IN THE SUPREME COURT OF BELIZE, A.D. 2015

CLAIM No. 200 of 2014

BETWEEN:

AARON LINCOLN ARNOLD	**Claimant/Respondent**
AND	
THE ATTORNEY GENERAL	**1st Defendant/1st Respondent**
MAGISTRATE HURL HAMILTON	**2nd Defendant/2nd Respondent**

Before: The Honourable Madam Justice Shona Griffith
Date of Hearing: 19th February, 2015
Appearances: Ms. Samantha Matute, Crown Counsel for the Applicant/Defendants and Mr. Dean Lindo S.C., Counsel for the Respondent/Claimant.

DECISION

Introduction

1. This is an Application to Strike Out a claim filed pursuant to Rule 26.3(1)(b) of the Civil Procedure Rules (CPR), 2005. The claim sought to be struck out is a Fixed Date Claim filed pursuant to CPR 56 on 23rd April, 2014. The claim filed was for declaratory orders and consequential relief in respect of a decision of the 2nd named Defendant made against the Claimant on the 27th February, 2014 in the Corozal Magistrate's District. The Application to Strike Out was filed on 23rd January, 2015 and was heard on the 19th February, 2015. The Court at the close of arguments reserved its decision which is now provided in writing.

The Claim

2. The Claimant, Aaron Lincoln Arnold complains against a decision of the 2nd Defendant, Magistrate of the Corozal Magistrate's District, in which a civil judgment was awarded by the latter against the Claimant on 27th February, 2014.

The judgment was in respect of a claim for money and a description of the precise nature of those proceedings, is for these purposes, unnecessary. The Claimant alleges that the learned Magistrate in coming to his decision in favour of the plaintiff therein, refused allow the Claimant (then defendant) to put forward his case. Particularly, that the learned Magistrate refused to allow the Claimant to cross examine the plaintiff; refused to allow the Claimant to physically examine evidence admitted on behalf of the plaintiff; refused to allow the Claimant to give oral evidence on his own behalf and refused to allow the Claimant to submit any documentary evidence in support of his claim which the Claimant asserts that he had in his possession at the trial.

3. The legal complaint against the learned Magistrate's actions, which served as the basis of this claim, was that the learned Magistrate acted ultra vires section 23(3) of the District Courts (Procedure) Act, Cap. 97 of the Laws of Belize, which required that in determining the case before him the Magistrate was obliged to hear both the plaintiff and the defendant and their respective witnesses. In the circumstances, the claim prayed the following relief:-

> *"1. A declaration that the 2nd Defendant erred in law and/or misdirected himself and/or acted ultra vires section 23(3) of the District Courts (Procedure) Act, Chapter 97 of the Substantive Laws of Belize, in refusing to accept evidence at the hearing of the suit and is therefore null and void and of no legal effect;*
>
> *2. An order that the Claimant be at liberty to apply for any further consequential relief as may be necessary to secure the effect of the declarations made herein;"*

The Claimant also claimed costs and such further or other relief as deemed just by the Court.

<u>The Application to Strike Out</u>

4. The Application to Strike Out was brought pursuant to CPR 26.3(1)(b) which is extracted as follows:-

26.3(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –
(a) …

(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

(c) ....

(d) ….”

In particular, the application was put forward on three grounds. At the hearing, the first ground was abandoned and the application advanced on the remaining two grounds which were as follows:-

> *“(i) The claim amounts to an abuse of process in that the same ought to have been brought for judicial review under Part 56 of the Supreme Court (Civil Procedure) Rules, 2005; and*
> *(ii) The claimant failed to exhaust all alternative remedies.”*

It is considered that the two grounds are appropriately dealt with together under the head ‘abuse of process’ as individually or together they are capable of forming the basis of this head, in satisfaction of Rule 26.3(1)(b).

