

IN THE SUPREME COURT OF BELIZE, A.D. 2022

Claim No. 134 of 2022

BETWEEN

BRYANT WILLIAMS dba GRIGA LINE	1st APPLICANT
JAMES WILLIAMS JR dba JAMES BUS LINE	2nd APPLICANT
BELIZEAN BUS ASSOCIATION	3rd APPLICANT

AND

MINISTER OF YOUTH, SPORTS & TRANSPORT	1st RESPONDENT
TRANSPORT BOARD	2nd RESPONDENT
THE ATTORNEY GENERAL OF BELIZE	3rd RESPONDENT
CHIEF TRANSPORT OFFICER	4th RESPONDENT
CHAIRPERSON OF TRANSPORT BOARD	5th RESPONDENT
CHIEF EXECUTIVE OFFICER OF THE MINISTRY OF YOUTH, SPORTS & TRANSPORT	6th RESPONDENT

BEFORE the Honourable Justice Geneviève Chabot

Date of Hearing: June 10th, 2022

Appearances:

Rt. Hon. Dean O. Barrow, S.C, Counsel for the Applicants
Samantha Matute and Jorge Matus, Counsel for the Respondents

DECISION ON APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW

Introduction

1. Bryant Williams (doing business as “Griga Line”), James Williams (doing business as “James Bus Line”), and the Belizean Bus Association (together, the “Applicants”) apply for permission to apply for the judicial review of two decisions of the Respondents granting Road Service Permits to Floralia Limited (“Floralia”). The first decision was made on or around November 24th, 2021 (the “First Decision”) and the second was made on or around February 9th, 2022 (the “Second Decision”). The Applicants also challenge the Fifth Respondent’s decision to reject the First Applicant’s applications for Road Service Permits for runs along the Dangriga to Belize City route (the “Third Decision”) (together, the “Decisions”).
2. The Applicants contend that in making the Decisions, the Respondents acted in excess of their statutory powers and in breach of the *Motor Vehicles and Road Traffic Act* (the “Act”)¹ and the *Motor Vehicles and Road Traffic Regulations*² (the “Regulations”). They also argue that the Respondents acted in breach of the principles of natural justice, and that the Second Respondent abdicated its powers to the First, Fourth, and Fifth Respondents in making the Decisions.
3. The Respondents deny that they acted in breach of the Act or Regulations, or of any principles of natural justice. In addition to arguing that the Applicants have no reasonable prospect of success in judicial review, they resist this Application on the grounds of delay and on the Applicants’ failure to appeal the Decisions to the Minister, as provided under the Act.
4. Permission to apply for judicial review of the Decisions is granted to the Applicants. The Applicants have the required interest to apply for judicial review. No discretionary bar applies to this matter. The statutory right of appeal provided by the Act does not constitute a proper alternative remedy to judicial review in this case because the Minister is the subject of the Applicants’ allegations. In addition, although there was a delay in the filing of this Application, there are good reasons to extend the time to apply for judicial review. The Applicants have a reasonable prospect of succeeding in judicial review because there is evidence that the statutory regime for the granting of road service permits has not been complied with.

¹ Cap 230, Rev. Ed. 2020.

² Cap 192 of the Subsidiary Laws of Belize.

The Application

5. The First and Second Applicants are bus operators. The Third Applicant is an autonomous corporate body that advocates for the rights of its member bus owners.
6. The First Applicant operated his business along the Dangriga – Belize City route under a Road Service Permit granted on October 19th, 2013. The Road Service Permit was issued in the name of the First Applicant’s family member, Calbert Williams Sr., now deceased. The First Applicant alleges that he was able to renew his Road Service Permit, and acquire additional Road Service Permits, up to October 18th, 2021. He was then granted an extension from the Transport Board up to December 2021. The renewal applications for his Road Service Permits were denied on or around March 11th, 2022.
7. The Second Applicant operates his business along the Punta Gorda – Belize City route under 14 Road Service Permits issued in his name. Its current Road Service Permits were set to expire in June of 2022.
8. According to the Applicants, on or about November 2021, Floralia started operating along the Punta Gorda – Belize City route. Floralia’s runs were within 15 to 30 minutes of the First and Second Applicants’ runs. Around February 2022, Floralia began operating along the Dangriga – Belize City route. As a result of Floralia’s operations, the First and Second Applicants lost substantial revenues.
9. Subsequently, the First Applicant was informed that his Road Service Permits for runs along the Dangriga – Belize City route would not be renewed. The First Applicant contends that he had a legitimate expectation that the Transport Board would consider his renewal applications in accordance with the Act and the Regulations.
10. The Applicants allege that Floralia did not formally apply to the Transport Board for Road Service Permits. Even if it did, these applications have not been considered by the Transport Board in accordance with the Act and the Regulations. The dates of the Transport Board meetings at which these applications were considered were not published in the Gazette as required by the Regulations. Floralia’s Road Service Permits have not been submitted to the Transport Board for consideration and approval. The Applicants were thus deprived of an opportunity to raise any objections to Floralia’s applications.
11. The Applicants further allege that the Minister of Youth, Sports & Transport (the “Minister”) made the unilateral decision to approve Floralia’s applications for Road Service Permits. The Minister does not have the discretion to decide the grant of a Road Service Permit under the Act or the Regulations, and as such the Minister acted outside of his lawful powers.

