IN THE COURT OF APPEAL OF BELIZE A D 2023

CIVIL APPEAL NO 18 OF 2021

**PRIMROSE GABOUREL**

Appellant

v

**THE ATTORNEY GENERAL OF BELIZE**

1st Respondent

**THE MINISTER OF NATURAL RESOURCES**

**AND THE ENVIRONMENT**

2nd Respondent

———

BEFORE:

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

Godfrey Smith SC, Darlene Vernon, Mikhail Arguelles & Hector David Guerra for the appellant.
Samantha Matute-Tucker, Assistant Solicitor General, & Jorge Matus, Crown Counsel, for the respondents.

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Hearing: 17 June 2022

Date of promulgation/handing down: 13 March 2023

**JUDGMENT**

**WOODSTOCK-RILEY, JA**

**[1]** I have read the draft judgment of Foster, JA and agree with his decision.

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WOODSTOCK-RILEY, JA

**FOSTER, JA**

**[2]** I have had the benefit of reading my learned sister Minott-Phillips, JA draft judgment. My sister has set out the facts and the law eloquently and I do not propose to repeat them but only where it is necessary to illustrate my reasoning. The court below was tasked with having to assess the compensation due to Ms. Gabourel for the compulsory acquisition of her lands which was made on or about the 3rd of February 2007. Ms. Gabourel was dissatisfied with the award made by James, J in the court below and she appeals that decision. The function of the court below was to assess the value of the lands compulsorily acquired in accordance with the provisions set out in section 19 of the LAA (*supra*). The issue is whether or not the court below carried out that assessment within the provisions of the law and whether or not the principles this court has adopted in the past in the case of ***Holiday Lands Ltd. v Attorney General*** were followed.

**[3]** In this case the central issue, in my respectful view, is whether or not the learned trial judge followed the guidelines set out in ***Holiday*** and expanded in the latter case of ***Belmopan***. As argued by learned counsel for Ms Gabourel in this appeal, the 2022 CCJ judgment in ***Belmopan*** had similar features to the case before us. They both involve a judgment on admissions for the compulsory acquisition of private property; the liability to compensate by the GOB and importantly, the wide difference between the two valuations of the experts in the court below, Mr. Herman Castillo, the Chief Valuer in the Lands and Survey Department in the Ministry of Natural Resources for the Respondents and Mr. Clinton Gardiner a well-qualified valuer on behalf of the Ms. Gabourel.

**[4]** In ***Belmopan*** Saunders, PCCJ said at paragraph 11

> *"A determination of the market value of the expropriated land requires an assessment of the expert evidence and application of the pertinent legal principles. In appraising the land, a valuer is entitled to consider 'the real value of the land, and may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events at no remote period it may be applied, just as an owner might do if he were bargaining with a purchaser in the market. Although judges should not ordinarily substitute the opinions of the experts with their own, if the expert proceeds on a faulty premise, or takes into account irrelevant material, or reaches conclusions on a mistaken view of the facts or the law, there is a very serious risk that the result they arrive at will be erroneous."* (the emphasis is mine).

The CCJ further relied on the dicta in ***Holiday*** when at paragraphs [41] Saunders, PCCJ stated:

> *"As we shall see, the decision of the Court of Appeal to find the value of the ten acres simply by averaging out the rival valuations raises questions. What is noteworthy, however, is that the Court of Appeal recognized that where there were land suitable for mixed use, or when there were widely differing valuations, whether equally apparently deficient or seemingly cogent, selecting one valuation to the entire neglect of the other is also not the best approach for arriving at a fair market value."*

**[5]** Ms. Gabourel relies on the ***Holiday Lands Ltd*** case and contends that, in applying the relevant principles drawn from the case, it will be clear that "*the learned trial judge erred in law and was plainly wrong in accepting the respondents' valuation over the Appellants valuation."*.

The learned trail judge at paragraph 10 of his judgment stated,

*"Both parties have provided valuation reports of the property in order to assist the court in determining the market value. There is a great disparity between the valuations prepared by each valuer, the Claimant stating that the property is valued at $8,503,500.00 while the defendants have said that the property is valued at $1,050,000.00. Therefore the Court is faced with the challenge of determining <u>which valuation is more appropriate and reliable</u> in the circumstances. This exercise is to ascertain fair compensation not a windfall."* The emphasis is mine.

At paragraph 11 of the judgment James, J stated,

*"Having regard to all the evidence I would accept the valuation provided by the defendant as the most appropriate of the valuation. I choose the Defendant's valuation for the following reasons*.

1. *The Claimant's valuation relied heavily on one parcel 4633 which was an outlier in price to the other properties. The average price per square yard for 4633 was over ten times the average square yard price of the others highlighted by the Claimant. The average square yards of the property produced by the Defendant which was $155 per square yards was more in line with the majority of the properties in that area.*

2. *The Claimant's valuation took irrelevant things into consideration and went beyond his ambit as a valuator. The Claimant's' valuator at paragraph 17 through 23 went into the realm of submissions rather than a valuation. The Claimant's valuator was making submissions and conclusions which was not his to make. The valuator for example and bolded that there was no justification for the Claimant to be denied the opportunity to develop the property. The Claimant's valuator*

*spoke to and considered that the Claimant lost opportunity twice for which there has been no determination by the Court. Further in paragraphs 33 and 34 made statements for the Court to determine not the Claimant's valuator.*

3. *The most appropriate method in these circumstances is the Comparable Method not the Residual method as comparable sales were available no exceptional reason provided as to why it should not. The Claimant's valuator at paragraph 31 indicated that the valuation is based on the price of the property with the highest unit price near to the subject parcel. This is despite that this price could be an outlier and inflated price rather than a true comparable to the subject property.*

4. *Parcel 4633 was not a true comparable property with the subject property. The property was transferred after the relevant date determined for assessment. There was no proper evidence that parcel 4633 was undeveloped at the time or evidence why this property is so much higher than all the other properties around.*

5. *The Claimant's other evidence contained in the business plan only valued the land at 4 million less than half the amount that the valuator indicated. Therefore, a valuation of over $8,000,000.00 seems inflated and excessive."*

**[6]** The learned trial judge referred to the valuation of Ms. Gabourel's expert on a 'comparable parcel 4633 as an 'outlier'. He stated that it was 10 times the average price per square yard of others highlighted by the Claimant. He further stated that average price of the property produced by the defendant which was $2,155 per square yard which was more in keeping with the properties in the area. Unfortunately, James, J left it at that.

