

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

**Claim No. 625 of 2015**

**BETWEEN:**

<b>(Margarita Canales (Administratrix of the</b>	<b>Claimant/Respondent</b>
<b>(Estate of Donatilo Canales and in her personal capacity</b>	
<b>(As Beneficiary to the said Estate</b>	
<b>(</b>	
<b>(And</b>	
<b>(</b>	
<b>(Attorney General of Belize</b>	<b>1st Defendant/Applicant</b>
<b>(Minister of Natural Resources</b>	<b>2<sup>nd</sup> Defendant/Applicant</b>

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Oswald Twist for the Claimant/Respondent**

**Ms. Trienia Young and Ms. Agassi Finnegan for Defendants/Applicants**

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**R U L I N G**

**Facts**

1. On 25<sup>th</sup> September, 2000 Donatilo Canales a farmer of Valley of Peace Village in the Cayo District was granted a lease of 44.84 acres of land situate in Young Gal/McRae Registration Section. The lease was for a term of seven years and was renewable for a total term of 30 years. Margarita Canales, the widow of Donatilo Canales, claims that her husband planted fruits, vegetables and herbs on the land which he sold to the public

to feed his wife and children. In 2012 Mr. Canales was shot and became incapacitated for close to two years and was unable to continue working the land as he had before. In 2014, he discovered that his land was leased to one Adilia Alvarado of Belmopan who later converted the lease to property and sold it to one Bernice Dueck of Belmopan. Dueck then sold the land to Adela Rivera of Valley of Peace. The land is still in Ms. Rivera's name. Donatilo Canales passed away in December 2014. His wife as Administratrix of his estate now brings this claim against the Ministry of Natural Resources seeking, *inter alia*, a declaration that she is entitled to a lease of land in Young Gal/McRae Registration Section, cancellation of a lease issued to Adilia Alvarado, order for Specific Performance of lease contract between the Minister of Natural Resources and damages for breach of lease contract. The Attorney General now applies to have this claim struck out on the basis that the claim discloses no reasonable ground for bringing the claim and that the claim is an abuse of process of the court. The parties have agreed to trial by written submissions, and the court now determines the issue.

**Legal Submissions on behalf of the Applicants seeking that the Claim be Struck Out**

2. a. Ms. Trienia Young and Ms. Agassi Finnegan argue on behalf of the Ministry of Natural Resources that the Claim should be struck out as it is wholly incapable of succeeding and it discloses no reasonable ground for bringing or defending the Claim in that:
  - i. Section 65(1)(a) of the Registered Land Act, Chapter 194 of the Laws of Belize, 2002 specifically states that determination of a lease occurs where the period of a lease has expired;

ii. Section 65(1)(b) of the Registered Land Act, Chapter 194 of the Laws of Belize 2002 further states that where an event upon which a lease is expressed to terminate has happened a lease may also be determined.

b. Learned Counsel submits that documents on which the Respondents rely specifically state that the term of the lease shall be for a period of seven years. The lease goes on to state that the lessee will have the option to extend the lease for a further period of years provided that the conditions of the lease are fulfilled and the land is surveyed. By the Ms. Canales' own admission in the witness statement, she has stated that they were not in compliance with the conditions of the lease. Margarita Canales states that she was aware that her husband the late Donatilo Canales owed land tax on the property at the time of his death on December 6<sup>th</sup>, 2014.

c. Learned Counsel for the Applicants/Defendants also argue that the Claim discloses no reasonable ground for bringing the Claim in that the Claimant has failed to provide any evidence to prove that the Estate has any legal or equitable interest in the land located at Parcel 47, Young Gal/McRae Registration Section.

d. As a result of the effluxion of time in relation to the determination of the lease, the Claimant has no *locus standi* with which to bring this claim.

e. The Claim is an abuse of process in that the Claim ought to have been brought by way of a private law claim.

f. The Claimant has failed to comply with the Rules of Court in that the Claim ought to have been brought by way of ordinary claim instead of by a Fixed Date Claim Form.

### Grounds a and b

3. In arguing Grounds a and b, Ms. Young and Ms. Finnegan say that while the Claimant admits that she did not fulfill the conditions of the lease, whether or not those conditions were fulfilled are irrelevant because the Claimant did not exercise her option to renew the lease prior to the determination of the lease. They cite Section 65(1) (a) of the Registered Land Act , Chapter 194 of the Laws of Belize 2002 as follows:

*“Where the period of a lease has expired, the lease and every other interest appearing on the register relating to the lease shall thereupon terminate, and the lessor may apply in writing to the Registrar to cancel the registration.”*

Learned Counsel for the Defendants also rely on ***Dotting v. Clifford*** (2007) Supreme Court Jamaica 2006HCV0338 where McDonald Bishop J said at paragraph 10:

*“In considering this application to strike out, I am mindful that such a course is only appropriate in plain and obvious cases. The authorities have established that a claim may be struck out where it is fanciful, that is, entirely without substance or where it is clear that the statement of case is contradicted by all the documents or other material on which it is based (***Three Rivers District Council v Bank of England (No. 3 ) [2003] 2 AC 1***) ... The ultimate question that should be considered in determining whether to strike out the statement of case on the basis that it discloses no reasonable cause for bringing the claim seems to be, essentially, the same as that in granting summary judgment, that is: is the claim against the defendant one that is not for trial at all?”*

