IN THE COURT OF APPEAL OF BELIZE, A.D. 2023

CIVIL APPEAL NO. 31 OF 2021

MANUEL POP on his own behalf and on behalf of the village of Santa Cruz

APPELLANTS

V

RUPERT MYLES — **FIRST RESPONDENT**
THE ATTORNEY GENERAL OF BELIZE — **SECOND RESPONDENT**

BEFORE:

The Hon Madam Justice Hafiz-Bertram	-	President
The Hon Madam Justice Woodstock-Riley	-	Justice of Appeal
The Hon Mr. Justice Bulkan	-	Justice of Appeal

L. Mendez for the appellant.
S. Matute, Assistant Solicitor General, for the respondent.

Hearing Date: 21 March 2023
Promulgation Date: 18 August 2023

REASONS FOR JUDGMENT

BULKAN, JA

[1] This case is an appeal from a decision of the Supreme Court of Belize striking out from the action the Attorney General of Belize, the second-named defendant and second respondent in this appeal. At the hearing on March 21, 2023, we allowed the appeal and ordered, *inter alia*, that the matter be remitted to the High Court for case management and hearing of the action. At the time we indicated that our reasons would follow and we provide them now.

[2] The claim itself arises out of the alleged activities of the first respondent, in which he is said to have moved into the village of Santa Cruz, constructed and/or extended a dwelling for himself and partner (herself a resident of the village), and cleared lands for farming, all

within an area of the village prohibited for residential or agricultural purposes because of its proximity to the Maya temple of Uxbenka. At the time of the hearing of the second defendant's application to strike out, there was also a pending application by the claimants to amend the claim to include as a third defendant, Cisco Construction Ltd., on the basis that as an agent of the government it cleared lands and constructed a road within the protected area, resulting in serious damage to the site including the temple. As against the government, the constitutional claim is premised on its alleged failure to take any action to prevent these activities despite repeated entreaties by the Village and its leaders for assistance and protection (note in particular paragraphs 5, 24 & 25 of the Fixed Date Claim).

[3] Before the action could proceed, however, the trial judge heard and granted the second defendant's application to strike them out on the dual bases that the private claim in trespass should have been brought separately from the claim against the government and further that, in any event, the Court was unable to grant the relief sought against the government since it is yet to demarcate and register the lands claimed as belonging to the Mayan people. In this appeal the claimants raised six (6) grounds, of which all but one can be classified as either procedural (whether the claim against the government constitutes an abuse of the process of the court) or substantive (related to the non-demarcation of Mayan customary lands pursuant to the second Maya land rights case[1]). The remaining ground, namely that the trial judge erred by striking out the claim against the government instead of granting some less draconian relief such as a stay of the proceedings pending the demarcation of the boundaries of the village, is necessarily otiose given that this Court has already ordered that the government be re-instated as a defendant. Accordingly, the other five grounds are discussed hereunder according to the two categories as identified.

Abuse of Process

[4] In her ruling on this point the trial judge stated cursorily, "The case against Mr. Myles for trespassing should have been brought separately from the case against the Government of Belize. Mr. Myles, as a private citizen, is not an agent of the State and he should therefore be held responsible for his actions in a private claim." While the judge provided no reasons for

[1] *Maya Leaders Alliance v AG of Belize* (2015) 87 WIR 178 (CCJ) [hereafter '*Maya Leaders Alliance*'].

this conclusion, she explicitly accepted and relied on the arguments of the Solicitor General (SG), so those arguments must be examined to determine the accuracy of her conclusion.

[5] On this procedural point, the SG contended vigorously in the proceedings below that it was not possible for a constitutional claim against the government to be heard together with a claim against a private individual in tort, as this was a situation not contemplated by the Civil Procedure Rules (CPR). Further, given the State action doctrine, constitutional proceedings could not be maintained against the first defendant as a private individual. The learned SG adverted also to the *Harrikissoon*[2] and *Jaroo*[3] line of cases, arguing that constitutional proceedings are abusive where an alternative remedy is available – as in this case where the claimants should have proceeded against the State for breach of statutory duty. In his successful bid to insulate the State from suit in this instance, the SG painted an apocalyptic picture if they were to be made accountable for the criminal and tortious acts of private individuals, predicting bankruptcy of the State in short order.

