

**IN THE COURT OF APPEAL OF BELIZE, A.D. 2023**  
**CIVIL APPEAL No. 29 of 2018**

**IN THE MATTER of an Application for Orders under Part 56**  
**Of the Supreme Court (Civil Procedure) Rules, 2005**

**IN THE MATTER of Preamble (e), Sections 3(d), 17, 6(1)**  
**And 20 of the Belize Constitution**

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

**(**  
**(AND**

**(**  
**(DENZIL JENKINS**

**1<sup>st</sup> APPELLANT**  
**2<sup>nd</sup> APPELLANT**

**RESPONDENT**

**BEFORE:**

The Hon Madame Justice Woodstock-Riley	-	Justice of Appeal
The Hon Madam Justice Minott-Phillips	-	Justice of Appeal
The Hon Mr. Justice Foster	-	Justice of Appeal

S Matute for the appellants.  
A Jenkins for the respondent.

**(On Written Submissions)**

6 January 2023

**JUDGMENT**

**WOODSTOCK-RILEY, JA**

[1] I have read the draft Judgment of Foster JA and agree with the proposed order.

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WOODSTOCK-RILEY, JA

**MINOTT-PHILLIPS, JA**

[2] I have had the privilege of reading in draft the written reasons and proposed order of my brother, Foster, JA. I agree with him and have nothing to add.

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MINOTT-PHILLIPS, JA

**FOSTER, JA**

**Introduction**

[3] Pursuant to Section 6 of the Land Acquisition (Public Purpose Act) Cap, in 1989, the Government of Belize compulsorily acquired 307.6 acres of land located in the Mullins River Area, Stann Creek District, which was owned by the Respondent, Denzil Jenkins.

[4] At the time of the acquisition, the First Appellant did not make any offers for payment to the Respondent regarding compensating him for the compulsory acquisition. It was not until 2005, some 16 years later, that the First Appellant and Respondent negotiated and settled on terms of the payment for the acquisition. The terms of payment were set out by a letter dated July 1, 2005 (“the **Settlement Agreement**”).

[5] The Government of Belize paid increments to the Respondent up to the year 2015, when it determined that it had fully compensated the Respondent for the acquisition. The Respondent disagreed that he had been paid in full and argued that based on the Settlement Agreement between the parties, he believed that the First Appellant agreed that the interest that accrued was compound interest, while the First Appellant contended that the interest that accrued was simple interest.

[6] The Respondent, filed a claim against the Appellants essentially seeking the following claims of relief:

- a. That the Appellants breached the Respondent's constitutional right against arbitrary deprivation of property and to reasonable compensation within a reasonable time due upon the compulsory acquisition of the Respondent's property contrary to Section 3(d) and 17 of the Constitution of Belize for failure to fully and within a reasonable time compensate the Respondent for the compulsory acquisition of the Respondent's property some 28 years after the acquisition;
- b. The Respondent also sought declarations that the First Appellant breached the Settlement Agreement and that he was entitled to the sum of \$1,183,432.88 which continued to accrue compound interest and further;
- c. That the First Appellant breached the Settlement Agreement when it unilaterally changed the interest payable from compound to simple interest on 11<sup>th</sup> September 2015 by the Statement of Compensation Payments.

[7] The learned trial Judge, the Honourable Madam Justice Shona Griffith, delivered an oral decision dated the 16<sup>th</sup> July, 2018 in favour of the Respondent, where she determined the following:

- a. That there was compensation agreed between the parties for the Government's acquisition of the Claimant's land in the sum of \$490,235.32 with interest thereon in the sum of \$1,047,681.96. The total compensation therefore agreed between the parties was \$1,537,917.28;
- b. That simple interest at the rate of 8% per annum was applicable to this total sum;
- c. That the Respondent's constitutional rights to be compensated within a reasonable time pursuant to Section 17 of the Constitution was breached by the Appellants;
- d. Awarded vindicatory damages in the sum of \$15,000.00 to the Respondent for breach of his constitutional right under Section 17 of the Constitution.

[8] By the Order perfected on September 6<sup>th</sup> 2018, the learned trial judge ordered that the Respondent was awarded the sum of \$1,138,206.30 as damages for breach of his constitutional right to be paid full compensation within a reasonable time for the acquisition of his property by the Appellants.

[9] On September 18, 2018, the Appellants filed a Notice of Appeal challenging the oral decision given by the Honourable Madam Justice Shona Griffith dated 16<sup>th</sup> July 2018 and the Order of the Supreme Court entered and perfected on September 6, 2018.

