**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 185 of 2023**

**BETWEEN:**

**[1] DWIGHT FLOWERS**

Applicant

**and**

**[1] MASTER MARTHA ALEXANDER**
**[2] JUDICIAL & LEGAL SERVICES COMMISSION**
**[3] MINISTER OF THE PUBLIC SERVICE, CONSTITUTIONAL & POLITICAL REFORM & RELIGIOUS AFFAIRS**
**[4] ATTORNEY GENERAL OF BELIZE**

Respondents

**Appearances:**

Sharryn Dawson for the applicant
Godfrey P. Smith SC and Hector D. Guerra for the 1st respondent
Samantha Matute and Jarvis Lou for the 2nd to 4th respondents

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2023: October 13th

December 13th

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**DECISION ON PRELIMINARY ISSUE OF LAW**
**(Jurisdiction)**

[1] **CHABOT, J.**: On 28th March 2023, Mr. Flowers applied for permission to apply for judicial review pursuant to Part 56 of the Supreme Court (Civil Procedure) Rules, 2005 ("CPR"). Mr. Flowers seeks permission to apply for the following reliefs:

1. Leave be granted to the applicant to apply for judicial review of the decision by the 1st respondent (hereinafter referred to as "the court") that:

a. Points of law in reference to Belizean legislation are triable stating at paragraph 33, *"Moreover, the defendant's further submissions, which shifted the basis of the point of law argument from the NLA to the Law of Property Act and the General Registry Act served only to show that the issues raised ought to be litigated at trial"*;

b. The court is empowered or entitled to disregard settled case laws previously decided by the High Court of Belize, which Belizeans have relied upon and ordered their affairs around;

c. Submissions totaling twenty-five pages are lengthy, and automatically suggest triable issues stating at paragraph 17, *"In further written submissions, the defendant's counsel dismisses the applicability of the NLA and shifts her argument to rely on the Law of Property Act and General Registry Act. In my judgment, the defendant's lengthy arguments opened the door to considerations of triable issues rather than to show that the test for a strike out application was satisfied"*;

d. Legislations provided in full, which constitute annexes to counsel's submissions need not be read, reviewed or considered by the court in determining the point of law raised; and the nature of the applicant's land dispute need not be reviewed against the requirements stated in the land laws of Belize dealing with unregistered lands (the state of affairs prior to the disputed registration); and

e. The court is entitled to make its own facts contrary to the evidence before it; misinterpret the expert's report at will, and; disregard the law of evidence.

2. An order of certiorari quashing the decision of the 1st respondent that suggesting that points of law are trial, and:

    a. A declaration that the 1st respondent has a public duty to decide and rule upon all points of law when called upon to do so; such failure and continuance to so act suggest misbehavior or inability to hold judicial office and breaches judicial oath;

    b. A declaration that the Belizean public have a right to and deserve to have:

        i. A competent court appointed to administer justice;

        ii. Their litigious arguments read and duly considered by a competent court, regardless of the lengthy hours involved in doing so; and

        iii. Settled laws upheld by all Justices duly appointed to serve Belize at all times;

c. A declaration that the applicant is owed a duty by any Justice (including the 1st respondent if duly appointed) deciding its matters that it will correctly interpret the Laws of Belize; read submissions of counsel; and accurately summarize the evidence before the court including that of the court ordered expert before determination of a matter, regardless of how many hours it takes to do so and despite the length of the laws, cases and/or submissions;

d. A declaration that a failure by the 3rd respondent to properly appoint competent and able professionals to the Judiciary of Belize endangers the legal system and the constitutional rights of Belizeans.

3. An order of mandamus directing the 2nd respondent to perform its public duty to investigate the 1st respondent's mode of leaving the public service given the applicant's contention under "Exhibit DF-61" that the 1st respondent is currently still employed to the High Court of Trinidad and Tobago in the capacity of a Master until effective retirement on 24th January 2024, and;

    a. A declaration that the 1st respondent cannot hold judicial office in two (2) jurisdictions concurrently;

    b. A declaration that the 1st respondent's oath in Trinidad and Tobago is first in time and continues to have force until its expiry on or around 24th January 2024;

    c. A declaration that the 1st respondent has not been properly installed as a Justice in Belize; and

    d. A declaration that all decisions made by the 1st respondent in the assumed capacity of a Justice in Belize are null, void and of no effect.

