

IN THE COURT OF APPEAL OF BELIZE AD 2019

CIVIL APPEAL NO 3 OF 2018

INTERNATIONAL ENVIRONMENTS LIMITED

Appellant

v

**COMMISSIONER OF INCOME TAX
INCOME TAX APPEAL BOARD
THE ATTORNEY GENERAL**

Respondents

BEFORE

The Hon Mr Justice Sir Manuel Sosa
The Hon Madam Justice Minnet Hafiz Bertram
The Hon Mr Justice Murrio Ducille

President
Justice of Appeal
Justice of Appeal

E H Courtenay SC along with G Courtenay for the appellant.
N Hawke, Solicitor General along with S Matute-Tucker for the respondents.

26 October 2018 and 1 February 2019.

SIR MANUEL SOSA P

[1] I have read in draft the judgment of my learned Sister Hafiz Bertram JA and wish only to say that I agree that the appeal should be allowed and that I concur in the reasons given and the orders proposed therein.

SIR MANUEL SOSA P

HAFIZ BERTRAM JA

Introduction

[2] International Environments Limited (“IEL”), a taxpayer, was dissatisfied with a decision made by the Commissioner of Income Tax (“the Commissioner”) in relation to Business Tax Assessment made in January 2009. IEL objected to the assessment by filing a notice of objection which was heard by the Income Tax Appeal Board (“Appeal Board”) pursuant to section 42(6) of the Income and Business Tax Act, Chapter 55, (“the Tax Act”). On 20 October 2010, the Appeal Board determined that IEL had failed to prove on a balance of probabilities that the assessment was excessive and therefore the objection failed.

[3] IEL appealed the decision of the Appeal Board on a point of law under section 43(1) of the Tax Act, to a judge of the Supreme Court. The grounds of appeal included that (a) the appeal did not consider the meaning of the word “receipts” and the meaning of the word “agent” on which IEL relied upon; and (b) the Tax Board considered an irrelevant matter under section 42(5) of the Tax Act, regarding the burden of proving its case. On 15 May 2012, the appeal was dismissed by Awich JA and the decision of the Appeal Board was upheld.

[4] IEL being dissatisfied with the decision of the judge filed an application to the Supreme Court pursuant to section 43(12) of the Tax Act, seeking permission to state a case on a question of law, to the Caribbean Court of Justice (“CCJ”), for the interpretation of sections 43, 105, 106, 107 and 112 of the Tax Act.

[5] At the hearing of the application, the respondents raised a preliminary issue as to whether a question of law can be stated to the CCJ on a proper construction of section 43(12) of the Tax Act. The respondents contended that the question of law had to be stated first to the Court of Appeal of Belize and not to the CCJ.

[6] The learned Chief Justice heard the application and upheld the objection made by the respondents. The judge ruled that the matter ought properly to be determined by the Court of Appeal. IEL appealed the decision of the Chief Justice.

[7] This Court heard the appeal on 26 October 2018 and reserved its decision.

Chronology of events

[8] On 5 May 2010, IEL was assessed \$19,558.63 by the Commissioner.

[9] On 19 May 2010, IEL wrote to the Commissioner and disputed the assessment. The Commissioner confirmed the assessment without amendment on 27 May 2010.

[10] On 1 June 2010, the CCJ came into force and replaced the Privy Council as the final appellate court for Belize. The Privy Council Act was repealed.

[11] On 20 October 2010, the Appeal Board affirmed the assessment in the sum of \$19,558.63.

[12] On 15 May 2012, Awich J, (as he was then) dismissed the appeal of IEL from the decision of the Appeal Board.

[13] On 28 May 2012, a notice of application for case stated to the CCJ was filed. The matter was heard by Benjamin CJ on 27 July 2012.

[14] On 22 September 2017, Benjamin CJ upheld the objection by the respondents and referred the case stated to the Court of Appeal for determination.

[15] On 23 January 2017, IEL filed Notice of Appeal to the Court of Appeal against the decision of Benjamin CJ.

The Order of the Chief Justice

[16] The Order of the Chief Justice dated 27 July 2012 states:

- (i) The objection by the respondents is upheld;
- (ii) Pursuant to section 43(12) of the Income and Business Tax Act, the Case Stated set out in Schedule 1 is referred to the Court of Appeal for determination;
- (iii) Each party bear its own cost in the appeal.

Case Stated

[17] The Case Stated is at page 9-11 of the record. For present purposes, it is not necessary to put in this judgment the question for determination. See paragraph 4 of the judgment of the Chief Justice for the draft text of the question.