[10] The Appellants have further appealed the said decision on the following grounds:-

- a. That the Learned Trial Judge erred in Law and misdirected herself in finding that the Respondent's constitutional right guaranteed by Section 17(1) of the Belize Constitution was breached;
- b. That the Learned Trial Judge erred in Law in awarding the sum of \$1,138,206.30 as damages for the breach of the Respondent's constitutional right under Section 17(1) to full compensation within a reasonable time in respect of the acquisition of the Respondent's 307.6 acres of land in Mullins River, Belize in 1989;
- c. The Learned Trial Judge misconstrued the law in rejecting the principles as outlined by the Caribbean Court of Justice (CCJ) in respect of the terms of the contract relating to "poorly" worded contracts;

[11] Each of the Appellants' grounds of appeal will be dealt with below.

### **Ground of Appeal 1**

[12] The first ground of the Appellants' appeal is that the learned trial Judge erred in law in finding that the Appellants breached the Respondent's constitutional right under Section 17 of the Constitution not to be deprived of his property.

[13] In summary, the Appellants' have argued that not only were the Respondent's constitutional rights under Section 17(1) not breached but that he had also acquiesced to not being compensated for several years as it took him 16 years since his property was compulsorily acquired, to engage in negotiations with the Government in 2005 with respect to compensation and as such he was not entitled to now say that his constitutional rights had been breached as a result of the delay in exercising his rights to file an action before the Court. The Appellants further relied on the case of *Somrah v Attorney General [2009] CCJ5 (AJ)* in their submissions.

[14] One of the issues therefore which is raised by this ground is simply whether under the provisions of section 17 of the Belize constitution and on the facts of this case, the Respondent's constitutional rights provided by that section were breached by the Minister and whether he contributed by his action or inaction to the derogation of his rights.

[15] I find it necessary to quote the following provisions of the Constitution of Belize:

*s17.-(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that, (a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and (b) secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of, (i) establishing his interest or right (if any); (ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition; (iii) determining the amount of the compensation to which he may be entitled; and (iv) enforcing his right to any such compensation. (2) Nothing in this section shall invalidate any law by reason only that it provides for the taking possession of any property or the acquisition of any interest in or right over property, (a) in satisfaction of any tax, rate or due"*

*Section 3 of the Constitution provides:*

*“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...*

*(d) protection from arbitrary deprivation of property”*,

*Section 6(1) of the Constitution provides:*

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law”.*

[16] This matter concerns the compulsory acquisition by the State of property owned by a private person. By this very make up there is a seeming and inherent imbalance of power of the State to deprive a person of his property. The provision in the Constitution is there to ensure that power is exercised fairly.

[17] The fundamental rights and freedoms guaranteed by the Constitution are not absolute. There will be occasions where the fundamental rights and freedoms of an individual will be subject to well-established circumstances and principles that override individual rights and freedoms. In fact, Section 17 of the Constitution states there are exceptions to an individual's right not to be deprived of his property, e.g. the acquisition is under a law giving **reasonable compensation** within a **reasonable time** (emphasis mine).

[18] A critical issue which falls to be considered (as provided by the Constitution) is whether the legislative provisions mandated by the Constitution provide for the paying of *“reasonable compensation ... within a reasonable time”*. The question to be addressed is whether the legislation provides the mechanisms to discharge the obligations to calculate and pay reasonable compensation within a reasonable time to compensate a person deprived of his property by compulsory acquisition.

[19] The question which must be addressed therefore is whether the important constitutional provision has been satisfied, that is, whether the law referenced in the Constitution has provided the “*principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time*”.

### **What is a reasonable time?**

[20] Both parties argued the issues of (a) reasonable compensation and (b) given within a reasonable time, in their Skeleton Arguments/Submissions. The Appellants relied on various arguments which I will summarize as follows. Firstly, the Appellants argued that based on the case law, there has been no fixed time as to what is considered ‘reasonable time’. In support of this argument the Appellants relied upon the decision of *San Jose Farmers’ Coop. Society Ltd v Attorney General BZ 1991 CA 11*. In relying on this decision, the appellants admit that while the Court in that instance held that paying the landowner compensation over 10 years was unconstitutional, the Court did not make any declaration as to what a reasonable time is.

