

**IN THE HIGH COURT OF BELIZE, A.D. 2023**

**Claim No. 119 of 2023**

**BETWEEN**

**REEF VILLAGE DEVELOPMENT II, LIMITED**

**APPLICANT**

**AND**

**THE HON. CORDEL HYDE  
(MINISTER OF NATURAL RESOURCES,  
PETROLEUM & MINING)  
THE ATTORNEY GENERAL**

**1<sup>st</sup> RESPONDENT**

**2<sup>nd</sup> RESPONDENT**

**Before** the Honourable Madam Justice Geneviève Chabot

**Appearances**

Rt. Hon. Dean O. Barrow, S.C., and Adler G. L. Waight, for the Applicant  
Samantha Matute and Agassi Finnegan, for the Respondents

**DECISION ON APPLICATION FOR PERMISSION  
TO APPLY FOR JUDICIAL REVIEW**

**Introduction**

1. Reef Village Development II, Limited (the “Applicant”) is the proprietor of Parcels 5206 and 5205, Block 7, San Pedro Registration Section. The Applicant was also the proprietor of Parcel 5203, Block 7, San Pedro Registration (“Parcel 5203”) until its compulsory acquisition by the Minister of Natural Resources, Petroleum & Mining (the “Acquisition”). The Acquisition is the subject of this Application for Permission to Apply for Judicial Review (the “Application”).

2. The Applicant seeks judicial review of the Acquisition because it alleges that the Acquisition was made in breach of the *Land Acquisition (Public Purposes) Act*<sup>1</sup> and of the Applicant's right to be heard. The Applicant also alleges that the Acquisition was made for an improper purpose and was based on irrelevant considerations. The Applicant applies for an order of *certiorari* to quash the Acquisition.
3. The Respondents object to permission being granted on the grounds that the Application was filed beyond the three-month statutory time limit, and because it does not disclose an arguable case with a reasonable prospect of success.
4. The Application is granted. There are good reasons to extend the time period for the filing of this Application. In addition, the Applicant has demonstrated that it has an arguable case with a realistic prospect of success. The Applicant is granted leave to file, within 14 days of the date of this decision, a Claim for Judicial Review.

### **The Application**

5. On September 9<sup>th</sup>, 2022 and October 22<sup>nd</sup>, 2022, the Minister of Natural Resources, Petroleum & Mining (the "Minister") caused to be published in the *Gazette* a Declaration under section 3 of the *Land Acquisition (Public Purposes) Act* of his intention to acquire Parcel 5203 for the public purpose of "Building a Public Easement". The Applicant alleges that it was never notified of the Minister's intention to proceed with the Acquisition. The Declaration was not posted on any part of Parcel 5203, nor was it exhibited at a suitable place in the locality in which Parcel 5203 is situated. As a result, the Applicant alleges that it was not given an opportunity to engage the Minister before, at the time of, or after the publication of the Declaration.
6. The Applicant alleges that it became aware of the Declaration and of the Acquisition only after receiving a letter from the San Pedro Town Council on January 30<sup>th</sup>, 2023 informing the Applicant of the Acquisition. The Applicant obtained the Declaration and the Land Register Report for Parcel 5203 on February 15<sup>th</sup>, 2023 (the "Report"). The Report shows that the Government of Belize registered itself as proprietor of Parcel 5203 on February 6<sup>th</sup>, 2023.
7. The Applicant argues that the Minister breached its natural justice rights by failing to give it notice of his decision to compulsorily acquire Parcel 5203, and by failing to give it an opportunity to be heard. The Applicant also argues that the Minister breached section 3(3) of the *Land Acquisition (Public Purposes) Act* by failing to post a notice of the Declaration on any part of Parcel 5203, and section 6 by failing to enter into negotiations with the Applicant as a result of the publication of the Declaration. The Applicant further argues that

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<sup>1</sup> Cap. 184, Rev. Ed. 2020.

the Minister failed to consider the prejudice the Acquisition would cause to the Applicant, and that the Minister was not empowered to acquire Parcel 5203 on behalf of the San Pedro Town Council, a third party.