4. The 1st respondent be made to indicate the date on which the decision to retire from the High Court of Trinidad & Tobago effective 24th January 2024 was made; the 2nd respondent be made to indicate the effective date of the 1st respondent's appointment to the Judiciary of Belize; and provide copies thereof to the court and the applicant.

5. An order restraining the 1st respondent from further acting in the capacity of Justice of the High Court of Belize until the Honourable Court determines this matter.

6. The applicant be granted an extension of time, if necessary for the making of this application for leave to apply for judicial review.

7. Damages; costs; and;

8. Any other further relief the Honourable Court deems fit.

[2] The matter was called up on 26th April 2023 for the purpose of issuing directions for the hearing of the application. The court was advised that the 1st respondent had not yet been served with the application and issued directions in that regard. Considering the nature of the application, the court, on its own initiative, raised the issue of bias and enquired whether the parties intended to object to the undersigned hearing the matter. Both parties indicated that they did not intend to raise any issue in respect of real or perceived bias. The hearing was adjourned until 9th May 2023 for directions.

[3] At the 9th May 2023 hearing, the court noted that the affidavit in support of the application did not comply with the CPR as it had been sworn using a different claim number and parties. Directions were given for the re-filing of the supporting affidavit. The supporting affidavit was re-filed on 12th May 2023.

[4] At the 9th May 2023 hearing, the respondents were also directed to file an affidavit in response to the application by 9th June 2023, and the applicant to file his reply, if any, by 15th June 2023. The hearing of the application was set for 27th July 2023, with the applicant's written submissions due on 30th June 2023, the respondents' written submissions due on 21st July 2023, and the applicant's reply submissions due on 25th July 2023.

[5] The 1st respondent filed an affidavit in response to the application on 8th June 2023, and the 2nd to 4th respondents filed the first affidavit of Rolando Zetina in response on 9th June 2023.

[6] On 19th July 2023, Mr. Flowers filed an application to strike out the respondents' affidavits on the grounds that they allegedly do not comply with the CPR, to summon the Chief Justice of the High Court of Trinidad & Tobago as a witness at the hearing of the application for permission to apply for judicial review, and for permission to serve documents outside of the jurisdiction (the "application to strike out"). The application to strike out was scheduled for 27th July 2023, the same day the application for permission to apply for judicial review was scheduled to be heard.

[7] At the hearing of the applications on 27th July 2023, the respondents indicated that they had not been served with the filed copies of the application to strike out and required time to respond to it. I noted that the respondents' written submissions on the application for permission to apply for judicial review raised the issue of the jurisdiction of the court to deal with this matter, and enquired whether this issue should not be dealt with first. Mr. Flowers' counsel indicated that the issue of jurisdiction should have been raised by the respondents in a separate application before their defence had been filed, while the respondents' counsel argued that the issue of jurisdiction can be raised at any time.

[8] Pursuant to my case management power to decide the order in which issues are to be tried (CPR 26.1(2)(f)), I decided to deal with the issue of jurisdiction first as it could be determinative of the whole application. I directed that the applicant file written submissions on the issue by 18th August 2023, that the respondents file written submissions in response by 8th September 2023, and that the applicant file written submissions in reply, if any, by 22nd September 2023. The hearing on the preliminary issue of law was held on 13th October 2023.

**Issues to be determined**

[9] The court must determine the following two issues:

1. Whether it is too late to raise the issue of jurisdiction; and

2. If it is not too late, whether the court has jurisdiction to hear the application for permission to apply for judicial review.

**Analysis**

*Whether it is too late to raise the issue of jurisdiction*

Submissions

[10] The issue of the court's jurisdiction to deal with this matter was raised by the respondents in their written submissions in response to the application for permission to apply for judicial review. Mr. Flowers argues that the issue should have been raised

in an application contesting the jurisdiction of the court before the respondents' defence was filed. Having filed a defence to the application for permission to apply for judicial review, the respondents have submitted to the jurisdiction of the court. The appropriate procedure to dispute or oust the court's jurisdiction is governed by CPR 9.7 and should be made by way of an application to the court supported by evidence on affidavit as soon as possible, and before the period for filing a defence lapses.

