

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

Claim No. 594 of 2021

BETWEEN

DEON BRUCE

CLAIMANT

AND

ATTORNEY GENERAL OF BELIZE

DEFENDANT

Before the Honourable Madam Justice Geneviève Chabot

Date of Written Submissions: June 24th and 27th, 2022

Appearances:

Anthony Sylvestre, Counsel for the Claimant

Lavinia Cuello and Imani Burgess, Counsel for the Defendant

RULING ON PRELIMINARY QUESTIONS OF LAW

1. The Claimant, Deon Bruce, spent more than six years in detention pursuant to a warrant of remand issued on a request for extradition by the United States of America. The warrant of remand was later determined by the Court of Appeal to have been unlawfully issued. The Claimant seeks declarations that his constitutional rights not to be deprived of his personal liberty, save as authorised by law, and to the protection of the law, have been breached. The Claimant also seeks damages against the Defendant, the Attorney General of Belize.
2. The Defendant raises a defence of immunity for the acts or omissions committed by the Chief Magistrate in issuing the warrant of remand. The Defendant argues that judicial officers are immune from civil liability in the exercise of their judicial function. The Defendant also relies on the immunity conferred on the Crown pursuant to the *Crown*

*Proceedings Act*¹ to defend against this Claim. At the First Hearing of this Fixed Date Claim, it was agreed that the issue of immunity would be dealt with by the Court as a preliminary issue of law. The parties filed a “Joint Application for Preliminary Issues” putting forward three questions for the Court’s determination.

3. Having considered the submissions of the parties, this Court finds that the Defendant is not immune from these proceedings. This claim is a constitutional claim, not a claim in tort against a judicial officer. Subsection 4(5) of the *Crown Proceedings Act* only applies to claims in tort. As a result, subsection 4(5) of the *Crown Proceedings Act* does not constitute a bar to the exercise of this Court’s jurisdiction to hear and determine this Claim pursuant to section 20 of the *Constitution of Belize*.

Background

4. On September 30th, 2022, the Claimant filed a Fixed Date Claim seeking relief under sections 5(1)(i) and 6 of the *Constitution of Belize* against the Defendant. The Claim arises from the Claimant’s detention at the Belize Central Prison between January 17th, 2014 and September 29th, 2020 under the *Extradition Act*.² The Claimant seeks the following relief:
 - i. A declaration that the Claimant’s right under section 5(1)(i) of the *Constitution* to not be deprived of his personal liberty, save as may be authorised in law, was breached when the Claimant was detained at the Belize Central Prison from January 17th, 2014 to September 29th, 2020, contrary to section 10 of the *Extradition Act*, a law which authorises the detention of a person for purposes of effecting extradition from Belize to a requesting state;
 - ii. A declaration that the Claimant’s right to protection of the law under section 6 of the *Constitution* was breached when the Claimant was detained at the Belize Central Prison from January 17th, 2014 to September 29th, 2020, contrary to section 10 of the *Extradition Act*;
 - iii. Compensatory and vindictory damages;
 - iv. Costs; and
 - v. Such further and other relief as the Court considers just.
5. The Claimant was first detained on July 2nd, 2013 on a warrant of apprehension issued by a Magistrate pursuant to a request for the Claimant’s extradition by the United States of America. On July 2nd, 2013, the Claimant was arraigned before the Chief Magistrate and

¹ Cap. 167 of the Laws of Belize.

² Cap. 112 of the Laws of Belize.

was remanded into custody at the Belize Central Prison until a hearing and determination of the extradition proceedings.

