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

CIVIL APPEAL NO 2 OF 2020

TERESITA OROSCO

Appellant

v

MINISTER OF LABOUR, LOCAL GOVERNMENT & RURAL DEVELOPMENT

1st Respondent

THE ATTORNEY GENERAL

2nd Respondent

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BEFORE:

The Hon Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon Mr Justice Foster	-	Justice of Appeal
The Hon Mr Justice Bulkan	-	Justice of Appeal

L Mendez for the appellant.
S Matute for the respondents.

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21 June 2022 and 7 September 2022

JUDGMENT

MINOTT-PHILLIPS, JA

[1] By notice of appeal filed on 7 February 2020 the Appellant, Teresita Orosco (Ms Orosco), appealed a decision of the Hon Madam Justice Shona Griffith made on the 23 December 2019 dismissing, without trial, her claim for constitutional relief. She did so upon an application made by the Respondents, The Minister of Labour, Local Government & Rural Development (the Minister) and the Attorney General (the AG) pursuant to Civil Procedure Rule 26.3 (1) (b) that the claim was an abuse of process.

[2] In her claim dated 13 May 2019 (as amended on 17 September 2019) Ms Orosco sought constitutional relief arising from the failure of the Minister to appoint the members and chairman of the Labour Complaints Tribunal (the Tribunal) established under the Labour Act, thereby depriving her of her right to access the Tribunal for the determination of her rights established under the Labour Act. Her claim, as amended, primarily was for:

a. Declarations that the Minister's failure to appoint the members and chairman of the Tribunal breached her right to protection of the law under section 6 of the Constitution in that she was denied access to the Tribunal for the determination of her rights established under the Labour Act and, in particular, of the protection of the law set out under section 42 of the Labour Act;
b. An order that the Minister constitutes the Labour Complaints Tribunal in accordance with the First Schedule to the Labour Act; and
c. Compensatory and vindicatory damages.

[3] The order made by the Hon Judge below on 23 December 2019 that is the subject of this appeal expressly stated it was made upon the Minister's application dated 24 October 2019 (that the claim filed by Ms. Orosco be dismissed and/or struck out).

[4] The application was advanced pursuant to sections 1.1 and 26.3(1)(b), (c) of the Civil Procedure Rules and the court's inherent jurisdiction:

a. an the grounds that:
    i. It is an abuse of the process of the court because the claim cannot be maintained as she has an available alternative remedy of a private claim for breach of an employment contract and wrongful termination which has not been exhausted; and
    ii. The declaratory reliefs sought by Ms Orosco would serve no useful purpose; and
b. on the grounds that:
    i. Ms Orosco has not factually proven that she was unfairly dismissed from her place of employment, a private company, as a result of discrimination, and deprived of specific remedies; and

ii. Ms Orosco submitted her complaint to the Labour Department for the Labour Tribunal outside of the statutory requirement of 21 days.

The Minister contended that, were it to continue, Ms Orosco's claim would violate the overriding objective of the CPR to deal with cases justly.

[5] Although the Hon Madam Justice Griffiths granted the Minister's application, she did so solely on the basis that Ms Orosco's claim was an abuse of the process of the court and dismissed it *"on the basis that the Claimant has not shown by her pleadings that she has exhausted all remedies available to her"*. There is only one ground of appeal. It asserts that conclusion is an error, and seeks by way of relief an order setting aside the decision of the trial judge and remitting the matter to the Supreme Court for continuation.

[6] The factual background to Ms Orosco's claim for constitutional relief involves the termination of her employment working as a cleaner for Kieser Management Limited. She maintains she was dismissed when her supervisor became aware that she is HIV positive following the airing of an interview she gave, incognito, to a local media house on her life experience as a person living with HIV. On being asked by her supervisor whether she was the interviewee, she admitted a few days later, on 1 February 2019, that she was. The afternoon of that same day, she was served with a notice of termination of her employment.

