

IN THE COURT OF APPEAL OF BELIZE AD 2023
CIVIL APPEAL No. 11 of 2022

BETWEEN:

STAKEBANK ENTERPRISES LIMITED

Appellant

and

THE ATTORNEY GENERAL

NATIONAL ENVIRONMENTAL APPRAISAL COMMITTEE

DEPARTMENT OF THE ENVIRONMENT

Respondents

and

PORTICO ENTERPRISES LIMITED

Interested Party

Before:

The Hon Madam Justice Hafiz Bertram

—

President

The Hon. Madam Minott-Phillips

—

Justice of Appeal

The Hon Mr. Justice Bulkan

—

Justice of Appeal

Appearances:

Mr. Glen D. Godfrey SC & William Lindo for the Appellant

Ms. Samantha Matute, Assistant Solicitor General, for the Respondents

Mr. David Morales and Mr. Andrew Bennett for the Interested Party

2023: June 20

September 29

JUDGMENT

- [1] **HAFIZ BERTRAM, P:** This appeal arose from a decision of Shoman J (the judge below) striking out a claim for Judicial Review made by Stakebank Enterprises Limited (Stakebank), on the basis that the claim was not filed within 14 days after leave was granted to do so.
- [2] The issues that arose for determination were whether documents for the claim were deemed to be filed within the required period as provided by the **Supreme Court (Civil Procedure) Rules, 2005 (CPR)** or whether **Practice Direction No. 1 of 2021 (PD 1)** which provides for electronic filing and the conditions for such filing was applicable. The trial judge applied PD1 and struck out the claim in favour of the Attorney General & Others, (the Respondents) on the ground that there was a failure to comply with the Order of the Court dated 26th July 2021, to file its claim for judicial review within 14 days of receipt of the order granting permission.
- [3] On 5th April 2022, Stakebank filed an application for leave to appeal the strike out decision and the trial judge by Order dated 30th May 2022 refused leave on the ground that there was no prospect of success on appeal.
- [4] Stakebank renewed its application for leave to appeal before this Court pursuant to section 14(3)(b) of the Court of Appeal Act and Rule 2 Order II of the Court of Appeal Rules (now **section 201 (3) (b) of the Senior Courts Act 2022, Act No. 27 of 2022**). The application for leave to appeal was heard and granted on 17th October 2022.
- [5] On 20th June 2023, this Court heard the appeal which was allowed and (a) granted a declaration that the Appellant's claim for judicial review was deemed to be filed on the 10th August 2021; (b) Ordered that the decision of the trial judge to strike out the Appellant's claim is set aside; (c) Remitted the matter to the High Court for hearing of the claim for Judicial Review and (d) Granted costs to the Appellant in the High Court and the Court of Appeal.
- [6] We promised to give our reasons in writing and do so now. At the outset of the hearing and in response to an enquiry from the Court, the parties said they had no objection to the court, as constituted, hearing this appeal, given that two of our number were on the panel that granted leave to appeal.

Brief Factual Background

- [7] On 26th July, 2021, Stakebank was granted leave for Judicial Review and was ordered to file, within 14 days of the decision that is on or before 10th August, 2021, its Fixed Date Claim Form on the grounds of Legitimate Expectation, Appearance of Bias, Bad Faith and Wednesbury Unreasonableness. Further, the Order stated that the parties have liberty to apply to the judge below in respect of the timelines set out in the Order.
- [8] On 9th August, 2021 at 4:49 p.m., the Fixed Date Claim Form dated 9th August, 2021 together with several Affidavits were uploaded unto the Court's electronic filing system ('Apex'). The Respondents filed their defences to the claim by filing several affidavits in response to the Fixed Date Claim Form.
- [9] On 13th January, 2022, (almost two months later) the Respondents filed a Notice of Application pursuant to CPR, Rules 26.3(1), 26.8, 32.6, Rule 56.4(11) and the inherent jurisdiction of the Court to strike out the Appellant's claim for failure to make its claim for judicial review within 14 days of receipt of the decision granting permission.
- [10] Stakebank opposed the Respondents' application on the ground that its claim was filed in accordance with Rule 3.7 of the CPR and that the Respondents' actions of filing full defences to the claim amounted to a waiver of their technical objection of any purported breach of not filing within the 14 day's time period, which Stakebank has denied.
- [11] On 3rd March 2022, the judge below made an order striking out Stakebank's claim on the ground that it failed to comply with the Order of the court by failing to make its claim for judicial review within 14 days of receipt of the decision. The judge below also refused leave to appeal to this Court.

