

IN THE COURT OF APPEAL OF BELIZE AD 2016
CIVIL APPEAL NO 13 OF 2015

ANGEL TZEC

Appellant

v

**THE ATTORNEY GENERAL OF BELIZE
MINISTER OF NATURAL RESOURCES**

Respondents

BEFORE

The Hon Mr Justice Samuel Awich
The Hon Mr Justice Christopher Blackman
The Hon Mr Justice Murrio Ducille

Justice of Appeal
Justice of Appeal
Justice of Appeal

W Piper for the appellant.
N Hawke for the respondent.

11 March 2016 and 4 November 2016

AWICH JA

[1] I concur with the judgment prepared by Blackman JA, which judgment I read in draft form.

AWICH JA

BLACKMAN JA

[2] At the conclusion of the hearing of the appeal on March 11, 2016 against the judgment of Griffith J dated 8 July, 2015 refusing the appellant's claim for judicial review, we dismissed the appeal with no order as to costs. We said that the reasons for our decision will be given later. This we now do.

[3] The appellant was granted a lease for a period of 25 years on 12 November, 1986 by the Government of 250 acres of land situate the Tu-Tu Camp/Duck Run are of Cayo, with an option to renew the lease for a further term of years, provided that the conditions of the lease were fulfilled

[4] Following inconclusive discussions with Government representatives, in December 2014 Mr. Tzec filed a fixed date claim form for judicial review, alleging that the refusal of the Minister of National Resources to renew or extend his lease, was unlawful, arbitrary and irrational. There were other Orders and declarations in the fixed date claim.

[5] At paragraph 10 of the judgment, the learned judge noted that whereas Mr. Tzec had sworn that he had diligently carried out all the conditions of the lease, including paying rent up to December 2012, the true position was that until he sought to extend the lease, he had paid no rent save for the initial amount on the execution of the lease. The Judge further noted that Mr. Tzec had woefully under performed in respect of other conditions of the lease, and had resolution of the issues before the court turned on the performance of the conditions of the lease, the outcome would have been unfavourable.

[6] At paragraph 16 of the judgment, **Griffith J** said: "Before considering the remedy, the Court must determine whether this case is on which is amenable to judicial review". After reviewing the facts of the instant case and the authorities submitted, the learned judge held at paragraph 22 that the circumstances of the matter did not involve any power beyond the Minister's administrative grant of a lease by **contract** and nothing

had been advanced on Mr. Tzec's behalf which introduced the requisite public element, to render the matter an appropriate subject for judicial review.

[7] On March 18, 2016 in the matter of **Board of Trustees, University of Belize v. Dr. Abigail McKay**, Civil Appeal 14 of 2014, a similar issue as to whether the matter was an appropriate subject for judicial review, was considered.

[8] At paragraphs 17 and 18, we said: In the seminal work on Judicial Remedies in Public Law (2000) by Clive Lewis at paragraphs 2-003 and 2-004, Lewis noted that Judicial review now is only available against a public body in a public matter. "In essence, two requirements need to be satisfied. First, the body under challenge must be a public body whose activities can be controlled by judicial review. Secondly, the subject-matter of the challenge must involve claims based on public law principles not the enforcement of private law rights. In the past, the courts focused primarily on the source of the power in determining whether a body was a public one subject to judicial review. Bodies created by statute or exercising powers derived from the prerogative were seen as public bodies amenable to judicial review. Now, however, the modern approach is to consider whether the exercise of a power, or performance of a duty, involves a "public element, which can take many different forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction". The source of a power or duty remains an important indication of the public law nature of a body and bodies created by statute or acting under powers derived from the prerogative will usually be public law bodies for the purposes of judicial review. Other non-statutory bodies may, however, be performing public functions and may be subject to judicial review. Other factors such as the nature of the function, the extent to which there is any statutory recognition or underpinning of the body or the function in question and the extent to which the body has been interwoven into a system of governmental regulation may indicate that the body performs public functions and is, in principle, subject to judicial review. The principal exclusion from the scope of judicial review now is bodies who acquire jurisdiction over individuals by virtue of contract. These are seen as private not public bodies.

2-004 The second requirement is that the subject-matter of the claim being pursued in the judicial review application involves matters of public law not private law. Public bodies (like private bodies) may enter contracts or commit torts. Individuals may only be seeking to enforce essentially private law rights. Judicial review is not available to enforce purely private law rights.”

Lewis’s statement that judicial review was only available against a public body in a public law matter followed the dicta of Sir John Donaldson M.R. in *R. v. East Berkshire Health Authority, ex p. Walsh* [1985] Q.B. 152 at 162 that “the remedy of judicial review is only available where an issue of “public law” is involved”.”.....”

[9] In our judgment, the foregoing observations are apposite to the instant case. Additionally, as we observed during the hearing of the appeal, there was an issue of timeliness in filing the application for judicial review. Judicial officers as well as practitioners are obliged to consider whether applications for permissions to proceed to judicial review comply with the requirements of Order 56.5 (3) of the Civil Procedure Rules.

[10] It is for the foregoing reasons that we made the orders referred to in paragraph 1 of this judgment.

BLACKMAN JA

DUCILLE JA

[11] I concur.

DUCILLE JA