The evidence revealed that the Respondents valuers put forward parcels for a comparative analysis which were nowhere near the subject parcel and were not waterfront parcels. There was no evidence, as far as can be gleaned from the judgment or the record that the stated purchase price of the parcel was false, or as commented by the learned trial judge in the court below 'what happened if it was money laundering or something? I don't know'. There was nothing in the trial below to reason that the sale and purchase price of the parcel 4633 was not genuine. Mr. Gardiner in cross examination had given evidence that parcel 4633 was the nearest to the subject parcel, only 30 minutes away. The most reliable property is the nearest to the subject. The judge did not take this into consideration but simply dismissed this crucial piece of uncontroverted evidence, without more, as being an 'outlier'. It is my view, that this evidence of the price of a similar parcel of land, closest to the subject parcel and on the waterfront as well, was and is relevant evidence to assist the valuer in coming to a fair valuation of the subject parcel. The learned trial judge erroneously stated that *"… this price (parcel 4633) could be an outlier and inflated price rather than a true comparable to the subject property".* The evidence in this case was that Block 16 parcel 4633, Registration Section: Caribbean Shores, the nearest comparable parcel had sold in 2008 for $3,050,000.00. The land was approximately 3.4 times in size of the subject parcel, which is why the subject parcel was valued in 2021 at $8,503,529.00. In my respectful view the consideration of parcel 4633 did not amount to the expert proceeding on a faulty premise or that he took into account irrelevant material, or reached a conclusion on a mistaken view of the facts or the law. Indeed, there was no evidence to suggest, even remotely, that the purchase price for parcel 4633 was fraudulent or erroneous, fictitious or unreliable. Because it was purchased in 2008 for sum higher than other properties had been sold in the past is, in my view, not a reason to discard it, unless it fell within one of the categories enunciated by Saunders, PCCJ. in ***Belmopan***. The learned trial judge highlighted his possible reasons for not accepting the valuation of parcel 4633. It was not correct, without more to have discarded the comparable parcel which he seemed to do based on speculation and conjecture as to why the price was higher than others in the area.

**[7]** The evidence of Mr. Gardener, in explaining the high price in his valuation stated at paragraph 22 of his valuation, *"All other things being equal values will be driven up when there is competition for a scarce resource. In the case of the subject parcel this is the only remaining parcel in the neighbourhood. This location is in an area of high value properties coupled with scarcity makes this a very valuable property"*. The leaned trial judge did not consider this evidence which I consider to be material.

**[8]** In the learned trail judges' deliberations at paragraph 11.2 he took issue with the comments made by the valuer at paragraphs 17-23 of his valuation and considered that he took irrelevant things into consideration. Mr. Gardiner stated in his valuation report -

> "17. Government policy promoted housing in Belize in the nineties. Available government land in and around Belize City was mangrove and wetland. In order to achieve its objective a massive landfill program was undertaken. Landfill material from inland was taken to Belize City. The land folio and other maps of the neighbourhood show what became of the trend. None of the properties who benefitted from the extended foreshore have had any difficulty in developing their property."

**[9]** By the early 2000's seacoast lands on the north side of Belize City were allowed to be reclaimed. This resulted in new waterfront properties being created. This new waterfront displaced the original waterfront. ***There was ostensibly no justification for the Claimant to be denied the opportunity to develop the property***. The proprietor is a Belizean with equal rights to any other proprietor in the vicinity. The property was primarily water land. She had the ***reasonable expectation to develop the property similar to that of her neighbours***. Title was granted to this waterfront property in 2005. The decision to transfer to the Claimant was in ***conformity with government policy*** at the time. This is borne out by a map of the subject area where the surveys had been projected beyond the natural shoreline north-west and south-east of the subject. ***There was a clear trend. No other proprietor in the area has ever been denied the opportunity to exercise the expected rights that a Land Certificate affords a***

***proprietor. The property was compulsorily acquired in February, 2007. The Register was updated after the application for Transmission by government in February 2019.***

**The Belize Constitution**

**[10]** The Constitution protects the proprietor from ***arbitrary depravation of land.*** It sets out the manner in which the land may be compulsorily acquired. It also requires the Authority undertaking the acquisition to pay reasonable compensation to the proprietor for the acquired land…***within a reasonable time.*** The Constitution also required that the quantum of compensation be determined under a law that allows for determining such matters. In Belize this is the Land Acquisition (Public Purposes) Act.

**The Land Acquisition (Public Purposes) Act**

**[11]** This Act provides for the setting out of matters pertinent to the compulsory acquisition of property inclusive of service of notice of intended acquisition to the proprietor in addition to by notice in the government gazette.

**[12]** Provision is made for negotiation between a government officer and the proprietor.

**[13]** The compensation must be fair and reasonable and determined in accordance with the rules set out in the Act.

**[14]** The proprietor's rights and reasonable expectations of his/her land are:

1. A right to develop or not develop her land
2. A right to keep or sell it
3. To develop it with a view to earn an income from it
4. To live on it
5. To rent it out

6. The only caveat is that it is to be used for a legal purpose
7. There is also a purpose for which a license may be needed."

The emphasis is that of Mr. Gardiner.

**[15]** I agree with learned counsel's arguments for Ms Gabourel that each and every of these matters referred to in paragraphs 17-23 of Mr. Gardiner's report *'did not affect, taint or infect his valuation exercise because those statements were innocuous and could easily be ignored. These statements or comments made by the valuer were superfluous commentary that did not go to the basis of the valuation to taint it one way or the other'*. It did not affect the price of the parcel 4633 which was evidenced by a 'Transfer of land" Instrument No LRS-200804770 for which filing fees of $151,530 were paid. (Affidavit of Gardiner). None of what Mr. Gardiner stated there had anything to do with the principles he used to value the property or were facts and data that was wrong. I agree with counsel for Ms. Gabourel that these statements were entirely gratuitous and ought to have been properly ignored as not forming part of his valuation of the land. In paragraphs 33 and 34 of the valuation by Mr. Gardiner again made gratuitous statements by stating the section of the Act under which property compulsorily acquired is assessed and the entitlement to interest. Those statements were not wrong. Interest on the assessed sum was not factored into his valuation and again I agree with learned counsel that *interest* is the province of the Board of Assessment or the judge. These statements played no part in Mr. Gardiner's valuation.