12. The Applicants apply to this Court for the following Orders:

1. That the Applicants be granted permission to apply for judicial review for a declaration that the First, Second and Fifth Respondents and their Ministry of Youth, Sports & Transport acted unlawfully by, inter alia, awarding Road Service Permits on or about December 6, 2021 to Floralia (First Decision), acting ultra vires in excess of their statutory powers, and in breach of the Motor Vehicles and Road Traffic Act, Chapter 230 of the Laws of Belize, Revised Edition, 2020 and the Motor Vehicles and Road Traffic Regulations, Chapter 192 of the Subsidiary Laws of Belize for the Punta Gorda to Belize City runs; and by, albeit informally, in or around February, 2022 similarly deciding to award Floralia a second Road Service Permit (Second Decision) for the Dangriga to Belize City runs; and further, by the third decision purportedly made by the Transport Board on February 9, 2022 rejecting the First Applicant's renewal applications (Third Decision); and for a declaration that the decisions are therefore void and a nullity;
2. That the Applicants be granted permission to apply for judicial review for a declaration that the First, Second, Fourth, Fifth and Sixth Respondents and their Ministry have not acted fairly towards the Applicants, and that they have breached basic rules of natural justice in making the Decisions to give Floralia routes and runs that are similar to, and merely half an hour or 15-minutes apart from, some of the First and Second Applicants' routes and runs; and that they have likewise acted unfairly and breached the rules of natural justice in not renewing the First Applicant's Road Service Permits for runs between Dangriga and Belize City, but making instead a Second and Third Decision to give such runs to Floralia and D-line; and for a declaration that those decisions are therefore void and a nullity;
3. That the Applicants be granted permission to apply for judicial review for a declaration that the First and Fifth Respondents have not acted fairly towards the Third Applicant and breached basic rules of natural justice, the Act and the Regulations in making their decisions to deprive the Third Applicant of the opportunity of reviewing Floralia's supposed application for Road Service Permits for the Punta Gorda to Belize City runs; and, further, through their subsequent Second Decision to deprive the Third Applicant of the opportunity to review the First Applicant's renewal application;
4. That the Applicants be granted permission to apply for judicial review for a declaration that the Second Respondent abdicated its duty to consider and decide Floralia's applications for Road Service Permits, including the supposed application for the Punta Gorda to Belize City runs, and the application conflicting with the First Applicant's renewal application of his Dangriga/Belize City Road Service Permits, and instead allowing the Chairman of the Second Respondent and/or the Chief Transport Officer and/or the Minister of Youth, Sports and Transport to make the said decision;

5. That the Applicants be granted permission to apply for judicial review for a declaration that the First and Fifth Respondents' Decisions were not based on a consideration of relevant factors, did not afford the Applicants an opportunity to be properly heard and were not done by way of a required meeting of the Second Respondent Transport Board;
6. That the Applicants be granted permission to apply for judicial review for a declaration that the First, Second and Fifth Respondents acted unlawfully in failing to provide the First Applicant an opportunity to be heard on his renewal application for Road Service Permits for the Dangriga Runs and return journey when he has held such permits since 2013; and by failing to provide the Second Applicant an opportunity to make representations on Floralia's purported application for the Punta Gorda to Belize City runs;
7. That the Applicants be granted permission to apply for judicial review for a declaration that the First, Second, Fifth and Sixth Respondents breached the First Applicant's legitimate expectation that his renewal application for Road Service Permits would be properly considered by the Second Respondent in accordance with the Act and Regulations;
8. That the Applicants be granted permission to apply for judicial review by way of an order of certiorari to quash the Decision made on December 6, 2021, by the First and Second Respondents and their Ministry to award the Road Service Permits to Floralia for Punta Gorda/Belize City runs; and to quash Floralia's Road Service Permits consequent upon that decision;
9. That the Applicants be granted permission to apply for judicial review by way of an order of certiorari to quash the Second Decision to award Road Service Permits to Floralia and D-line for the Dangriga to Belize City runs;
10. That the Applicants be granted permission to apply for judicial review by way of an order of certiorari to quash the Third Decision made by the Second Respondent to reject the First Applicant's renewal applications;
11. That the Applicants be granted permission to apply for judicial review by way of an order mandating that the Second Respondent consider, in accordance with the Act and Regulations, the First Applicant's renewal application for the Road Service Permits he previously held;
12. That damages be assessed and paid for the Applicants' losses suffered as a result of the First, Second, Fourth, Fifth and Sixth Respondents' actions;
13. That the costs of this application be costs in the cause;
14. Such further or other relief as may be just.