8. The Applicant applies for the following orders:
  - (1) The Applicant be granted permission to apply for judicial review for a declaration that the compulsory acquisition of Parcel 5203 Block 7 San Pedro Registration Section by Declarations dated October 2<sup>nd</sup>, 2022 and September 9<sup>th</sup>, 2022 is null and void as being ultra vires the power of the Minister responsible for Natural Resources, Petroleum & Mining and in breach of the provisions of the *Land Acquisition (Public Purposes) Act*.
  - (2) The Applicant be granted permission to apply for judicial review for a declaration that the Acquisition is null and void because of the Minister's failure to account for relevant considerations.
  - (3) The Applicant be granted permission to apply for judicial review for a declaration that the Acquisition is null and void because the Minister acted on irrelevant considerations.
  - (4) The Applicant be granted permission to apply for judicial review for a declaration that the Acquisition is null and void because it is irrational and was made for an improper purpose.
  - (5) The Applicant be granted permission to apply for judicial review for a declaration that the Acquisition is null and void because it was made on a procedurally unfair basis without any prior notice to or consultation with the Applicant, and without giving the Applicant any opportunity to make representations to the Minister prior to the Acquisition; and null and void as being in violation of the Applicant's Constitutional Rights to equal protection of law and protection from arbitrary/unlawful deprivation of property.
  - (6) The Applicant be granted permission to apply for judicial review for an order of *certiorari* to quash the Acquisition.
  - (7) The Applicant be granted permission to extend the time for the filing of the instant application.
  - (8) Costs.
  - (9) Such further or other relief as may be just.

9. The Applicant also indicates that it will seek rectification of the Register pertaining to the Property under section 143 of the *Registered Land Act*<sup>2</sup> and damages for breach of its rights to equal protection of the law and protection from arbitrary/unlawful deprivation of property.

## Legal Framework

10. Rule 56.3 of the *Supreme Court (Civil Procedure) Rules, 2005* (the “Rules”) requires a person wishing to apply for judicial review to first obtain permission from this Court. Under Rule 56.2, an application for judicial review may be made by any person, group, or body which has sufficient interest in the subject matter of the application.
11. The “usual test”<sup>3</sup> applicable to an application for permission to apply for judicial review was described by the Privy Council in *Sharma v Deputy Director of Public Prosecutions & Ors (Trinidad and Tobago)*<sup>4</sup> as follows:

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

“... the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities.”

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<sup>2</sup> Cap. 194, Rev. Ed. 2020.

<sup>3</sup> Claim No. 43 of 2021 *Ian Haylock v Prime Minister of Belize et al.* at para. 16, citing *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44 and *National Commercial Bank Jamaica Ltd v Industrial Disputes Tribunal and Peter Jennings* [2016] JMCA App 27. See also Claim No. 761 of 2019 *Julian Johnathan Myvett v Comptroller of Customs et al.* at para. 8.

<sup>4</sup> [2006] UKPC 57 (“*Sharma*”).

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

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

### Analysis

13. The Respondents made no submissions as to the Applicant's interest in the subject matter of this Application. It is clear that the Applicant is directly affected by the decision at issue in this Application. Similarly, the Respondents made no submissions in respect of any alternative remedy available to the Applicant, except to point out that the Applicant is entitled to compensation. The Applicant indicates that there is no right to appeal, review, or challenge the legality of a compulsory acquisition under the *Land Acquisition (Public Purposes) Act*. These two elements of the test are taken as being met and need not be further considered.

### Delay

14. Under Rule 56.5 of the *Rules*, an application for permission to apply for judicial review must be made promptly, and in any event within three months from the date when the grounds for the application first arose. The Court can extend this period if there is a good reason to do so. The Court can refuse permission if there has been unreasonable delay before making an application.
15. In its initial submissions, the Applicant acknowledged that the Application was filed outside of the three-month statutory limit. As noted by the Applicant, the time for filing begins from the date when the grounds for judicial review first arose, not from the date of the Applicant's knowledge or discovery of those grounds. The Applicant's initial position was that the grounds for judicial review arose at the earliest with the first publication of the Declaration on September 9<sup>th</sup>, 2022, or at the latest, with the second publication of the Declaration on October 22<sup>nd</sup>, 2022. The Application was originally filed on February 24<sup>th</sup>, 2023, but was later amended on March 20<sup>th</sup>, 2023. The Applicant initially admitted that the

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

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

Application was filed either 77 days or 32 days late, depending on the date used as the date at which the grounds for judicial review arose.