The decision of the trial judge

- [12] The trial judge struck out the claim on the grounds that:
- (a) A document is filed on the E-Filing Portal of the Registry once it has been uploaded, the undertaking accepted on the Apex System and returns a notification on the document, bearing its date stamp and the claim consequently was not filed within the 14 day period;

(b) The Court has no jurisdiction to extend the time for the filing of the claim.

The Appeal

[13] Stakebank by Notice to Appeal dated the 26th October, 2022 (pursuant the decision of this Court granting leave to appeal on 17th October, 2022) sought the following relief:

1. A declaration that Stakebank's claim for judicial review was filed on 9th August, 2021 but treated as filed on the 10th August 2021;
2. An Order that the decision of the judge below to strike out Stakebank's claim be set aside;
3. An order remitting the matter to the High Court for hearing of the claim for Judicial Review; and
4. Costs in the court below and this Court.

Grounds of Appeal

[14] The grounds of appeal are:

1. The judge below erred in law and misdirected herself in concluding that Stakebank failed to make its claim for judicial review within 14 days of receipt of the Order made 26th July 2021, granting permission to do so, as the conclusion of fact is unreasonable and against the weight of the totality of the evidence.
2. The judge below erred in law and misdirected herself or acted upon a wrong principle or wrongly exercised her discretion when making her decision to strike out in the claim made by Stakebank.
3. The judge below erred in her decision by:
 - a. Failing to appreciate the distinction between the process of a party filing a document in accordance with the CPR as opposed to the Court Office issuing the said document;
 - b. Treating Practice Direction No. 1 of 2021 as an implied repeal of Rule 3.7 of the CPR;
 - c. Falling into error by relying exclusively on Practice Direction No. 1 of 2021 and in particular, interpreting the meaning and import of the word 'file';

- d. Failing to treat with the issue that the Defendants/Respondents filing a complete defence to the claim herein effectively waived their right to any objection of irregularity;
- e. Interpreting Part 56 of the CPR as having circumscribed the Court's general powers of case management as cumulatively provided for by Part 26 of the CPR;
- f. Failed to resolve the conflict of evidence by Ronald Arias and Giovanni Tillett by ordering cross-examination of both affiants;
- g. Concluding that the permission granted to the Appellant to make an application for judicial review was conditional, although the perfected Order approved by the learned judge was unconditional and made provision for the parties to apply to the Court in respect of the timelines set out in the order granting leave to apply for judicial review."

Whether Stakebank's documents were deemed to be filed when uploaded on the court's portal.

[15] The appeal in my view can be disposed of under the issue as to whether Stakebank's documents were deemed filed when uploaded on the court's portal.

The Applicable Rules

(i) *CPR Rules relevant to the filing of documents at the court office*

[16] Rule 3.7 of the CPR provides for the filing of documents. It states:

"3.7 (1) A document may be filed by –

- (a) *delivering it;*
- (b) *posting it ; or*
- (c) *sending it by FAX,*

to the court office where the claim is proceeding or intended to proceed.

(2) ***The document is filed on the day when it is received at the court office or, where it is received at a time when the court office is closed, on the next day on which the court office is open.***

(3) *Where a fee is to be paid the document is not to be treated as filed until –*

- (a) *the fee is paid; or*
- (b) *an undertaking to pay the fee acceptable to the Registrar is received."*

(ii) Introduction of electronic filing by Practice Direction 1

[17] By Belize Gazette Extraordinary dated 21st April 2021, The Supreme Court (Electronic Filing and Service) Rules, Practice Direction No. 1 of 2021 was published and came into effect on the 26th April, 2021. It was issued by Arana CJ (as she was then) pursuant to Rule 4.1. Rule 4.2(1) provides for the scope of the practice directions. That is, it may be issued “in any case where provision for such a direction is made by these Rules.”