**[16]** The third reason given by the learned trial judge for rejecting the valuation of Mr. Gardiner was because he used the residual method of valuation. Having said that, Mr. Gardiner's expert report referenced 12 comparable properties to that of Mr. Castillo's on behalf of the Respondent. Although he called it a residual valuation, he in fact valued it on the basis of a comparable value, by stating the price of the highest parcel of land, being the last one available, sold in 2008, 30 minutes away from subject parcel, and similar in location, both parcels being on the waterfront and being similar except as to size. In paragraph 29 of Mr. Gardiner's valuation he gave what he termed a

neighbourhood analysis of the properties with their amenities, location and values per square yard. This was cogent and relevant evidence to have assisted the trial judge in his deliberations on assuming the value of the acquired parcel of land. I therefore do not accept that this was a reason to reject the valuation outright.

**[17]** The fourth reason for rejecting the valuation of Mr. Gardiner was that parcel 4633 was not a true comparable because there was no evidence that it was undeveloped. The unchallenged evidence before the court was the evidence given by Mr. Gardiner was that it was undeveloped. No evidence was given as to whether any of the other lands used as comparable were undeveloped. The only evidence before the court was that it was undeveloped. Mr. Gardiner exhibited aerial photographs of the two parcels 4670 and 4633 which showed, even from my layman's viewpoint that the lands were undeveloped, in the sense that no buildings were erected on them and neither of them had been backfilled. What they do show is that they are very similar parcels in many respects. Although the learned trial judge commented that 'no evidence why this property is so much higher than all the other properties around.' There was that evidence from Mr. Gardiner that opined that it was the last parcel of land in a high value area. There is also no evidence to show that the registered price and stamp duty paid for 4633 was fictitious or erroneous. Mr. Gardiner also gave evidence that he visited the parcel "At this point in time".

**[18]** The fifth reason for the rejection of the valuation was because the Claimant gave evidence of a Business plan which suggested a value of $4,000,000.00 for the parcel. This Business plan did not form part of the material used by Mr. Gardiner as support for his valuation of parcel 4670. I therefore respectfully disagree with the learned trial judge in referring to this as a basis for rejecting the valuation.

**[19]** Collectively or individually, none of the reasons given by the learned trial judge to reject the valuation were sufficient to do so. In ***Belmopan*** Saunders PCCJ at paragraph [43] stated:

*"The judge had before him valuations from five valuers on the side of the claimant ranging from a low of $18,000.00 to a high of $30,000.00 the judge also had to consider, on the par of the defendant, four valuations ranging between $8,500.00 and $10,300.00. The judge commented:*

> *'There is a great gap between these valuations, a wide divergence of views and opinions as to what the market value is and how it should be estimated. The Court, faced with this conflicting evidence of the optimist and perhaps the pessimist, must be guided by the reasons supporting each witness' views, bearing in mind the soundness of the same and the balance of probabilities'."*

In ***Minister of Natural Resources and Attorney General v Holiday Lands Limited Civil Appeal 8 of 2003*** Justice Mottley P stated at paragraph 50 *"Counsel also relied on* ***Re Little*** *(1957) 9 D.L.R. (2d) 296; (1957) OWN 301 (can), in which it was held that in fixing compensation for expropriated land, evidence of sales of nearby and comparable land at or about the time of expropriation, or even thereafter, is relevant and admissible. In* ***Melwood Units etc. v Commissioner of Main Roads*** *(1959) 1 All ER 161 at 162, the Privy Council stated that in assessing values for the purpose of compulsory acquisition, a tribunal in not required to close its mind to transactions subsequent to the date of acquisition which might relevant or of assistance.".* At Paragraph 52 Motley P reasoned:

> *"The Board found that Mr. Casino, in his comparative sales approach, had relied solely on the sale of the land to Government (the Elliot sale) when other data was available on parcels ranging in sizes from three acres to about eighty acres. In rejecting his evidence, the Board concluded that his approach was superficial and without analysis. Having rejected this evidence, the Board resorted to the residual method approach. 53. In my opinion, the Board was wrong to reject Mr. Casino's evidence. The Board ought to have reminded itself of what this Court said in* ***Holiday Lands Limited, Witte & Witte P.C. v The Attorney General and Ministry of***

***Natural Resources v Holiday Lands Limited, Witte & Witte P.C****., Civil Appeal Nos. 4 and 17 of 2002 of the Court of Appeal of Belize. Rowe P said:*

**[20]** *Our attention was drawn to the decision of* ***Goold and Rootsey v. Commonwealth of Australia et. Ors [1993]*** *Australian Law Reports 135. There the trial judge had a number of sales of property some of which were not in the immediate vicinity of the property that was compulsorily acquired. From the evidence provided by the valuers, the trial judge carried out a comparative exercise to determine which if any of those properties bore a sufficient relationship to the subject land. He gave his reasons for refusing to treat some properties as comparable. When the judge had narrowed the comparative exercise to one property on the low side put forward by the claimant and another, the highest put forward by the Government, he then considered the advantages which the subject land had over the low price and all the disadvantages that it suffered in relation to the property on the high side. He gave percentage discounts or additions as appeared appropriate and by that method he arrived at a market value for the property. (See paragraphs 62-67 of the judgment). We commend the approach of Wilcox, J. in Goold and Rootsey, (supra) in cases such as this where the valuers might have to range far afield to find sales for the consideration of the Board.*

**[21]** *The Board declined to take into consideration the sale to Government in 1993 of a parcel of land of 135 acres in Ambergris Caye and relied on a passage from Real Estate Valuation in Litigation, 2nd Edition at p. 222 which states that:*