13. The grounds of the Application are:

1. *Ultra vires*;
2. Breach of natural justice (procedural fairness);
3. Abdication of power;
4. Irrelevant considerations; and
5. Legitimate expectations.

Legal Framework

14. Rule 56.3 of the *Supreme Court (Civil Procedure) Rules, 2005* (the “Rules”) requires a person wishing to apply for judicial review to first obtain permission from this Court. Under Rule 56.2, an application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application. The first step in the analysis is to determine whether the applicant has the required interest to seek judicial review.

15. The second step in the analysis is concerned with the application itself. In *Sharma v. Deputy Director of Public Prosecutions & Ors (Trinidad and Tobago)*,³ the Privy Council laid out what is now referred to as the “usual test”⁴ for leave to apply for judicial review:

(4) The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy: *R v Legal Aid Board, Ex p Hughes* (1992) 5 Admin LR 623, 628; Fordham, *Judicial Review Handbook*, 4th ed (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in *R(N) v Mental Health Review Tribunal (Northern Region)* [2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable *mutatis mutandis* to arguability:

“... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the

³ [2006] UKPC 57.

⁴ See for instance Claim No. 43 of 2021 *Ian Haylock v Primer Minister of Belize et al.* at para. 16, citing *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44 and *National Commercial Bank Jamaica Ltd v Industrial Disputes Tribunal and Peter Jennings* [2016] JMCA App 27; Claim No. 761 of 2019 *Julian Johnathan Myvett v Comptroller of Customs et al.* at para. 8.

allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen": *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712, 733.

16. For permission to apply for judicial review to be granted, therefore, an applicant must satisfy the Court that she or he has an arguable case having a realistic prospect of success. The Court must also be satisfied that no discretionary bar, such as delay or an alternative remedy, applies to the case. The threshold to be met under the *Sharma* test is considered to be low,⁵ "at a height which is necessary only to avoid abuse".⁶

Analysis

Whether the Applicants have sufficient interest

17. The Applicants submit they have standing under Rule 56.2 of the *Rules*. The First and Second Applicants are bus operators that were already providing transport services along parts of, or near to, the routes awarded to Floralia. They contend they had a right to be heard under Regulation 207. As a member of the Transport Board, the Third Applicant alleges that he was also deprived of his right to be heard. In addition, the First Applicant alleges that his applications for Road Service Permits were not considered by the Transport Board in accordance with the Act and the Regulations, and he was directed to discontinue operation effective March 20th, 2022. The First and Second Applicants argue that their livelihood has been directly affected by the Decisions of the Respondents.
18. The Respondents do not appear to dispute the Applicants' interest in this matter.
19. This Court is satisfied that the Applicants have the required interest under Rule 56.2 of the *Rules*. The First and Second Applicants have been directly affected by the Decisions which are the subject of this Application. The Third Applicant is a body that represents the views of its members who

⁵ *Maharaj v Petroleum Company of Trinidad and Tobago Ltd (Trinidad and Tobago)* [2019] UKPC 21; *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44.

⁶ Claim No. 563 of 2021 *Senator Michael Peyrefitte v Minister of Finance et al.* at para. 40.

may have been adversely affected by the Decisions. The Applicants have demonstrated that they have the required interest in applying for judicial review of the Decisions.

Whether there is an alternative remedy

20. Section 4(10) of the *Motor Vehicles and Road Traffic Act* provides as follows:

(10) Where any person is aggrieved by a decision of the [Transport] Board, he shall, within twenty-one days of such decision, appeal to the Minister whose decision thereon shall be final.

21. The Applicants argue there is no alternative form of redress which exists that is more appropriate than judicial review. The Applicants acknowledge that the Act provides for a right of appeal to the Minister, however they say it would be “pointless” to engage the Minister because Floralia has already been awarded Road Service Permits and is currently operating. In addition, the Minister has expressed his support for Floralia, stating to the Applicants that Floralia’s business model is in line with his government’s Plan Belize and to the media that “Floralia is here to stay”.
22. The Applicants add that the statutory right of appeal is not suitable for an application which is grounded not on the merits of the Decisions, but on allegations of procedural impropriety. They cite this court’s decisions in *Belize Water Services Ltd. v Public Utilities Commission*⁷ and *Belize Electricity Limited v Public Utilities Commission*⁸ in support of their position that independent judicial review is more appropriate in matters where a respondent acts in excess of their statutory powers.
23. The Respondents, on the other hand, argue that judicial review is a remedy of last resort. The Applicants must first utilize the appeal mechanism available to them under section 4(10) of the Act. The Applicants have failed to demonstrate that there exist exceptional circumstances why they have not pursued their statutory right of appeal under the Act.
24. With respect to the Minister’s statements relied upon by the Applicants, the Respondents submit that those statements made by the Minister in his political capacity must be distinguished from the Minister’s exercise of his quasi-judicial appeal function. The Minister must be given an opportunity to exercise those functions before the Applicants are entitled to come to the Court.
25. This Court agrees that the statutory right of appeal to the Minister provided for at section 4(10) of the Act does not constitute, in the particular circumstances of this case, an appropriate alternative remedy.