6. The Chief Magistrate heard the extradition proceedings on December 2nd, 2013. On January 17th, 2014, the Chief Magistrate concluded that there was a sufficient basis for the Claimant's extradition to the United States to stand trial. The Claimant was detained at the Belize Central Prison on a warrant of remand issued by the Chief Magistrate on January 17th, 2014.
7. On February 3rd, 2014, the Claimant filed an application for a writ of *habeas corpus* to challenge his extradition and detention. He also filed an application for judicial review in relation to the order of the Chief Magistrate to extradite him. Both claims were consolidated, heard, and dismissed by Supreme Court Justice Courtenay Abel.
8. On November 24th, 2017, the Claimant applied for a fresh writ of *habeas corpus*. The Claimant's application was heard and dismissed by Supreme Court Justice Michelle Arana. The Claimant appealed the decision to the Court of Appeal, seeking an order to set aside the decision and order of the Chief Magistrate pursuant to the warrant of remand issued on January 17th, 2014, as well as an order for the issuance of a writ of *habeas corpus* for his immediate release.
9. On September 29th, 2020, the Court of Appeal allowed the Claimant's appeal. The Court of Appeal found that the order of the Chief Magistrate granting the application of the United States for the Claimant's extradition and ordering his detention pursuant to the warrant of remand dated January 17th, 2014 was unlawful. The Court of Appeal also issued a writ of *habeas corpus* and the Claimant was released.
10. The Claimant alleges that he was deprived of his right to personal liberty when the Chief Magistrate concluded that there was a sufficient basis for his extradition. The Court of Appeal's decision held that the Chief Magistrate's decision was unlawful and not in accordance with section 10 of the *Extradition Act*. The Magistrate did not focus on the Claimant's conduct in Illinois for each charge, and did not consider whether that conduct amounts to a crime in Belize. In addition, the Chief Magistrate failed to issue a warrant of remand which specifies the offences proven in accordance with the laws of Belize. As a result, the Claimant's detention between January 17th, 2014 and September 29th, 2020 was contrary to section 5(1)(i) of the *Constitution of Belize*, which provides that the extradition of a person from Belize can only be done if authorised by law.
11. The Claimant also alleges that he was deprived of his right to protection of the law under section 6(1) of the *Constitution of Belize* because the procedure employed by the Chief Magistrate at the extradition proceedings, in not considering whether there was a case in

relation to each specific offence in the extradition request and in issuing a warrant of remand that was not in accordance with the *Extradition Act*, was unlawful.

12. The Claimant claims that there is no other way for him to hold the State to account and to vindicate the interference with his rights under the *Constitution of Belize*, but to initiate this Claim. This matter has caused the Claimant mental and emotional distress as a result of having to spend a considerable period of time incarcerated.
13. The Defendant raises a defence of immunity. At the First Hearing of this Fixed Date Claim, the parties agreed that the issue of immunity would be dealt with by the Court as a preliminary question of law. The parties filed a “Joint Application on Preliminary Issues” putting forward the following three questions for the Court’s determination:
 - i. Whether judicial officers in exercise of their jurisdiction are immune from civil liability;
 - ii. Whether the Crown can be found liable in respect of acts or omissions by persons discharging or purporting to discharge any responsibility of a judicial nature vested in him in connection with the execution of the judicial process;
 - iii. Whether section 4(5) of the *Crown Proceedings Act* operates as a bar to the jurisdiction of the Supreme Court under section 20 of the Constitution of Belize.

Analysis

Whether judicial officers in exercise of their jurisdiction are immune from civil liability

Claimant’s Submissions

14. The Claimant admits that the answer to this first question is affirmative, but stresses that this Claim is neither a claim against a judicial officer, nor a claim in tort; this Claim is a constitutional claim. The Court of Appeal found that the warrant of remand issued by the Chief Magistrate was unlawful. The Court of Appeal therefore determined that there was a failure to comply with the laws of Belize relating to the extradition process of the Claimant and his detention. It follows that the Claimant’s detention was in contravention of section 5(1)(i) of the *Constitution of Belize*, which provides that a person shall not be deprived of their person liberty, save as authorised by law for the purpose of effecting their expulsion, extradition, or other lawful removal from Belize. The Claimant notes that in *Norris v Government of United States of America*,³ the Supreme Court of the United Kingdom held

³ [2010] UKSC 9. See also *Rhett Fuller v Attorney General of Belize*, [2011] UKPC 23.

that the extradition process is to be considered in light of a person's constitutional and fundamental rights, including their human rights.

15. In addition, the failure of the Chief Magistrate to follow the proper procedure in extradition proceedings by not considering whether there was a case in relation to each specific offence in the extradition request, and in issuing a warrant of remand that was not in accordance with the *Extradition Act*, violated the Claimant's right to protection of the law under section 6(1) of the *Constitution of Belize*.
16. Under section 20 of the *Constitution of Belize*, this Court has jurisdiction to hear this Claim. The scope of section 20 is expansive and provides for the Supreme Court to inquire into alleged breaches of fundamental rights and freedoms guaranteed under sections 3 to 19 of the *Constitution of Belize*.
17. The Claimant relies on the Privy Council's decision in *Ramesh Maharaj v Attorney General of Trinidad & Tobago*⁴ in which Lord Diplock explained, in the context of a constitutional claim, the legal consequences arising from a person being detained as a result of a judicial order that was not in accordance with the law:

What it [the claim] does involve is an inquiry into whether the procedure adopted by that learned judge before committing the appellant to prison for contempt contravened a right, to which the appellant was entitled under s. 1(a) [of the Constitution of Trinidad and Tobago], not to be deprived of his liberty except by due process of law.

