

IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 86 OF 2014

BETWEEN:

IN THE MATTER of section 121 of the Constitution of Belize

AND

IN THE MATTER of an Application that Edmond Castro has breached the Code of Conduct as prescribed for members of the House of Representatives

TREVOR VERNON

Claimant

AND

EDMOND CASTRO

Defendant

BEFORE: Hon. Chief Justice Kenneth Benjamin.

May 5 & 19, 2014.

Appearances: Mr. Arthur Saldivar and Mr. Phillip Palacio for the Claimant.
Mr. Denys Barrow, SC and Ms. Naima Barrow for the Defendant

JUDGMENT

[1] By a Fixed Date Claim Form supported by Affidavit filed on February 26, 2014, the Claimant, Mr. Trevor Vernon, claims declaratory relief pursuant to Rule 56.7(1)(c) of the Supreme Court (Civil Procedure) Rules (“CPR”) against the Defendant, Mr.

Edmond Castro, a member of the House of Representatives of Belize. The following reliefs were sought:

- “1. A Declaration that the first Defendant is in breach of section 121(1)(a) of the Belize Constitution Act, Cap. 4 of the Substantive Laws of Belize, in that he has placed himself in a position in which he has a conflict of interest;
2. A Declaration that the First Defendant is in breach of section 121(1)(c) of the Belize Constitution Act, Cap. 4 of the Substantive Laws of Belize, in that he has used his office for private gain;
3. A Declaration that the First Defendant is in breach of section 121(1)(e) of the Belize Constitution Act, Cap. 4 of the Substantive Laws of Belize, in that he has allowed his integrity to be called into question;
4. Further or other relief which the Court doth deem just.”

THE CLAIM

[2] The crux of the Claimant’s case can be found in paragraphs 5 to 18 of his sworn Affidavit as follows:

- “5. He was appointed as a Minister of State in the Ministry of Works and Transport but was conferred ministerial authority by the Prime Minister of Belize Honourable Dean Barrow over the ministry’s portfolio of Transport. He also assumed responsible for the portfolio of Civil Aviation.
6. The Ministry’s responsibilities are for Works (Bridge Construction and Maintenance, Public Works and Road Construction and Maintenance); Transport (Belize Ports Authority, Licensing of Vehicles, Postal Services, Ports and Harbours, Salvaging Wrecks, Traffic and Transport); Civil Aviation.
7. The Belize Airports Authority (hereinafter referred to as “the Authority”) is a statutory body established by law and is governed by a Board of Directors appointed by the Minister responsible for Civil Aviation, who was at the material time, the Honourable Rene Montero.
8. The Authority’s duties are to (a) administer, control and manage prescribed airports and any other property vested in it; (b) provide

and maintain such services and facilities as are in its opinion necessary or desirable for the efficient operation of the prescribed airports or as the Minister may require; and to provide rescue and firefighting equipment and services at prescribed airports.

9. In or around April 2013, the Authority caused to be issued a cheque for the sum of Four Thousand Dollars (\$4,000.00) to the First Defendant purportedly to assist with funeral expenses for his deceased mother. **A copy of the cheque has been exhibited as "TV1"**.
10. The Authority additionally issued another cheque in the sum of Three Thousand Three Hundred Thirty Seven Dollars and Fifty Cents (\$3,337.50) to David Coye Funeral Home and Parlour also as assistance to the First Defendant with the burial of his mother. **A copy of the cheque has been exhibited as "TV2"**.
11. A further cheque in the sum of Five Thousand One Hundred Fifty Six Dollars and Fifty-Six Cents (\$5,156.50) dated May 10, 2013 was issued to the First Defendant from the opening account of the Authority for further expenses related to his mother's funeral. **A copy of the cheque has been exhibited as "TV3"**.
12. In or around December 2012, the First Defendant caused to be issued yet another cheque, this time in the sum of One Thousand Nine Hundred and Thirty-Seven Dollars (\$1,937.00) from the Authority's operation account to Ordonez Bike Shop as assistance for his cycling team, the Clear the Landing Cycling Team. This cycling team is owned by the First Defendant and his sons are members of his team. **A copy of the cheque has been exhibited as "TV4"**.
13. The Authority also issued cheques to Bowen & Bowen Limited manufacturers for soft drinks and alcoholic beverages in the sum of \$5,000.00 and \$5,321.66 respectively as payments for two political social functions hosted by the First Defendant in two separate villages of which forms a part of the Belize Rural North electoral constituency. **Refer to "TV1"**.
14. Cheques were also issued to the First Defendant's secretary for his political office, Erlean Baptist in the sums of \$200.00 and \$500.00 respectively; to his official driver Norman Middleton in the sum of \$300.00 (Refer to "TV3"); to his campaigners, Jacqueline Cassasola in the sum of \$600.00; Maureen Olivera in the sum of \$200.00 (Refer to "TV6") Sharon Budd in the sum of \$150.00; Melanie Revers in the sums of \$500.00 and \$600.00; and Zellie

