that the claimants were on 1 May 2005 members of the defendant organisation.

(ii) It is declared that the purported amendments to the defendant's 1993 Constitution on 1 May 2005 were invalid.

(iii) It is declared that the subsequent purported reclassification of the claimants to be associate members of the defendant was invalid.

(iv) The decision to disqualify the first claimant from standing for election as an executive member of the defendant in 2006 on the ground that he was an associate member was invalid.

33. The claimants have thus substantially succeeded in their claim. They are entitled to their costs from the defendant in the sum of \$14,000.00 each.

A Final Note

34. As citizens of Trinidad and Tobago, the calypso art form is important to all of us. It was started here and it is here that it has been nurtured, grown, and spread into many different forms and directions. It is important, therefore, that there is proper regulation of the artistes who perform it by legislation and by the governing rules of the organisation.

35. The Constitution or governing rules of an organisation ought not to be changed willy-nilly or in haste. There must be time for adequate consideration, full deliberations, mature reflection, and wise decision making. An essential component of that is that persons affected must be given the opportunity to read and consider the proposed changes. It is hoped that those concerned would have learnt from this experience which has caused bitterness and hard feelings among some in the calypso fraternity, as reflected in the unwillingness of the parties to try to resolve these matters in an amicable way. This is but a word to the wise.

Ronnie Boodoosingh

Judge