[7] Section 42 of the Labour Act, 2011 ("the Act") beside the marginal note *"Unfair Dismissal"* states,

> *Notwithstanding anything to the contrary contained in any other law or agreement, the following reasons do not constitute good and sufficient cause for dismissal or for the imposition of disciplinary action against a worker: …(i) HIV status.*

Sections 200-205 of the Act speak to the Labour Complaints Tribunal including its establishment and power to deal with complaints of Unfair Dismissal. It fell to the Minister to appoint the Tribunal and its Chairman pursuant to section 200 of the Act and sections 1 and 2 of the Schedule. It is accepted that the Tribunal was not established prior to the filing of Ms Orosco's constitutional action. That is confirmed by a Memorandum dated 17 October 2019 from the

CEO of the Ministry to the Solicitor General exhibited to an affidavit filed on 24 October 2019 on behalf of the Minister.

[8] Section 203 of the Act is relevant. It states,

> *(1) Within twenty-one days of the date of dismissal or wrongful termination, an employee shall have the right to file a complaint to the Tribunal, through the Commissioner whether notice has been given or not.*
> *(2) ...*
> *(3) Subsection (1) of this section does not apply to a contract of employment, which is terminated pursuant to section 37(1) of this Act unless, in the case of a worker, the worker is able to give evidence to the satisfaction of the Tribunal that a reason under section 42 of the Act,* ***may*** *be the cause of termination of the contract of employment [my emphasis].*

[9] Section 37 (1) of the Act provides for the termination of a contract of employment without reason by either the employer or the worker upon provision of a specified period of notice.

[10] Section 3 of the Constitution of Belize states,

> *Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—*
>
> (a) *life, liberty, security of the person,* ***and the protection of the law****;* [my emphasis];
>
> *...*
>
> *the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed*

to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

[11] Section 6 (1) of the Constitution of Belize states,

> *All persons are equal before the law and **<u>are entitled</u>** without any discrimination **<u>to the equal protection of the law</u>**. [my emphasis].*

[12] In arriving at her decision the Hon Madam Justice Griffith made it clear that she did not dismiss the claim on the basis of there being no reasonable cause of action but on the basis only of it being an abuse of the process of the court -- and not in the sense of the action being *'frivolous and/or vexatious',* but on the basis that she found the bringing of it to be inappropriate in the circumstances of this case. The transcript of her oral reasons records her saying the following,

> *"The nature of the application is such that it pleads….the strike out either as an abuse of process or for there being no reasonable cause of action or no reasonable grounds for bringing the claim. I discount the ground that says there's no reasonable ground for bringing the claim. I would consider primarily the issue of whether or not it is an abuse of process…" …Abuse of process is not synonymous with…. being frivolous and/or vexatious…"*

She is later quoted as follows,

> *"The starting point for the consideration of the application would be sections 3(a) and 6(1) of the Constitution which between them provide or prescribe the protection of the law in relation to the fundamental rights and freedoms. And this has been interpreted as justiciable…"*

She continued,

> *"And I do acknowledge, Mr Sylvestre [counsel for Ms Orosco below], the interpretation that you have put forward in relation to the right being broad and pervasive and there's no argument with that…. However, the crux or the most important thing when we are going to consider applying*

that right is the question of appropriateness. It is not just going to be the rigid and inflexible approach that says as long as there is a parallel remedy then you cannot bring the action. There can be no parallel remedy. The question of whether or not you have properly brought a claim under the Constitution would still be examined. So the right to be here is accepted…"

"In relation to this particular case, the subject matter is one of breach of an employment contract, whether it is an implied contract, I assume it was, and the right to an action via statute which would be unfair dismissal versus the residual right at common law to bring an action for wrongful dismissal. The law very plainly is…that the existence of the statutory right of unfair dismissal [sic.] has not obliterated the common law so that there always is still that right to bring an action for wrongful dismissal…"

"…this Claimant would still have a right at common law for wrongful dismissal, so there is a parallel remedy…and the question can be asked in this case whether the existence of that parallel remedy of a wrongful dismissal would be effective. Mr Sylvestre says no."