[18] PD 1 at paragraph 7 sets out when a document is deemed to be filed:

“7. Time for filing

(1) A document filed by electronic means shall be deemed to be filed within the meaning of the CPR at the date and time when the following requirements are satisfied:

(a) **The document is submitted by electronic means and received by the Court office;**

(b) The filing fee (where applicable) is received by the Court office; and

(b) A copy of the submitted document bearing the stamp (and where applicable the seal) of the Court is **transmitted to the filing party.**”

The arguments on the vires of PD1

[19] Learned counsel, Mr. Lindo for Stakebank submitted that paragraph 7 of PD1 runs afoul of Rule 3.7 of CPR when it conflates the processes of a party filing a document in accordance with Rule 3.7 of the CPR and of the court office issuing the said document after it has been filed. That these are two distinct processes that are both bundled under the heading ‘*Time of Filing*’ at paragraph 7 of PD1. Further the issuance of a claim is provided for under Rule 3.9 of the CPR which is a separate process. As such, paragraph 7 (1) (c) of PD1 sought to amend Rule 3.7 by the additional requirement of issuance of the document after filing. Counsel argued that the purported amendment is therefore ultra vires.

[20] Learned counsel Ms. Matute for the Respondents argued that the challenge as to the vires of paragraph 7(1) (c) is a matter to be decided in different proceedings and the appeal should not be allowed on that ground. But, in any event she argued that it is intra vires since it was issued in furtherance of the existing requirements of filing under Part 3 of the CPR. Counsel submitted that PD1 contemplated its application consistent with the CPR as can be seen at paragraph 5(1) where it states that “[s]ave for where otherwise provided in an Act, Regulation or Rule, a filing party may file documents in civil proceedings, by uploading the documents through the portal”. She further contended that PD1 was made pursuant to Rule 4.2 and Rule 4.5 requires compliance with the practice direction issued by the Chief Justice.

[21] Learned counsel, Mr. Bennett for the first interested party submitted that PD1 is intra vires the rules because it was issued pursuant to Rule 3.6 (2) (b) of the CPR which provides for the Chief Justice to issue Practice Directions which prescribe the conditions under which documents may be served or filed electronically.

No amendment to CPR to introduce electronic filing

[22] PD1 introduced electronic filing for the first time through a portal, Apex. At the time the CPR came into force by Statutory Instrument in 2005, there were three methods of filing, namely delivering, posting and sending by Fax. It was over 15 years later that a new method of filing was introduced during the Covid 19 pandemic, that is, filing of documents electronically through a portal managed by the court office. There was no amendment done to the CPR to introduce this method of filing, which in my view ought to have been done. As can be seen by Rule 3.6(2) (b) of the CPR, the practice direction should be issued in relation to format and prescribe conditions under which the documents may be filed electronically. PD1 did in fact address format and conditions but it also introduced the new method of filing as shown by the “Citation” which states:

1. “Citation

- (1) These Rules may be cited as the Supreme Court (Electronic Filing and Service) Rules, 2021.
- (2) This Practice Direction is to make provision for the filing of documents in civil proceedings by electronic means utilizing a portal managed by the Supreme Court (now High Court) of Belize. This objective of which is to
 - (a) Promote technology in the Court process

(b) Further the overriding objective of civil proceedings to deal with matters justly and fairly;

.....

(c) Enhance access to justice.”

[23] There is no doubt that a new method of filing was introduced, by electronic means using a portal managed by the court office and this can be done anywhere in the world with any device that has internet. Electronic filing means filing of documents through the portal. Electronic means includes “any website, software or electronic programme in use for the time being for the purpose of facilitating the filing of documents ... under the management of the Supreme Court.” To access the portal a user must register as shown by PD1.