Grounds of Appeal

[18] The appellant appealed the decision of the Chief Justice on six grounds. The appellant stated that the Chief Justice erred in law and misdirected himself when he found that:

- (a) It was not possible to construe section 43(12) of the Act to mean that appeals from a judge in chambers should be heard by the CCJ;
- (b) The court must give effect to the definition of 'Court' in section 3 of the Privy Council Appeals Ordinance on March 19, 1975;
- (c) When the Privy Council Appeals Ordinance on March 19, 1975 was repealed by the CCJ Act, the Income and Business Tax Act would have been impliedly amended to alter the jurisdiction for the entertaining of a case to be stated on a question of law from the Privy Council to the Court of Appeal;
- (d) There was no need to invoke section 104(10) of the Belize Constitution;

- (e) The proper forum for an appeal from a judge in chambers by way of case stated by a tax payer is to the Court of Appeal;
- (f) The appeal from the judge in chambers ought properly to be determined by the Court of Appeal.

Relief Sought

[19] The appellant seeks the following Orders before this Court:

- (a) A Declaration that on a proper construction of section 43(12) of the Act, a question of law must be stated to the CCJ;
- (b) An Order that pursuant to section 43(12) of the Act, a case be stated on a question of law to the CCJ for the interpretation of sections 43, 105, 106, 107 and 112 of the Act;
- (c) Alternatively, an order that a date be fixed by this Court for hearing of the appeal by way of case stated, pursuant to the order of the Supreme Court dated 22 September 2017 and perfected on 5 January 2018;
- (d) Costs in the appeal and in the court below.

The relevant law

[20] Section 43(12) of the *Income and Business Tax Act* provides:

“The decision of a judge shall be final, but a judge if he so desires may, on the application of the appellant or of the Commissioner, shall state a case on a question of law for the decision of Her Majesty in Council under the provisions of the Privy Council Appeals Act.”

[21] The Privy Council Appeals Act, (“the PC Act”) was repealed by section 27 of the Caribbean Court of Justice Act, Chapter 92 of the Substantive Laws of Belize, Revised

Edition 2011. Appeals to the CCJ was introduced by an amendment to the Constitution in 2010 (Act No. 4 of 2010). Section 104 of the Constitution addressed appeals to the CCJ and abolished all references to “Her Majesty in Council” or the “Privy Council”.

[22] Section 104(2), 104 (6) and 104(10) of the Constitution provides:

“104.-(2) An appeal shall lie to the Caribbean Court of Justice with the leave of the Court of Appeal from decisions of the Court of Appeal in the following cases:

- (a) Final decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its general or public importance or otherwise, ought to be submitted to Caribbean Court of Justice; and
- (b) Such other cases as may be prescribed by the National Assembly by law.

....

(6) In the exercise of its appellate jurisdiction, the Caribbean Court of Justice is a superior court of record for Belize, with such jurisdiction and powers as are conferred on it by the Agreement or by this Constitution or any other law.

.....

(10) Subject to the foregoing provisions of this section, the jurisdiction of Her Majesty in Council to hear appeals, applications and petitions from Belize is hereby abolished and all references to “Her Majesty in Council” or the “Privy Council” or the “Judicial Committee of the Privy Council” wherever occurring in this Constitution or in any other law, rule, regulation order or instrument having effect as part of the law of Belize,

shall be read and construed as references to the Caribbean Court of Justice.”

Issue for determination

[23] The issue for determination is whether there was an implied amendment to the Tax Act to alter the jurisdiction for a case to be stated on a question of law from the Privy Council to the Court of Appeal.

The finding of the Chief Justice

[24] The learned Chief Justice upheld the objection raised by the respondents that the case stated should be to the Court of Appeal. At paragraph 16 of his judgment, he found that:

“The Court must give effect to the definition of ‘Court’ ascribed by the legislature in section 3 of the Privy Council Appeals, Ordinance on March 19, 1975. Accordingly, at the time the said legislation was repealed by the Caribbean Court of Justice Act, the IBTA would have been already impliedly amended to alter the jurisdiction for the entertaining of a case to be stated on a question of law from the Privy Council to the Court of Appeal. As such, there would be no need to invoke section 104(10) of the Belize Constitution.”