"…we have in this case that the subject matter of the infringement is rooted allegedly in an assertion or an allegation of discrimination and discrimination based on the fact that the Claimant revealed that she was HIV positive and this is specifically provided for in section 42 as a reason that does not amount to good reason for dismissal. ***So there is that element in this claim which says that underlying the Claimant's case is a cry of discrimination which cannot possibly be addressed via a wrongful dismissal case. The court says that is acceptable and that is fine****."[my emphasis]*.

[13] The Honourable Judge goes on to find *"... there are at least two factors which militate against the claim as it has been brought…"* and says they are:

a. The claim as pleaded and the relief that is sought is predicated upon this breach of the employee's right as specified in section 42; and

b. The employer is not a party to the action.

[14] Having identified the two deficiencies she perceived in the action brought by Ms Orosco, the Hon Madam Justice Griffiths continued,

> *"…The employer is not before the Court. That in my view is critical in relation to grounding the Applicant's standing.* ***What is before the Court is an allegation in private law*** *[my emphasis]. What we are balancing is utilizing the mechanism of the Constitution to say that the Government has failed in its protection. That's the element that is missing.*
>
> *Also, when we look at the protections that the law has, again you are seeking to invoke the Constitutional mechanism where there could have been a first step that says to the Court I have tried all that is available to me to have this Tribunal established; there is nowhere else to turn…. The reasons for the non-appointment of the Tribunal are just as germane in relation to considering whether or not the arms of the law have actually failed the Applicant. And in the Court's view when you're going to come to the Court and say that the arms of the law have failed you, you really need to show an exhaustion of all the remedies and the avenues that are in fact available to you…. But everything in relation to balance is always circumstantial and in this circumstance I'm finding that the litigant has fallen just slightly short and has hopped over a few benches or a few steps that in the Court's view should have been exhausted before coming to the Court to say I have nowhere else to turn in relation to what truly is a private law issue."*

[15] The two deficiencies identified by the judge below are, firstly, a deficiency in Ms Orosco's pleading and, secondly, her non-joinder of a party before the court. For reasons I state here and below in this judgment I do not agree that there is either a deficiency in Ms Orosco's pleaded claim or in her joinder of parties. I also consider these findings by the Judge below to be inconsistent with her unwillingness to say Ms Orosco doesn't have an arguable

claim. The transcript of her oral reasons has her, at one point, prevailing upon counsel for Ms Orosco to,

> *"specifically explain to the litigant* ***it's not that the Court has turned her away because she doesn't have a claim****. But when we're coming to use the Constitution, we have to come, especially if you're going to say that the law has failed me, we have to come in a circumstance that enables the Court to pick it right up and say this has to be decided. But if there are other avenues that are circumstantially appropriate, then the Court would say this is not the case,* ***not that you don't have a claim****, but this is not the case."* [my emphasis].

In that extract (and the one that follows) the court seems to accept a valid claim exists.

[16] Also appearing to have a bearing on the decision of the Hon Madam Justice Griffith was her view that *"the remedy of directing the Government to constitute a Tribunal* ***is not a remedy that would arise from these proceedings. They would arise from proceedings of Judicial Review, but not from these proceedings…****"* [my emphasis]. In expressing her agreement with the application to strike out she says,

> *"…I'm more focusing on the steps that are available and that could possibly be taken,* ***not because it is not an arguable claim*** *[my emphasis] but because, before you invoke the Constitution in this way, the concept of it being exceptional I think is to be superimposed or equated with what we have in this case of exhausting what is available to you. So that is where I find that the application is properly brought and that is more or less what needed to be done in terms of getting the arguments out before the Court."*

[17] The main issue that arises for determination on this appeal is whether the Judge below correctly exercised her discretion to dismiss Ms Orosco's constitutional claim as being an abuse of the process of the court.

[18] Abuse of the process of the court is one of those things the court knows when it sees it. As pointed out in *Halsbury's Laws of England* there are no fixed categories of abuse. In its

most general form it presents as a party seeking a collateral advantage beyond the proper scope of the action, or as bringing the proceedings not to achieve vindication but to cause the defendant problems beyond those ordinarily encountered in litigation.