[21] The Respondent also relied on *San Jose Farmers’ Coop Society*. Counsel for the Respondent argued that the delay in compensating the Respondent was not within a reasonable time and therefore amounted to a breach of his constitutional rights under Section 17.

[22] In *San Jose*, the constitutionality of the then Section 32 of the Land Acquisitions (Public Purposes) Act was challenged when juxtaposed to Section 17 of the Constitution. Section 32 gave the Minister the discretion to pay compensation to a landowner over the course of 10 years. Such a timeline for compensation was not considered as being within a reasonable time pursuant to Section 17 of the Constitution and was therefore declared unconstitutional and void.

[23] As such, I believe a good starting point would be to state that 10 years is substantially outside of what would be a reasonable time to compensate a landowner where Government has compulsorily acquired his property.

[24] Clearly, the Court in San Jose determined that 10 years was an unreasonable amount of time and, therefore, even if, as the Appellants submit, there was no determination of what is generally accepted to be a reasonable time, there has been a determination of what is considered to be an unreasonable time. In the circumstances of this case it is my view that the time taken to compensate the Respondent was totally unreasonable.

[25] Moreover, since San Jose has pronounced that 10 years is not a reasonable time, the Appellants, with their acceptance of the correctness of that decision, have, in essence, conceded the point that they failed to pay the Respondent within a reasonable time.

[26] An undisputed fact in this matter is that the Government did not compensate the Respondent at the time of the acquisition. Rather, the parties entered into a settlement agreement with respect to compensating the Respondent about 16 years after the acquisition, that is, on July 1<sup>st</sup>, 2005, the acquisition having taken place in 1989.

[27] The Appellants admit that the Government did not make any payments to the Respondent prior to the Respondent's letter dated July 1, 2005, and have not disputed the delay between 1989 and 2005 in the Government's failure to compensate the Respondent at all.

[28] The Appellants submit at paragraph 17 of their Submissions that there was no evidence to explain why negotiations for compensation were not started by the Government at the time of acquisition. Counsel for the Appellants further argued that the Respondent did not exercise his right to access the courts for more than 16 years before the compensation agreement was entered into between the parties.

[29] While it is acknowledged that the Respondent did not exercise his rights to file an action in Court, this does not negate the Government's obligation and responsibility pursuant to Section 17 of the Constitution to ensure that compensation for the acquisition of the land is determined and the Respondent compensated within a reasonable time.

[30] The line of argument pursued by the Appellants is that because the Respondent did not exercise his right to file an action in court he is to be regarded as having acquiesced to the Government's failure to compensate him within a reasonable time. This defence to a breach of the Respondent's constitutional right is not, in my view, sustainable on the facts of this case. Where an individual or entity or the State, breaches the constitutional right of an individual, the onus is on that individual or entity or the State to remedy the breach in

recognition of the supremacy of the Constitution. Furthermore, the instant case concerns the State pitted against an individual. Consideration must be given to the imbalance of power between the parties and, therefore, the onus on the State to remedy the breach is even greater here. In fact, in contemplation of this imbalance in power, the Constitution provides for the imbalance to be counteracted with the obligation placed on the State to implement legislation to ensure reasonable compensation within a reasonable time for the compulsory acquisition of private property for a public purpose.

[31] Legislation must follow the Constitution. The Constitution provides for reasonable compensation to be made within a reasonable time with respect to compulsory land acquisitions. This must necessarily mean that in exercising this power the State must have in place the legislation which allows for reasonable compensation to be determined and given within a reasonable time. In my view, the provision of compensation within a reasonable time can only be achieved if the legislation provides the framework for determining reasonable compensation within a reasonable time. The existing legislation provides by section 3 for the acquisition of lands for a public purpose, by a declaration to be published in two ordinary issues of the gazette “*there being an interval of not less than six weeks between each publication .....*”. Following these two publications, the land vests absolutely in the Crown and the Crown is authorized to enter and take possession of the lands accordingly. This means that within a time frame of two months a person may be deprived of his ownership and possession of his lands. The Constitution provides for this, but does the legislation correspondingly provide the stipulated constitutional safeguards for the determination and payment of reasonable compensation within a reasonable time? I venture to suggest here that the State may wish to establish a standard as to what is a reasonable time so that the courts are not visited with actions resulting from delays of the magnitude illustrated by this case. Governments and private persons must, in my view, be treated equally. Equality under the law is similarly enshrined right under the Constitution pursuant to Section 6(1).