16. The Applicant's position on this issue shifted in its Rejoinder. Having had sight of the First Affidavit of the Registrar of Lands, Ms. Patricia Blackett, sworn on March 31<sup>st</sup>, 2023, the Applicant now contends that the grounds for judicial review actually arose on February 6<sup>th</sup>, 2023 with the registration of Parcel 5203 in the name of the Government of Belize. The Applicant relies on Ms. Blackett's own statement that it is "the execution of the transmission application form which finalized the Government of Belize's ownership of Parcel 5203". The Applicant says that this position is supported by section 6 of the *Land Acquisition (Public Purposes) Act*, which allows the owner to voluntarily sell his land to the Government of Belize. As noted by the Applicant, sale by the owner, and transfer of his title, "could hardly be possible in the case of a completed acquisition" because title would already have been extinguished. The point is also supported by section 10 of the *Land Acquisition (Public Purposes) Act*, which allows the Government of Belize to abandon an acquisition after publication of the second statutory declaration.
17. The Applicant submits that if, however, the position is that the start of the period for challenge to the Acquisition was indeed no later than the second publication, there are good reasons to extend the time for the filing of the Application. Relying on this Court's decision in *Bryant Williams et al. v Minister of Youth, Sports & Transport et al.*,<sup>7</sup> the Applicant argues that its lack of knowledge is a relevant consideration. The Minister gave the Applicant no notice before commencing the acquisition process for Parcel 5203, and failed to post a notice of the Declaration on any building on Parcel 5203. The Declaration was never brought to the Applicant's attention, and the Applicant had no knowledge of the Declaration until after it was made. Once the Applicant found out about the Acquisition, it moved with immediate dispatch to challenge it.
18. The Applicant adds that the Respondents will not be prejudiced by the delay. The Applicant still occupies Parcel 5203, as the Minister has yet to seek possession of it pursuant to the Acquisition. The Applicant also stresses that the Application is of great constitutional importance not only to itself, but also to the wider public as it is in the public interest to ensure that unconstitutional State actions do not go unchallenged. The challenge would not be to the detriment of good administration; to the contrary, the challenge seeks to vindicate fair, proper, and accountable public administration. In addition, the challenge has every prospect of success.
19. The Respondents ask this Court to find that the Application is barred because it was not filed within three months from the date when the grounds for judicial review first arose. The Respondents' position is that the Applicant's delay is inexcusable and is a result of its

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<sup>7</sup> Claim No. 134 of 2022.

own delinquency or lack of due diligence. The Application should have been filed by December 9<sup>th</sup>, 2023, or at the latest by January 23<sup>rd</sup>, 2023. The Applicant came to the Court an entire month after the stipulated framework.

20. The Respondents note that, by its own admission, the Applicant was aware of the intention to acquire Parcel 5203 upon receipt of the San Pedro Town Council's letter dated January 10<sup>th</sup>, 2023. The Applicant had ample time to seek the Court's permission before January 23<sup>rd</sup>, 2023.
21. The Respondents assert that extending the time to file this Application would be detrimental to good administration. They say that the decision to compulsorily acquire Parcel 5203 was made in August 2022, as evidenced by the Declaration published in the *Gazette*. The second publication of the Declaration made the Acquisition complete, save and except for the transfer of the title to the Government of Belize, which occurred on February 6<sup>th</sup>, 2023. The Application was filed on February 24<sup>th</sup>, 2023, some two months outside of the statutory three-month time limit.
22. The Respondents point out that the arguments put forward by the Applicant to extend the time for it to file the Application are not supported by any evidence. There is no evidence establishing that the Applicant only received notice of the Acquisition through the January 10<sup>th</sup>, 2023 letter from the San Pedro Town Council. The Respondents also point out that there is no evidence to support that the Applicant's previous attorney took any steps on behalf of the Applicant after it was notified of the Acquisition.
23. The Respondents further submit that the Applicant makes bold statements when it says it would suffer great prejudice should it be denied access to the Court. There is no evidence to support any such prejudice. In any event, it is the Respondents' submission that the Applicant does not currently stand to suffer any prejudice because Parcel 5203 has been vested in the Government of Belize, and the only issue that remains is that of compensation. The Respondents note that the very nature of compulsory land acquisition involves some elements of prejudice as it amounts to landowners being denied use, occupation, and ownership over lands which they previously held, in the name of a public purpose. In recognition of the prejudice, the *Land Acquisition (Public Purposes) Act* makes mandatory the payment of compensation for the loss suffered.
24. This matter is peculiar in that it is not clear when the decision to compulsorily acquire Parcel 5203 was made. Presumably, the decision would have been made before the first publication of the Declaration, but no evidence has been adduced to substantiate the exact date the decision was made. The Declaration published in the *Gazette* is dated August 29<sup>th</sup>, 2022.<sup>8</sup> While subsection 3(2) of the *Land Acquisition (Public Purposes) Act* requires the

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<sup>8</sup> First Affidavit of Patricia Blackett dated March 31st, 2023, Tabs D and E.