[19] Even if we would have exercised our discretion differently, we would not substitute our discretion for that of the Hon Madam Justice Griffiths unless we find that, in exercising her discretion, she was plainly wrong.

[20] It is my view that, in exercising her discretion to dismiss this constitutional claim as an abuse of the process the Judge below was plainly wrong for the following reasons:

a. Her decision was inconsistent with her finding that Ms Orosco's cry of discrimination could only be addressed by recourse to the protection from unfair dismissal afforded her by the Labour Act and that it could not possibly be addressed *via* a wrongful dismissal case;

b. What was before the court was not an allegation in private law but, rather, an allegation in public law of Ms Orosco's entitlement to submit to the Labour Complaints Tribunal her complaint that the cause of the termination of her employment **<u>may</u>** have been her employer's discovery of her HIV status;

c. Her decision was inconsistent with her acceptance that Ms Orosco had an arguable claim;

d. The remedy of directing the Government to appoint the Tribunal is one that could be obtained in the constitutional proceedings that were before her and is not a remedy confined to a claim for judicial review.

c. Her decision did not appear to have sufficient regard to section 20 sub-sections (1) and (2) of the Belize Constitution even though, in fairness, she did identify section 20 of the Constitution as being *"the part which safeguards and preserves the right of access to the Court".*

[21] I agree with the following submissions advanced before us on behalf of counsel for Ms Orosco, namely, that the Hon Judge below erred in dismissing her claim because:

a. There were no existing remedies or avenues then available to Ms Orosco which she was obligated to pursue before seeking Constitutional relief. Unfair dismissal is a statutory action which could only have been pursued in accordance with the statute, namely the Labour Act.
b. Ms Orosco was under no obligation to send letters to the Ministry or the Labour Commissioner demanding that the Tribunal be appointed prior to bringing a constitutional claim in court, especially in circumstances where the Tribunal had never been appointed since the enactment of the law in 2011.
c. The breach alleged was the very fact that Ms Orosco was placed in a position, despite the enactment of the Labour Act, 2011, where she could not prove her underlying claim. The unproven nature of the allegations made were the direct result of the failure to appoint a Tribunal, and not a failure on the part of Ms Orosco.

[22] The remedies for wrongful and unfair dismissal do not overlap. They are not alternative claims. Neither is claimed in these proceedings brought by Ms Orosco. Nor was this a claim for judicial review, no doubt because there was no administrative decision not to appoint the tribunal that was capable of being the subject of judicial review.

[23] What Ms Orosco has claimed in the proceedings she brought is redress for being deprived of her constitutional right to access the protection of the law that ought to have been available to her under the Labour Act on account of the Labour Complaints Tribunal having not been appointed.

[24] This failure by the relevant Minister or Ministers of the day to appoint the tribunal over the course of an 8-year period is, Ms Orosco asserts, a contravention of her human right under section 6 of the Belize Constitution to protection of the law. There is, on these facts, no other procedure under common law or statute that might be invoked in lieu of this constitutional claim.

[25] The Caribbean Court of Justice (CCJ) sitting in its Belizean jurisdiction in the case of ***Hillaire Sears v Parole Board, Minister of National Security & The Attorney General***[1], reminds us that,

> *"This Court has on several occasions discussed the scope of the right to the protection of the law. This Court has observed that the right to the protection of the law is broad and pervasive. In the Barbadian case of* ***Attorney General v Joseph***[2] *the Court expressed the view that protection of the law included access to administrative tribunals with power to affect constitutional rights or rights under the Constitution of an individual. "Further, in the Belizean case of* ***Maya Leaders Alliance v Attorney General***[3]*, this Court pointed out that the right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law….The Court observed that the right went beyond questions such as access to the courts, and included the right of the citizen to be afforded "adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary abuse of power.[4]" The right to protection of the law also requires the availability of effective remedies. And, as this Court has stated before, s 20 of the Constitution provides the courts with a broad discretion to fashion those remedies. Where a citizen has been denied rights of access and the procedural fairness demanded by natural justice, or* ***where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law****."* [my emphasis].