⁷ Claim No. 176 of 2018.

⁸ Claim No. 466 of 2020.

26. As rightly noted by the Respondents, judicial review is a remedy of last resort; where an alternative remedy exists, absent exceptional circumstances courts will refuse leave to apply for judicial review. As held by the Eastern Caribbean Supreme Court in *Benjamine Company Serviced Ltd. v Anguilla Financial Service Commission*,⁹ where there exists an avenue of appeal or review created by statute, an applicant must show some exceptional reason why they should be pursuing judicial review instead:

[31] There is a presumption against judicial review where an alternative remedy exists and the Court may not grant leave where the Court forms the view that some other form of legal proceedings or avenue of challenge is available. The most obvious type of substitute remedy is an avenue of appeal or review created by statute. It is therefore for the Applicant to show some exceptional reason why the avenue of judicial review was pursued instead of the statutory appeal avenue [...]

27. The court in *Benjamine* expanded on the issue of “exceptional reason”, noting that the inconvenience, cost, and delay of the statutory procedure would not meet the threshold, nor is the fact that the time for filing the appeal has passed.¹⁰ The court, in *Benjamine*, rejected the argument, also made by the Applicants in the present matter, that leave for judicial review should be allowed because the dispute revolved around the conformity of the administrative body’s decision-making process with the statutory or common law powers conferred on it.¹¹
28. However, the concerns raised by the Applicants in relation to the independence of the decision-maker on appeal constitute an exceptional reason for this Court to grant leave to apply for judicial review despite the existence of a statutory right of appeal. Under section 4(10) of the Act, it is the Minister who is empowered to hear appeals of the Transport Board’s decisions. The Minister is not a member of the Transport Board,¹² and can normally hear appeals from decisions by this body with impartiality.
29. In the present matter however, the Applicants allege that the Minister acted unfairly, unlawfully, ultra vires, and in breach of the Act by awarding Floralia Road Service Permits without a consideration by the Transport Board of Floralia’s applications, as required by the Act. The fact that the Minister is at the center of the Applicants’ allegations raises concerns as to the Minister’s ability to impartially hear an appeal of the Decisions at issue. In these exceptional circumstances, the statutory right of appeal provided by the Act does not constitute a proper alternative remedy to judicial review.

⁹ AXAHCV2017/0066 (*Benjamine*).

¹⁰ *Benjamine* at paras. 33-34.

¹¹ *Benjamine* at paras. 29-32.

¹² Section 4(1) of the Act.

Whether there was delay

30. Under Rule 56.5 of the *Rules*, an application for permission to apply for judicial review must be made promptly, and in any event within three months from the date when the grounds for the application first arose. The Court can extend this period if there is a good reason to do so.
31. The Application was submitted on March 4th, 2022 and filed on March 8th, 2022. In his Affidavit in support of the Application, Mr. Thomas Shaw stated that the time limit for making the Application had not expired because the First Decision to award the Road Service Permit to Floralia regarding the Punta Gorda runs had been made on or about December 6th, 2021, and the Second and Third Decisions had only just been made.
32. In their Skeleton Arguments, the Applicants acknowledge that the First Decision had actually been made on November 24th, 2021, which corresponds to the date Floralia's Road Service Permits had been issued. However, they explain that they believed the First Decision had been made on December 6th, 2021 because that is the date Floralia started operations. There is only a one-week delay for the review of the First Decision. The delay was caused by the action of the Respondents in withholding copies of Floralia's applications and permits from the Transport Board and interested members of the public.
33. At the hearing of this Application, the Applicants sought permission from this Court to amend their Application to add an order that time be extended for filing their Application for Permission to Apply for Judicial Review. The Applicants ask this Court to extend the time for making the Application regarding the First Decision because there is a good reason to do so. The Application has strong merit as the evidence shows there were flaws in the Respondents' decision-making process. There is a clear public interest in having this Application determined on its merits to vindicate the rule of law and the Applicants' rights. In addition, there is no evidence before this Court that the Respondents would be prejudiced by granting the extension sought by the Applicants.
34. The Respondents argue that the Application was not made promptly, as the First Decision being challenged was made on the 23rd or 24th of November, 2021, and the Application was not filed until almost four months later. They note that as a member of the Transport Board, the Third Applicant would have known about the First Decision. As for the Second Decision, the Respondents submit that although it was made within three months of the Application, the Application was not made promptly. The Respondents cite *R (Sustainable Development Capital LLP) v SSBEIS*¹³ in support for the proposition that an application brought within three months is not necessarily prompt. They also cite *R (Wingfield) v Canterbury City Council*¹⁴ and *O'Reilly v Mackman*¹⁵, in which the courts emphasized the importance of promptness for the good and proper administration of the state.