[6] These arguments were contested by the claimants, in the court below by Mrs. Magnusson and before us by Ms. Mendez. Both counsels questioned the SG's insistence that the claims should have been separated, asserting not only that the CPR did *not* prohibit joinder of the claims – but, on the contrary, that the ethos of the rules demanded it. Mrs. Magnusson pointed to CPR Rule 1.1, which lays down the omnibus or governing principle that the overriding purpose of the Rules is "to enable the Court to deal with cases justly". This would require joinder of claims against separate defendants in the interests of economy and efficiency, among other considerations. In this instance, since the claims arose out of the same fact situation, Mrs. Magnusson submitted that it was necessary to hear them together not just for practical reasons of time and cost but also to avoid contradictory outcomes. And the claimants' counsels, both before us and below, relied upon CPR Rule 8.4, which allows the use of a single claim form to dispose of all claims that can conveniently be heard in the same proceedings.

[7] Responding to the other arguments of the SG related to abuse, Mrs. Magnusson contested the applicability of the *Harrikissoon* line of cases, asserting that even if there was a parallel remedy available – which she disputed – there was none that addressed the alleged breaches as appropriately as the constitutional action. Mrs. Magnusson sought to correct the

[2] *Harrikissoon v AG* (1979) 31 W.I.R. 348 (PC TT).
[3] *Jaroo v AG* (2002) 59 W.I.R. 519 (PC TT).

interpretation put upon the claimants' case, submitting that the State action doctrine did not arise because the State was sued both for the actions of its agent (CISCO) and for its inaction in relation to those of the defendant Myles. Since there were multiple breaches alleged, Mrs. Magnusson argued that the principle laid down in ***Belfonte v the State*** (2005) 68 WIR 413 (CA, T&T) applied, namely that constitutional proceedings were apt to address them all in one action.

[8] In determining these conflicting positions, the first point to be decided is whether the governing *Civil Procedure Rules* prohibit the joining in one action of a claim against the State together with a claim against a private individual. Despite the tenacity with which he advanced this argument, the learned SG in the proceedings below failed to identify any specific rule to this effect. Instead, he asked a series of rhetorical questions (such as "How can this claim be maintained against the government for constitutional redress on the one hand and against Mr. Myles for private law redress on the other?"[4]), referred to the Rules in general without identifying which specific one he was relying on, and then developed his point by reference to judicially-created doctrines. While I will examine the applicability of the latter shortly, I pause here to note that it is a serious deficiency in the State's argument that they have asserted a rule-based impediment to the claimants' case without identifying the rule.

[9] This gap was not closed at the appellate stage. Indeed, it appears that the second respondent may have abandoned this position, for when questioned about it by us, Mrs. Matute for the Attorney General responded that the crux of the decision to strike out was connected to the non-demarcation issue and not about mixing private and public law claims. This, however, is not accurate, for as recounted above, one limb of the trial judge's decision was precisely that the two claims – one against a private individual and the other against the government of Belize – should have been brought separately.[5] Since it was a ground relied upon by the trial judge in striking out the second respondent, we must therefore be satisfied as to its applicability or not.

[10] Scrutiny of the CPR explains why both the SG in the Court below and Mrs. Matute on appeal could not point to any rule prohibiting the joinder of private and public law claims in one action, for in fact, no such rule exists. On the contrary, as submitted by the claimants'

[4] See page 156 of the Transcript.
[5] See para 13 of the Trial Judge's Ruling, dated 18 October 2019.

counsels here and below, where the Rules do touch on the matter of initiating proceedings, their purport and effect suggest the opposite – namely, that joinder of claims is permitted wherever this would be conducive to the efficient administration and delivery of justice. The most relevant rule in this regard is contained in Part 8 of the CPR, specifically ***Rule 8.4(1)*** which provides that "A claimant may use a single claim form to include all, or any, other claims which can be conveniently disposed of in the same proceedings." Similarly, in applications under Part 56, which concerns applications for judicial review and/or for relief under the Constitution, a claimant can include therewith a claim for any other relief or remedy arising out of or related to the same fact situation, pursuant to Rule 56.8(4). And if one were to extrapolate from other rules – such as Part 18 which allows parties in an existing action to add ancillary claims to the initial action and Part 19 which allows new parties to be added or substituted – the patent goal of these procedures is to facilitate the resolution of all related disputes arising out of the same fact situation in one set of proceedings.