[11] Mr. Flowers further argues that Part 9 of the CPR applies to all Part 56 proceedings. CPR 56.10 deals with "evidence in answer", and clearly states that Part 10 applies to all affidavits that are evidence in answer. The evidence in answer as filed by the respondents on or around 9th June 2023 constituted their defence, and is subject to the general rules of Part 10. Based on CPR 10.9(c), the rules of Part 10 are subject to CPR 9.7 which deals with the procedure for disputing the court's jurisdiction.

[12] The respondents dispute they submitted to the jurisdiction of the court by filing affidavits in response to the application for permission to apply for judicial review. Relying on **Morgan Naik v Simon David Burgess, Rahendrakumar Sombahai Patel et al.**,[1] **Wilkinson v Barking Corporation**,[2] and **Foster v Usher Wood**,[3] the respondents argue that jurisdiction is a legal question, and no act, commission, or omission of the parties can vest jurisdiction in a court that otherwise has no jurisdiction. Rules of procedure requiring objections to jurisdiction to be raised by formal application are not a bar for a party to raise a preliminary objection on jurisdiction at any stage. In **Nigerian Port Authority v Sam Namjee**,[4] the Court of Appeal of Nigeria stated that "the rules of Court cannot regulate when and how issues of jurisdiction can be raised particularly where the issue involves jurisdiction as a matter of substantive law". Similarly, in **Popoola Elabanjo et al v Chief Ganiat Dawoda**,[5] the Nigerian Supreme Court held that "it is desirable that Preliminary Objection be raised early on the issue of jurisdiction; but once it is apparent to any party that the Court may not have

[1] Appeal No. 45/2020, High Court of Appeal of Zambia ("Naik").
[2] [1948] 1 KB 721 ("Wilkinson").
[3] [1877] 3 Ex D1 ("Wood").
[4] (2020) LPELR-51849 (CA) ("Namjee").
[5] SC 386/2001 ("Dawoda").

jurisdiction, it can be raised even viva voce". As such, the applicant's contention that an objection to jurisdiction can only be raised in the manner provided for in the CPR is contrary to the authorities and is generally overly technical.

[13] The respondents further argue that Parts 9 and 10 of the CPR can only apply to the instant proceedings so far as Part 56 allows. Part 56 envisions a two-step process in claims for judicial review. If permission is granted, then a claim can be commenced by way of a fixed date claim form. CPR 56.10 is only applicable where a claim has been commenced after permission has been granted. The applicant has yet to obtain permission to commence his claim for judicial review, so there is no claim before the court that would make Parts 9 and 10 of the CPR applicable.

[14] According to the respondents, the very reason a litigant is required to first obtain permission to commence judicial review proceedings is to weed out matters with no realistic prospect of success, including matters over which the court might have no jurisdiction. Relying on **Fordham's Judicial Review Handbook**,[6] the respondents assert that a respondent to an application for permission to commence judicial review proceedings is entitled to challenge the court's jurisdiction at the leave stage.

[15] In reply, Mr. Flowers submits that the CPR governs the procedural manner in which a litigant may challenge the jurisdiction of the court. The rules do not allow jurisdictional issues to be raised randomly at any point in time in the proceedings, but only prior to the filing of a defence.

[16] Mr. Flowers says that the respondents failed to provide any authority showing the court does not have jurisdiction to hear this matter. The applicant distinguishes **Naik** and **Wood** on the basis that these cases dealt with jurisdiction governed by statute, such that the court's intervention was deemed to be in excess of the statute and waiver of the jurisdiction was untenable. The purpose of judicial review applications is to uphold the rule of law. There exists no statute that bars the jurisdiction of the court from hearing the application for permission to apply for judicial review.

[6] 7th ed. at para. 21.2, page 301.

[17] Mr. Flowers resists the respondents' contention that Parts 9 and 10 of the CPR do not apply to Part 56 proceedings, and distinguishes the authorities[7] cited by the respondents on this point on the grounds that the application for permission to apply for judicial review does not pertain to matters of substantive law or to prayers for substantive reliefs. Part 10 states that "any evidence" filed in answer to a claim for administrative orders is subject to Part 10. The application for permission to apply for judicial review is an application for an administrative order because the orders, which will derive from the application, will govern the process for substantive administrative reliefs. The court ordered the parties to file evidence in answer to the claim in order to determine whether permission should be granted, and such evidence is subject to the rules governing Part 10 as directed by CPR 56.10.

