

IN THE COURT OF APPEAL OF BELIZE AD 2013  
CIVIL APPEAL NO 27 OF 2010

- (1) **THE ATTORNEY GENERAL OF BELIZE**
- (2) **THE MINISTER OF NATURAL RESOURCES  
AND THE ENVIRONMENT**

Appellants

v

- (1) **THE MAYA LEADERS ALLIANCE and**
- (2) **THE TOLEDO ALCALDES ASSOCIATION both on  
behalf of the Maya villages of the Toledo District**
- (3) **JUAN POP on behalf of the Maya village of  
Golden Stream**
- (4) **DOMINGO CAL on his own behalf and on behalf  
of the Maya village of Aguacate**
- (5) **LUCIANO CAL on his own behalf and on behalf  
of the Maya village of Bladen**
- (6) **ALBERTO HUN on his own behalf and on behalf  
of the Maya village of Blue Creek**
- (7) **CANDIDO CHO on his own behalf and on behalf  
of the Maya village of Crique Jute**
- (8) **LUIS CHO on his own behalf and on behalf of the  
Maya village of Crique Sarco**
- (9) **PEDRO CUCUL on his own behalf and on behalf  
of the Maya village of Dolores**
- (10) **MANUEL CHOC on his own behalf and on behalf  
of the Maya village of Indian Creek**
- (11) **ALFONSO OH on his own behalf and on behalf of  
the Maya village of Jalacte**
- (12) **MARIANO CHOC on his own behalf and on behalf  
of the Maya village of Jordan**
- (13) **EDUARDO COY on his own behalf and on behalf  
of the Maya village of Laguna**
- (14) **PABLO SALAM on his own behalf and on behalf  
of the Maya village of Medina Bank**
- (15) **ROLANDO AGUSTINE PAU on his own behalf and  
on behalf of the Maya village of Midway**
- (16) **LORENZO COC on his own behalf and on behalf of  
the Maya village of Otoxha**
- (17) **SANTIAGO COC on his own behalf and on behalf  
of the Maya village of Pueblo Viejo**
- (18) **SILVINO SHO on his own behalf and on behalf of  
the Maya village of San Antonio**

- (19) **IGNACIO TEC on his own behalf and on behalf of the Maya village of San Benito Poite**
- (20) **GALO MENJANGRE *(sic)* on his own behalf and on behalf of the Maya village of San Felipe**
- (21) **FRANCISCO CUS on his own behalf and on behalf of the Maya village of San Marcos**
- (22) **MARCOS ACK on his own behalf and on behalf of the Maya village of San Miguel**
- (23) **JUAN QUIB on his own behalf and on behalf of the Maya village of San Vicente**
- (24) **LIGORIO COY on his own behalf and on behalf of the Maya village of Santa Anna *(sic)***
- (25) **ELIGORIO CUS on his own behalf and on behalf of the Maya village of Santa Theresa *(sic)***

Respondents

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BEFORE

The Hon Mr Justice Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Mr Justice Brian Alleyne	Justice of Appeal

D A Barrow SC and I Swift, Crown Counsel, for the appellants.  
A Moore SC for the respondents.

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14 March, 2014.

**MORRISON JA**

[1] By its judgment given on 25 July 2013, the court (i) dismissed the appellant’s appeal against the judgment of Conteh CJ, by which the respondents were declared to be entitled to the enjoyment of customary land tenure in all Maya villages in the Toledo District; and (ii) allowed the appeal against the Chief Justice order that the respondents were as a consequence entitled to certain remedies. In addition, the court dismissed the respondents’ cross-appeal, by which it was contended that they were entitled to an award of damages for violation of their constitutional rights.

[2] In response to the court's direction, the appellants and the respondents filed written submissions on the question of costs on 14 August 2013 and 24 September 2013 respectively.

[3] For the appellants, it was submitted that, in accordance with the standard rule that costs should follow the event, they should have 75% of their costs in this court and in the court below. This submission was based on the consideration urged by the appellants that, having succeeded on three of five grounds of appeal, and entirely on the cross-appeal, they were "the bigger and overall victors" in the appeal.

[4] In support of their submission, the appellants referred us to the decision of the Court of Appeal of Barbados in **Weekes v Advocate Co Ltd (2002) 66 WIR 26, para [41]**, in which Sir David Simmons CJ observed (in a case in which the claimant was found to be contributorily negligent to the extent of one-third of her damages):

"A plaintiff will ... generally be entitled to the full costs of the action, even if found contributorily negligent, although costs are always in the discretion of the court and an award will be based on the particular circumstances of each case."