¹³ [2017] EWHC 771.

¹⁴ [2019] EWHC 1974.

¹⁵ [1983] 2 AC 237.

35. According to the Respondents, the delay in the bringing of this Application can cause substantial prejudice to the rights of the third party, Foralia, and the general public, who have been acting in reliance on the Decisions being challenged and expect buses to run accordingly.
36. This Court finds that although the Application was not brought within three months from the date when the grounds for application first arose, the delay was not unreasonable in the circumstances and there are good reasons for extending the period within which the Applications can be made.
37. The relevant time for computation of the three month timeframe begins from the date on which the grounds for the application first arose, not “from the date when the claimant first learnt of the decision or action under challenge nor from the date when the claimant considers that he has adequate information to bring the claim”.¹⁶ The Applicants allege that they became aware of the First Decision on or around December 6th, 2021 when Foralia began operations along the Punta Gorda to Belize City route. Foralia’s Road Service Permits for that route were actually issued on November 24th, 2021. The Application was submitted electronically on March 4th, 2022 but was filed on March 8th, 2022. The Application was therefore filed 3 months and 12 days after the First Decision. A delay of 12 days does not strike this Court as unreasonable.
38. There are good reasons for extending the period within which the Application can be made. In *Maharaj v National Energy Corporation of Trinidad and Tobago (Trinidad and Tobago)*, the Privy Council explained that a court can take a variety of factors into account in making a decision to extend the statutory timeframe:¹⁷

37. The obligation on an applicant is to bring proceedings promptly and in any event within three months of the grounds arising. The presence or absence of prejudice or detriment is likely to be a key consideration in determining whether an application has been made promptly or with undue or unreasonable delay. Thus, for example, in 1991 in *R v Independent Television Commission, Ex p TV Northern Ireland Ltd* reported [1996] JR 60 Lord Donaldson MR warned against the misapprehension that a judicial review is brought promptly if it is commenced within three months.

“In these matters people must act with the utmost promptitude because so many third parties are affected by the decision and are entitled to act on it unless they have clear and prompt notice that the decision is challenged.” (p 61)

Similarly, in *R v Chief Constable of Devon and Cornwall, Ex p Hay* [1996] 2 All ER 711, Sedley J observed (at p 732A):

¹⁶ *R v Secretary of State for Transport ex p. Presvac Engineering Ltd.* (1991) 4 Admin L. Rep 121 at 133-134, cited in *Odean Grant v The Commissioner of Police & Anor*, [2017] JMCS Civ 78 at para. 28.

¹⁷ [2019] UKPC 5.

“While I do not lose sight of the requirement of RSC Order 53 rule 4 for promptness, irrespective of the formal time limit, the practice of this court is to work on the basis of the three-month limit and to scale it down wherever the features of the particular case make that limit unfair to the respondent or to third parties.”

Indeed, when considering whether an application is sufficiently prompt, the presence or absence of prejudice or detriment is likely to be the predominant consideration. The obligation to issue proceedings promptly will often take on a concrete meaning in a particular case by reference to the prejudice or detriment that would be likely to be caused by delay.

38. In the same way, questions of prejudice or detriment will often be highly relevant when determining whether to grant an extension of time to apply for judicial review. Here it is important to emphasise that the statutory test is not one of good reason for delay but the broader test of good reason for extending time. This will be likely to bring in many considerations beyond those relevant to an objectively good reason for the delay, including the importance of the issues, the prospect of success, the presence or absence of prejudice or detriment to good administration, and the public interest.

39. While irrelevant to the computation of the three month timeframe, the fact that the Applicants were not informed of the First Decision until after Floralia started operating along the Punta Gorda to Belize City route on or around December 6th, 2021 is relevant to the determination of whether there are good reasons to extend the delay in filing the Application. As will be addressed below, there is no record in any minutes of any meetings of the Transport Board showing that the Transport Board discussed or approved Floralia’s applications for Road Service Permits. The Applicants submitted their Application within three months of discovering that Floralia had begun its operations.
40. The Respondents have failed to demonstrate any prejudice flowing for the delay in filing this Application. In their Skeleton Arguments, the Respondents submitted that “there has been considerable delay in the bringing of this Application which can cause substantial prejudice to the rights of the third party, Floralia Limited, and the general public, who have been acting (to their detriment to the decision now under challenge) (*sic*)”. The Respondents allege prejudice not only for the 3 months and 12 days delay with respect to the First Decision, but also the delay of about a month between the Second and Third Decisions and the filing of the Application. When probed about the nature of the prejudice, Respondents’ counsel submitted that prejudice may flow from the fact that Floralia is already operating and the general public benefits from its services. Respondents’ counsel argued that the public would be affected by a decision of this Court to quash the Decisions.
41. At the leave stage, the Court is concerned with whether the delay *in bringing the Application* would cause a prejudice, not whether the granting of any remedy on the merits would cause a prejudice. The Respondents failed to articulate how the fact that the Application was brought when it was