[18] Mr. Flowers stresses that his case underscores a severe breach of the rule of law and a breach of his constitutional rights by the conduct of the 1st respondent. His case further points to a serious concern that the 1st respondent may not be properly installed on the bench in Belize. As such, the test for permission has been met.

Determination

[19] I find that it is not too late for the respondents to raise the issue of this court's jurisdiction to hear the application for permission to apply for judicial review.

[20] First, on the issue of whether Parts 9 and 10 of the CPR apply to Part 56 proceedings, I refer to my recent ruling in **Michael Belgrave v Judicial and Legal Services Commission et al.**,[8] in which Mr. Belgrave contended that the respondents' affidavit in response to an application for permission to apply for judicial review did not comply with the requirements in Part 10 of the CPR dealing with "defences". On the issue of whether Part 10 applies to Part 56 proceedings, I wrote as follows:

> [22] As for the applicant's submission that the affidavit in response does not comply with Part 10 of the CPR, I find that Part 10 does not apply to an

[7] Namjee; Petrojam Limited v The Industrial Disputes Tribunal and the Minister of Labour and Social Security, [2018] JMSC Civ 166; Public Service Commission v The Attorney General of Jamaica and Deanroy Ralston Bernard, [2021] JMCA Civ 2.
[8] Claim No. 689 of 2022 ("Belgrave").

> affidavit in response to an application for permission to apply for judicial review. CPR 56.10 deals with affidavits filed in answer to a claim for an administrative order, not to affidavits filed in response to an application for permission to file such a claim. CPR 56.4 makes it plain that a claim for judicial review is premised on permission being first granted. Permission is granted on an application.
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> [23] Part 10 does not apply to affidavits filed in response to an application for permission to apply for judicial review. Part 56 makes no such provision. CPR 10.1 states that "the Rules in this Part set out the procedure for disputing the whole or part of a claim". CPR 2.4 defines a "claim" as "to be construed in accordance with Part 8". Part 8 is entitled "How to start proceedings". CPR 8.1(1) states that "a claimant starts proceedings by filing in the court office the original and one copy (for sealing) of – (a) the claim form; and […] the statement of claim; or where any Rule or practice direction so requires, an affidavit or other document".
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> [24] An application for permission to apply for judicial review is not a claim as defined in the CPR. It is an application made under Part 56 of the CPR. Part 56 of the CPR is silent as to what a response to an application for permission to apply for judicial review must contain. Similarly, Part 11 dealing with applications for court orders generally does not provide for any specific content for the response to an application.
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> [25] A response to an application for permission to apply for judicial review is made by filing an affidavit. Affidavits are governed by Part 30 of the CPR. CPR 30.3 states that the affidavit must contain facts within the own knowledge of the deponent, or statements of information and belief. Part 30 does not further regulate the content of an affidavit […].[9]

[21] Since Part 10 of the CPR does not apply to an affidavit in response to an application for permission to apply for judicial review under Part 56, it follows that CPR 10.3(9)(c) subjecting the general rule that a defence is to be filed within 28 days of the date of service of the claim form to CPR 9.7 dealing with the procedure for disputing the court's jurisdiction does not apply either. I note that like the provisions in Part 10 of the CPR, CPR 9.7(1)(b) refers to a dispute of the court's jurisdiction to try the claim, while at this stage no claim for an administrative order has been filed. Had the legislators intended CPR 9.7(1)(b) to apply to an application, they would have expressly stated so in the rule itself. CPR 9.7 does not apply.

[9] Belgrave at paras. 22-25.

[22] Part 56 of the CPR is silent as to the procedure for disputing the court's jurisdiction to deal with an application for permission to apply for judicial review. Because CPR 9.7 and Part 10 do not apply to an affidavit in response to an application for permission under Part 56 of the CPR, it follows that there was no requirement for the respondents to file a separate application to dispute the court's jurisdiction. The respondents' objection to the court's jurisdiction was quite properly raised in response to Mr. Flowers' application for permission to apply for judicial review, which, as argued by the respondents, is the stage at which unmeritorious applications for judicial review are to be "weeded out". An application which calls on the court to exercise a jurisdiction it does not have should not be permitted to go forward to the next stage.

