

IN THE SUPREME COURT OF BELIZE, A. D. 2013

CLAIM NO. 677 OF 2012

BETWEEN:

(LEONEL REYES	CLAIMANT
(AND	
(THE ATTORNEY GENERAL	FIRST DEFENDANT
(THE MINISTER OF NATURAL	SECOND DEFENDANT
(RESOURCES AND THE	
(ENVIRONMENT	

-----

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Said Musa, S. C., for the Claimant

Mr. Herbert Panton for the First Defendant and Second Defendant

-----

**R U L I N G**

1. This is an application to strike out a Claim in this matter on the basis that this present claim is based on the same facts as Claim No. 767 of 2011 Leonel Reyes v. The Attorney General and the Minister of Natural Resources. Claim No. 767 of 2011 was an application

brought by Leonel Reyes against the Attorney General and the Minister of Natural Resources where Mr. Reyes sought leave to apply for judicial review. Leave was granted on 21<sup>st</sup> February, 2012, by Awich J (as he then was). When the substantive claim was about to commence before Legall J on 4<sup>th</sup> December, 2012, the Defendants raised a preliminary objection that the Claim had not been brought within 14 days of leave being granted as required by the rules. Legall J. heard submissions from both sides on the matter and just before judgment was to be handed down, Counsel for the Claimant announced that he would be withdrawing the Claim. The Claimant then filed a notice of discontinuance of Claim No. 767 of 2011 on 10<sup>th</sup> December, 2012, and on that same day commenced this Claim No. 677 of 2011 seeking certain administrative orders. The Defendants seek to have this Claim struck out as an abuse of process of the court on the following grounds:

- (a) The Claimant/Respondent's Claim be struck out as it has not complied with Part 56.3(1) of the Supreme Court (Civil Procedure) Rules 2005 and/or;
- (b) The Claimant/Respondent's Claim be struck out as the Claim is an abuse of the process of the Court and/or;

(c) The Claimant/Respondent's Claim be struck out as the Claim discloses no reasonable grounds for bringing the Claim.

2. The first limb on which the Defendant seeks to strike out this Claim is that the Claimant has not complied with Part 56. 3(1) of the Supreme Court Rules. Learned Counsel for the Defendants Mr. Panton argues that the claim should be struck out because of non-compliance with Rule 56.3(1) which states:

56.3(1): *“A person wishing to apply for judicial review must first obtain permission.”*

On behalf of the Defendants, Mr. Panton urges on the court that this present claim is substantively the same as the previous claim, and since this claim is in essence a claim for judicial review, it ought to be struck out as no permission has been sought or obtained from the court. Mr. Musa, S. C., for the Claimant in response submits that this is not a claim for judicial review. It is a claim for administrative relief which the Claimant is fully entitled to bring. As it is not a claim for judicial review, there is no need to seek leave.

I have looked at the nature of the relief sought and it appears to me that this is indeed a claim for administrative relief, where the Claimant is seeking declarations and injunction from the court and not one for judicial review. As such, there is no need to seek leave. While it is true that the Claimant sought judicial review in a different matter involving the same parties, I do not see how that prior course of action can now be a bar to his seeking relief in this present case. This point was already decided by the Court of Appeal in Civil Appeal No. 18 of 2007 **Belize Bank Ltd. and The Association of Concerned Belizeans et al v. The Prime Minister and Minister of Finance** aptly cited by Learned Counsel for the Claimants Mr. Musa, S. C., in his written submissions on behalf of the Claimant/Respondent. Carey J.A. said at page 8 as follows:

*“There is I think, good reason not to seek to assimilate the Belizean and English positions, an exercise which Mr. Plemming Q.C. wishes us to perform. In England, there is no written Constitution, but there is in Belize. The effect of the written Constitution is that an application for an administrative order can be made either by judicial review or constitutional motion. Consequently the rules do not require leave in one but*

*they do in the other. The significance of what I have stated thus far is to demonstrate that the Belizean and English positions are divergent. Ms. Lois Young, S. C., is correct when she argues that Part 56 gives the court great flexibility in dealing with claims for administrative orders. The former situations are gone and the court has a wide selection of remedies and combination of remedies to choose from. This can be seen by a reference to Rules 56.1(4); 56.8(2); 56.6 (3); 56.13 (3). The New Rules should be given a liberal rather than a restrictive interpretation.”*

This is clearly not a claim for judicial review. The first ground fails. The previous claim for judicial review was discontinued. The Claimant is free to bring this claim for administrative orders.

3. The second ground is that this claim is an abuse of the process of the court. The Defendants’ Counsel argues that this claim should have been brought by judicial review and since the Claimant is now out of time, the Claimant is seeking declarations and should not be allowed to do so. He urges that since the Claimant has not complied with rule 56.3(1) this present Claim for declarations should be struck out as an abuse of process of the court. Learned Counsel for the Claimant in

rebutting this argument has relied on the case of The Belize Bank v. ACB Civil Appeal No. 18 of 2007 where the Court of Appeal held that the Claimants did not have to proceed by way of judicial review in order to pursue declaratory reliefs. The difference between the English position in the *O'Reilly v. Mackman* [1983] 2 A. C. 237 case and the legal position in Belize was elucidated by Carey JA. His Lordship stated that the Rules in Part 56 give the Court great flexibility in dealing with claims for administrative orders. I agree with the submissions made on behalf of the Claimant on this ground, and I find that this ground also cannot stand.

4. The final ground brought by the Defendants is that the Claim discloses no reasonable grounds for bringing the Claim. Learned Counsel for the Defendants in advancing this ground submits that Rules 56.6(2) and 56.6(3) can only be invoked if the matter has not yet gone before the courts. I have looked at the authorities submitted and at the rules and I see no support for such a proposition. I see no such requirement in the rules and to uphold such a submission would in my view be a direct contravention of the spirit and the letter of the rules as interpreted by the Court of Appeal in Civil Appeal No. 18 of 2007 The Belize Bank v ACB. I agree with the submission made on

behalf of the Claimant that the essence of this Claim is a breach of contract and the failure of the Defendant to complete the sale of property by transferring title to the Claimant. Such a claim is obviously one of substance as a private citizen is claiming that his rights have been contravened by the state. For this reason, this ground also fails.

5. The application to strike out this claim is hereby dismissed.
6. Costs awarded to the Claimant in the sum of \$3,000.00 to be paid by the Defendants.

***Dated this 16th day of October, 2013***

---

**Michelle Arana  
Supreme Court Judge**