caused a prejudice to the Respondents, Floralia, or the general public. The Court notes that Floralia began its operations a mere 12 days after the Road Service Permits for the Punta Gorda to Belize City runs were granted. It would be absurd to suggest that the Applicants had to file their Application within those 12 days, lest they would cause prejudice to the above-noted parties and lose their right to apply for judicial review. Once Floralia began operating, the impact of this Application on these parties is the same, whether the Application had been filed 5 days or 3 months after Floralia began operating.

42. This Application has a reasonable prospect of success. As outlined below, there is evidence that the statutory regime applicable to the granting of road service permits has been flouted. This Application raises important issues of transparency and fairness in the administration of the Belize public transportation system. The Applicants and the public in general have an interest in ensuring that Road Service Permits are awarded in compliance with the applicable statutory and regulatory regime.
43. The Applicants are granted permission to amend their Amended Application for Permission to Apply for Judicial Review to add an order that time be extended for the filing of the Amended Application. The time for filing the Amended Application is extended to March 8th, 2022.

Whether there is an arguable case with reasonable prospect of success

44. The Applicants contend that the Respondents acted *ultra vires* by breaching the provisions of the Act and the Regulations in making the Decisions. Regulation 207 provides that the date of the meeting of the Transport Board at which an application is to be considered shall be published in the Gazette beforehand. Regulation 207, in relevant parts, reads as follows:

207. The date of the meeting of the Licensing and Transport Board to consider applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issue of the *Gazette*, provided that when only applications for renewals of road service permits are to be heard the date of the meeting of the Board shall be published in one issue of the *Gazette*. In considering an application the Board shall have regard to the following –

[...]

(g) that the fares are so fixed as to prevent wasteful competition with alternative means of transport on the proposed routes or any part of them;

(h) any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them;

[...]

45. With regard to the First Decision, the Applicants contend that the Gazette publications concerning Floralia do not state the date of the meeting of the Transport Board to consider Floralia's applications. The Applicants dispute the evidence provided in the Affidavit of Dian Vasquez according to which the Transport Board met on November 23rd, 2021 to consider Floralia's applications. They allege that the meeting took place on November 12th, 2021, and that Floralia's Road Service Permit applications for the Punta Gorda – Belize City route were not tabled before the Transport Board at that, or any other meeting. The Applicants argue that they were never given an opportunity to make representations on Floralia's applications.
46. Similarly, with respect to the Second Decision, the Applicants argue that Floralia's Road Service Permit applications for the Dangriga – Belize City route were not tabled before the Transport Board on February 9th, 2022, or at all. There were no Gazette publications for these applications. The Applicants argue that they were also deprived of the opportunity to make representations on those applications.
47. With respect to the Third Decision, the First Applicant alleges that he has been operating along the Dangriga – Belize City route since October 19th, 2013, under two Road Service Permits that had been issued in the name of Calbert Williams Sr., a family member who is now deceased. This was done with the knowledge and consent of the Respondents at all times. After the expiration of the two Road Service Permits, the First Applicant was granted a temporary permission to operate until March 2022. The First Applicant's applications to renew his Road Service Permits were not approved by the Transport Board following its February 9th, 2022 meeting. The Applicants allege that the First Applicant was not permitted to make representations on his own applications, contrary to Regulation 207, and that the Third Applicant was deprived of the opportunity to review the First Applicant's applications as a member of the Transport Board.
48. The Applicants submit that the Second Respondent abdicated its power to the First, Fourth, and Fifth Respondents in making the Decisions. The Act and Regulations place the discretion on the Transport Board to consider and award road service permits. No such discretion resides in the Minister, Chief Transport Officer, or Chairperson of the Transport Board.
49. In the Applicants' submissions, in making the First Decision the Minister was swayed by irrelevant considerations. Even though Floralia may have presented the Minister with a business proposal, ticketing system, and financial information before applying for their runs, these are no substitute for a proper meeting of the Transport Board as required by law. Further, the Minister improperly supported Floralia because their project was in line with Plan Belize, thus usurping the duty of the Transport Board.
50. The First Applicant contends that he was denied a fair hearing before the revocation of his runs and the rejection of his applications. The First Applicant also argues that his legitimate expectation that his applications would be considered in accordance with the process mandated by law, and that the

fact that he has been operating since 2013 under Calbert Williams Sr.'s Road Service Permits would be taken into account, was breached.