[...]

The order of Maharaj J committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm of the State. So if his detention amounted to a contravention of his rights under s. 1(a), it was a contravention by the State against which he was entitled to protection.

Whether it did amount to a contravention depends upon whether the judge's order was lawful under the law in force before the Constitution came into effect.

[...]

That the order of Maharaj J. was unlawful [...] has already been determined in the previous appeal; and in their Lordships' view it clearly amounted to a

⁴ [1978] UKPC 3 ("*Maharaj*").

contravention by the State of the appellant's rights under s. 1(a) not to be deprived of his liberty except by due process of law.

18. Thus, according to the Claimant, while a civil claim in tort cannot be pursued against a judicial officer, a claim can be pursued against the State in circumstances where an unlawful judicial order is executed and leads to the detention of a person.

Defendant's Submissions

19. The Defendant argues that judicial officers are immune from civil liability for any action taken by them in their judicial capacity, so long as they acted in good faith. The Claimant's imprisonment was the result of the exercise of the Chief Magistrate's discretion under the *Extradition Act*. The Chief Magistrate acted in good faith in exercising her judicial duties when determining the Claimant's extradition proceedings and issuing the warrant of remand.
20. Following the Chief Magistrate's ruling, the Claimant filed a first application for a writ of *habeas corpus* challenging his extradition and detention. This application was heard and dismissed by Justice Courtenay Abel. The Claimant filed a second application for a writ of *habeas corpus*, which was dismissed by Justice Michelle Arana. Both justices were acting in good faith and within their judicial capacity.

Discussion

21. The first step in the Court's analysis is to determine whether this Claim is a claim in tort or a constitutional claim. Properly characterizing this Claim is essential to the determination of the questions posed to this Court.
22. The Court agrees with the Claimant that this Claim is not a claim in tort, but a constitutional claim. The Chief Magistrate who made the decision that led to the Claimant's detention is not a party to this Claim. In addition, the remedies sought by the Claimant are squarely within the realm of public law. The Claimant seeks declarations that his constitutional rights under sections 5(1)(i) and 6(1) of the *Constitution of Belize* have been violated. The Claimant also seeks damages resulting from those alleged violations of the *Constitution*. The Claimant is claiming no damages in private law against the judicial officer. This Claim is therefore not a claim in tort.
23. That judicial officers are immune from personal liability in tort is not disputed by the Claimant. Both parties provided case law in support of this point. It suffices to quote from

Lord Denning's judgment in *Sirros v Moore*⁵, in which the learned jurist explained the general rule as follows:

Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a court of appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. [...] The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear.⁶

24. However, having established that this Claim is not a claim in tort against a judicial officer, but a constitutional claim against the Crown, the immunity of the Chief Magistrate does not arise in this Claim.

Whether the Crown can be found liable in respect of acts or omissions by persons discharging or purporting to discharge any responsibility of a judicial nature vested in him in connection with the execution of the judicial process

Claimant's Submissions

25. The Claimant argues that pursuant to *Maharaj*, the State is liable for acts or omissions of judicial officers, as it is the State which gives effect to the judicial officer's orders. The State is liable for the consequences of a judicial order where it is found that the order was not lawful, as it was found by the Court of Appeal in this case.

Defendant's Submissions

26. The Defendant submits that section 4(5) of the *Crown Proceedings Act* applies to this Claim because the Claimant is seeking declaratory relief in relation to acts done by the Chief Magistrate in her judicial capacity, that is the failure to issue the correct warrant on January 17th, 2014. That decision was upheld by two justices of the Supreme Court, in that the Claimant was unsuccessful in both of his applications for a writ of *habeas corpus*. It is not until the Court of Appeal's decision that the decision of the Chief Magistrate was

⁵ [1974] 3 All ER 776.