[23] I note that the issue of jurisdiction was not raised in the respondents' affidavits in response to the application for permission to apply for judicial review, but in the respondents' written submissions. The respondents' counsel indicated that the issue of jurisdiction is an issue of law, and not an issue of fact, and would therefore not be appropriately raised in an affidavit. I disagree. Pursuant to CPR 30.3(2)(b), "an affidavit may contain statements of information and belief […] where it is for use in […] any procedural or interlocutory application". The respondents could have raised the issue of jurisdiction in their affidavits in response to the application for permission to apply for judicial review. Having not done so is, however, not fatal to their position. The CPR does not require an issue of jurisdiction to be raised at any specific point in time, or in any specific form, in the context of a Part 56 application for permission to apply for judicial review. The issue of jurisdiction was raised as part of the legal submissions filed on behalf of the respondents in opposition to permission being granted. Mr. Flowers had an opportunity to consider those submissions, to reply to them in writing in advance of the hearing, and to address them orally at the hearing of the application. No unfairness flows from the fact that the issue was raised in written submissions as opposed to in the affidavits in response.

*If it is not too late, whether the court has jurisdiction to hear the application for permission to apply for judicial review*

Submissions

[24] The respondents submit that the court is not clothed with the jurisdiction to issue the order of certiorari sought by Mr. Flowers in relation to the 1st respondent's decision and order in Claim No. 480 of 2020. According to the respondents, citing the case of **The Christian Workers Union v The Belize Waterfront Employers Association**,[10] a judge of a court of unlimited jurisdiction does not have the jurisdiction to vary, alter, and/or review the decision of another judge of unlimited jurisdiction. The decision of the 1st respondent is not amenable to judicial review, and cannot be quashed by another judge of the High Court with concurrent jurisdiction. Mr. Flowers' remedy is in appealing the decision to the Court of Appeal.

[25] With respect to the orders sought by Mr. Flowers in regards to the 1st respondent's appointment, the respondents say that the court is barred by section 34(4) of the Belize Constitution from enquiring into the function and exercise of authority by the Governor General, who appointed her. Section 34(4) reads as follows:

> (4) Where by this Constitution the Governor-General is required to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be enquired into by any court of law.

[26] The court therefore does not have the jurisdiction to enquire into, and/or quash by way of an order of certiorari the appointment of the 1st respondent as Justice of the High Court.

[27] In response to the first point, Mr. Flowers argues that the respondents have failed to acknowledge the serious concern that the 1st respondent is not duly appointed as a Justice in Belize, and as such this court is competent to make right the wrongs of the 1st respondent. The court is duty bound to act where serious allegations of misconduct are raised on an application for judicial review of the conduct of any judicial officer, and

[10] [1994] 1 Belize Law Reports 319 ("Christian Workers Union").

ought not to simply ignore it. Mr. Flowers relies on **R (Cart) v Upper Tribunal**,[11] in which the Supreme Court of the United Kingdom held that decisions of the Upper Tribunal, which was regarded as the "alter-ego" of the High Court, could be judicially reviewed.

[28] In regards to the second point, Mr. Flowers submits that this application does not touch or concern section 34(4) powers as the Governor General's powers do not form a part of the prayers requested by the applicant. Mr. Flowers adds that unless the 1st respondent is immune or exempt from the law, the application for permission to apply for judicial review is properly before the court.

Determination

[29] The reliefs sought by Mr. Flowers in the application for permission to apply for judicial review fit into two broad categories – "decision reliefs" and "appointment reliefs". Reliefs 1 (judicial review of the 1st respondent's decision) and 2 (order of certiorari quashing the 1st respondent's decision) and their subparts relate to the 1st respondent's decision in Claim No. 480 of 2020 and will be referred to as the "decision reliefs". Reliefs 3 (mandamus) and its subparts, 4 (indication as to dates), and 5 (order restraining the 1st respondent from acting as a Justice of the High Court) will be referred to as the "appointment reliefs".