<u>The case for the Applicants/Defendants.</u>

5. The submission of Crown Counsel in this regard was that the claim for declaratory relief was filed in order to avoid having to file proceedings for judicial review which was the proper proceeding in order for the Court to review the decisions or acts of a public authority. This submission was put forward based on **O’Reilly v Mackman**[1] which it is said, established a general rule that a claim under public law for a prerogative writ or declarations must be brought by way of judicial review and that proceedings by ordinary action for those reliefs amounted to an abuse of the Court’s process. Crown Counsel cited from ***Mackman***, two main reasons for the existence of that rule as follows:-

> *“(i) It ensured that a Claimant who did not bring his judicial review claim promptly could not avoid the limitation rule by bringing the claim by an ordinary action; and*

[1] [1983] 2 A.C. 237

(ii) It ensured that the claimant obtained permission from the court, so that a hopeless case was dismissed at that stage, in turn protecting the public authority from a hopeless case."

6. The failure of the Claimant to bring his proceedings via judicial review it was submitted, amounted to an abuse of the Court's process as it allowed the Claimant to bypass the requirement for permission, at which stage the Court would have been entitled to subject the Claimant's case to the requisite tests which would accord with the reasons set out above. In particular, having brought his claim seeking declaratory relief only, the Claimant's case was not subjected to the Court's examination of whether there existed arguable grounds of judicial review.
7. In addition to the Claimant's case not having been scrutinized by the Court, Counsel for the Crown also submitted that had the Claimant applied for judicial review as he ought to have done, he would have been met with the argument that he failed to exhaust all available remedies. In this regard, as judicial review is to be a remedy of last resort and the Claimant had available to him a right of appeal from the Magistrate's decision, his application for permission for judicial review would likely have been refused. In the circumstances, it was contended that the claim for declaratory relief ought to be struck out as being an abuse of the Court's process.

<u>The Case for the Respondent/Claimant</u>.

8. The main thrust of the Respondent's arguments as put forward by learned Senior Counsel is that under Part 56 of CPR 2005, the Claimant in effect had a choice as to which remedy under that part he wished to pursue. In other words, the Claimant had at his option bringing proceedings for judicial review or merely seeking declaratory relief. In fact, learned senior Counsel submitted that the Claimant was in no way seeking to quash the decision of the lower court, but merely seeking declaratory relief as to the unlawfulness of the Magistrate's decision.

9. Learned Senior Counsel relied upon two Belizean authorities, one of which applied the other. The main authority relied upon was the case of **The Belize Bank Limited v The Association of Concerned Belizeans et al**[2] per Morrison JA who held that Part 56 '*conferred a free standing entitlement on litigants to move the court for a declaration, whether it be in respect of public or private law rights…*" It was also stated by Morrrison JA that the language of Part 56 was "*clear and unambiguous*". Additionally, learned senior counsel referred to the case of **Lois Young Barrow et al v Glenn Tillett**[3] where then Mendes JA cited with approval[4], both the judgments of Carey JA and Morrison JA insofar as they established that a litigant has under CPR Part 56, an alternative right to seek only declaratory relief as redress in a public law claim, rather than being constricted to an application for judicial review. On the strength of these authorities learned senior counsel submitted that the Claimant was well within his rights to opt to pursue his claim for only declaratory relief and not judicial review.
10. With respect to the Crown's submission that the Claimant had failed to exhaust available remedies, learned senior Counsel firstly pointed out that as the claim was not one of judicial review, no argument of exhaustion of alternative remedies arose. Additionally, it was submitted, the Claimant '*had sought leave from the learned magistrate to appeal the decision out of time which leave was refused*'. Again, taking into consideration this submission, learned senior counsel's position was that the Application to Strike Out ought to be dismissed.

The Court's Consideration

11. In considering the application to strike out, the Court finds that the essential issues can be stated as follows:-
    (i) Whether the Claimant is in fact at liberty to select alternative modes of redress under CPR Part 56 in respect of asserting his public law rights, and if so;

[2]Belize Civil Appeal No. 18 of 2007
[3] Belize Civil Appeal No. 20 of 2011
[4] Ibid @ para. 24

(ii) Does the existence of that option automatically preclude the Court from considering whether the proceedings for declaratory relief can amount to an abuse of the Court's process.