[26] Ms Orosco's action filed in the court below appears to me to be a genuine claim of infringement of her fundamental right to the protection of the law which, as in the case of

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[1] [2022] CCJ 13 (AJ) BZ at numbered paragraphs 52-53, Delivered by Wit, JCCJ and Rahnauth-Lee JCCJ on 5 August 2022.
[2] [2006] CCJ 3 (AJ) (BB) at numbered paragraphs 59 & 60.
[3] [2015] CCJ 15 (AJ) (BZ) at numbered paragraph 47
[4] ***Joseph*** at numbered paragraph 20, per Wit JCCJ

Hillaire Sears v Parole Board[5], required the Court *"to examine carefully those claims, and to determine whether the appellant is indeed entitled to constitutional redress"*. I detect no abuse of the process of the court in Ms Orosco's action.

[27] If, as a result of her constitutional claim, Ms Orosco is able to get her complaint heard by the Labour Complaints Tribunal, and is able to satisfy the tribunal that her dismissal by her employer resulted from its discovery of her HIV status, then her dismissal would have been unfair and she would be entitled to such remedies as the Tribunal decrees based upon the powers vested in it under the Labour Act. No equivalent remedies are otherwise available to her. In my view it cannot be reasonable to require her to show that she has exhausted alternative remedies where none exist. The focus of Ms Orosco's averments is not whether she has received proper notice or pay in lieu of notice. The facts she has pleaded do not form the framework of a common law claim of wrongful dismissal. They are the framework for her claim that her constitutional right to protection of the law under the provisions of the Labour Act has been breached by the Minister's failure to appoint the Labour Complaints Tribunal.

[28] Sections 20 (1) and (2) of the Belize Constitution state:

> *(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him…, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person…may apply to the Supreme Court for redress.*
>
> *(2) The Supreme Court shall have original jurisdiction*
>
> *a. to hear and determine any application made by any person in pursuance of subsection (1) of this section;*
>
> *b. ….,*
>
> ***and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution*** [my emphasis].

[5] *Ibid* at numbered paragraph 32.

[29] There used to be a proviso to section 20(2) of the Belize Constitution of 1981 which said,

> *"Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are, or have been available to the person concerned under any other law."*

That proviso was repealed in 2001. The Constitution, in its current form, must be interpreted in a manner that is consistent with that repeal which, as Saunders JCCJ observed in his dissenting opinion in ***Lucas v Chief Education Officer***[6], is, nevertheless, not to be interpreted as sanctioning needless resort to the redress provision contained in s 20.

[30] I do not consider this to be a case of needless resort by Ms Orosco to the redress provision contained in s 20 of the Belize Constitution. That being so, even if it were not (as I consider it to be) an obviously justiciable claim for constitutional redress, the court below ought, if it considered it necessary to do so in this case, to have taken the purposive and generous approach to the interpretation and application of fundamental rights and freedoms in order to facilitate flexible access to the court for the fullest vindication of those rights.[7] From her expressed remarks it is clear that the learned judge below considered this case raised a triable issue of possible unfairness meted out to Ms Orosco on account of her disclosed HIV status. Her dismissal of the Minister's application for Ms Orosco's claim for constitutional redress to be dismissed without trial as an abuse of the process of the court ought to have followed from that. Ms Orosco was entitled to her fundamental human right to access the protection from her alleged unfair dismissal that she sought to obtain from a hearing conducted before the Labour Complaints Tribunal.

[31] It is my view that when one considers the facts as alleged, and the relevant sections of the Labour Act and the Constitution, every one of the reliefs claimed in Ms Orosco's Fixed Date Claim Form (as amended) for Constitutional Relief is justiciable within her action as brought. As was pointed out by the Honourable Justices of the CCJ in ***Hillaire Sears v Parole Board et al,***

[6] [2015] CCJ 6 (AJ) (BZ) at numbered paragraph 132
[7] ***Marin v R*** [2021] CCJ 6 (AJ) (BZ), per Jamadar JCCJ at numbered paragraph 70.