[11] What reinforces this interpretation is the very first rule of them all, which stipulates that the "overriding objective of these Rules is to enable the court to deal with cases justly". This directive is not mere window-dressing or, as the SG dismissed it, a "band-aid for every sore", for it articulates a clear objective (the just disposition of cases) buttressed by a list of measurable factors in sub-rule (2), such as cost, time and resources, in order to achieve it. This formed the bedrock of the claimants' position – namely, that in this case there are a multiplicity of reasons militating that the claims be joined. Aside from the practical considerations of time, cost and resources – not inconsequential factors given the limited resources of the State – is the fact that the claims arose out of the same factual dispute. Specifically, this was the desecration of the sacred Uxbenka site, allegedly committed partly by a private individual with the State's acquiescence and partly by a road-building company with their express permission, all occurring over the same time period. Not only is there no procedural rule which forbids mixing public and private claims, there is no apparent benefit for separate trials in this instance but instead every reason spanning both form and substance to hear them together.

[12] Closely allied to this formal objection was the SG's reliance on certain judicially-created doctrines to shield the State. One of these was the submission that private remedies must be exhausted first and constitutional redress purportedly left for "urgent" matters. Proceeding with a constitutional claim when an alternative remedy is available, the SG argued, would constitute an abuse of the process of the court. Very little needs to be said in relation to

this argument, since in recent times its true meaning and scope have been clarified repeatedly. However, given the frequency with which it is invoked and applied, some key aspects are worth reiterating.

[13] The genesis of the court's power to decline constitutional relief lies in a proviso to this effect to the enforcement clause of many independence Caribbean Constitutions, which may (or must) be exercised where "adequate means of redress" are available under any other law.[6] Courts have exercised this power where no constitutional right is involved,[7] or where the constitutional action amounts to a collateral attack on a matter already decided,[8] or where an alternative remedy exists that is deemed to be adequate.[9] Cases in the first two scenarios would be easy to identify (and just as easy to justify shutting out, as it is clearly abusive to litigate a point that does not arise or to re-litigate one already settled), so it is really only in the third scenario where a value judgment has to be exercised. In this third scenario, a trial judge has significant discretion in deciding whether to proceed or to strike out the claim on the basis that an alternative remedy is "adequate". Once the latter course is taken it means that the court may never consider the constitutional point, so it is an option that must be sparingly exercised and with good justification, lest a genuine issue or serious rights' violation is left unremedied.

[14] Ironically, much of the learning around this power to decline constitutional relief has come from Trinidad and Tobago, whose constitution contains no such provision. Courts there have held that there should be some "additional feature" justifying recourse to the Constitution, such as the arbitrary use of state power[10] or an allegation of multiple rights' violations;[11] however, an alternative remedy is not inadequate merely because it is slower or more costly than constitutional proceedings.[12]

[15] These examples are useful but, in my view, should not be treated as exhaustive. The Constitution is supreme law and its catalogue of fundamental rights is its moral centrepiece. A cardinal, longstanding principle is that the rights and freedoms enshrined therein should be

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

given a "generous interpretation… suitable to give to individuals the full measure of the fundamental rights and freedoms referred to".[13] However, this potential will remain unfulfilled and the bill of rights reduced to mere decorative status if individuals cannot even get past the starting block – that is, if they are prevented from launching a constitutional claim on account of the alleged availability of some alternative remedy. Thus, consistent with Lord Wilberforce's exhortation as well as more recent explications, courts should not treat the Constitution as "secluded behind closed doors",[14] reserved only for so-called "urgent" cases as urged upon us here and in the proceedings below. Instead, courts should be alive to the integral role of those rights in protecting human dignity, constraining unreasonable or excessive state action, and upholding the Rule of Law, and should therefore refrain from setting an exclusionary threshold that would allow valid constitutional issues to remain unaddressed.

[16] Reinforcing the need for flexibility is that the text of the enforcement provision itself – including the one contained in the Belize Constitution – explicitly states that constitutional redress for violation of any of the guaranteed rights and freedoms is available "*without prejudice to any other action with respect to the same matter which is lawfully available*".[15] This language clearly establishes that recourse to the Constitution for enforcement of the fundamental rights provisions is possible regardless of whether an alternative remedy exists. This interpretation applies with even greater force in Belize, given that here the proviso in question was deleted since 2010, thereby signalling an unmistakable intent that constitutional relief is *not* to be treated as a last resort but as available notwithstanding the existence of alternative remedies. As affirmed resoundingly by the CCJ in a unanimous judgment:

> *"The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the Constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights."*[16]

[13] *Minister of Home Affairs v Fisher* (1979) 44 W.I.R. 105 (PC Bah) per Lord Wilberforce at 112.
[14] *Observer Publications Ltd v Matthew* (2001) 58 W.I.R. 188 (PC A&B).
[15] Belize Constitution, s. 20(1).
[16] *Sears v Parole Board* [2022] CCJ 13 (AJ) BZ at [35].