Tillet in the sum of \$1,000.00. ***Copies of these cheques have been exhibited as “TV5” “TV6” “TV7” “TV9” “TV10”.***

15. I have been informed and do verily believe that the monies issued by the Authority to the First Defendant and on his behalf have nothing to do with the Authority whose functions and duties are established by law.
16. I am also of the belief that the Authority was induced to do acts and things mentioned in paragraphs 9, 10, 11, 12, and 14 thereof and each of them by undue influence of the First Defendant and under his direction, and pursuant to the faith, trust and confidence the Authority reposed in the First defendant but without any separate or independent advice and without the consideration or independent advice and without the consideration of the reasons for or the effect of what it was doing.
17. I have also been informed and do verily believe that as an individual who is subject to Code of Conduct, as mentioned above in paragraph 5, the First Defendant is not to accept a gift, the values of which exceeds the sum of Two Hundred and Fifty Dollars (\$250.00).
18. The First Defendant also has a duty by virtue of his position to ensure that he does not illegally use for his benefit or that of a third party, any property including money belonging to the Government of Belize or any statutory body or any government company or anybody providing public utilities to which he has access as a result of or in the course of the performance or his functions”.

THE APPLICATIONS BEFORE THE COURT

[3] The Defendant filed an Acknowledgement of Service on March 24, 2014. No Defence was filed.

[4] The present proceedings are in respect of the Notices of Applications filed by the Defendant on April 14, 2014 and on April 23, 2014. By Notice of Application filed on April 14, 2014, the Defendant applied to the court for the Claimant’s claim to be struck out pursuant to Rule 26.3(1)(c) of the CPR. The said Rule empowers the Court to strike out a statement of case or part thereof where:

“... the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim”.

The Notice of Application sought the following orders:

- “1. The Claimant’s claim against the Defendant be struck out because it is wholly incapable of succeeding and amounts to an abuse of process.
2. The Claimant’s claim against the Defendant be struck out because it discloses no reasonable grounds for bringing the claim.
3. The Claimant shall not without the permission of the Court first having been obtained commence a new claim against the Defendant arising out of acts which are the same or substantially the same as those relating to this claim.
4. The Claimant shall pay the Defendant’s costs of this application and of the claim.”

The grounds for the application were stated as follows:

- “1 The Claimant’s Fixed Date Claim Form and Affidavit Statement of Claim dated the 26th February, 2014 are brought pursuant to Rule 56.7(1)(c) of the Supreme Court (Civil Procedure) Rules 2005.
2. Part 56 of the Supreme Court (Civil Procedure) Rules 2005 deals with applications for administrative orders but the reliefs being sought against the Defendant are not administrative orders.
3. Rule 56.1(1) provides that
“This Part deals with applications –
 - (a) For judicial review
 - (b) For relief under the Constitution
 - (c) For a declaration in which a party is the Crown, a court, a tribunal or any other public body; and
 - (d) Where the court has power by virtue of any enactment to quash any order, scheme, certification or plan, any amendment or approval of any plan, any decision of a Minister or Government Department or any action on the part of a Minister or Government Department.”
4. The Claimant is seeking declarations as against the Defendant but he is neither the Crown, a court, a tribunal or a public body.