Appellant’s submission

[25] The argument for IEL before this Court was that the intention of section 104(10) of the Constitution was to amend existing laws to substitute the CCJ for the Privy Council. Further, the effect of section 104(10) of the Constitution is that section 43(12) of the Tax Act was amended and should be construed as conferring a right to appellants to have a case stated on a question of law to the CCJ. As a result, learned senior counsel, Mr.

Courtenay contended that the Chief Justice erred in concluding that “there is no need to trouble section 104(10) of the Constitution...” in reaching his decision.

Respondents’ submission

[26] The learned Solicitor General for the respondents contended that the Chief Justice was correct in his finding that the question of law must be stated to the Court of Appeal.

[27] The Solicitor General contended that the Tax Act is a pre-independence Act which came into operation in 1958, before the Court of Appeal Act. The latter Act came into operation on 28 May 1968 and is also a pre-independence Act. Counsel argued that section 134 of the Belize Constitution, which provides for the treatment of existing laws, is applicable in this case. That is, “...*the existing laws shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.*” As such a reasonable inference is that with the introduction of the Court of Appeal Act, a necessary modification and adaptation ought to be that a question of law which is to be stated by the Judge should be stated first to the Court of Appeal, and not the Caribbean Court of Justice.

[28] The Solicitor General found support for his argument by looking at the legislative history. He stated that on 29 May 1911, the Privy Council Appeals Act was enacted and at section 3 it provided:

“Subject to this Act, an appeal shall lie -

(c) From a judgment of the Court on a question of law under the provisions of the Income and Business Tax Act.”

[29] Counsel then referred to the amendment done on 19 March 1975 to the Privy Council Appeals Ordinance. Section 2 was amended and it also repealed and replaced the previous definition of “Court” with the definition that “Court” means “Court of Appeal” as established by the Court of Appeal Ordinance 1967.

[30] It was for that reason that the Solicitor General argued that the Tax Act was impliedly amended by virtue of the Privy Council Amendment Ordinance. He relied on Bennion on Statutory Interpretation at page 293 for the explanation of implied amendment as follows:

“Where a later enactment does not expressly amend (whether textually or indirectly) an earlier enactment which it has power to override, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication amends the earlier so far as necessary to remove the inconsistency between them.

If a later Act cannot stand by an earlier, Parliament (though it has not said so expressly) is taken to intend an amendment of the earlier. This is a logical necessity since two inconsistent texts cannot both be valid without contravening the principle of contradiction. If the entirety of the earlier Act is inconsistent, the effect amounts to a repeal of it. The rules relative to repeals will then apply.”

[31] Counsel further argued that the Tax Act was amended by implication and as such IEL should seek leave of this Court to state a question to it, and not to the CCJ. He submitted that this Court has jurisdiction to do so as provided at section 13(2) of the Court of Appeal Act. Section 13(2) prescribes that:

“The Court shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserve by the Supreme Court or a judge thereof pursuant to any power conferred in that behalf by any law.”

[32] The Solicitor General submitted that the CCJ does not have jurisdiction to hear the matter. He argued that from the language of the Caribbean Court of Justice Act and the Treaty establishing the CCJ, the only question of law that can be stated directly from the Supreme Court to the CCJ, is question of interpretation of the Treaty of Chaguaramas and that must be done to the Original Jurisdiction of the CCJ.

[33] Counsel further argued that to state a question to the CCJ under the provisions of the Tax Act, would be tantamount to leap frogging the jurisdiction of the Court of Appeal and would be contrary to section 6 of the CCJ Act, which provides that an appeal shall lie to the Court from decisions of the Court of Appeal.

[34] In the speaking notes of the respondents, it was submitted at paragraph 8, that with the introduction of the Court of Appeal Act, the Tax Act was impliedly amended and as a consequence all questions of law should be stated to the Court of Appeal.

[35] The learned Solicitor General argued that section 43(12) of the Tax Act fell victim to the lack of proper consolidation or general oversight. He stated that the Laws of Belize were consolidated in 1993 and 2000 respectively, but section 43(12) was overlooked and it has resulted in this appeal before this Court.

Reply of the appellants

[36] Senior counsel, Mr. Courtenay argued that neither the amendment to the Privy Council Act nor the introduction of the Court of Appeal Act, caused an implied amendment to section 43(12) of the Tax Act. Counsel referring to the law as stated by Bennion above, submitted that when the Court of Appeal came into existence, there was no inconsistency between that Court acting as an appellate Court from decisions of the Supreme Court and the right to appeal directly from a judge in chambers to Her Majesty in Council under section 43(12) of the Tax Act.