[17] In light of these principles, this ground of the State's objection falls away entirely. In the first place, there was some amount of ambiguity as to the nature of the alternative remedy supposedly available on these facts. The Application to strike out was silent on this important detail, and it was only when pressed during oral arguments that the SG tentatively proffered two options – one against the Police and the other against the National Institute of Culture and History of Belize ("NICH") – under the respective legislation governing these entities. Neither of these routes, however, would adequately cover the breaches alleged by the claimants, which encompass both inaction by the State as well as positive action by one of their agents. Moreover, neither seems commensurate with the gravity of what was alleged (the desecration of an irreplaceable, sacred Indigenous monument) nor would either one properly address the larger, systemic problem that indigenous communities of that entire region have been complaining about for decades, namely that of the alleged disregard for indigenous-owned and occupied lands even as their rights thereto have been recognised by successive international tribunals and domestic courts. There was therefore no *adequate* remedy under statute or at common law comparable to the one invoked by the claimants under the Constitution in relation to the State's failure to comply with the 2015 Consent Order, and therefore no justification for striking out the government on this ground.

[18] The claimants having clarified the basis of their case during the hearing of the Application in the proceedings below as resting partly upon their right to the protection of the law, the SG then sought to limit this right's application with reference to a 'floodgates' argument. The learned SG argued that should the State become liable for every breach committed by private persons – every trespass, every killing, every theft including that of garbage bins – it would become bankrupt in short order. But this argument need only be stated for its weakness to be revealed, and not merely because of the absurd trivialisation of the claim. Before proceeding further, it is important to note that since we have already reinstated the State as a defendant and remitted the case for trial, any further comments on this point are made only to clarify the legal basis of the action and not as an endorsement or prejudgment of the merits of the actual dispute between the parties.

[19] Contrary to the SG's fears, the right to protection of the law does not make the State liable for every criminal act committed by private individuals against each other. While the

right is indeed "multi-dimensional, broad and pervasive",[17] it applies only where there is arbitrariness or some similar failing on the part of the State, and which must obviously reach a certain magnitude to attract constitutional redress. The right is relevant insofar as it can hold the State accountable where individuals are denied access to the courts or other judicial bodies to secure relief for breaches of their rights. Liability does not arise for every criminal or tortious act, but only does so where the inaction of the State has resulted in (or created the conditions for) such violations. As the CCJ explained in ***Maya Leaders Alliance v AG***, "Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy."[18]

[20] Given the meaning and effect of this right, its relevance to the facts as alleged by the claimants ought to be clear. The claimants allege that multiple acts of encroachment occurred on a sacred temple integral to their culture and way of life, despite efforts by them to secure the assistance of various state entities to prevent such trespass. Their complaint does not concern an isolated or trivial act of trespass, but instead details a sustained course of conduct against which they tried, but allegedly failed, to obtain official protection. In response, the defendants have countered with their respective defences – the Police, for example, denying they were ever approached about any acts of trespass at the Uxbenka site and the NICH officials recounting the steps they took to ensure that the first defendant remove himself from the site in question. There is therefore a factual dispute to be resolved, after which the proven facts must be assessed against the standards imposed by the right to determine if indeed a violation occurred. In carrying out this evaluation, the trial judge at the appropriate time would do well to bear in mind the guidance of the CCJ on this very point, namely that "In the context of the application of the protection of the law to land rights, it is to be noted that the landowner bears the primary responsibility to take reasonable steps to protect his property, but even so, the State may be constitutionally liable for failing to ensure protection."[19]

[21] To summarise the position on this first limb, therefore, no rule has been identified that would preclude mixing the private and public law claims, nor does there appear to be any

[17] *Maya Leaders Alliance v AG of Belize* (2015) 87 WIR 178 at [47].
[18] Ibid at para [47].
[19] Ibid at para [48].

alternative remedy which would adequately cover the alleged breaches by the State. Moreover, the constitutional dimension of this action is squarely against the State – both for its alleged actions and inaction – and thus the State action doctrine does not arise as a barrier. Accordingly, the argument that these proceedings constitute an abuse of the court's process remains unproven and the trial judge's conclusion on this point that the claims should have been brought separately cannot be sustained.