[30] The court does not have the jurisdiction to deal with the decision reliefs. **Christian Workers Union** is clear that "it is not open to one judge of unlimited jurisdiction to declare that the judgment or order of the other judge of unlimited jurisdiction is void and of no legal consequence".[12] Similarly, in **Millicent Forbes v Attorney General of Jamaica**,[13] the Supreme Court of Jamaica held that proceedings in the Circuit Court were not amenable to judicial review and could not be quashed by certiorari. One of the authorities relied on in **Forbes**, **Re Racal Communications Ltd.**,[14] is helpful. The appellant in **Racal** disputed the Court of Appeal's jurisdiction to entertain an appeal

[11] (2011) UKSC 28; (2012) 1 AC 663 ("Cart").
[12] Christian Workers Union at 324.
[13] 2004/HCV 01386 ("Forbes").
[14] [1980] 2 All ER 634 ("Racal").

from a decision of a High Court judge made in the exercise of the statutory jurisdiction conferred on the High Court by the (United Kingdom) Companies Act, 1948. In his speech, Lord Scarman distinguished the jurisdiction of the Court of Appeal, which is conferred by statute, from the inherent jurisdiction of the High Court, stating that:

> In the present case the Court of Appeal has sought to construe s 441(3) of the Companies Act 1948, which declares a decision of the High Court to be not appealable, in the same way as a provision excluding appeal from a statutory tribunal. But the High Court is not an inferior tribunal. It is one of Her Majesty's courts of law. It is a superior court of record. It was not, in the past, subject to control by prerogative writ or order, nor today is it subject to the judicial review which has taken their place. It has inherited the jurisdiction of the superior common law courts of first instance.[15]

[31] The **Cart** decision is of no assistance to Mr. Flowers. The Upper Tribunal is an administrative tribunal created by the (United Kingdom) Tribunals, Courts and Enforcement Act 2007. Contrary to the High Court, which has unlimited jurisdiction, the Upper Tribunal derives its powers from statute. Although the Upper Tribunal was regarded as the "alter ego" of the High Court in first instance, that position was swiftly rejected on appeal, with Sedley LJ stating that "the [Upper Tribunal] is not an avatar of the High Court at all: far from standing in the High Court's shoes … the shoes the [Upper Tribunal] stands in are those of the tribunals it has replaced". At issue before the Supreme Court of the United Kingdom was the scope of the court's judicial review power over the Upper Tribunal in light of its enabling statute. The instant application does not deal with an administrative tribunal; it deals with a court of unlimited jurisdiction. There is no enabling statute, and therefore no legislated jurisdiction to judicially review the exercise of its powers.

[32] The authorities are clear that this court does not have jurisdiction to judicially review a decision of another judge of the High Court. The decision reliefs require this court to sit in a supervisory capacity over the 1st respondent. Despite counsel's submission that Mr. Flowers is not asking this court to review the 1st respondent's decision but her conduct, it is plain from the phrasing of the decision reliefs that what Mr. Flowers is seeking is for this court to review the 1st respondent's legal analysis and the outcome

[15] Racal at 646.

she reached in a matter under her consideration; in other words, her decision. This is a matter for the Court of Appeal, as provided for in sections 31 and sub-part 8 of the Senior Courts Act, 2022. As for Mr. Flowers' submissions that pursuing an appeal to the Court of Appeal is costly and would not result in as fair an outcome as a judicial review of the 1st respondent's decision in the High Court, they have no bearing on whether this court has jurisdiction to deal with this matter.

[33] The court does not have jurisdiction to deal with the decision reliefs. As a result, reliefs 1 and 2 must be struck out.

[34] I find, however, that the court has jurisdiction over the appointment reliefs. Although it is the Governor General who appoints Justices of the High Court, the appointment reliefs do not seek to review the Governor General's functions or exercise of authority. The order of mandamus sought by Mr. Flowers seeks to compel the Judicial and Legal Services Commission to take certain actions in discharge of its duties to advise the Governor General in respect of the appointment of a Justice of the High Court under section 97(2) of the Belize Constitution. The Judicial and Legal Services Commission is not immune from judicial review.

[35] As for the declarations sought by Mr. Flowers in the subparts of relief 3, they do not pertain to the Governor General's functions and exercise of authority *per se*, but seek to declare the legality of a current state of affairs. It is possible that Mr. Flowers may not ultimately be entitled to those declarations, however at this stage the court is only concerned with its jurisdiction to issue the reliefs if granted. The respondents have not discharged their burden of showing that the court does not have the jurisdiction to make the declarations sought in the subparts of relief 3, or reliefs 4 or 5.