[24] *Conditions for filing electronically using the portal*

Paragraph 5 of PD1 states the conditions under which filing of electronic documents should be done. This includes getting familiar with APEX Folio User Guide. (It is a little over two years that Belize is using the portal). Parties are to ensure that when filing electronically that the specified paper (US Letter or A4) is used with the specified margin. Also, when documents are uploaded for electronic filing, it must not exceed 75 megabytes (MB). This condition on the size of the document seems to be a continuing problem and I take judicial notice of this. However, PD1 at 20 gives directions for a party to contact the Registry at <https://efiling.courts.bz/support> whenever a technical issue is encountered.

The additional requirement under PD1 for filing a document – Transmission after stamping

[25] I have considered the provisions of Rule 3.7 of the CPR and paragraph 7 of PD1 and it is shown that paragraph 7 (1) (c) provides for an additional requirement in relation to the filing of electronic documents using the portal and when it is deemed to be filed – “ (c) A copy of the submitted document bearing the stamp (and where applicable the seal) of the Court is transmitted to the filing party.” Under the CPR a document is deemed to be filed **when it is received** at the court office and the fee is paid or an undertaking given to pay that fee, where necessary. A stamp/seal is placed on the document by a staff of the court office which shows date and time of filing.

[26] The process under PD1 requires the court staff to issue a copy of the document with the electronic stamp/seal on receipt of the document. The issuance by the court staff is a process that must be done. This is the only method a party can receive the date of filing when it is done electronically. Paragraph 5(19) of PD1 contemplated the administrative mechanism for the filing party to be notified of the submission and filing of his documents.

[27] However, according to paragraph 7 of PD 1, **a document is not deemed to be filed within the meaning of the CPR until that issuance by the court staff.** (This is in comparison to actual physical stamping of a hard copy under the CPR). If the directions under PD1 are followed the issuance of the document can be instantaneous as with the CPR. Nevertheless, the issuance/transmission under PD1 is an additional requirement before a document is deemed filed. The document is not deemed filed when uploaded on the portal.

Stakebank's documents not stamped and issued when uploaded on the portal

[28] Stakebank filed its documents electronically using the portal, the online based platform used by the High Court. The evidence before the judge below showed that the documents were uploaded on the portal by Stakebank within the 14 days period, 9th August 2021, as ordered by the court, one day before the deadline. The undertaking to pay the fees was done on the same day. Stakebank received an acknowledgment email from the Court Office's Case Management Department (Curia) on the same day stating that the documents were received. However, the issuance of the copy of the documents by the court office was done on 13th August 2021, three days outside of the 14 day period within which to file the claim for Judicial Review. The reason for the issuance on that date was explained in the Affidavit of Giovanni Tillett. He deposed that the Fixed Date Claim Form dated 9th August 2021 was marked "not accepted" as stated under the status bar of the case file. He deposed that when he clicked on those words "not accepted," it stated that the reason for non-acceptance was that the "file was too large". (See the evidence in the judgment of the trial judge).

[29] Stakebank relied on the Affidavit of Ronald Arias dated 10th February, 2022, who deposed at paragraph 7 that he "personally uploaded into the Apex System" the Fixed Date Claim form and supporting Affidavits. He exhibits copies of email from "Curia Support" which showed that he received a message that the "document has been successfully uploaded for case AP20210269 Stake Bank Enterprise Limited v. The Attorney General et al." Though that message was given, the evidence from Mr. Tillett showed that "A check of the Apex System has revealed that 2

submissions were made to the Apex System- a Fixed Date Claim Form dated 9th August 2022, and only one was stamped filed and the other marked "Not Accepted" by the system".

[30] It is obvious that Stakebank did not get an instant response that some documents were not accepted. Stakebank received a notification that the documents were successfully uploaded when the system showed that one document was "Not accepted" because it was too large. Stakebank would not have known at the time of the rejection of some documents unless informed by the court office. This problem was eventually resolved three days later and by this time the 14 days requirement had expired. Two months later, the application for striking out was filed although a defence had already been filed.