12. The Court firstly examines the judgments of Carey JA and Morrison JA in ***Belize Bank Ltd v Association of Concerned Belizeans*** (supra). This case concerned an appeal from a High Court order granting leave to the claimant therein to add additional prayers for declaratory relief to its public law claim. The appeal was sought on the basis that a claim pursued only on the basis of an alleged breach of public law rights ought to have been made only by way of judicial review proceedings under CPR Part 56. The appellant therein relied on ***O'Reilly v Mackman*** and referred to the origin of judicial review proceedings in England which introduced declaratory relief to public law rights. On the other hand, the Respondent therein contended that Part 56 clearly and unambiguously created a right to seek declaratory relief independent of judicial review proceedings. The Honourable Carey JA, began his analysis of what was an interlocutory appeal by acknowledging that Belize's Part 56 was not a replica of the English RSC Order 53 which governed judicial review proceedings in England.

13. After examining the RSC 53 position in England and what he described as the divergent position created by Belize's CPR 56, Carey JA concluded[5] 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…The New Rules should be given a liberal rather than a restrictive interpretation…"*

Thereafter, Morrison JA went into greater detail in examining the context of ***O'Reilly v Mackman*** having been decided following substantial reforms to the judicial review procedure in 1977 and the reluctance of English Courts following upon a proliferation of challenges to claims on procedural grounds, to treat the decision as having legislative effect.

[5] Supra @ paragraph 10.

He thereafter found that the language of CPR Part 56 was '*plain and unambiguous*' and agreed with Carey JA that an applicant for a declaration in respect of public law rights, was not obliged to approach the court only by way of the prescribed procedure for judicial review. As was submitted by learned senior counsel in the case at bar, the decision of ***Association of Concerned Belizeans*** was cited in ***Lois Young Barrow et al v Glenn Tillett*** (supra) as having established that Part 56 provides an alternative process by which a public authority might be made to account for violations of public law rights.[6]

14. The Court firstly acknowledges that as the claimant's complaint concerned the manner in which the Magistrate exercised his jurisdiction in determining the case before him, the Claimant was concerned with his public law rights. With respect to its consideration of the Belizean authorities by which it is bound, the Court finds, as per the submission of the Claimant in response to the application to strike out, that judicial review proceedings were not the only mode for the Claimant to have brought his claim before the Court and learned Senior Counsel is therefore at liberty to seek only declaratory relief under CPR Part 56. However, the second issue identified by the Court for determination nonetheless remains - that being - whether the entitlement of the Claimant to seek declaratory relief as opposed to being obliged to seek judicial review, automatically precludes the Court from finding the proceedings an abuse of the Court's process.

15. The Court finds assistance with respect to this issue from paragraph 9 of Carey JA's judgment in ***Association of Concerned Belizeans***. It was herein noted by Carey JA (having already concluded as to the fact that Part 56 provided alternative means of redress in respect of public law rights), as follows (emphasis mine):-

> *"It is plain that O'Reilly v Mackman (supra) was decided with Order 53 in mind. Of course it is as well to remind, that, that decision was arrived at well before the Woolf Reforms took effect in England. <u>The winnowing or filter process which it is argued is demonstrated by the leave process to which judicial review applications are initially subject, is not absent from administrative applications under Belizean</u>*

[6] Judgment of Mendes JA @ paragraphs 24 - 26

Rules. Such applications are the subject of a case management process which serves the like process of filtering out frivolous or unmeritorious applications.

It is of course true that there is no three months time limit for bringing such applications. But declaratory orders being discretionary, the court might refuse to grant a declaration if it served no useful purpose.

16. With respect to this issue, it is also noted that Morrison JA[7] expressed his full agreement with the judgment of Carey JA and further expressed his wish to associate himself in particular with [Carey JA's] comments at paragraphs 9 and 10 on the efficacy of the case management process, the discretionary nature of declaratory relief and the significance of the fact that Belize has a written Constitution. The Court is in particular taking note of the learned Justice of Appeal's association with Carey JA's words in relation to the case management process and the discretionary nature of declaratory relief as these factors are considered to be determinative in the instant case.