51. The Respondents maintain that the Act and Regulations have been complied with. Floralia made two applications for Road Service Permits for runs along the Punta Gorda – Belize City route on October 20th, 2021. The date of the Transport Board meeting at which the applications were to be considered was published in three consecutive issues of the Gazette dated October 30th, 2021, November 6th, 2021, and November 13th, 2021. The Transport Board met on November 23rd, 2021 to consider Floralia's applications. Since there were no objections raised by anyone, the Transport Board approved the applications. The Road Service Permits were amended on February 9th, 2022 because of a conflict in the bus run times.
52. In early 2022, Floralia submitted an application for runs along the Independence Village – Belize City route. The date of the meeting of the Transport Board at which the applications were to be considered was published in three consecutive issues of the Gazette dated February 12th, 2022, February 19th, 2022, and February 26th, 2022. The applications were approved by the Transport Board on March 12th, 2022.
53. The Respondents note that contrary to his submissions, the First Applicant had not been granted Road Service Permits since 2013. The Road Service Permits were issued in the name of Calbert Williams Sr. for Griga Line. Road Service Permits are not transferable. The first time the First Applicant applied for a Road Service Permit was on January 13th, 2021 for runs along the Dangriga – Belize City route. No legitimate expectation in the renewal of the Road Service Permits in the name of Calbert Williams Sr. arises. The First Applicant's applications were gazetted three times on January 30th, 2021, February 6th, 2021, and February 13th, 2021, before they were considered by the Transport Board and a decision was made on March 11th, 2021. At that time, Floralia had already been granted Road Service Permits for the same runs.
54. On January 22nd, 2022, the First Applicant was informed that the runs he operated for Calbert Williams Sr. would be canceled as Mr. Williams Sr. had pending fees with the Transport Board. On February 24th, 2022, the First Applicant applied for four runs which he operated for Calbert Williams Sr.
55. The Respondents deny that there has been abdication of power because all Road Service Permits awarded to Floralia were properly considered, and issued, by the Transport Board alone. No Minister or any other public official has made the decision to grant Road Service Permits to Floralia. Floralia made its applications, and the relevant considerations were taken into account. There is no question that the notices were gazetted. The Third Applicant, as the representative of the industry, was present when the decisions were made and did not raise any objections in respect of Floralia's applications.

56. On the issue of legitimate expectation, the Respondents argue that the First Applicant had no legitimate expectation since the bus runs which he operated were all done under the Road Service Permits issued in the name of Calbert Williams Sr. for Griga Line. It was not until January 2021 that the First Applicant made any application for a Road Service Permit to conduct any bus runs. No clear and unambiguous promise was made to the First Applicant, nor were there any practices or policies in place to create a legitimate expectation. In addition, there is no issue of procedural legitimate expectation since the Third Applicant sits as a member of the Transport Board and the only concern raised was who was the owner of Floralia and what was the source of funding.
57. In oral submissions, Respondents' counsel admitted that the minutes of the relevant Transport Board meetings make no mention of any decision taken by the Transport Board with regard to Floralia's applications. Counsel argued that the Transport Board's approval is implicit because the Transport Department would only act on the directives of the Transport Board to issue Road Service Permits. Counsel was unable to specify how the decisions of the Transport Board are recorded and forwarded to the Transport Department for action.
58. This Court finds that the Applicants have demonstrated that they have an arguable case with a reasonable prospect of success. Firstly, there is evidence of a breach of the Regulations. Regulation 207 provides that "the date of the meeting of the Licensing and Transport Board to consider applications together with particulars of the applications to be considered shall be published beforehand in three consecutive issues of the *Gazette*". Appended as exhibit DV3 to the First Affidavit of Dian Vasquez are notices dated October 30th, 2021, November 6th, 2021, and November 13th, 2021 advising of Floralia's applications for runs along the Punta Gorda – Belize City route. None of these notices contain the date of the meeting at which the applications were to be considered.
59. Appended as exhibit DV10 to the First Affidavit of Ms. Vasquez are notices which the Respondents allege constitute Gazette publications advising of the March 12th, 2022 meeting of the Transport Board at which Floralia's applications for the Dangriga – Belize City runs would be considered. Curiously, none of these publications dated February 12th, 2022, February 19th, 2022, and February 26th, 2022 make any mention of Floralia at all. The Court is at a loss as to how these notices support the Respondents' contention that the date of the Transport Board meeting had been published in accordance with the Regulations.
60. In the absence of notices of the dates of the meetings at which Floralia's applications would be considered, as required by Regulation 207, there is an arguable case that the Applicants were denied an opportunity to make representations on those applications as provided for in Regulation 207(h). In oral submissions, counsel for the Respondents suggested that even if the dates of the Transport Board meetings were not published, in breach of Regulation 207, the breach is not consequential because the Third Respondent, as a member of the Transport Board, was notified of all meetings, was able to advise the First and Second Applicants of the meetings, and was able to represent the

both of them at the meetings. Counsel for the Respondents interpret Regulation 207 as meaning that individuals can make representations to the Transport Board, unless there is an organization to represent them, in which case the organization is the one who represents individual service providers.