[36] Even if I am wrong and the declarations sought in the subparts of relief 3 pertain to the Governor General's functions and exercise of authority, it does not follow that the court is without jurisdiction to consider those reliefs. As I recently noted in **Bartholomew Jones v The Security Services Commission,**[16] "an ouster clause in

[16] Claim No. 318 of 2023 at para. 15.

a constitution is not an absolute ouster of the court's jurisdiction". Section 34(4) of the Belize Constitution was considered by James J. in **Ian Haylock v Prime Minister and anor**.[17] In **Haylock**, the applicant sought to challenge a decision of the Prime Minister to advise the Governor General to designate the office of Comptroller of Customs and Excise as an office to which section 107 of the Belize Constitution applies. The respondents raised the issue of the court's jurisdiction to enquire into the matter by virtue of section 34(4) of the Belize Constitution. James J. found that section 34(4) of the Belize Constitution does not constitute an absolute ouster of the court's jurisdiction. The court retains the jurisdiction to consider whether the Governor General acted lawfully in the exercise of her constitutional powers and functions:

> 18. Ouster clauses are not an absolute ouster of the Court's jurisdiction. Actions of the Governor General cannot be enquired into once his actions are lawful. A Governor General's actions, like any public body's action to which an ouster clause applies, cannot be protected from judicial scrutiny if they are unlawful. The Constitution must not only be read as a whole, it has to also be given effect to as a whole.
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> […]
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> 25. It is accepted that once the Governor General acts consistently with the Constitution, then his actions cannot be challenged. It is in this context the case of ***Re: Blake (1994) 47 WIR 174*** is to be viewed. However, as adopted from the judgment of Justice Boodoosingh in ***Devant Maharaj (supra)*** it could not be that the actions of the Governor General in all circumstance cannot be challenged in Court. To so hold would undermine the supremacy of the Constitution and provide for supremacy of the Governor General. It would put the Governor General above the law and the Constitution rather than being subject to it. Surely the Respondent cannot be asking the Court to uphold one section of the constitution to the exclusion of all others.
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> 26. In the present case the Governor General can only act on the advice of the Prime Minister after the Prime Minister consulted with the Public Services Commission. As stated in the Commonwealth the case of ***Ulufa'alu v Governor General [2001] 1 LRC 425*** where a Governor-General is obliged to act on advice and he could only act on that advice where it was legitimately given, since advice contrary to law or lacking legitimacy or which was unconstitutional could not be the type of advice contemplated under the Constitution for him to act upon. As stated by Mr Marshalleck, section 127(1) provides conditions precedent for the Governor

[17] Claim No. 43 of 2021 ("Haylock").

> General to act. Those conditions precedent are the advice of the Prime Minister after that Prime Minister has consulted with Public Services Commission. If the advice of the Prime Minister did not occur after consultation in accordance with the Constitution then that advice to the Governor General would not be legitimate and unconstitutional and therefore would mean the Governor General would have acted unlawfully and his action reviewable by this Court [emphasis added].[18]

[37] Section 34(4) of the Belize Constitution therefore does not bar this court from considering reliefs 3, 4, and 5, and to assess the lawfulness of the Governor General's decision to appoint the 1st respondent as a Justice of the High Court in light of the advice from the Judicial and Legal Services Commission.

[38] While I found that the court has the jurisdiction to consider Mr. Flowers' application for permission to apply for reliefs 3, 4, and 5, it does not follow that permission is granted. Mr. Flowers must still persuade the court that the requirements for permission to be granted under Part 56 of the CPR have been met. The court has yet to hear the parties' submissions on this issue, and will therefore make no determination in that regard at this stage.

**IT IS HEREBY DECLARED THAT**

(1) The court is without jurisdiction to consider reliefs 1 and 2 and their subparts and they are struck out;

(2) The court has the jurisdiction to consider the remaining reliefs if the applicant is granted permission to apply for judicial review;

(3) Each party shall bear their own costs.

**Geneviève Chabot**
High Court Judge

[18] Haylock at paras. 18, 25 and 26.