Declaration to be published in two issues of the *Gazette*, subsection 3(1) makes it plain that it is the Declaration itself that records and evidences the Minister’s decision to acquire land for a public purpose. Subsection 3(1) of the *Land Acquisition (Public Purposes) Act* reads as follows:

3.-(1) Whenever the Minister considers that any land should be acquired for a public purpose, he may cause a declaration to that effect to be made in the manner provided by this section and the declaration shall be prima facie evidence that the land to which it relates is required for a public purpose [emphasis added].

25. In light of subsection 3(1), I find that the grounds for judicial review first arose on August 29<sup>th</sup>, 2022, when the Minister issued the Declaration for the compulsory acquisition of Parcel 5203, and not when the Declaration was published or when the Acquisition was completed. The Applicant had until November 29<sup>th</sup>, 2022 to file the Application. The Application was filed on February 24<sup>th</sup>, 2023, three months beyond the statutory time limit.
26. Pursuant to 56.5 of the *Rules*, the Court can extend the period within which an application for judicial review is made if it considers that there is a good reason for extending that time period. In *Maharaj v National Energy Corporation of Trinidad and Tobago (Trinidad and Tobago)*, the Privy Council explained that a court can take a variety of factors into account in making a decision to extend the statutory timeframe:<sup>9</sup>

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

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

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

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<sup>9</sup> [2019] UKPC 5.



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

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

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

27. In determining that there is a good reason for extending the time for the filing of this Application, I have paid particular attention to the nature of the breach alleged by the Applicant. The Applicant alleges, and the Respondents admit,<sup>10</sup> that copies of the Declaration were not posted on one of the buildings on Parcel 5203, and there is no evidence that the Declaration was exhibited at suitable places in the locality in which Parcel 5203 sits as required by subsection 3(2) of the *Land Acquisition (Public Purposes) Act*. The purpose of this statutory requirement is for the owner of the land being compulsorily acquired to be made aware of the acquisition. As noted by Conteh CJ in a judgment upheld by the Court of Appeal, “the practical purpose and effect of this requirement is to bring home to the landowner whose land is being acquired and the local community for whose benefit that land is being acquired what is being done”.<sup>11</sup> The requirement for individual and community notification provided for in subsection 3(2) of the *Land Acquisition (Public Purposes) Act* is an indication that *Gazette* notification is by itself not sufficient to ensure actual knowledge of the compulsory acquisition by a landowner. One of the purposes of notification is for the landowner to be aware of the acquisition in order to be able to

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<sup>10</sup> First Affidavit of Patricia Blackett dated March 31st, 2023 at para. 26.

<sup>11</sup> *Attorney General and Minister of Natural Resources and the Environment v Bruce*, Civil Appeal No. 32 of 2010 (“Bruce”).

exercise their rights under the *Land Acquisition (Public Purposes) Act*, including the right to challenge the acquisition, as is the case here.