5. The Court is empowered by Rule 26.3(1)(c) of the CPR to strike out a statement of case if it appears that the statement of case discloses no reasonable ground for bringing a claim”.

[5] By Notice of Application filed on April 23, 2014, the Defendant applied to the court pursuant to Rule 10.3(8) of the CPR which states:

“a defendant may apply for an order extending the time for filing a defence”.

The Defendant sought the following orders:

- “1. The time for filing a defence be extended until after the hearing of the Defendant’s application to strike the claim brought by the Claimant.
2. The Claimant shall pay the Defendant’s costs of this application and of the claim.”

The grounds of the application were that:

- “1. Rule 10.3 of the Supreme Court (Civil Procedure) Rules 2005 permits a Defendant to apply for an order extending the time for filling a defence.
2. The Defendant has filed an application seeking to strike the claim brought by the Claimant on the ground that it is wholly incapable of succeeding, amounts to an abuse of process and discloses no reasonable ground for bringing the claim.
3. A favourable determination of the Defendant’s application to strike would render a defence unnecessary.
4. The time for filing a defence expires today and the Defendant’s application to strike has not yet been heard.
5. Should the Honourable Court decide not to strike the claim, the Defendant would need to be given time to file a defence so that judgment is not entered against him.
6. Supreme Court (Civil Procedure) Rules 2005 Part 26 Rule 26.1(2)(c) empowers this Honourable Court to extend the time for compliance with any rule.”

[6] At the outset of the hearing of the applications, Learned Counsel for the Claimant stipulated that the Claimant had no objection to the Notice of Application filed on April 23, 2014 by the Defendant seeking an extension of time to file his defence. However, objection was taken to the Notice of Application filed on April 14, 2014 and the issues were thereupon joined.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[7] Learned Senior Counsel for the Defendant, Mr. Denys Barrow, submitted the claim was framed as one for declaratory relief pursuant to Part 56 of the CPR. It was pointed out that Part 56 does not allow proceedings other than for administrative orders. Consequently, private law proceedings are not countenanced by Part 56 thus excluding proceedings arising out of a dispute between private parties. Proceedings cannot be brought under Part 56 unless the same are made by way of an application for Judicial Review or for relief under the Constitution or for a declaration in which a party is the Crown, a Court, a Tribunal or any public body. It was posited that nowhere in the claim was there not any averment that the Defendant is the Crown, a Court, a Tribunal or some other public body.

[8] In order to complete the argument in the event that the proceedings were mislabeled and fell within some other limb of the Court's jurisdiction under Part 56, Learned Senior Counsel contended that the claim cannot be passed off as a claim for judicial review, no application for leave having been made, nor as a claim for relief under the Constitution. More specifically, the fact that Section 121 of Constitution was cited could not provide an opening for the Claimant to seek relief as would be the case for breaches of the fundamental rights provisions or for challenges to the membership of the House of Representatives. It was said that section 121 stands alone as a Code of Conduct, breaches of which can be pursued under the Prevention of Corruption Act No. 21 of 2007. The Court was told that the provisions of the said Act operated to expand upon and enlarge the Code of Conduct set out in the Constitution by providing for an Integrity Commission with powers to investigate the matters complained of by the

Claimant. By contrast, the Constitution does not provide for any relief in relation to the Code of Conduct.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[9] In response, Learned Counsel for the Claimant Mr. Phillip Palacio, submitted that the power to strike out a statement of case is a draconian one which should be exercised rarely. He made reference to the case *Biguzzi v Rank Leisure Plc* [1999] 1WLR 1926 where the Court of Appeal held that in many cases there would be alternatives to striking out that would better achieve the overriding objective of a just result such as by way of an order for costs.

[10] Learned Counsel urged the Court that in the event that it acceded to the Learned Senior Counsel for the Defendant, ought to consider applying an alternative to striking out the claim. It was further suggested that the Court could possibly order that the Claim be amended to remove the parts that were offensive and inhibited the claim from proceeding.