> *"In a perfect world appraisers would always find an abundance of comparable market data and there would never be a need to even consider using a sale to the government as a comparable (because)…(w)hen a government purchase occurs, the buyer and seller are not "typically motivated" and the property sold was not typically exposed in the open market".*

*In our view, there is no rule of general application that sales to government can never be considered for purposes of comparison when a Board is called upon to make assessments and awards pursuant to the Land Acquisition Act. As the learned author of* ***Real Estate Valuation in Litigation****, from which the above quotation is taken has said,*

> *"But because of the unique needs of some governmental agencies, there is sometimes an inadequacy of private market data with which to develop a reliable indication of market value. Indeed without resorting to sales to the government as comparables, it would be impossible to develop an indication of market value by the sales comparison approach at all".*

*We bear in mind that Belize is a very small society and that a Board in making an assessment, can take into consideration all the probabilities and then make adjustments based on such evidence as expert witnesses may proffer as to how government sales might differ, if at all, from other sales, properly called open market sales. A Board, in our view, can take into consideration government sale(s) where the land is in a vicinity which bears relevance to the property compulsorily acquired".*

**[22]** It is my view that the learned trial judge ought not to have rejected the valuation report of Mr. Gardiner. He was under the mistaken apprehension that because *"There is a great disparity between the valuations prepared by each valuer, the Claimant stating that the property is valued at $8,503,500 while the Defendants have said that the property is valued at $1,050,000.00"*, and that he had to *"determine which valuation is more appropriate and reliable in the circumstance".* The learned trial judge did not rely on the dicta in ***Minister of Natural Resources v Holiday Lands Limited*** (supra) that he did not have to accept one valuation over the other. I also commend the approach of Wilcox, J in ***Goold and Rootsey***, (supra) and repeat Saunders PCCJ when he stated *"… when there were widely differing valuations, whether equally apparently deficient or seemingly cogent, selecting one valuation to the entire neglect of the other is also not the best approach for arriving at a fair market value".*

**[23]** The learned trial was therefore wrong to reject the valuation of Mr. Gardiner for the reasons he did at paragraph 11 of his judgement, and 'because of the great disparity in the valuations'.

**[24]** Learned Counsel for the Respondent argued that the learned trial judge was correct in rejecting the Ms Gabourel' s expert for the reasons stated in paragraph 11 of his judgment. She went on to quote paragraph 11 of ***Belmopan*** (*supra*) that *"if the expert proceeds on a faulty premise, or takes into account irrelevant materials, or reaches conclusions on a mistaken view of the facts or the law, there is a very serious risk that the result they arrive at will be erroneous".* As I have stated above, none of the reasons stated by the learned trial judge at paragraph 11 of his judgment amounted to Mr. Gardiner proceeding on faulty premise. He did not use irrelevant materials in arriving at his recommendation. He merely gave superfluous comments which were not considered in the factual basis of his valuation, the sale and purchase of a comparable lot of land parcel 4633. He did not tamper with or opine on that sale and purchase price. There was no evidence that the price was faulty, a mistake, fraudulently made or unreliable in and of itself. The comments made by the learned trial judge about the price of parcel 4633 were speculative, and, that it was an outlier. This did not satisfy of the caveats articulated by Saunders, PCCJ at paragraph 11 of ***Belmopan*** (*supra*).

**Conclusion**

**[25]** I have found that the learned trial judge was under a mistaken apprehension that he had to choose one valuation over the other. This was incorrect. A Board or a judge ought to consider the valuations and give to them what weight they may possess especially *"When faced with widely differing valuations, whether equally apparently deficient or seemingly cogent, selecting one valuation to the entire neglect of the other is also not the best approach for arriving at a fair market value"* (see Belmopan paragraph 41). In this matter the learned trial judge did just that, selected one valuation to the entire neglect of the other, which he ought not to have done; unless the valuation the Board or the judge discarded or disregarded, was because the opinion of the expert is based on a

faulty premise, or the expert takes into account irrelevant material, or reaches conclusions on a mistaken view of the facts or the law. For the reasons I have given here, I would allow the appeal.

**[26]** Having allowed the appeal in part the question now is what orders I can make. The litigation in this matter has not been inordinate. The Claim was filed in 2019 and James, J delivered his decision on 7th July 2021. From my assessment of the evidence, I do not however consider that we have sufficient material before us to carry out a valuation of the appropriated land and to assess Ms. Gabourel's inability to develop the property. The information given by both experts as to the comparable properties, 5 on one side and 12 on the other do not provide the sufficient information to allow me to carry out a fair valuation exercise.

**[27]** As in ***Belmopan*****,** (*supra*) this case was filed by Ms Gabourel for damages for violation of her rights under section 17 of the constitution, to the protection from deprivation of property. As such, the court is now free to provide redress as it sees fit. As the court below awarded Ms. Gabourel $1,050,000, *it can hardly be disputed* that Ms. Gabourel is owed at least that sum of money. I am of the view that the value given for the appropriated lands would have been obviously higher. The Supreme Court (Civil Procedure) Rules 2005 at part 17.1 (1) (i) and 17.6(1)(c), make provision for ordering the making of interim payments. This is a suitable case for the making of such an order. I would therefore order that GOB make immediate payment to Ms. Gabourel of the sum of $1,050,000.00 together with interest at the rate of 6% per annum from the date of acquisition to the date of payment. I would further order that the sum of $300,000.00 for the landfill be paid immediately by GOB to Ms. Gabourel together with interest from the date of 16 January 2019 to the date of payment (in both instances less such sums as GOB has already paid Ms. Gabourel on account).