⁶ *Ibid* at 781-782. See also *Maharaj* at 9; *Gibson v Attorney General*, BS 2017 SC 71.

reversed and the warrant of remand was found to be unlawful. At all material times prior to the decision of the Court of Appeal, the agents of the Crown acted lawfully in applying the decisions of the judicial officers.

27. The Defendant cites *Gibson v Attorney General*,⁷ in which the plaintiff had been imprisoned pursuant to a judgment of the Court of Appeal. The plaintiff was later released when it was decided by the Privy Council that the Court of Appeal had misunderstood or misapplied the law. The defendant in that case submitted a defence of immunity based on a statute similar to the *Crown Proceedings Act*. The Court determined that no proceedings can be brought against the Crown in respect of anything done by a justice of appeal while discharging their function.
28. The Defendant further argues that decisions made in exercise of legal officers' discretion are too remote to impugn liability on the State. In *Attorney General v Bennett et al.*,⁸ Morrison J.A. stated that in instances where a person has been falsely imprisoned, "the interposition of an independent judicial act may have the effect of breaking the chain of causation, thus excluding the original tortfeasor from liability from the period subsequent to the act".⁹
29. The Defendant stresses that this matter has passed through three instances where judicial officers exercised their discretion in detaining the Claimant pursuant to the United States' extradition request. The independent judicial acts by these judicial officers are too remote to impugn liability on the State.

Discussion

30. Having established that this Claim is not a claim in tort against the Chief Magistrate, the next issue to be considered is whether the Defendant can be found liable for the acts or omissions of the Chief Magistrate. The Defendant offered two arguments: one based on the immunity conferred on the Crown by subsection 4(5) of the *Crown Proceedings Act*, and the other grounded on the remoteness of the actions of the Chief Magistrate from the Defendant.
31. Subsection 4(5) of the *Crown Proceedings Act* provides as follows:

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or

⁷ BS 2017 SC 71.

⁸ Civil Appeals No. 48 of 2011, No. 49 of 2011; No. 50 of 2011.

⁹ See also *Harnett v Bond*, [1924] 2 KB 517 at 565.

any responsibilities which he has in connection with the execution of judicial process.

32. I agree with Claimant’s counsel that the scope of subsection 4(5) of the *Crown Proceedings Act* is limited to claims in tort. While subsection 4(5) itself does not refer to claims in tort, subsection 4(5) must be read in context. Subsection 4(5) declares the immunity of the Crown “by virtue of this section”, meaning section 4 of the *Crown Proceedings Act*. It is clear from the introductory words in subsection 4(1) that section 4 applies to claims in tort:

4.-(1) Subject to this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject–

(a) in respect of torts committed by its servants or agents;

(b) in respect of any breach of those duties which a person owes to his servants or agents at law by reason of being their employer; and

(c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property,

provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that servant or agent or his estate.

33. Thus, the “proceedings” to which subsection 4(5) of the *Crown Proceedings Act* refers are the claims in tort to which the Crown would be subjected pursuant to subsection 4(1) of the *Crown Proceedings Act*. The purpose of subsection 4(5) is to declare that the Crown is immune from such proceedings if the alleged tort has been committed by a person exercising, or purporting to exercise, a judicial function. Since this Claim is not a claim in tort, but a constitutional claim, subsection 4(5) of the *Crown Proceedings Act* does not apply.

34. The Court rejects the argument that the independent judicial acts of the judicial officers involved in handling the Claimant’s case are too remote to impugn liability on the State. The cases cited by the Defendant on this point involve claims for damages in tort, specifically false imprisonment and malicious prosecution, against agents of the Crown. It is trite law that to succeed in a claim in tort, a claimant must prove causation. It is in that context that the Court of Appeal discussed the issue of independent judicial act in *Attorney General of Belize v Bennet et al.*¹⁰ In that decision, the Court of Appeal found that because the magistrate had no discretion as to whether to remand the claimants into custody or not, the chain of causation had not been broken and the Attorney General was liable in damages

¹⁰ Civil Appeals No. 48, 49, and 50 of 2011.

for the tort caused by its agents. Similarly, the decision in *Lock v Ashton*,¹¹ cited in *Harnett v Bond and anor*,¹² addresses the issue of a judicial decision breaking the chain of causation between the original tort and the damages claimed against the State.