61. The Court rejects the notion that the Third Applicant's membership on the Transport Board is sufficient to meet the requirements in Regulation 207(h). Regulation 207(h) states that the Transport Board will consider "any representations which may be made by persons who are already providing transport facilities along or near to the proposed routes or any part of them". Regulation 207 does not limit the right to make representations to the lone representative of the public transport providers who sits on the Transport Board. That is so because the interests of individual transport providers may differ from those of the whole. The First and Second Applicants had a right to make individual representations before the Transport Board, a right which they claim they were unable to exercise given the lack of notice of the dates of the relevant Transport Board meetings.
62. Secondly, there is no evidence of any consideration given by the Transport Board to Floralia's applications. Despite Ms. Vasquez's evidence, there is no evidence of a meeting of the Transport Board that took place on November 23rd, 2021. Appended as exhibit DV4 to the Second Affidavit of Ms. Vasquez are minutes of a meeting of the Transport Board that took place on November 12th, 2021. There is no record in those minutes of Floralia's applications for the runs along the Punta Gorda – Belize City route being considered, let alone approved. The only mention of Floralia's applications are under the "New Business" item of the minutes, where in response to a question by Mr. Shaw about two new runs for Floralia from Punta Gorda to Belize City, the minutes indicate that the "Chair mentioned that Floralia (*sic*) runs are not affecting any of James time slot. They will need to adjust the time on their application". The reference to an adjustment to Floralia's application in the future suggests that the applications were not actually approved by the Transport Board at the November 12th, 2021 meeting.
63. The Respondents did not provide the minutes of the March 12th, 2022 meeting at which they allege Floralia's applications for the runs along the Dangriga – Belize City route were approved, and the Third Applicant's applications for Road Service Permits were considered and denied. In the absence of any record of any applications being considered, and any decision being made on that day, as alleged by Ms. Vasquez, the Court can reach no other conclusion than the Applicants have a reasonable prospect of succeeding in judicial review.
64. Much has been made of the fact that the First Applicant operated his business under Road Service Permits issued in the name of Calbert Williams Sr., now deceased. The parties dispute whether the First Applicant had any legitimate expectation that Road Service Permits would be issued in his own name upon his applications. It is unnecessary to consider, at this stage, whether or not the First Applicant had any legitimate expectation that the Road Service Permits would be granted. Indeed, the First Applicant had, at the very least, a legitimate expectation that his applications would be

considered by the Transport Board in accordance with the Act and the Regulations. The Respondents have provided no evidence to support that the First Applicant's applications were considered at all. The First Applicant has a reasonable prospect of succeeding on that point.

65. Given the lack of evidence in support of the Respondents' position that Floralia's and the First Applicant's applications for Road Service Permits were all considered in accordance with the Act and the Regulations, and in the absence of any record showing how and by whom those decisions were made, this Court finds that the Applicants have a reasonable prospect of succeeding in judicial review.

Full and Frank Disclosure

66. The Respondents argue that the Applicants breached their duty of full and frank disclosure because they failed to disclose all material facts. They argue that the Applicants did not disclose that the First Applicant had never been issued a Road Service Permit as of 2013 and only made his first application in January of 2021. In addition, the Applicants failed to disclose that the Chair of the Third Applicant was present at all material times at the Transport Board meeting held approving Floralia's Road Service Permits, and that having been present, the Third Applicant by conduct would have acquiesced to the decision to grant the Road Service Permits to Floralia.
67. The Applicants submit that the duty of full and frank disclosure only applies when permission for judicial review is sought on an *ex parte* basis since at an *inter partes* hearing the Respondent can advance all facts it considers relevant. The Applicants were not aware of certain matters because of the Respondents' lack of transparency.
68. The Court has not been persuaded that the Applicants failed to disclose any material facts that were within their knowledge. The Applicants were clear in their Application that the First Applicant's Road Service Permits had been issued in the name of Calbert Williams Sr.¹⁸ As to whether the Third Applicant was present at the Transport Board meetings held approving Floralia's Road Service Permits and his acquiescence to the Decisions, this is very much disputed by the Applicants and will have to be established by the Respondents at the hearing on the merits.

¹⁸ See para. 14 of the Amended Application.

IT IS HEREBY ORDERED

- (1) The Applicants are granted leave to amend the Amended Notice of Application for Permission to Apply for Judicial Review to seek an order that time be extended for the filing of the Application;
- (2) Leave is granted to extend the time for filing the Amended Application for Permission to Apply for Judicial Review to March 8th, 2022;
- (3) The Applicants are granted leave to apply for Judicial Review and shall file, within 14 days of the date of this decision, an Application for Judicial Review;
- (4) Costs of this Application are granted to the Applicants and shall be costs in the cause.

Dated September 20th, 2022

Geneviève Chabot
Justice of the Supreme Court of Belize