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OPINION

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1. My first observation of the Blenman J judgment is that Messrs Mendez & Martineau were entirely comprehensive in their submissions on behalf of the respondents. Indeed, the judge appears to have adopted all they contended such that, in my view, she should have readily found for the respondents. However, in deserting that logical path, the judge erred in law by creating for herself a test that was neither juridically sound nor one that was even put to her by the parties.

2. Blenman J goes wrong at paragraph 243 of her written judgment where she creates a test that does not stem from any of the cases put before her. Her self-created test is to decide (to quote): "whether it does not appear that the result (of the election) was not affected". This so called test does not emanate from Edgell v Glover [2003] EWHC 2566 (QB) (as proposed by the judge). Indeed, that was a case where there was a one vote difference between the candidates and it was known for a fact that one of the postal votes had been counted illegally (wholly different circumstances to the facts before Blenman J). It was no surprise, therefore, that the court in 'Edgell' found at paragraph 32 of its judgment that "(T)he evidence discloses that the result (of the election) is affected by the one error". However, that judicial comment does not provide a test upon which Blenman J can rely. In my view, neither the facts nor the conclusions of the High Court in 'Edgell' have any authoritative or persuasive bearing on the case before Blenman J. She was wrong to derive any legal test from 'Edgell'; let alone to make it the bedrock of her decision-making.

3. Yet, the established legal test, as set out in Morgan v Simpson [1975] QB 151, provides a very substantial case for the petitioner to discharge; namely, the petitioner must effectively show that the outcome of the election was a travesty or sham. Add to that high bar the need for the petitioner to provide a preponderance of evidence, Blenman J should not have watered down her decision-making to the legal equivalent of a shrug of the shoulders, deserting the established test in 'Morgan' and simply saying that it does not appear that the results of the elections were not affected. That does not constitute an effective judgment.

4. The real vice of Blenman J's judgment (apart from watering-down the substantial test in 'Morgan') is that such an approach creates a reverse burden of proof on the respondents. Further, by requiring the respondents to show that there was no affect on the outcome, the respondents are being asked to prove a negative. This is contrary to the rules of evidence. Yet, even if that was the correct approach (and it certainly is not), the respondents in these cases were able to discharge that burden because Blenman J said she found the mathematical analyses and comparisons of respective general election turnouts to be unhelpful to her decision-making. Thus, if the complaint of the petitioners was that the election results were affected, the respondents were justified in their defence because the figures did not prove any affect.

5. The role of the courts in matters of constitutional significance is to take into account the public interest. Blenman J's capricious approach has led to a severe constitutional crisis. The judgment lacks both the necessary balancing exercise of public interest against the need for the petitioner to discharge a high burden.

6. In its juridical failure to identify a workable legal test, the judgment fails for lack of legal certainty. Should this judgment be allowed to stand, any election in the Caribbean that is substantially conducted in accordance with the law of elections will be prone to being undermined by the whims of the disappointed voter or candidate; thus, throwing into chaos the future of the democratic process in the Caribbean.

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