The Applicant submits that this claim is not one which is fit for trial and that the lease on which the Claimant is relying completely contradicts the claim itself. It is further submitted that time had already passed under the lease and that given the fact that the Claimant had not even satisfied the conditions of the lease, the Claimant was not in a position to assert the option to renew the lease. The Applicants/Defendants therefore had no duty to give notice to the Respondent/Claimant as notice is not necessary to end a fixed period lease (**Ward McGregor v. William Neal** Claim 275 of 2007 in the Supreme Court of Belize). As the lease came to an end, the Claimants have no reasonable prospect of successfully prosecuting this claim.

**Grounds c and d**

4. The Applicants/Defendants argue that the Respondent/Claimant has no interest in the property because at the expiration of the lease, the interest previously held by them reverted to the Government of Belize. The Government of Belize as the owners of the land had freedom to use/contract away rights to this land with any party. In addition, it has been held that the option to renew must be exercised near the end of the termination of the lease itself (**Biondi v Kirklington and Piccadilly Estates** [1947] 2 All ER 59; **Scott v Lerner Shop Ltd** 1988 253LR 219). The Applicant/Defendant says that in this case, the Respondent/Claimant should have notified the Second Defendant and/or the Ministry of Natural Resources by way of a written notice that they in fact intended to exercise their option to renew. There is no evidence of such a notice being given by the Respondent/Claimant.

### Grounds e and f

5. The Applicants/Defendants submits that the Claim is an abuse of the Court's process in that the Claim ought to have been brought by way of a private law claim and as such the Claim should have been brought by way of an ordinary claim instead of a fixed date claim. It is submitted that no issue of public law arises and the entire claim lodged by the Respondent/Claimant revolves around considerations in private law. In ***Hampshire County Council v. Supportways Community Services Ltd*** 2006 EWCA Civ 1035, Nueberger J said:

*“Thus, the mere fact that the party alleged to be in breach of contract is a public body plainly cannot, on its own, transform what would otherwise be a private law claim into a public law claim. There are, of course, circumstances where, in a contractual context, a public body is susceptible to public law remedies. However, where the claim is fundamentally contractual in nature, and involves no allegation of fraud or improper motive or the like against the public body, it would, at least in the absence of very unusual circumstances, be right, as a matter of principle, to limit a claimant to his private law remedies.”*

6. In conclusion, the Applicants/Defendants asks that the Claim be wholly struck out as disclosing no reasonable chance of success and that costs be awarded to the Applicants/Defendants.

**Legal Submissions on behalf of the Respondent/Claimant resisting the Application to Strike Out the Claim**

7. Mr. Oswald Twist on behalf of the Respondent/Claimant argues that the Claim should not be struck out. He says that Mr. Canales was never informed by the Second Defendant that the lease was being cancelled despite the fact that such notice was a requirement before the lease could be cancelled. Paragraph 12 of the lease reads as follows:

*12(a) Non-payment of rent at a specified time;*

*(b) Any disposition or transfer or subletting of the whole or any part of the land without written permission;*

*(c) Non-observance or non-compliance with any of the conditions herein contained or referred to or specified in the lease*

***Shall in every instance authorize the Minister by notice in the Gazette to declare the lease forfeited and thereupon the same shall cease become null and void , to all intent and purposes, and to land may be entered upon by or on behalf of the Government of Belize or by any person duly authorized so to do, and possession thereof may be resumed as the property of the Government of Belize and in such case the lessee shall have no claim to compensation for any improvement or outlay.”***

Learned Counsel further submits that paragraph 22 of the lease was also not complied with by the Applicants/Defendants:

*“If upon inquiry it appears to the Minister –*

- a. That any neglect or breach of conditions has occurred; or*
- b. That injury has been done or is being done to the land by the lessee or his agent;*

*He may, after giving the lessee a reasonable opportunity to make representation, cancel the lease.”*

Paragraph 12 which is mandatory was not complied with by the Defendant and no effort was made to observe paragraph 22 of the lease. Mr. Twist further submits that the only failure on the part of the Deceased to fulfill the conditions of the lease was to pay arrears of taxes and to build a permanent structure on the land. He submits that Mr. Canales was using the land for the purpose of the lease which was for agriculture.