**[28]** This is a matter for expert valuers to undergo a proper valuation. With regard to the assessment of full and fair compensation to Ms Gabourel for losses suffered from being unable to utilize the property to develop commercial residences the learned trial judge found the witness on this issue devoid of credibility and cogent and credible

evidence absent. In circumstances where the validity of a document used was reasonably questioned, that assessment is understandable. However, and again, as this is filed as a constitutional motion and this court free to make such declarations and orders for the purpose of giving effect to Ms Gabourel's right to property, I think it only fair and just that and in keeping with Saunders, PCCJ reasoning in ***Belmopan*** (*supra*) at paragraph [65], when he referred to G Roots and Others (eds), The Law of Compulsory Purchase (2nd edn, Bloomsbury Professional 2011) at 1207.1., *'Dispossessed owners of land must receive a fair financial equivalent for their land. They are to receive fair compensation, but not more than fair compensation'.* And because as Saunders, PCCJ stated in Belmopan at paragraph [79] there is *'good reason why the Land Acquisition (Public Purposes) Act favours an arbitral style approach to the valuation of compulsorily acquired land,'* the determination of an appropriate amount should still be undertaken rather than only the nominal amount awarded by the trial judge. I am therefore of the view that it would be best, in all the circumstances of this case to remit these matters to the court below for further evidence to be taken to arrive at a fair market value of the land acquired in keeping with the principles provided in the LAA.

**[29]** For this reason I would urge the court below, to apply Part 32 of the Supreme Court (Civil Procedure) Rules to assist in arriving at a fair market value of the expropriated land. At the reassessment the judge would consider the expert evidence of Mr. Castillo and Mr. Gardiner, and any other experts, to arrive at a fair market value of the property and to properly assess the compensation for the inability of Ms. Gabourel to develop the property.

**[30] Order**

i. The appeal is allowed.

ii. The assessment of compensation for the fair market value of the land and for compensation to Ms. Gabourel for her inability to develop the land is remitted to a judge below.

iii. Directions be given for the assessment of compensation within 21 days of the date of this order.

iv. The experts appointed are to decide the best and most appropriate valuation method for determining the fair market value of the land.

v. The GOB immediately pay to Ms Gabourel (less any sums already paid on account) the sum of $1,050,000.00 for the land and the sum of $300,000.00 for the landfill.

vi. Cost of this appeal is awarded to Ms. Gabourel (save and except the costs associated with the issue of the assessment of compensation for the inability of Ms Gabourel to develop the property which I would set at 20 percent) to be agreed within 21 days failing which it be assessed.

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FOSTER, JA

**MINORITY JUDGMENT OF MINOTT-PHILLIPS, JA**

**[31]** This is an appeal against an assessment of damages conducted by the Hon Mr Justice Westmin R A James and pronounced on 7 July 2021. His assessment was the sequel to Judgment on Admissions handed down by the Hon Madam Justice Michelle Arana (as she then was) on 28 February 2020 ordering the Respondents, the Attorney General ("***the AG***") and the Minister of Natural Resources and the Environment ("***the Minister***") to:

> *… pay full and fair compensation to the Claimant [Primrose Gabourel ("**Ms Gabourel**")] for the compulsory acquisition of land being Parcel 4670 Block 16 in the Caribbean Shores Registration Section, inclusive of interest, and or losses suffered from being unable to utilize the property to develop commercial residences and costs related thereto.*

**[32]** It was the task of the Hon Mr. Justice James to assess the quantum of damages payable to Ms Gabourel consequent upon the judgment that issued in her favour. Her appeal is against those parts of his order that awarded her:

a. $1,050,000 as compensation for the compulsory acquisition of the property being Registration Section: Caribbean Shores/ Belize; Block 16; Parcel 4670;

b. $150,000 as compensation for the losses suffered for not being able to utilize the property being Registration Section: Caribbean Shores/ Belize; Block 16; Parcel 4670 to develop commercial residences;

c. Simple interest on the damages of 6% from 3rd February 2007 to 7 July 2021[1] and thereafter at the statutory rate of 6% per annum until payment;

being paragraphs 1, 2 and 4, respectively, of the order he made.

**[33]** Ms Gabourel's contention before us was that the award to her following the assessment conducted by the Hon Mr Justice James was too low. In this appeal she seeks:

a. An Order setting aside the award of $1,050,000 and awarding instead the

[1] This date, although correctly reflecting the order as it was perfected by the Registrar on 27 August 2021, is not the date set out in paragraph 24 of the written reasons of James, J. In that paragraph of his reasons James, J. states the relevant date as being 28 February 2020 (being the date of Arana, J's judgment on Admissions).

appropriate compensation determined by the Court of Appeal based on a proper evaluation of the valuation evidence.

b. An Order setting aside the award of $150,000 for loss of utilization of property and awarding instead the appropriate compensation determined by the Court of Appeal.

c. An Order setting aside the award of simple interest on the damages to be paid by the Respondents and awarding instead compound interest on the damages to be paid.

d. In the alternative, if the Court of Appeal is of the view that it does not have sufficient information, an Order remitting the matter to the Supreme Court for re-assessment of compensation with such instructions as regards the taking of evidence or further evidence or otherwise as appears necessary.

**[34]** The grounds of appeal are:

a. The learned trial judge's acceptance, *in toto*, of the expert report of Herman Castillo, which was partial on its face and manifestly unreliable and blatantly inconsistent, was plainly wrong and amounted to a mistake in the judge's evaluation of the evidence that was sufficiently material to undermine his conclusions.

b. The learned trial judge erred in law and/or in fact by failing to properly evaluate the valuation evidence; by preferring the expert report of Mr Herman Castillo over that of Mr Clinton Gardner, against the weight of the valuation evidence; and by failing to provide any reasons that would enable the appellate court to understand why the judge reached this decision.

c. The Learned Trial Judge erred in awarding the sum of $1,050,000 as compensatory damages.

d. The Learned trial Judge erred in law in awarding the sum of $150,000 only as compensation representing the loss suffered as a result of the Appellant's inability to use the property.

e. The learned trial judge erred in awarding simple interest on the compensation assessed rather than compound interest in circumstances where compound interest ought to have been awarded.

f. The learned trial Judge erred in law in finding that planning permission was necessary to properly award compensation for loss of land utilization and by awarding only nominal damages, because of the difficulty of assessment, in circumstances where there was a court order for full compensation for loss of land utilization.

In the written submissions advanced on behalf of Ms Gabourel the court was informed of her abandonment of ground e. Accordingly, the award of interest by James, J. contained in paragraph 4 of his order pronounced on 7 July 2021 is no longer the subject of challenge.