Non-demarcation

[22] The other limb of the trial judge's decision to strike out the second defendant from the action was grounded in the non-demarcation of Maya customary lands pursuant to the 2015 Consent Order. While acknowledging as "indisputable" the legal entitlement of the Mayans to certain lands in Belize, the learned judge noted that the nature and extent of these rights and the manner in which they are to be exercised are still to be determined. Until that "long and arduous process" is completed, she held, the relief sought against the Government cannot be granted.

[23] In their appeal against this holding, the claimants raised several grounds. First, they relied on the principle that a party cannot be allowed to benefit from its own wrongdoing. That wrongdoing, they submitted, was the government's failure to demarcate indigenous lands for over 20 years, for which they should not be allowed to profit by escaping responsibility for failing to protect the claimants' lands. Moreover, the claimants argued, the result of this ruling would be effectively to encourage the government to delay compliance with the 2015 Consent Order indefinitely.

[24] The claimants submitted further that the issue of non-demarcation was in any case irrelevant to the issues raised, the latter premised on Village's *use and occupation* of the lands in question and not its ownership of them. The judge's ruling on this point was entirely at odds with the previous decision given in ***Jalacte Village v AG*** #190 of 2016, where non-demarcation did not prevent a finding in favour of the claimant village. Instead, the evidence led by the claimants in that case of the varied uses of the land, both historically and in the present, supported a presumption that the lands in question were customary Mayan lands and so led to a finding in the claimant village's favour. More confounding, according to the claimants, was that far from being contested, their use and occupation of the land in question was

acknowledged by several of the defendants' own witnesses. Relatedly, the claimants submitted that the trial judge misinterpreted their claim, which was based both on the inaction (failure to protect against third party encroachment) and actions (via its agent involved in road construction) of the government in relation to the said lands.

[25] Finally, the claimants submitted that the learned trial judge misinterpreted the Consent Order, and in particular paragraph 4 thereof which is an interim measure designed to protect the use and enjoyment of all lands by Mayan villages until the physical boundaries are demarcated and formal ownership registered in law. Ruling that this interim measure can only be enforced after the customary lands are demarcated strips it of any meaning, for once demarcated and legally recognised there would no longer be any need for *interim* protection.

[26] In contrast, the second respondents submitted in defence of the trial judge's order to strike them out that since the precise extent and scope of the claimants' rights were yet to determined, no finding of any breach of those rights could be made. They noted that in ***Maya Leaders Alliance,*** the second land rights case which gave rise to the Consent Order relied on by the claimants, the CCJ declined to find a breach of the Villages' right to property for the very reason that the nature of the rights they enjoy is still to be defined.[20] The trial judge in this case therefore had no choice but to take the same approach as the CCJ. Further, the second respondents submitted, it would be unjust and improper to grant constitutional relief without any concrete evidence that the lands form and belong to the claimant or to Santa Cruz Village.

[27] On the issue as to the government's liability for trespass based on the actions of their agent in constructing the road, the second respondents noted that the focus of the claimants during the oral arguments was on the breach of the judicial orders and the Constitution, which suggested that they had "effectively abandoned" their claim for trespass committed by the government's agent. Moreover, they faulted the claimants for not drawing the judge's attention to the statements of those witnesses who deposed to the acts of trespass, which they submitted meant that the claimants could not criticise the judge for failing to consider this issue.

[28] In analysing the relevance of the non-demarcation ground, it is convenient to begin – as the claimants did – with their contention that the government should not be allowed to benefit

[20] Ibid at para [35].

from its wrongdoing by escaping all liability for its failure to protect the claimants' lands. This submission can be easily disposed of, because there is insufficient material before us to support a conclusion that the failure by the government to demarcate indigenous lands pursuant to the 2015 Consent Order constitutes wrongdoing. Such a characterisation could only be made on the basis that that failure – incidentally occurring over successive administrations – is deliberate and represents a studied refusal to abide by the Order, but evidence to that effect has not been led by the appellants. Rather, the available information in the public domain indicates that efforts to implement are underway: a tribunal has been created and staffed, negotiations are taking place and, uniquely, the CCJ itself has been regularly monitoring the process. It is indeed, as described by the trial judge, an arduous process, not confined to a simple exercise of identifying historic boundaries but one requiring evidence and having to mediate conflicting claims between and among indigenous villages themselves. While the apparent lack of progress may be frustrating, if the CCJ – which is fully apprised of all the material facts – has not sanctioned the parties for "wrongdoing" or wilfully refusing to abide by the terms, it is simply not possible for this or any other court, acting on less information, to do so. This contention alleging wrongdoing, therefore, so strenuously put forward by Ms. Mendez, must fail.