[31] The judge below struck out the claim as she was satisfied by the explanation given by the Registrar. At paragraph 33 of the decision, the judge said: *"In my view, the Registrar is right. A document is filed in the E-Filing Portal of the Registry once it has been uploaded, the undertaking accepted and the Apex System returns a notification on the document, bearing its date stamp."*

Should the Rules of the CPR prevail?

[32] Under the CPR, the filing and undertaking are sufficient for a document to be deemed to be filed. In relation to PD1, the notification is the issuance of the filed document by a court officer which is an additional requirement before a document is deemed filed. In my view, the Rules of the CPR, which has statutory force, must prevail, that is, the receipt of the documents and the undertaking given, for the documents to be deemed filed.

[33] The documents in the instant matter were uploaded on the system and as shown by the evidence Stakebank received a message that it was successfully uploaded. This message therefore amounted to receipt by the portal. The documents should therefore be deemed to be filed when uploaded on the portal. Stakebank would not have known at this point that some documents were rejected due to their own technological error by exceeding 75 MB. Though there was non-compliance with the directions in relation to some documents, Stakebank was not sent a message instantly upon uploading that some documents were rejected and the reasons for that rejection. This was done sometime thereafter and re-uploading was done three days outside of the 14 day time limit. Therefore, it is my view that all of the documents should be treated as successfully uploaded and received by the system.

The date of filing should therefore be deemed to be 10th August 2021 (since it was outside the normal office hours on 9th August) satisfying the court order to file within the 14 day limit.

CMC powers and Costs

[34] The overriding objective of the CPR is to enable the court to deal with cases justly. Dealing justly with the case includes saving expense. A great deal of costs and judicial time have been wasted because Case Management Powers were not utilized in the court below in addressing the difficulty encountered by Stakebank with the electronic filing of the documents. The learned judge below could have exercised her case management powers and deemed the documents filed within the time limit or order costs against Stakebank for not complying with the 75 MB requirement upon filing the documents electronically. Rule 4.5 (1) provides for compliance with a practice direction unless there is good cause for not doing so. Rule 4.5 (2) provides that where there is a failure to comply with a practice direction the Court may (a) make an order under Part 26 (Case Management – The Court Powers) or (b) Part 63 (Costs -General). In the instant appeal, these Rules were not applied by the judge below.

[35] In my view, Stakebank should not be denied access to justice for a technological problem for which it was not informed immediately and having received a message that the documents were uploaded successfully. The message gave an indication that all the documents were received. That is the conundrum in this case. As it has been decided that the documents were, in fact, filed within the required timeline in accordance with the CPR, the question of whether the court had jurisdiction to extend the time does not arise for determination in this appeal.

Whether an Order should be made on the vires of PD1 – paragraph 7

[36] In my view, the issuance of the document under PD1 is a process that must be done as discussed above but in so far as it conflicts in relation to when a document is deemed to be filed, the CPR must prevail. Stakebank was not asking for the entire PD1 to be struck down, only the paragraph on issuance. However, since the vires of paragraph 7 of PD1 on the issuance of the document was not determined by the judge below, I agreed with the respondent that this is not the forum to make that

challenge. I would add though that the new method of filing electronically should have been properly done by amending the CPR.

Conclusion

[37] For the foregoing reasons, the judge below ought not to have struck out the claim for Judicial Review. The documents should have been deemed filed as and when uploaded on the portal.

Order

[38] In the circumstances, the Court allowed the appeal and made the following Order:

1. A declaration is granted that the Appellant's claim for judicial review was deemed to be filed on the 10th August 2021.
2. The decision of the trial judge to strike out the Appellant's claim is set aside.
3. The matter is remitted to the High Court for hearing of the Appellant's claim for Judicial Review.
4. The Appellant is granted costs in the court below and the Court of Appeal to be agreed or taxed.

Minnet Hafiz Bertram

President

[39] I have read the reasons of my sister, Hafiz Bertram, P., I agree with her reasons and the order made, and have nothing to add.

Sandra Minott-Phillips

Justice of Appeal

[40] I concur.

Arif Bulkan

Justice of Appeal