> *"There is also no merit in the argument that the Supreme Court was not empowered to make an order to quash the decision of the Parole Board under a constitutional claim. This Court has pointed out that constitutional relief is always a matter of discretion and that a court has wide powers under the redress clause of the Constitution, that is to say, s 20, to create or fashion a remedy to ensure effective relief, given the unique features of a particular case."* [8]

And

> *"The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the Constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights."*[9]

[32] Respectfully, therefore, I consider the Honourable Madam Justice Griffiths to have been plainly wrong in dismissing Ms Orosco's claim, without trial, on the basis that she has not shown by her pleadings that she has exhausted all remedies available to her.

[33] I would allow this appeal, set aside the order of Griffith, J made on 23 December 2019 and entered and perfected on 17 January 2020, remit the matter to the Supreme Court for continuation before a different judge, and award the costs of the Respondents' application dated the 24 October 2019 to the Appellant together with the costs of this appeal.

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MINOTT-PHILLIPS, JA

FOSTER, JA

[8] [2022] CCJ 13 (AJ) BZ at numbered paragraph 33.
[9] *Ibid* at paragraph 35.

[34] I have had the opportunity and distinct pleasure of reading in draft the judgments of my learned sister and brother judges and I agree with the reasons and the orders made. I do not think there is anything I may usefully add to the well-reasoned judgments given by each of them.

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FOSTER, JA

BULKAN, JA

[35] I fully concur with the orders as proposed and the reasons therefor, as clearly set out in the judgment of Minott-Phillips JA. I wish, however, to make a few brief observations on the approach of the trial judge and its implications for access to the court in constitutional cases.

[36] On the facts, even the respondent conceded at the hearing that the common law remedy of wrongful dismissal is inadequate – at best that would entitle an employee to damages for any period of notice not given, but would not interfere with an employer's right to end a contract of employment. Only the statutory amendment which introduced the action of unfair dismissal provides recourse for termination on the ground of HIV status, but the appellant could not avail herself of this remedy because of the State's failure to set up the appropriate mechanisms. This failure is the crux of her claim on the protection of law, which the trial judge missed entirely with her focus on the absence of the employer. As fully discussed in the principal judgment, by taking this approach the trial judge misdirected herself.

[37] Equally concerning, however, are some of the statements made by the trial judge in striking out the appellant's claim. She noted, for instance, that the appellant had not shown that she had "exhausted all remedies available to her" or had "nowhere else to turn"; later, she justified this approach by describing the constitution as "exceptional". In my view, this approach embodies too exclusionary a standard which risks undermining some of the very values the constitution is meant to protect.

[38] The genesis of the court's power to decline constitutional relief lies in a proviso to the enforcement clause found in many Constitutions, which may (or must) be exercised where

"adequate means of redress" are available under any other law.[10] Courts have exercised this power where no constitutional right is involved,[11] or where the constitutional action amounts to a collateral attack on a matter already decided,[12] or where an alternative remedy exists that is deemed to be adequate.[13] Cases in the first two scenarios would be easy to identify (and just as easy to justify shutting out, as it is clearly abusive to litigate a point that does not arise or to re-litigate one already settled), so it is really only in the third scenario where a value judgment has to be exercised. In this third scenario, a trial judge has significant discretion in deciding whether to proceed or to strike out the claim on the basis that an alternative remedy is "adequate". Where the point arises, the most care should be taken so as not to shut out a genuine claim for constitutional relief.

[39] The need for a more flexible approach is heightened when regard is had to the text of the enforcement provision itself, including the one contained in the Belize Constitution, which explicitly states that constitutional redress for violation of any of the guaranteed rights and freedoms is available "*without prejudice to any other action with respect to the same matter which is lawfully available*".[14] Its meaning and intent could not be clearer – whether or not there is an alternative remedy, recourse to the Constitution for enforcement of the fundamental rights provisions is possible.