**[35]** In this case the judgment of Arana, J in favour of Ms Gabourel was issued upon the Government's admission to having compulsorily acquired Parcel 4670 for a public purpose. Hence the first figure of $1,050,000 in the assessment conducted by James, J. was as compensation for the compulsory acquisition of the property being Registration Section: Caribbean Shores/ Belize; Block 16; Parcel 4670. The admitted facts set out as the grounds of the application for judgment on admissions, and upon which the judgment issued, make this clear. They include an admission by the Commissioner of Lands that he was informed that the Minister was prepared to appoint the Board of

Assessment so that this matter can be finally resolved for both Ms Gabourel and the Government.

**[36]** Although the action that led to the assessment was formulated as a claim for damages for violation of Ms Gabourel's right, under section 17 of the Belize Constitution, to protection from deprivation of property, the admissions upon which judgment issued were that the land had been compulsorily acquired by the Government of Belize and that Ms Gabourel was entitled to compensation. The parties' acceptance that the Land Acquisition (Public Purposes) Act **("*LAA*")** is applicable is recited by James, J when he stated[2],

> *"It is accepted by both parties that the Land Acquisition (Public Purposes) Act Chap 184 is applicable in assessing the fair compensation to the Claimant for the compulsory acquisition of land."*

**[37]** It is not clear what, if any, role the Board of Assessment played in determining the quantum of compensation payable to Ms Gabourel for the compulsory acquisition of her land but the order requested of (and granted by) Arana, J. (albeit in the event mediation proved unsuccessful) was that the assessment of quantum of damages be done by the court. Arana, J's order provides for the assessment to be returned to case management (pursuant to Rule 73.14(3) of the CPR) if, as was the case, the mediation was unsuccessful.

**[38]** The point is important because it establishes that James, J., in the exercise he was conducting, was concerned with assessing compensation for a lawful acquisition of land under the LAA, and not damages for an unlawful acquisition of land outside of the Act.

**[39]** Whatever procedural anomalies there may have been (e.g. the compensation due being assessed by a Supreme Court Judge instead of by the Board of Assessment that

[2] At numbered paragraph 3 of his written reasons

the Minister indicated he was prepared to appoint for the purpose), both sides agreed that the LAA was applicable in assessing the fair compensation to Ms Gabourel for the compulsory acquisition of her land and it is upon that basis that the assessment proceeded. Nothing in the Notice of Appeal took issue with the procedure adopted.

**[40]** As was noted by Anderson, JCCJ, in delivering the opinion of the minority in the court's decision in ***Belmopan Land Development Co Ltd v Government of Belize***[3],

> *"Caribbean legislation on compensation for compulsorily acquired land has replaced the unifying 'value to the owner' principle with expressly enumerated matters to which regard must be had in determining compensation for the compulsory acquisition of land. In deciding upon compensation under the legislation, the first obligation on the court is fidelity to the principles of statutory interpretation in construing the words used in the statute. It is apposite to advert to the warning of the High Court of Australia against construing modern legislation dealing with compensation for the compulsory acquisition of land by reference to 'principles' extant at common law. The High Court quoted with approval McHugh J's warning in* ***Marshall v Director-General, Department of Transport***[4]*, that:*
>
> > *The duty of courts, when construing legislation, is to give effect to the purpose of the legislation. The primary guide to understanding that purpose is the natural and ordinary meaning of the words of the legislation. Judicial decisions on similar or identical legislation in other jurisdictions are guides to, but cannot control, the meaning of legislation in the court's jurisdiction. Judicial decisions are not substitutes for the text of legislation*

[3] BZ 2022 CCJ 1 at para. 116
[4] (2001) 205 CLR 603

> *although, by reason of the doctrine of precedent and the hierarchical nature of our court system, particular courts may be bound to apply the decision of a particular court as to the meaning of legislation."*

**[41]** Although that dictum emanates from the minority judgment there was no disagreement on it among the members of the court. It is to be noted that all dicta relating to the award of compensation for land compulsorily acquired under the LAA in the ***Belmopan Land Development***[5] case is *obiter*, as the court was of the unanimous view that the case before them was one of an assessment of damages for unlawful acquisition by the Government of Belize ("***GOB***") of land outside of the ambit of the LAA. That case was not, as is the case here, an assessment of compensation for compulsory acquisition of land done within the ambit of the LAA.

**[42]** It is also to be noted that the opinion of the majority of the CCJ in the ***Belmopan Land Development***[6] case was that the principles for determining the 'fair market value' of the land under the LAA and otherwise are the same. The minority disagreed with that and were of the view that there were potentially material differences between an assessment of **compensation** for land compulsorily, but lawfully, acquired by the GOB under the LAA and an assessment of **damages** for the unlawful acquisition of property by the GOB outside of the LAA and, consequentially, in breach of the landowner's constitutional right not to be so deprived of his property.

**[43]** It was the CCJ's view that, notwithstanding that the case before them was not one of compulsory acquisition of land pursuant to the LAA,

> *"Cases that are premised on compulsory acquisition may, however and with some caution, provide assistance on the manner in and principles upon which the courts may go about determining fair*

[5] [2022] CCJ 1 AJ (BZ)
[6] *Ibid* at numbered paragraph 7

*market value. In any event, even if the Land Acquisition (Public Purposes) Act were applicable, s 19(a) of that Act definitively states that:*

> *The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realized at the date of the second publication in the Gazette."*[7]

**[44]** In the ***Belmopan Land Development***[8] case there was division in the opinions of the majority and the minority on whether there was any basis for an appellate court overturning the acceptance of the expert evidence of the valuer relied upon by the judge at first instance in determining the fair market value payable for the expropriated land. The majority (agreeing with the Court of Appeal) held there was. The minority discerned no legal basis upon which the trial judge's reliance on the expert evidence she found credible could be disturbed.

**[45]** The principles set out in that decision are helpful. Importantly, the entire court was unified in the view that the task of assisting a tribunal or court to arrive at a fair market value of land (whether for purposes of ascertaining compensation or damages) properly is that of a valuer.