17. Specifically, the Court considers the fact that the subject matter of the claim is a grievance with the outcome of an inferior court claim in respect of which there exists a statutory right of appeal. The grounds of appeal available would have included a challenge to the alleged failure of the Magistrate to allow or take into account evidence from the Claimant. The Court notes in this regard the submission on behalf of the Claimant that the Claimant had sought leave of the learned Magistrate to appeal the decision out of time, which leave was refused and in support of this submission, reference was made to Exhibit ALA2 of the Claimant's Affidavit in Support of his Fixed Date Claim Form. In the first instance, nowhere in that Affidavit was there reference to leave being sought from the Learned Magistrate which was refused. There was exhibited to the Affidavit a letter from the Clerk of Court to Senior Counsel enclosing the notes of evidence of the hearing and thereafter advising that the Magistrate declined to hear an application for a *stay of execution* of the judgment, given that the 21 days for lodging an appeal had expired. In any event in this regard, an extension of time for an inferior appeal was not a matter for the Magistrate, but a judge of the Supreme Court.

[7] Association of Concerned Belizeans (supra) paragraph 38, pgs 21-22

18. These points are taken to dispel any notion that the Claimant had sought to avail himself of his right to appeal against the Inferior Court's decision, and thereby support his decision to proceed to address his grievance by seeking purely declaratory relief. Returning to the Court's consideration of the subject matter of the instant claim, the Court finds that it is being asked to embark upon an exercise in review of the actions of the inferior court and on conclusion make a declaratory pronouncement as to the status of a judicial proceeding. Given its discretionary nature, (as contemplated by the learned Justices of Appeal in ***Association of Concerned Belizeans***), it is considered a relevant factor for the Court to make an assessment as to the utility of embarking upon such an exercise in review, relative to the subject matter at hand and the outcome that the declaratory relief would provide.

19. With respect to any likely outcome of the matter, the Court observes in the Claimant's prayer for relief that he seeks *"…an Order that the Claimant shall be at liberty to apply for any further consequential relief as may be necessary to secure the effect of the declarations made herein;"* This Court is certainly not aware of what such further consequential relief might entail but it suffices to say that in the event of a declaration in favour of the Claimant as to the unlawfulness of the decision of the Inferior Court, the enforcement of that judgment will be affected. A question then arises, that where there is a statutorily prescribed right of appeal as there is in this case, and the complaint of the Claimant could properly have been met by an exercise of that right of appeal, is the plaintiff in the Inferior Court, to be deprived of his judgment other than pursuant to a contrary decision on appeal, or by a positive order quashing that decision consequent upon successful judicial review proceedings. Within the context of the public interest of promoting the certainty and finality of judicial proceedings on the one hand and the Claimant having been out of time for appeal and having made no attempt to extend that time and so establish some proper basis for the Court to continue to be seized of this matter on the other hand, the answer to that question is viewed in the negative.

Conclusion

20. In its consideration of the matter, the Court finds that it is being asked to exercise its discretion in relation to granting the declaratory relief sought in circumstances where a litigant in the Inferior Court in effect stands to lose the benefit of enforcement of a judgment which has to be presumed lawfully obtained unless the contrary be shown. In this regard the Claimant had available to him and failed to exercise his right of appeal, the importance of which must relate to the need for certainty and finality in judicial proceedings as is underscored by the existence of time limits for appeal and constraints in relation to having those time limits extended. .

21. As already stated in the Court's discussion of the judgments of Carey JA and Morrison JA in ***Belize Bank Ltd v Association of Concerned Belizeans*** the effectiveness of the case management processes and the discretionary nature of declaratory relief, are considered determinative of this Application. Within the context of the circumstances detailed above, albeit entitled to seek declaratory relief it is clear that such declaratory relief cannot be said to be appropriate relief to seek in these circumstances. The Court finds that this would not be a case where it would exercise its discretion to grant declaratory relief thus the Court avails itself of its powers of case management and grants the Defendants' Application to strike out the claim.

The Final Disposition

22. (i) The Defendants' Application to Strike Out the Claim is granted.

    (ii) There is no order as to costs.

Dated this 11th day of March, 2015.

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Shona O. Griffith
Supreme Court Judge