[32] To have the power to compulsorily acquire property, and not to abuse that power, requires the Government to ensure that the legislation which provides for that acquisition of property provides for the determination and giving of reasonable compensation within a reasonable time. In a perfect world, the Government on deciding to acquire lands, would immediately set up a process for the determination of reasonable compensation to be paid to a landowner and for that payment to be made within a reasonable time thereafter. However,

the legislation in this case provides for reasonable compensation to be determined by a Board of Assessment and for compensation to be given. In the present legislation there are no time limits or guidelines for when the Board is to determine the 'reasonable compensation' and when it is to be paid. The question therefore is whether the present legislation meets the requirements of the Constitution to have in place legislation that provides for reasonable compensation to be given within a reasonable time. The legislation does provide the mechanism to determine reasonable compensation but in my view it is lacking in ensuring that it is determined and given within a reasonable time. In reviewing the legislation, there are no timelines, guidelines or obligations on the part of the Government to ensure that the Board is set up in a timely manner so that on its determination of 'reasonable' compensation, that compensation is given within a reasonable time to the landowner. The constitutional rights of an individual are not to be taken lightly. Section 17 of the Constitution is clear that a person has a right not to be compulsorily deprived of his property without adequate protection under the law to mitigate the deprivation by ensuring reasonable compensation is given within a reasonable time.

[33] To acquire a person's property without ensuring that payment can be made to him within a reasonable time is an abuse of that person's right.

[34] Therefore, once the Government compulsorily acquires a person's property, time is of the essence to pay reasonable compensation to the person.

[35] I further agree with the Respondent at paragraph 56 of his Skeleton Arguments that the onus was on the Government who has compulsorily acquired the Respondent's property to ensure that it compensated the Respondent within a reasonable time. I am unable to accept that the Government acquires someone's property, fails to compensate the landowner within a reasonable time, or at all, and then succeeds in an argument that the landowner somehow acquiesced to his constitutional right being breached by failing to file an action in court.

[36] I therefore find that the Appellants' breached the constitutional rights of the Respondent under Section 17 and I agree with the Learned Trial Judge's findings on this issue, and I dismiss this ground of appeal.

[37] In any event, the Respondent has also put forward the argument that the Appellants did not set out delay on the part of the Respondent as one of the grounds of appeal. Even if I

found any merit to the Appellants' arguments with respect to a delay or an acquiescence on the part of the Respondent which would defeat any claim for a breach of his constitutional rights, I similarly agree with the Respondent that this argument did not form any of the Appellants' grounds of appeal.

### **Ground of Appeal 2**

[38] The second ground of appeal advanced by the Appellants is that the Learned Trial Judge erred in law in awarding the sum of \$1,138,206.30 as damages for the breach of the Respondent's section 17 constitutional right to full compensation within a reasonable time in respect of the acquisition of the Respondent's property in 1989.

[39] The Appellants' have also argued that the Learned Trial judge has a discretion to award damages and it was not fit to do so in this instance. Moreover, the Respondent must specifically prove his loss.

[40] Having already agreed with the Learned Trial judge's decision, that the Respondent's constitutional right under Section 17 was breached, the second question which falls to be considered is what is reasonable compensation pursuant to Section 17?

[41] The Learned Trial Judge considered the terms of the Compensation Agreement between the parties. I agree with the Respondent that the Learned Trial Judge found that the sum of \$1,138,206.30 was based on the balance outstanding pursuant to the Government's own Compensation Agreement and the calculations of the accountant jointly agreed by the parties.

[42] With respect to the Appellants' submissions that it was not appropriate for the learned Trial judge to exercise her discretion to award damages, I also have difficulty with this argument particularly because I have already found that as a result of the gross delay on the part of the Government to compensate the Respondent, the Respondent's constitutional rights were breached.

[43] It is undisputed that it took the Government 16 years after acquiring the Respondent's land, to engage in meaningful discussions with him on the issue of compensation and that prior to these negotiations, no compensation had been given to the Respondent at all after being deprived of his land.

[44] The Appellants cannot therefore reasonably argue that the Respondent has not shown his loss and that, further, the circumstances of this case do not merit an award for damages.

[45] The Appellants' have not submitted any sustainable ground for their assertion that the Learned Trial Judge erred in making the award for damages and I similarly dismiss this ground of appeal.