**Reply to Grounds a and b**

8. Mr. Twist argues that this lease is governed by the terms and conditions set out in the lease and by the National Lands Act. It is his submission that the Registered Land Act Chapter 194 of the Laws of Belize does not govern the land until the land is properly registered under that Act. He also cites Section 38 of the National Lands Act as follows:

*Section 38 “In the event of any conflict in regard to any matter between the provisions of this Act and those of the Registered Land Act, the provisions of this Act shall prevail.”*



He also cites Section 11 of the National Lands Act as follows:

*Section 11 (1) " If at any time it appears to the Commissioner that the condition of any lease has been neglected or broken, or that any land is suffering injury at the hands of the lessee or his agents, it shall be his duty forthwith to bring the matter to the notice of the Minister.*

*(2) If upon inquiry it appears to the Minister –*

*(a) that any such neglect or breach of conditions has occurred; or*

*(b) that injury has been done or is being done to the land by the lessee or his agent, he may, after giving the lessee a reasonable opportunity to make representations, cancel the lease.*

*(3) Whenever any lease is cancelled under this section, the lessee shall have no right or claim for compensation against the Government, its agents or servants for the return of any deposit or payment made by him on account thereof".*

Mr. Twist contends that the lease incorporates nearly all of the conditions of the National Land Act. He submits that it was mandatory for the Defendants to comply with sections 12 and 22 of the lease. He argues that the case of ***Dotty v. Clifford*** cited by the Defendants can be distinguished from the present case because the Defendants in this case clearly breached the conditions of the lease and should have given the Claimant an opportunity to rectify any default. He relies on ***S & T Distributors v CIBC Jamaica Ltd*** 2007 Jamaica Civ. Appeal No 112/04 where the Court of Appeal held as follows:

*“The striking out of a claim is a severe measure. The discretionary power to strike out must be exercised with extreme caution. A court when considering an application to strikeout is obliged to take into consideration the probable implications of striking out and balance them carefully against the principles as prescribed by the particular cause of action which is sought to be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases.”*

Mr. Twist further submits that the Claim is neither frivolous nor vexatious. The first seven years of the lease had expired, but the deceased had 21 years remaining before it can firmly be said that the lease expired. Clearly the deceased had been developing the land although there was minor breach by him of some of the conditions of the lease. However the Defendants also breached some conditions of the lease. The case of **Ward McGregor v William Neal** can be distinguished from the present case because the McGregor case was based on the Registered Land Act, while this present case is based on the National Lands Act.

**Reply to Ground c and d**

9. Mr. Twist says that the Claimant repeats her assertion that the lease had specific requirements before cancellation. He repeats his submission on grounds a and b.

**Reply to Ground d and e**

10. Mr. Twist submits that the claim is a claim against the Government of Belize i.e. the Attorney General and the Minister of Natural Resources who are the proper

Defendants. It is not a claim for judicial review when the dichotomy between private law and public law require that the distinction be made. The only question is whether it should be a fixed date claim or an ordinary claim. The remedies asked for are declarations, specific performance which are grounded in contract law and damages for breach of the lease contract. These claims are hybrid and ought properly to be commenced by fixed date claim, as required by Rule 8.1(4) and (5) of the Civil Procedure Rules. He then cites three similar claims which have brought in the Supreme Court but which were settled:

- 1) ***Rudolph Tucker v Dennis Williams*** Claim 32 of 2014, where the Chief Justice ordered that the AG and Minister of Natural Resources be added as parties to the Claim;
- 2) ***Natalie Wade v. Cherry Reynold, The AG and the Minister of Natural Resources*** Claim 346 of 2013;
- 3) ***Alina Lopez et al v The Minister of Natural Resources*** Claim 95 of 2008.

In conclusion, Mr. Twist submits that the Defendant's concept of public law is misconstrued and the Claimant was right in proceeding by way of Fixed Date Claim Form.

### **Ruling**

11. Having reviewed the written submissions and the authorities cited on this application, I am satisfied that the Applicants/Defendants have proven their case. The plain and simple truth of the matter is that the Respondent/Claimant's lease came to an end by effluxion of time. Mr. Donatilo Canales did not exercise his right under the lease of his

intention to renew the lease. He did not pay the taxes owed to the Government for the land, nor did he carry out a survey of the land. The Ministry of Natural Resources then granted a lease of the land to someone else. I agree with the submissions of Learned Counsel for the Respondent/Claimant that the applicable statute is the National Lands Act and not the Registered Land Act. I also agree with the submissions by the Applicants/Defendants that the Respondent/Claimant was not correct in bringing this matter to court by way of Fixed Date Claim Form instead of by ordinary claim. This is a simple matter where the Respondent/Claimant is seeking relief against the Government for breach of the lease contract. As such, the matter should have been brought by ordinary claim. The matters raised by Mr. Twist on the issue of notice are only relevant if the lease were still subsisting and was then cancelled by the Ministry of Natural Resources. As he has conceded, the original seven year term of the lease had already come to an end and his clients never applied to the Government of Belize to renew the lease. His contention was that the Applicants breached the lease by not informing the Respondent that conditions of the lease remained unsatisfied and giving them an opportunity to remedy the breach. But it is the duty of the lease holder to apply for renewal of the lease before the term expires. Mr. Canales did not apply for renewal so his lease came to an end and the Government of Belize as the owner of this portion of National Land was legally entitled to dispose of the land as it saw fit. I therefore grant the Application to Strike out this Claim as the Respondent/Claimant's claim cannot succeed. Costs awarded to the Applicants/Defendants to be paid by the Respondent/Claimant to be assessed or agreed.

*Dated this Friday, 24<sup>th</sup> day of February, 2017*

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**MICHELLE ARANA  
SUPREME COURT JUDGE**