28. Despite admitting to their own breach of the notification requirements in the *Land Acquisition (Public Purposes) Act*, the Respondents qualify the Applicant's delay in applying for permission to apply for judicial review as "inexcusable" and the result of "its own delinquency or lack of due diligence". Coming to this Court with less than clean hands, the Respondents cannot benefit from their own breach of the notification requirements in this manner. Refusing to extend the time period within which the Application can be made would penalize the Applicant twice over; not only was the Applicant deprived of the opportunity to make representations before Parcel 5203 vested in the Government,<sup>12</sup> it would also be deprived of the opportunity to challenge the Acquisition in Court once made. Fairness militates against taking such a course of action.
29. The evidence is that the Applicant was made aware of the Acquisition via letter from the Mayor of San Pedro Town dated January 10<sup>th</sup>, 2023. In his Affidavit, James Prochaska states that the Applicant only received the letter on January 30<sup>th</sup>, 2023. While the Respondents challenge this evidence, they did not provide any counterevidence that would put into question Mr. Prochaska's assertion as to the date of receipt of the letter, such as the date the letter was mailed. The Application was filed on February 24<sup>th</sup>, 2023, approximately 3 weeks after receipt of the letter notifying the Applicant of the Acquisition. This delay does not strike me as unreasonable to retain counsel and gather the materials needed to prepare an application.
30. I also find that the Applicant would be prejudiced should the time period for the filing of this Application not be extended. The Applicant lost ownership of parcel 5203. The Applicant describes Parcel 5203 as a "busy lot" used to store tools and equipment, and to serve as a base for the maintenance and operation of the buildings on Parcels 5205 and 5206. There is no doubt that the Applicant stands to lose something of value should this application be denied. On the other hand, the Respondents have not yet moved to take possession of Parcel 5203. Parcel 5203 is not currently used for any public purpose, and does not cost anything to the Respondents. Prejudice would therefore only befall the Applicant should the time period for the filing of this Application not be extended.
31. Finally, there is a public interest in making sure that the statutory requirements for the compulsory acquisition of land lawfully owned by private citizens are strictly complied with. If the case law provided by the Applicant is any indication, strict compliance with the requirements of the *Land Acquisition (Public Purposes) Act* may be a recurring issue which

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<sup>12</sup> Pursuant to s. 3(4) of the *Land Acquisition (Public Purposes) Act*, the land vests in the Government automatically upon the second publication in the *Gazette*.

is in the public interest to address.<sup>13</sup> As will be discussed below, the Applicant has an arguable case with a realistic prospect of succeeding on judicial review. There are therefore good reasons to extend the time period for the filing of this Application.

*Arguable case with a realistic prospect of success*

32. The Application raises an arguable case with a realistic prospect of success. First, by their own admission, the Respondents breached subsection 3(2) of the *Land Acquisition (Public Purposes) Act*. Subsection 3(2) provides as follows:

(2) Every declaration shall be published in two ordinary issues of the *Gazette*, there being an interval of not less than six weeks between each publication, and copies thereof shall be posted on one of the buildings, if any, on the land or exhibited at suitable places in the locality in which the land is situate.

33. In her Affidavit, Ms. Blackett acknowledges that copies of the Declaration were not posted on any structure upon Parcel 5203. While Ms. Blackett states that copies of the Declaration were kept in possession of the San Pedro Town Council's office as public records which were capable of being accessed by members of the public if requested, it is not clear to me that keeping the Declaration in an office amounts to "exhibiting" the Declaration "at suitable places in the locality" in which Parcel 5203 is located.

34. Second, there is an arguable case that the Respondents breached the Applicant's right to be heard. As noted by the Court of Appeal in *Bruce*, although not specifically provided for in the *Land Acquisition (Public Purposes) Act*, fairness and justice requires that a person whose land is being compulsorily acquired be provided with an opportunity to be heard:

There is no provision in the Act that mandates a hearing in these circumstances. Nevertheless, Conteh, C.J. expressed the view (at para. 74) that [it is] elementary fairness and justice that a person whose land is about to be compulsorily acquired should know beforehand and be afforded an opportunity, if he wants, to make representation to dissuade the decision maker".

In *British American Bank & Boyce v. Attorney General*, Legall, J. at first instance accepted, (at para. 125) that "generally, the right to be heard and fairness are legally required", but considered that there were exceptions, the most important of which was "there is no right to be heard before making legislation, whether primary or delegated unless it is provided by statute" (Wade, *Administrative Law*, 8th edn, page 44).

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<sup>13</sup> *Bruce*, *supra*. See also *Michael Modiri v Attorney General of Belize et al*, Claim No. 188 of 2015 ("*Modiri*").

In this court, after a review of a number of Commonwealth authorities, both myself and Carey, J.A., with whom Alleyne, J.A. agreed, accepted that in any case in which a decision “is calculated to cause particular prejudice to an individual or particular groups of individuals, the person has a right to be heard” (per Carey, J.A. at para. 283; and see per Morrison, J.A. at paras. 176–199).