[37] Further, senior counsel contended that the intention of the amendment to the Privy Council Act was to give a right of appeal from decisions of the newly constituted Court of Appeal to her Majesty in Council.

Discussion

[38] It is quite likely that there was an oversight by the Law Revision Commissioner since several law revisions were done and no amendment was made to section 43(12)

of the Tax Act. This was recognized by both the appellant and the respondents. However, this Court cannot fix this oversight by merely looking at the hierarchical structure of the court system in Belize. It is not as simple as saying that the court system does not allow for 'leapfrogging.' A court is expected to construe the applicable law. Further, it is my view, that this oversight cannot be fixed by applying section 134 of the Constitution, for reasons to follow.

[39] Even further, this Court cannot amend laws but can recommend that the Law Revision Commissioner consider an express amendment to section 43(12) of the Tax Act to remove the Privy Council.

[40] The learned Chief Justice gave effect to the definition of 'Court' ascribed by the legislature in section 3 of the Privy Council Appeals, Ordinance on March 19, 1975, which is the Court of Appeal, in arriving at his decision. He found that at the time the Ordinance was repealed by the CCJ Act, the Tax Act would have been already impliedly amended. In my respectful view, the Chief Justice failed to consider the intention of the legislature at the time of the amendment to substitute Court of Appeal and remove Supreme Court. In my opinion, the amendment was to give a right of appeal from the Court of Appeal to the Privy Council. There was no longer a right of appeal from the Supreme Court to the Privy Council with the institution of the Court of Appeal.

[41] Also, it is my view, that the amendment of the Ordinance had no impact on section 43(12) of the Tax Act which speaks of appeal from a judge sitting in chambers and who has to state a case to the Privy Council which is now replaced by the CCJ. The function of that judge cannot be compared to a judge sitting as a judge in Chambers or of the Supreme Court and whose judgment can be appealed to the Court of Appeal. In these instances, the Supreme Court (Civil Procedure) Rules are applicable. It is not applicable to a hearing under section 43(12) of the Tax Act. Further, as noted at paragraph 5 of the judgment of the court below, the appellant discounted the applicability of Part 61 of the CPR which deals with appeals to the Supreme Court by way of case stated and the respondents did not demur.

[42] The Chief Justice, in my respectful opinion, should have invoked section 104(10) of the Constitution since the intention of the legislature was to replace the Privy Council with the CCJ wherever it occurred. Section 104(10) is clear that the jurisdiction of Her Majesty in Council is abolished and “all references to “Her Majesty in Council” or the “Privy Council” or the “Judicial Committee of the Privy Council” wherever occurring in this Constitution or in any other law” shall be read and construed as references to the Caribbean Court of Justice.

[43] Although the laws of Belize had been revised several times, section 43(12) of the Tax Act has not been amended and still reads, “.... a case on a question of law for the decision of Her Majesty in Council under the provisions of the Privy Council Appeals Act.” Therefore, section 104(10) of the Constitution must be applied to section 43(12) and it should now read:

“Section 43(12) of the *Income and Business Tax Act* provides:

“The decision of a judge shall be final, but a judge if he so desires may, and on the application of the appellant or of the Commissioner, shall state a case on a question of law for the decision of the Caribbean Court of Justice.”

Conclusion

[44] It is my opinion, that there was no implied amendment to the Tax Act either by the Ordinance or the institution of the Court of Appeal Act. The test of inconsistency as described by Bennion did not arise in the instant matter. Therefore, the learned Chief Justice erred when he found that there was an implied amendment to the Tax Act at the time of the amendment of the Ordinance.

Disposal

[45] For reasons stated in the foregoing, I propose that the appeal should be allowed and the following orders and declaration be made:

- (1) The Order of the learned Chief Justice be set aside;
- (2) A Declaration that on a proper construction of section 43(12) of the Tax Act, a question of law must be stated to the CCJ;
- (3) An Order that pursuant to section 43(12) of the Tax Act, a case be stated on a question of law to the CCJ for the interpretation of sections 43, 105, 106, 107 and 112 of the Tax Act;
- (4) The respondents pay the costs of the appellant in this Court and the court below, to be taxed, if not agreed.

HAFIZ BERTRAM JA

DUCILLE JA

[46] I have had the opportunity of perusing the judgment of Hafiz-Bertram JA and am in total agreement with her reasoning and conclusion. In the circumstances I cannot add anything further.

DUCILLE JA