35. Because this is not a claim in tort, the issue of the chain of causation does not arise in this Claim. Although the decision of the Chief Magistrate was upheld by two Supreme Court Justices before being ultimately reversed by the Court of Appeal, the Chief Magistrate's decision is not too remote to impugn liability on the State. The two decisions of the Supreme Court did not affect the original decision of the Chief Magistrate.
36. That the State can be constitutionally liable in respect of acts or omissions by persons acting or purporting to act in a judicial capacity has been recognised by the Privy Council. In *Maharaj*, an attorney was found in contempt and was committed to seven days imprisonment following an order of a judge which was later set aside as having been made in breach of a fundamental rule of natural justice, namely that "a person accused of an offence should be told what he is said to have done plainly enough to give him an opportunity to put forward any explanation or excuse that he may wish to advance". The question before the Privy Council was whether this constituted a deprivation of liberty otherwise than by due process of law for which the appellant was entitled to redress by way of monetary compensation.
37. On the issue of the liability of the State, the Privy Council noted that:

The claim for redress under s. 6(1) [of the Constitution of Trinidad and Tobago] for what has been done by a judge is a claim against the State for what has been done in the exercise of the judicial power of the State. This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the States, not of the judge himself [emphasis added]¹³

38. The Claimant asks this Court, based on its determination of this Joint Application, to grant the declarations sought in the Claim. This Court declines to do so. The questions posed by the parties in the Joint Application pertain to the defence of immunity raised by the Defendant. Having found that the Attorney General is not immune from these proceedings, the next step is to consider whether there was a breach of either sections 5(1)(i) or 6(1) of the *Constitution of Belize*, such that the Claimant is entitled to damages. Pursuant to *Maharaj*, the mere fact that the Claimant was imprisoned pursuant to a decision of the Chief Magistrate that was later found to be unlawful, however long the imprisonment might

¹¹ 12 QB 871.

¹² [1924] 2 KB 517 at 565.

¹³ *Maharaj* at 9.

have been, is not necessarily sufficient to give rise to the remedies sought in this Claim. Under *Maharaj*:

[...] no human right or fundamental freedom [...] is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law – even where the error has resulted in a person’s serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. [...] It is only errors in procedure that are capable of constituting infringements of the rights protected by s. 1(a); and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event.

39. Whether the error(s) that led to the Chief Magistrate’s decision being reversed by the Court of Appeal amounts to a failure of the Chief Magistrate to observe one of the fundamental rules of natural justice, as opposed to being an error(s) of fact or substantive law, remains to be determined. The parties did not address this issue in their respective submissions on the Joint Application, which was specifically meant to address the preliminary issue of immunity. A trial on the nature of the error(s) in the Chief Magistrate’s decision, along with the damages available to the Claimant should he succeed on the Claim, is required.

Whether section 4(5) of the Crown Proceedings Act operates as a bar to the jurisdiction of the Supreme Court under section 20 of the Constitution of Belize

Claimant’s Submissions

40. The Claimant argues that subsection 4(5) of the *Crown Proceedings Act* must be read in context. Section 4 of the *Crown Proceedings Act* applies only in relation to torts. This is not a claim in tort, but a constitutional claim. Further, the Privy Council, in *Maharaj*, considered a similar provision in Trinidad and Tobago’s *Crown/State Liability and Proceedings Act*, 1966, and did not regard it as ousting the jurisdiction of the High Court in constitutional claims.
41. In addition, section 2 of the *Constitution of Belize* makes it clear that the *Constitution* is the supreme law and if any other law is inconsistent with the *Constitution*, the other law shall be void. Were there to be any inconsistency between section 20 of the *Constitution of Belize* and section 4(5) of the *Crown Proceedings Act*, the provisions of section 20 would prevail. Section 4 of the *Crown Proceedings Act* can therefore not oust the jurisdiction of this Court to hear this constitutional claim.

Defendant's Submissions

42. The Defendant repeats that the breaches of the *Constitution* the Claimant is alleging arose from extradition proceedings before the Chief Magistrate. The Chief Magistrate, in the exercise of her judicial duties, failed to issue the correct warrant pursuant to the *Extradition Act*, which led to the detention of the Claimant. These acts or omissions of the Chief Magistrate are protected by the doctrine of judicial immunity.

43. With respect to section 20 of the *Constitution of Belize*, the Defendant says that the presumption of constitutionality prevails. In *De Freitas v The Permanent Secretary of the Ministry of Agriculture, Fisheries, Land and Housing*,¹⁴ the Privy Council stated that:

It is also accepted that in the construction of statutory provisions which contravene human rights and freedoms there is a presumption of constitutionality [...] and that in construing constitutional provisions a liberal approach is required [...].