### **Ground of Appeal 3**

[46] The Appellants' third ground of appeal is that the Learned Trial Judge misconstrued the law in rejecting the principles as outlined by the Caribbean Court of Justice in respect of the terms of the contract relating to "poorly" worded contracts.

[47] Couched under this ground of appeal, the Appellants argued that The Court should not have awarded interest, that there was no term in the agreement between the parties with respect to interest and therefore the learned trial judge fell into error by interpreting this into the agreement.

[48] This line of argument is solely premised on the Appellant's position that the contract between the parties is a private law matter. Neither this argument or the cases relied upon consider the fact that this matter is underpinned in public law and in particular, the constitutional rights of an individual. Section 17 clearly provides that *property shall not be compulsorily taken possession of except by or under a law that prescribes the principles on which and the manner in which reasonable compensation is to be determined and given within a reasonable time* (emphasis mine). For reasonable compensation to be given within a reasonable time, the law must correspondingly provide for the mechanism to assess reasonable compensation to be undertaken within a reasonable time. A law that provides for the determination of reasonable compensation and payment of that compensation within a reasonable time would satisfy the concurrent constitutional protections of equality before the law and the protection of the law.

[49] In determining the issue of reasonable compensation, the learned trial judge embarked upon the exercise of determining the meaning of interest and the purpose of interest by assessing case law. Based on her assessment, she concluded that it would have been reasonable

for interest to have been implied into the agreement. I am of the view that this approach was correct. The agreement between the parties was formalized some 16 years after the Government compulsorily acquired the Respondent's property. Given the very definition of interest, the learned trial judge was correct in concluding that it was reasonable for interest to be expected given the conduct of the parties. The Learned Trial Judge was correct to determine that given the reasonable compensation component as underpinned by the Constitution and enforced by the Land Acquisition Act, that it was reasonably expected that interest would be payable. As such, in my view, she correctly determined that the payment of interest on the compensation agreed for a land acquisition would be a term reasonably implied into an agreement between a landowner and Government.

[50] Moreover, the argument that the Court should not have awarded interest is not accepted. By the Appellant's own admission, whether through its agent, Glenroy Ferguson and/or based on its correspondence with the Respondent, accepted that the Government would pay interest to the Respondent. Whether that interest was calculated as simple or compound interest is a different issue entirely.

[51] At paragraph 15 of the Appellants' submissions the Appellants admit that payments to the Respondent reflected that payments of interest were made on the principal sum. Therefore, there is clear evidence that even though interest was not an express term of the agreement, based on the conduct and correspondence between the parties and the delay in compensating the Respondent, the learned trial judge was correct to conclude that it was reasonable that interest would be paid to the Respondent from the time it took from the acquisition to the time of payment for the deprivation of his property.

[52] The award of interest on a sums due on delayed payments is an accepted course to compensate someone for not being able to use their money. The Appellants' have advanced an argument that the Court should not have awarded interest. However, the Government, by its own conduct, accepted that interest was payable and in fact paid interest to the Respondent based on the Schedule of Payments. I therefore dismiss this ground of appeal.

[53] In Civil Appeal *SLUHCAP2016/0021 Jerome Montoute v the Attorney General of the Saint Lucia*, Justice of Appeal Webster (Ag) found that:

*“A person whose lands have been compulsorily acquired is entitled to full and prompt compensation for the value of his lands at the date of acquisition and interest a rate that is appropriate to give the expropriated landowner a just equivalent for his loss. The principle of full compensation contemplated by the constitution means that the affected person should be restored as far as possible for the position that he would have been in had the acquisition not occurred.”*

The court in that case went on to state that *“compound interest can be awarded at common law as damages for the non-payment of a debt or breach of contract or tort, subject to the rules relating to remoteness and causation. The Board’s award of compound interest was not challenged on appeal except as to quantum and was fully justified on the exceptional facts of this case”*.

[54] The constitutionality of the legislation which provides for the assessment of compensation is not before us. However, it is incumbent on me to shine the spotlight on the underlying omissions in the legislation to ensure the timely calculation of reasonable compensation for the compulsory acquisition of a person’s property. The law fails to address the requirement provided in the constitution that *“No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that, (a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time.* This failure to provide guidelines is in my view the principle reason for the delays inherent in many of the cases regarding the payment of compensation.

[55] In the circumstances however of this matter before the court, the interest was properly awarded. I therefore have no basis in law or in fact to disturb the learned trial judge’s decision. I therefore dismiss the appeal with cost to the Respondent to be agreed or otherwise assessed.