[40] Ironically, much of the learning around this power to decline constitutional relief has come from Trinidad and Tobago, whose constitution contains no such provision. Courts have held that there should be some "additional feature" justifying recourse to the Constitution, such as the arbitrary use of state power[15] or multiple violations of rights;[16] however, an alternative remedy is not inadequate merely because it is slower or more costly than constitutional proceedings.[17]

[41] These examples are useful but, in my view, should not be treated as exhaustive categories determining the possibility (or not) of constitutional redress. The Constitution is supreme law and

[10] See, for example, Constitution of Barbados, s 24.
[11] *Harrikissoon v AG* (1979) 31 W.I.R. 348 (PC TT); *Kent Garment Factory v AG* (1991) 46 W.I.R. 177 (CA Guy).
[12] *Chokolingo v AG* (1980) 32 W.I.R. 354 (PC TT).
[13] *Jaroo v AG* (2002) 59 W.I.R. 519 (PC TT).
[14] Belize Constitution, s. 20(1).
[15] *AG v Ramanoop* (2005) 66 W.I.R. 15 (PC TT); *Takitota v AG* [2009] UKPC 11 (PC Bah).
[16] *Belfonte v AG* (2005) 68 W.I.R. 413 (PC TT).
[17] *AG v Ramanoop* (2005) 66 W.I.R. 15 (PC TT); *Brandt v COP* [2021] UKPC 12 (PC Mont) at [35].

its catalogue of fundamental rights is its moral centrepiece. Moreover, it has long been settled that these rights should be given a "generous interpretation… suitable to give to individuals the full measure of the fundamental rights and freedoms referred to".[18] However, constitutional rights and freedoms will remain purely decorative if individuals cannot get to the door and are shut out because there is allegedly some other available remedy. This position is even more justifiable in the context of the Belizean Constitution, from which the proviso in question was deleted, thereby signalling an unmistakable intent to de-emphasise the power to decline constitutional relief where alternative remedies may be available.

[42] In light of these considerations, therefore, the language of the trial judge which required the appellant to show that she had "exhausted" all other avenues alongside other statements treating constitutional redress as a last resort, was altogether too extreme. Aside from the fact that in this case there was actually no adequate alternative remedy available, those statements espouse too much of an exclusionary approach that conflicts with both the letter and spirit of the fundamental rights provisions in the Belizean Constitution.

[43] Ultimately, and consistent with Lord Wilberforce's exhortation as well as more recent explications, courts should not treat the Constitution as "secluded behind closed doors",[19] reserved only for special litigants or exceptional cases. Rather than treating constitutional rights as a last resort, courts should be alive to their tremendous promise in securing human dignity and enforcing the Rule of Law. This is not to deny that a court is entitled to constitutional relief where an action may be patently without merit or otherwise abusive, but the caution is that where it is faced with an allegation that there is an adequate alternative remedy, it should bear in mind that setting an inordinately high threshold for access to the court could enable violations to occur with impunity and dilute the constitution's supremacy. There is no clearer exposition of the appropriate approach than that given by the CCJ, namely that:

> *"The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the Constitution, is to provide*

[18] *Minister of Home Affairs v Fisher* (1979) 44 W.I.R. 105 (PC Bah) per Lord Wilberforce at 112.
[19] *Observer Publications Ltd v Matthew* (2001) 58 W.I.R. 188 (PC A&B).

flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights."[20]

[44] For these reasons, I too would allow the appeal and grant the relief sought by the appellant.

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BULKAN, JA

MINOTT-PHILLIPS, JA

The order of the court is as follows:

1. The appeal filed on 7 February 2020 is allowed.
2. The order of Griffith, J made on 23 December 2019 and entered and perfected on 17 January 2020 is set aside.
3. The matter is remitted to the Supreme Court for continuation before a different Judge.
4. The costs of the Respondents' application dated the 24 October 2019 are awarded to the Appellant together with the costs of this appeal and are to be taxed if not agreed.

[20] *Sears v Parole Board* [2022] CCJ 13 (AJ) BZ at [35].