[11] Reliance was also placed on the dicta of Master Charlesworth Tabor (Ag.) in case *Ray George v Attorney General of the Virgin Islands Claim No. BVIHCV2012/0161* where he iterated that the striking out of a statement of case or defence is a draconian step which a court should only take in exceptional circumstances. The Master made reference to the case of *Baldwin Spencer v the Attorney General of Antigua and Barbuda et al (Civil Appeal No. 20 A of 1997)* where Dennis Byron CJ(Ag.), (as he then was), restated the seminal test that should be applied by the court on an application to strike out in the following way:

“This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court...striking out has been described as ‘the nuclear power’ in the court’s arsenal and should not be the first and primary response of the court”.

[12] Learned Counsel characterized the attacks on the statement of case as being essentially technical objections which did not affect the merits or substance of the case.

Learned Counsel urged the Court to consider whether the allegations can be proven and whether the statement of case is so defective that without the intervention of the court it would not be able to proceed.

[13] Learned Counsel noted that in the case of *Pauline Hannigan v Andrew Cooke Hannigan [2000] AER D693*, Lord Justice Brooke said:

“...the interest of the administration of justice would have been much better served if the defendant’s solicitors had simply pointed out all the mistakes that had been made in these very early days of the new rules and Mrs. Hannigan’s solicitor had corrected them all quickly and agreed to indemnify both parties for all the expense unnecessarily caused by his incompetence. CPR 1.3 provides that the parties are required to help the court to further the overriding objective, and the overriding objective is not furthered by arid squabbles about technicalities such as have disfigured this litigation and eaten into the quite slender resources available to the parties.”

[14] Also cited was the dicta of Mottley, P in the case of *Attorney General v Marin and Another [2011] 2 LRC 464*, when he said:

*“This action concerned allegations that the former ministers of government had abused their office by acting in a manner that they knew was detrimental to the government or they were reckless in their conduct. This court does not in these proceedings have to determine the truth of these allegations but merely whether the action can be maintained by the Attorney General. These allegations are being made against the former ministers of government. By their very nature, they are serious and need full investigation by a court of law. In *Common Cause, A Registered Society v Union of India (1996) 3 SCJ 432* the Supreme Court of India, speaking of the role of a minister in a developing society, had this to say: ‘A minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people’s property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people.’”*

[15] Learned Counsel for the Claimant opined that this case has important consequences for the democracy of Belize, in that the Claimant has made serious

allegations against the Defendant which require investigation by a Court of law. It was said that the matters complained of were not vexatious, neither were they frivolous, especially considering the role that the Defendant plays in the Government of Belize.

[16] Learned Counsel expressed the view that with certain amendments, the Court should allow the matter to continue. It was suggested that the portion of the claim that explicitly sought declaratory relief under Rule 56 should be deleted. In addition, the Claimant should be allowed to place the claim on a Claim Form along with a statement of case setting out the contents of the Claimant's affidavit. In response to the query by the Court, Learned Counsel responded that the cause of action in the amended claim would be for breach of the statutory duty under the Belize Airport Authority Act and for undue influence.

THE DEFENDANT'S REPLY TO THE CLAIMANT

[17] Learned Senior Counsel for the Defendant rebutted the submissions made on behalf of the Claimant by highlighting that Counsel for the Claimant completely fails to recognize the difference between public law and private law and ignored the fact that there is no existing lis between the Claimant and the Defendant. It was reiterated that there exists a complete procedure under the Prevention of Corruption Act which includes criminal sanction by way of prosecution.

[18] Learned Senior Counsel responded that the objections taken by the Defendant are far from technical objections. In this regard he distinguished the three cases referred to by Counsel for the Defendant as all dealing with technical objections; whereas in the present case the issue is whether Part 56 of the CPR gives a cause of action to the Claimant and it is clear that it does not.

[19] Learned Senior Counsel went on to address the content of the Claim as embodied in the supporting Affidavit of the Claimant. It was gratuitously observed that the Claim was entirely based on matters of information and belief which was not permissible being hearsay only permissible in interlocutory proceedings. The exhibits to paragraphs 9 to 19 (excepting paragraph 18) were essentially hearsay and liable to be

struck out as such. On this basis, there existed no other cause of action that could be countenanced.