[29] This brings us to the second contention, which involves the impact of non-demarcation on the action. As noted above, the second respondents argue that since Mayan customary rights have not been demarcated, it would have been premature of the trial judge to determine whether there was a breach of the claimants' property rights. At first blush, the position of the second respondents seems reasonable, for if the CCJ could not find a breach of the property right in ***Maya Leaders Alliance***, how can such a finding be made in this claim? This argument, however, does not withstand closer scrutiny.

[30] The most obvious point of distinction between the cases is the nature of the respective claims. ***Maya Leaders Alliance***, subject of the Consent Order, invoked (among other rights) the constitutional right to property in respect of the government's failure to identify and protect customary Maya land rights. Crucially, it was brought by and on behalf of 23 villages representing the entire Toledo District of Belize. In other words, both the nature and the scale of that case were dramatically different to what is at stake here. Given the complexity of the evidential issues involved, it was perhaps inevitable that the CCJ could not find a breach of the *property* right in the absence of determining precisely where physical boundaries lay. By contrast, this dispute involves matters occurring in a single village. If the boundaries of the area

involving the alleged trespass are contested, that is an issue that could just as well be resolved at trial by way of evidence. Put another way, it is wholly unnecessary for all the Villages in Belize, or all the Villages of one sub-region, to be demarcated before a specific dispute in one single Village can be resolved.

[31] The other, equally important, point of distinction to be made between the cases is the nature of the right in issue. In ***Maya Leaders Alliance***, the CCJ declined to find a breach of the right to property as this depended on evidential matters, namely occupation of the lands in question, as yet undetermined. Here, by contrast, the claimants have invoked not the right to property but the right to protection of the law, and as argued by the claimants, the basis of that claim lies in the use and occupation of the area, not its ownership. Certain key aspects of the instant claim illustrate this distinction clearly.

[32] The area involved in this case, known as Uxbenka, is where a sacred Mayan temple is located and lies adjacent to the main residential area of the Village of Santa Cruz. As outlined in the Fixed Date Claim and buttressed by the Affidavits in support, the site holds spiritual and cultural significance for the Maya people and is even recognised nationally for its archaeological value. Its importance to the Maya people is reflected in the fact that Santa Cruz set up an organisation to monitor activities around the temple, pursuant to which a collective decision was made by the Village to keep the site inviolable and thus off-limits to residential, agricultural and other uses. It appears that the only activities permitted within its precincts are ceremonial, by the Maya people themselves, and scientific study, which is currently ongoing, carried out by researchers from the University of New Mexico in the USA.

[33] Given the local, national, and even international importance of the temple, one can understand the anxiety of the residents when, as they perceived, the first defendant and proposed third defendant engaged in activities that threatened to and allegedly did despoil the environs of the temple. It was in relation to those activities that they sought the intervention of the police and other official authorities, and the instant claim arises because of their alleged failure to obtain any such assistance. That claim, grounded in the protection of the law, certainly does not depend on their ownership of the area – but only upon their use of it for their traditional purposes. Further, it squarely invokes the 2015 Consent Order whose terms include an undertaking by the Government that until Maya property rights are formally protected, "it shall cease and abstain from any acts, whether by the agents of the government itself or third parties

acting with its leave, acquiescence or tolerance, that might adversely affect the value, use or enjoyment of the *lands that are used* and occupied by the Maya villages…" (see para. 4 thereof). Factually, therefore, the claim arises out of alleged threats to a site held sacred by the Maya people of one village in violation not only of their traditions but a consent order granting protection to areas *used* by the Maya communities of that region. Legally, this claim is grounded not just in the binding nature of the court order, but also in the right to protection of the law – as that right has been interpreted by successive decisions of the CCJ.