[5] We were also referred by the appellants to the decisions of this Court in **British Caribbean Bank v The Attorney General of Belize** (Civil Appeal No 6 of 2011, judgment delivered 28 December 2012) (in which the court considered that the respondent, as "the bigger of the two partial victors in the appeal", was entitled to 80% of its costs); and **Rhett Allen Fuller v The Minister of Foreign Affairs** (Civil Appeal No 45 of 2011, judgment delivered 28 June 2013) (in which, in a case in which the appellant succeeded in the overall result, though not on all the grounds advanced on his behalf, it was ordered that the appellant should have 75% of his costs in this court and in the court below).

[6] The respondents, for their part, while accepting that it may be appropriate in a proper case for costs to be apportioned, so as to reflect the relative success of each party, submitted that an award of 90% of their costs “would be a fair disposition”.

[7] The basis of this submission was that the respondents were successful on the main issue in the appeal, that is, the existence and legal nature of their customary property rights. It was this issue, the respondents pointed out, that consumed “virtually all of the oral arguments, written submissions, and evidence”, at the trial and on appeal. On the other hand, the issue of remedies, on which the appellants were successful, “involved very little proportion of the submissions”. In support of this submission, the respondents furnished a detailed chronology of the (i) the trial, over a course of six days in 2009; and (ii) of the trial, over the course of five days in March and one day in June 2011.

[8] Finally, the respondents submitted, basing themselves on the decision of Supreme Court of British Columbia in **Concerned residents of property owners in or about Tlell (Community) v British Columbia (Minister of Transportation and Highways, et al** [1994] 3CJ No. 3173, that where a government encourages litigation against it to obtain clarification of a legal issue from the courts “it is inappropriate to award costs against the claimants who were compelled to bring the action”.

[9] In the light of these submissions, I approach the matter on the basis that, firstly, the award of costs is always a matter for the court’s discretion in the circumstances of the particular case under consideration. Secondly, costs should ordinarily follow the event. This was indeed characterised by Sosa P in **British Caribbean Bank v The Attorney General of Belize** (at para [16]) as “the fundamental principle”. But, thirdly, in a case in which a party – or each party – has had a measure of success only, it is appropriate for the costs to be apportioned as between the parties to reflect this outcome.

[10] In this case, the appellants have pointed out and rely on the fact, that they were successful on three of the five grounds of appeal filed by them, as well as on the cross-appeal, to which they were respondents. However, I doubt that this kind of “box-ticking approach” (to borrow a phrase made by Lord Hoffmann in a wholly different context in **National Commercial Bank Jamaica Ltd v Olivet Corp [2008] UKPC** \_\_\_ can possibly do justice to a case such as this, in which, as the respondents have submitted (and convincingly demonstrated), the foundation issue of their entitlement to customary land tenure in the Toledo District, on which they succeeded, dominated the proceedings, both here and the court below. Which is not to say, of course, that this tips the balance wholly the other way: the question of the appropriate remedies to which the respondents should further be entitled, on which the appellants succeeded in this court, must on any objective view of the matter be a significant – if not equally important – factor as well.

[11] So the award of costs in this case calls for, in my view, a ..... approach that recognises, not only the time spent in ventilating particular issues during the proceedings, but also the relative importance of the issues to the parties. Therefore, taking all factors into account and doing the best one can in an area of plainly imperfect science, I would strike the balance in this case in favour of an award of 70% of their costs to the respondents, in this court and in the court below. In a case of partial victories on either side, I consider that the respondents, who successfully established the platform upon which their case was heard at all stages of proceedings, that is, their right to enjoyment of customary land rights in the Toledo District, have been “the bigger of the two partial victors” (per Sosa P in **BCB v AG** at para [16]).

[12] In coming to this conclusion, I should perhaps make it clear that I have not taken into account the respondents' submission (referred to at para [8] above) that an award of costs in a Government's favour would be "inappropriate" in these circumstances. Whether principle as broadly stated – and as far-reaching – as this exists at all is a matter that must, in my view, await full argument on some other occasion.

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MORRISON JA

**ALLEYNE JA**

[13] I have read the proposed ruling on costs prepared by Morrison JA. I agree with it and have nothing to add".

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ALLEYNE JA