THE ISSUES

[20] In light of the of the submissions made by Learned Counsel on both sides the following issues arise for the determination of the Court:

1. Whether the Claimant has a cause of action under Part 56 of the CPR
2. If not, whether the Claim can be cured by way of amendment or otherwise

[21] It should at once be pointed out that while section 121(1) of the Constitution prescribes a prohibition against certain behaviour, the Code of Conduct does not go on to provide for a mechanism for its enforcement. The section reads as follows:

“121-(1) the persons to whom this section applies shall conduct themselves in such a way as not –

- (a) to place themselves in positions in which they have or could have a conflict of interest;*
- (b) to compromise the fair exercise of their public or official functions and duties;*
- (c) to use their office for private gain;*
- (d) to demean their office or position;*
- (e) to allow their integrity to be called into question; or*
- (f) to endanger or diminish respect for, or confidence in the integrity of the Government.*

(2) This section applies to the Governor-General, members of the National Assembly, members of the Belize Advisory Council, members of the Judicial and Legal Services Commission or Public Services Commission, members of the Election and Boundaries Commission, public officers, officers of statutory corporations and Government agencies, and such other officers as may be prescribed by law enacted by the National Assembly.”

Nowhere in the Constitution is there a remedy provided for a breach of the Code of Conduct. This can be contrasted with the enforcement provisions set out in Section 20

in respect of the fundamental rights provisions and Section 86 in respect of matters relating to the membership of the House of Representatives. It therefore follows that Section 121 stands by itself as declaratory of the conduct to be expected of the functionaries listed in Section 121(2) without provision for the enforcement of any breach.

FINDINGS

[22] This application raised the important question of the distinction between public law and private law. The Claimant elected to bring his Claim under Part 56 of the CPR which specifically sets out the procedure for applications for administrative orders which are conveniently noted in Rule 56.1(1) as being applications for: (1) judicial review; (2) relief under the Constitution ; (3) a declaration in which a party is the Crown, a court, a tribunal or any other public body; and (4) where the court is empowered by statute to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of or any action on the part of a Minister or Government Department. These are matters of public law for which the procedure is provided for in Rule 56.7.

[23] The Claim makes specific reference to Rule 56.7(1)(c) which states that where an application is made for a declaration the same must be made by way of fixed date claim identifying the nature of the relief being sought. The declaration herein referred to is that listed in Rule 56.1(c). Learned Counsel for the Claimant made no attempt to classify the claim as qualifying as an application for an administrative order. Indeed, the approach taken in argument tacitly conceded that the Claim did not qualify as falling within the bounds of Part 56. In fact, there was no answer provided to the Defendant's contention that there is no *lis inter partes* between the Claimant and the Defendant.

[24] The thrust of the Claimant's response was that the striking out of the Claim is a draconian measure that ought not to be exercised by the Court for what was a technical objection. It cannot be disputed that the striking out of a statement of case is the ultimate of the powers available to the Court and therefore, the Court ought to explore the possibility of applying some lesser sanction to address the defects in the Claim. In

this regard, Learned Counsel for the Claimant was invited to make submissions as to possible amendments to the Claim. However, no suggested amendments were forthcoming and even an invitation to frame the case in terms of a cause of action under private law was met with an unsatisfactory response. The principles enunciated in ***Biguzzi v Rank Leisure Plc*** (*supra*) and the dictum of Bryon, CJ (Ag.) (as he then was) in ***Baldwin Spencer v. the Attorney General of Antigua and Barbuda*** (*supra*) are beyond controversy. However, there is nothing that can be amended to render the Claim one under private law to cure the defect of the same having been brought under public law as provided for in Part 56 of the Rules.

[24] In the premises, it is ordered that the Statement of Case be struck out as disclosing no reasonable cause of action and no likelihood of succeeding. The Defendant is entitled to costs which are fixed in the sum of \$5,000.00. The said costs shall be paid before a new claim is commenced by the Claimant.

KENNETH A. BENJAMIN
Chief Justice