[34] As Ms. Mendez pointed out, there is also precedent for this approach in the recent decision of the former Chief Justice in ***Jalacte Village v AG of Belize et al***, No. 190/2016 (decision dated June 2021). The claim there arose out of the road-building activities carried out by the government over lands held by the Maya village of Jalacte. A similar argument that the land was national land until and unless demarcated and officially recognised as Maya customary lands was rejected. Acting Chief Justice Arana was not stymied in that case by the lack of demarcation pursuant to the national process begun under the Consent Order, and instead analysed for herself the testimony led in the case. From this exercise she was able to arrive at a determination as to the character of the lands in dispute, based on evidence led of historic and current use. Given that the issues in both cases are similar, this is precisely the approach to be adopted at this trial, namely, an assessment of the evidence when led to determine whether the Uxbenka site forms part of lands traditionally used by the Village. In passing, it should be borne in mind that the resolution of this issue should not turn exclusively on spatial considerations, but should also involve an inquiry as to whether the temple holds any spiritual or cultural significance for the community which might qualify it for protected status.

[35] Finally, on this point, it is useful to recall that even though the CCJ declined to find a breach of the appellants' constitutional right to property in ***Maya Leaders Alliance*** – a point emphasised by the second respondents – they found in the alternative a breach of appellants' right to the protection of the law. As discussed above, the contours of this right as outlined by the CCJ capture failures by the State to provide protection for vindicating alleged constitutional breaches, including to the right to property. In a noteworthy passage, their Honours explained:

> "The nature of traditional or customary rights in land, the history of litigation, the informal as well as formal acknowledgements by the State, and the fact such rights nonetheless remain invisible in the general laws of the country, suggest the

obligation to put in place special measures to give recognition and effect to these rights so that the protection of the law can be enjoyed."[21]

This, as explained above, captures exactly the nature of the claimants' complaint in this case.[22] Just as non-demarcation was not an impediment to the finding of a breach of the right to protection of the law in ***Maya Leaders Alliance,*** or subsequently in ***Jalacte Village v AG***, so too it is not an impediment here.

[36] The last aspect of the State's case is one that merits very little discussion. This is their contention that the claimants had effectively abandoned the allegation of trespass made against the government's agent, alongside the justification that the trial judge could not be criticised for failing to consider the evidence on this ground since the claimants did not draw her attention to it. This contention does not fairly reflect what transpired, nor can it be sustained from a procedural point of view. At the hearing in question, the claimants were necessarily responding to the Application which was based upon arguments alleging abuse of process and relying upon the impact of non-demarcation, so not only can there be no suggestion of abandonment of other grounds of their claim – it hardly seems fair to even make this suggestion. Moreover, at the time when this Application was heard, the claimants had their own application to amend the Fixed Date Claim in order to add CISCO as a third defendant, and it was at the SG's urging that the Court prioritized the State's application to strike out. How then can the claimants now be penalized for focusing on the specific arguments related to joinder of public and private law claims and abuse of process, when those formed the crux of the SG's application to strike out? Nor can abandonment be inferred by not mentioning all the evidence to the judge, for once the evidence forms part of the case, the ultimate responsibility lies with the trial judge to consider it (whether her attention is drawn to it or not). Accordingly, this submission fails.

[37] To summarise the position on this second ground, therefore, the failure of the government to demarcate Maya customary lands in accordance with the 2015 Consent Order is no impediment to resolving the dispute in this case which concerns only one Village and not all those of the sub-region. In any event, the basis of the claim is not the claimants' right to property, but that of protection of the law, which is grounded in their use of the site in question

[21] Ibid at para. [59], and see generally paras. [41] – [60] of the said judgment.
[22] Note in particular paras 5, 24 & 25 of the Fixed Date Claim.

and not their ownership thereof. Accordingly, this alternative aspect of the ruling to strike out the second defendants from the action also cannot be sustained.

Disposition

[38] It was for these reasons that this appeal was allowed. As ordered at the oral hearing, the second defendant/respondent is restored and the matter is remitted to the High Court for case management and hearing. Further, costs as agreed or taxed in the absence of agreement are awarded to the appellant for this appeal and in the application below, to be paid by the second respondent.

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BULKAN, JA

HAFIZ-BERTRAM, P

[39] I have read the draft judgment of my learned brother Bulkan JA, and I agree with reasons given by him for the judgment of the Court. There is nothing that I can usefully add.

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HAFIZ-BERTRAM, P

WOODSTOCK-RILEY, JA

[40] I have read the draft reasons for our decision and I am in agreement.

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WOODSTOCK-RILEY, JA