**[46]** The CCJ in its ***Belmopan Land Development***[9] decision helpfully reminds us of the definition of "market value" when it states,

> *"The International Standards define 'Market Value' as the estimated amount for which an asset or liability should exchange on the*

[7] ***Belmopan*** at numbered paragraph 19 of the majority opinion
[8] [2022] CCJ 1 AJ (BZ)
[9] [2022] CCJ AJ (BZ) at numbered paragraph 10 of the majority opinion

*valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."*

**[47]** As the court opined, the determination by the tribunal of the market value of the expropriated land requires as assessment of expert evidence and application of the pertinent legal principles[10]. The majority opinion delivered by the Hon Mr Justice Saunders, PCCJ, states,

*"Although judges should not ordinarily substitute the opinions of experts with their own, if the expert proceeds on a faulty premise, or takes into account irrelevant material, or reaches conclusions on a mistaken view of the facts or the law, there is a very serious risk that the result they arrive at will be erroneous."*[11]

And (citing ***Melwood Units Pty Co Ltd v Commissioner of Main Roads*** [1979] AC 426 at 432)

*"The assessment of compensation for acquired land is usually a question of fact derived from the opinion of valuation experts. Where, however, in the assessment process, the valuer does not have regard to basic valuation principles a court's acceptance of such a valuation amounts to an error of law and cannot stand."*[12]

The minority opinion delivered by The Hon Mr Justice Anderson, JCCJ, put it this way,

*"Unless the evidence of the expert is demonstrated by accepted jurisprudential reasons to be inadmissible or otherwise unacceptable, it is not, in my view, the responsibility or mandate of*

[10] *Ibid.* At numbered paragraphs 11 and 69 of the majority opinion and numbered paragraph 85 of the minority opinion
[11] At numbered paragraph 11
[12] At numbered paragraph 69

> *this Court to reopen, or authorize the reopening of an original investigation into the market value to be assigned to the expropriated property. Such a course of action would be inconsistent with the appellate function exercisable by this court."*[13]

He also alluded to the CCJ's earlier decision in ***Guyana Sugar Corporation v Dukhi***[14], in which the court noted that,

> *"An award of damages will be subject to appellate review where the trial judge made an error of law or the quantum of damages is so disproportionate to the sum claimed that it appears to be entirely incommensurate with the nature and extent of the loss suffered. The test is routinely applied in Caribbean jurisprudence…"*[15]

**[48]** Utilizing cases as illustrations, the CCJ showed how various methods used by valuers for arriving at the fair market value of expropriated land have been upheld as not warranting interference by an appellate court. These methods include:

a. The residual method - This method requires one to ascertain the net value of the lands by first engaging in a hypothetical sub-division of the land and then calculating the gross sum capable of realisation from the sale of the sections therein. From the resulting sum is deducted such expenses as the infrastructure costs, professional fees, finance charges and other such allowances as well as the expenses related to the acquisition: ***Blake Estates Ltd v Government of Montserrat***[16] [17]. The use of this methodology was approved by both the Court of Appeal and the Privy Council. The CCJ considered the ***Blake Estates*** case *"a good illustration*

[13] At numbered paragraph 85
[14] [2016] CCJ 17 AJ (GY)
[15] ***Belmopan*** at numbered paragraph 130
[16] [2005] UKPC 46; (2005) 67 WIR 83
[17] ***Belmopan*** at numbered paragraph 35 quoting the PC.

*of how the residual method of valuation may be applied to lands where it is virtually impossible to find any valid comparators."*[18]

b. Use of cogent available evidence of the value of the precise parcel of land - eg the sale price of a very recent sale of the exact same parcel of land: ***Windward Properties Ltd v Government of Saint Vincent and the Grenadines***[19]***.*** The acceptance of this methodology by the first instance tribunal was approved by the Court of Appeal and the Privy Council[20].

c. The use of valid comparators - as done in the Australian case of ***Goold v Commonwealth of Australia***[21] by Wilcox, J who had a wide range of sales of property offered up to him by the valuers as valid comparators. He opted to carry out a detailed exercise to determine which if any of those comparable properties bore a sufficient relationship to the subject land and gave his reasons for refusing to treat some properties as being properly comparable. He considered the advantages which the subject land had over those properties with low values and all the disadvantages that it suffered in relation to the properties with high values. He gave percentage discounts or additions as appeared appropriate and by that method he arrived at a market value for the property. The CCJ stated in its majority opinion in ***Belmopan*** that the Court of Appeal in ***Holiday Lands Ltd v Attorney General***[22] rightly commended this approach taken by Wilcox, J.[23]

**[49]** The CCJ in ***Belmopan Land Development***, having provided the above illustrations of various valuation methods, said,

[18] ***Belmopan*** at numbered paragraph 38.
[19] (1996) 47 WIR 189
[20] ***Belmopan*** at numbered paragraphs 29-30 and 32
[21] (1993) 114 ALR 135. Referred to in ***Belmopan*** at numbered paragraphs 43 & 44
[22] Belize CA, 27 March 2003
[23] ***Belmopan*** at numbered paragraph 44

> *"There are valuable lessons to be drawn from these cases, both the Caribbean and the non-Caribbean ones. They provide useful guidance on how to go about the task of valuing expropriated land, especially in circumstances where one is dealing with particularly large pieces of land and or where the rival valuations vary widely."*[24]

***The assessment judge's determination of full and fair compensation to Ms Gabourel for the compulsory acquisition of her land***

**[50]** It appears to me that, in this case, James, J., in conducting his assessment, took a similar approach to that taken by Wilcox, J in the Australian case of ***Goold*** – which approach was commended by this court in the ***Holiday Lands*** case (with the subsequently expressed approval of the CCJ in ***Belmopan***)[25].

**[51]** I accept the guidance of the CCJ given in ***Belmopan*** that an appellate court would only interfere with a trial judge's acceptance of the expert evidence provided to him in assessing the compensation payable if it is established that:

a. the expert proceeds on a faulty premise, or

b. the expert takes into account irrelevant material, or

c. the expert reaches conclusions on a mistaken view of the facts or the law.

In other words, in order to succeed the Appellant must establish that the assessment judge was plainly wrong to have accepted the evidence of the expert.

**[52]** I am of the view that the Appellant has not met this threshold. One need but read the transcript of the evidence adduced before James, J. to appreciate why it was that he

[24] ***Belmopan*** at numbered paragraph 45 of the majority opinion
[25] See footnotes 21 & 23

unhesitatingly preferred the expert evidence of Mr Herman Castillo to that of Mr Clinton Gardiner.