In the instant case, there being no question that Mr. Bruce would have been seriously prejudiced, by the loss of almost a half of his land and a considerable investment, I consider that Conteh, C.J. was also correct to suggest that elementary fairness and justice demanded that he be given an opportunity to be heard. In this way, not only Mr. Bruce's concerns, but “all the facts of the case” which the Minister stated that he had considered, as well as the position of the church, could have been fully ventilated in a transparent manner.<sup>14</sup>

35. It is not disputed that the Applicant did not make representations to the Minister before the Acquisition. While Ms. Blackett states that the Applicant had ample opportunity between the receipt of the January 10<sup>th</sup>, 2023 letter from the Mayor of San Pedro Town and the registration on the Land Register on February 6<sup>th</sup>, 2023 to approach the Mayor or the Minister to discuss its concerns, I note that under subsection 3(4) of the *Land Acquisition (Public Purposes) Act*, Parcel 5203 “vested absolutely” in the Government upon the second publication of the Declaration in the *Gazette* on October 22<sup>nd</sup>, 2022, months before receipt of the letter. There is an arguable case that the Applicant’s right to be heard may have been breached.
36. Third, there is an arguable case that the Respondents breached section 6 of the *Land Acquisition (Public Purposes) Act*, which mandates the Government to engage in negotiations with a landowner whose land is being compulsorily acquired “without delay”, and “as soon as any declaration has been published”:

6.-(1) As soon as any declaration has been published in accordance with section 3 of this Act, the authorised officer shall, without delay, enter into negotiations or further negotiations for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and by voluntary agreement with the owner of the land.

(2) It shall not be necessary for the authorised officer to await the publication of the declaration before he endeavours to ascertain from the owner the terms and conditions on which he is willing to sell his land, but no negotiations or

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<sup>14</sup> *Bruce* at 20. See also *British American Bank and Boyce v Attorney General*, Civil Appeals No. 30 and 31 of 2010.

agreement shall be deemed to be concluded unless and until the conditions of sale and acquisition have been approved in writing by the Minister.

37. The Declaration was first published on September 9<sup>th</sup>, 2022. There is no evidence showing that an authorised officer approached the Applicant at any point before the filing of this Application on February 24<sup>th</sup>, 2023 with a view to entering into negotiations with the Applicant. There is an arguable case that this would constitute “delay” under section 6 of the *Land Acquisition (Public Purposes) Act*. In *Modiri*, Young J. found that a breach of the Government’s statutory duty to enter into negotiations “without delay” was “likely fatal to the acquisition”.
38. Finally, the Respondents argue that the Application is an abuse of process because it seeks to nullify a lawful process carried out by the Government of Belize. The Government has the ability to compulsorily acquire land for a public purpose so long as the prescribed principles for the acquisition are adhered to, and the landowner is promptly and reasonably compensated. The Applicant alleges that the Minister took into account irrelevant considerations in coming to its decision to compulsorily acquire Parcel 5203, which made that decision irrational. In light of the admitted and arguable breaches of the *Land Acquisition (Public Purposes) Act* noted above, I do not find it necessary at this time to delve into the issue of the stated public purpose of the Acquisition. It is sufficient to point out at this juncture that contrary to the Respondents’ assertion, the Applicant is not now confined to seeking compensation for the loss of Parcel 5203. Subsection 3(5) of the *Land Acquisition (Public Purposes) Act* allows the Applicant to challenge the public purpose of the Acquisition:

(5) Any person claiming an interest in or right over the land shall have a right of access to the courts for the purpose of determining whether the acquisition was duly carried out for a public purpose in accordance with this Act.
39. There is no ground for a finding that this Application amounts to an abuse of process.
40. Finally, the Respondents argue that rectification of the Register under section 143 of the *Registered Lands Act* may not be available because the registration of Parcel 5203 was not completed due to any mistake or fraud, and the Applicant did not plead either fraud or mistake. The issue of what relief, if any, is appropriate is an issue that will be more properly addressed at the hearing of the substantive Claim.

**IT IS HEREBY ORDERED THAT**

- (1) The time for filing the Application for Permission to Apply for Judicial Review is extended to February 24<sup>th</sup>, 2023;
- (2) The Applicant is granted leave to apply for Judicial Review and shall file, within 14 days of the date of this decision, a Claim for Judicial Review;
- (3) Costs of this Application are granted to the Applicant and shall be costs in the cause.

Dated July 19<sup>th</sup>, 2023



Geneviève Chabot  
Justice of the High Court