44. The Defendant also relies on Hogg's *Constitutional Law in Canada*, 5th ed., vol. 2, in which the author explains that the presumption of constitutionality carries the following three legal consequences:

- i. The court should exercise restraint in judicial review, striking down a law only if it offends constitutional restrictions on the power of Parliament;
- ii. Where the validity of a law turns on a finding of facts, that finding of fact need not be proved strictly by the government; it is sufficient that there be a "rational basis" for the finding; and
- iii. If the law is open to two interpretations, under one of which it would be unconstitutional, and under the other of which it would be constitutional, the latter interpretation should be selected. This mode of interpretation is known as "reading down".

45. It is the Defendant's contention that the right not to be deprived of liberty under section 5(1)(i) of the *Constitution of Belize* is not absolute. The right is limited by the proviso in section 5(6) of the *Constitution of Belize*, which reads as follows:

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting:

¹⁴ [1998] 3 WLR 675.

Provided that no person shall be liable for any act done in the performance of a judicial function for which he would not be liable apart from this subsection.

46. The proviso in section 5(6) of the *Constitution of Belize* bars a person from being liable for any act done in performance of its judicial function. Section 4(5) of the *Crown Proceedings Act* falls within the ambit of this proviso. The onus is on the Claimant to prove that the presumption of persons acting in the performance of their judicial function does not apply.
47. Similarly, the Defendant argues that the protection afforded by section 6(1) of the *Constitution of Belize* is not absolute. The right to the protection of the law is limited by the presumption that section 4(5) of the *Crown Proceedings Act* is constitutional.
48. In Hogg's *Constitutional Law in Canada*, 5th ed., vol. 2, the author explains that there is a presumption that the Crown is not bound by statute:

It follows that the Crown is not immune from statutes by virtue of any rule of the constitution. However, the Crown does enjoy a measure of immunity by virtue of a common law rule of statutory construction (or interpretation). The rule is that the Crown is not bound by statute except by express words or necessary implication [...] The rule is often expressed as a "presumption" that the Crown is not bound by statute - a presumption that is rebuttable by express words or necessary implication. The rule is sometimes describes as a "prerogative" of the Crown, which is also accurate, so long as it is understood that the rule is an immunity rather than a power. The rule is not a power to override a statute that applies to the Crown; the rule is a rule of construction, designed to ascertain whether or not the statute does apply to the Crown. Once it is ascertained that the statute does apply to the Crown, then the Crown is bound: the Crown has no prerogative power to escape from the obligations imposed by the statute.

49. Pursuant to the proviso in section 5(6) of the *Constitution of Belize*, and section 4(5) of the *Crown Proceedings Act*, the Defendant cannot be found liable for acts done by judicial officers in the performance of their judicial functions. The Claimant's constitutional rights were therefore not breached.

Discussion

50. Having found that subsection 4(5) of the *Crown Proceedings Act* does not apply to constitutional claims, but only to claims in tort, the third question must be answered in the negative. Section 4(5) of the *Crown Proceedings Act* does not operate as a bar to the jurisdiction of the Supreme Court under section 20 of the *Constitution of Belize* to hear and determine any application for relief for breaches of sections 3 to 19 of the *Constitution of Belize*.

51. For clarity, this Court is not being asked to rule on the constitutionality of subsection 4(5) of the *Crown Proceedings Act*. The question posed to this Court is whether section 4(5) of the *Crown Proceedings Act* operates as a bar to the jurisdiction of the Supreme Court under section 20 of the *Constitution of Belize*. This Court's decision that section 4(5) of the *Crown Proceedings Act* does not apply to this Claim for constitutional relief should not be interpreted as a ruling on the constitutionality of this provision.

Costs

52. This Application was filed jointly by the parties, who agreed to seek this Court's ruling on three preliminary questions related to the immunity of the Defendant before the trial of this Claim. It is therefore proper for each party to bear their own costs on the Joint Application.

IT IS THEREFORE DECLARED THAT

- (1) The Defendant is not immune from the Claimant's Fixed Date Claim dated September 30th, 2021;
- (2) The parties shall bear their own costs.

Dated October 28th, 2022

Geneviève Chabot
Justice of the Supreme Court