**[53]** So far as the statutory requirements set out in s 19 of the LAA are concerned it is clear that James, J adhered to them scrupulously.

**[54]** There is no complaint about James, J's selection of the date of assessment, nor could there reasonably be in the light of the parties' acceptance of the LAA as applicable in assessing the fair compensation due to Ms Gabourel for the compulsory acquisition of her land by the GOB. The LAA fixes the assessment date as the date of the second publication in the Gazette of the Ministerial declaration that the land will be acquired for a public purpose. The date of the second publication was 3 February 2007 which he accepted and used as the appropriate date for the assessment.

**[55]** Having done that, James, J went on to address the value of the land and, in so doing, sought to determine the appropriate sum that represented the market value of the land considering its highest and best use. He declared the assessment of compensation to be a matter for valuers and not for lawyers and said,

> *"It is thus a question of fact but expert fact needing to be provided by the testimony of expert witnesses, who in this context must be valuers."*

**[56]** There was a great disparity between the valuations prepared by each valuer: one (by Mr Clinton Gardiner) was for $8,503,500 while the other (by Mr Herman Castillo) was for $1,050,000. The judge having received the valuers' evidence in chief (inclusive of their reports) and observed them under cross-examination accepted the valuation provided by Mr Castillo in preference to that provided by Mr Gardiner and gave cogent reasons for doing so. Among those reasons were:

a. Mr Gardiner's indication that his valuation is based on the price of the property (Parcel 4633) with the highest unit price near to the subject parcel

despite that price being an outlier reflecting a price that was over 10 times the average square yard price.

b. His preference for Mr Castillo's use of the comparable sales method as being the most appropriate method in these circumstances and his rejection of the residual method used by Mr Gardiner;

c. His disapproval of Mr Gardiner having gone beyond his remit by himself making submissions and drawing conclusions that were the preserve of the Court; and

d. His finding that Parcel 4633 used by Mr Gardiner was not a true comparator with Ms Gabourel's property, there being no proper evidence that Parcel 4633 was undeveloped at the time, or evidence why its value was so much higher than all the other properties around.

e. Ms Gabourel's other evidence (that of Mr Francisco Lopez) of a business plan for the property that valued the land at $4,000,000 – less than half the amount that Mr Gardiner indicated- making Mr Gardiner's $8M valuation seem very inflated and excessive.

**[57]** James, J also received the valuation of Mr Castillo into evidence. Mr Castillo testified at the request of the Defendants. James, J found that, in spite of some inconsistencies, Mr Castillo's evidence had not been rendered unreliable. He was entitled to, and did, accept Mr Castillo's valuation of $1,050,000 in determining the compensation payable to Ms Gabourel for the loss of property compulsorily acquired to be $1,050,000.

**[58]** I see nothing in the reasons of James, J. that indicates that the valuer's opinion he accepted (being that of Mr Castillo):

a. did not have regard to basic valuation principles; or
b. proceeded on a faulty premise; or
c. took into account irrelevant material; or
d. reached conclusions on a mistaken view of the facts or the law.

As none of the above applies, a re-opening of James, J.'s original investigation into the market value to be assigned to the expropriated property would be inconsistent with the appellate function exercisable by this court; and I see no cause for doing so.

**[59]** For the above reasons grounds a, b and c of appeal fail.

***The assessment judge's determination of full and fair compensation to Ms Gabourel for losses suffered from being unable to utilize the property to develop commercial residences***

**[60]** The evidence of the other witness for Ms Gabourel, Mr Francisco Lopez, sought to provide an evidential basis for the Judge to make a determination of the loss suffered by Ms Gabourel for being unable to utilize the property to develop commercial residences.

**[61]** Mr Lopez failed in his task not least because of his generation of a letter (signed by him which he said he sent to Heritage Bank) which, under cross-examination, he admitted he could not have sent as Heritage Bank was not in existence at the time. He produced that document to the court as a copy of an original letter from him to that institution. This elicited the following from, James, J.:

> *"This alone makes the evidence of Mr Lopez quite unreliable to the Court having printed off a copy of a letter to someone long after and signing it and producing it to the Court as a copy of the original is very disturbing and so the Court has lost confidence that the witness could give unbiased and truthful evidence."*

**[62]** In assessing damages under this head, James, J. correctly declared that he could not go behind the determination of Arana, J. that Ms Gabourel should be compensated for not being able to utilize property to develop commercial residences.

**[63]** Mr Lopez' expertise, such as it was, lay in preparing business plans, loan proposals, feasibility studies, market surveys and the like. He was not a contractor, valuer, architect or engineer. James, J essentially found Mr Lopez to be entirely devoid of credibility. This finding was entirely reasonable in my view in the light of Mr Lopez' admitted generation, for the purpose of testifying, of a document that did not exist, and pretending to the court that it did. In my view James, J did not err in rejecting the evidence of Mr Lopez.

**[64]** In assessing Mr Lopez' evidence, James, J also noted his failure to supply any supporting documents to justify the figures in his proposal for the development of the land. As stated by James, J.,

> *"…the valuation for the property listing it as $4,000,000 was not produced, the plans for the property upon which he based his opinion was not produced. There was no approval by a bank for funding of this proposal only a statement by the witness that it was being positively considered by the Manager. The Company which was to be responsible for this project was not even in existence."*

**[65]** Section 19 (b) of the LAA states,

> *Subject to this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land,*
>
> *(a) ….*
>
> *(b) the suitability or adaptability of the land for any purpose*

> *shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers not already granted….*

**[66]** In the absence of cogent and credible evidence of the amount of the claimed damage, James, J. cannot, in my view, be faulted for assessing the damages that would be applicable under that head in the nominal amount of $150,000 as *"fair and reasonable in the circumstances to compensate the Claimant for their [sic.] inability to develop the property."*

**[67]** For the above reasons grounds d and f of appeal fail.

**[68]** It follows from the views I have expressed that I would dismiss the appeal, affirm the order of James, J made on 7 July 2021, and award the costs of the appeal to the Respondents.

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MINOTT-PHILLIPS, JA