

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 296 of 2022**

**BETWEEN:**

**[1] ORMENCIA POU  
[2] IRENE BUDD**

Claimants

**and**

**[1] ATTORNEY GENERAL OF BELIZE**

Defendant

**Appearances:**

Orson J. Elrington for the Claimant

Agassi Finnegan and Israel Alpuche for the Defendant

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2023: June 20  
October 10  
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**JUDGMENT**

[1] **FARNESE, J.:** Ms. Ormencia Pou and Ms. Irene Budd stand charged with the offence of dangerous harm. They have filed a claim for constitutional relief on the basis that the delay in bringing this matter to trial breaches their constitutional right to a fair hearing in a reasonable time. The Attorney General (AG) argues that the claim ought to be dismissed because the claimants are partially responsible for the delay and have not proven that they are unable to receive a fair trial.

[2] For the reasons outline below, I find that Ms. Pou and Ms. Budd's rights to a hearing within a reasonable time as guaranteed by subsection 6(2) of the Belize Constitution<sup>1</sup> have been breached. At the time this claim was filed, over 11 years had elapsed since their arrest. While I find that 13 months of that delay is attributable to the claimants, 4 years of delay are the result of judicial vacancies. Judicial vacancies are not exceptional circumstances that would justify the inordinate delay. Ms. Pou and Ms. Budd are awarded a declaration that their rights have been breached. They have failed to prove, however, that a permanent stay of proceedings is justified in the circumstances.

### Issues

- [3] The following issues arise in this claim:
- a) Has there been inordinate delay in bringing this matter to trial?
  - b) If yes, is the delay reasonable and justified?
  - c) What remedy is appropriate if the court finds that delay is unreasonable and unjustified?

### Analysis

[4] Subsection 6(2) of the Constitution guarantees the right to be tried within a reasonable time:

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

[5] The court undertakes a balancing exercise on a case-by-case basis to decide whether the delay is unreasonable.<sup>2</sup> Ms. Pou and Ms. Budd have the burden to show undue delay. The court must consider the time from arrest to the conclusion of any potential appeal process when deciding if delay has been of sufficient duration to invoke the rebuttable presumption of a breach of subsection 6(2) of the Constitution.<sup>3</sup> If the claimants satisfy that burden, the onus shifts to the AG to justify the delay. The Court “must weigh the competing interests of the public and those of the accused and apply principles of proportionality” when assessing whether the delay resulted in a

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<sup>1</sup> Cap. 4, The Substantive Laws of Belize, Rev. Ed. 2020 [Constitution].

<sup>2</sup> Smith v AG (Belize) HC Claim No. 368 of 2022 at para 3.

<sup>3</sup> R v Henry, [2018] CCJ 21 at para. 37 [Henry].

violation of Ms. Pou and Ms. Budd's rights to a fair trial within a reasonable of time.<sup>4</sup> The Court considers the reasons for the delay, the complexity of the case, the conduct of the accused and the State (including steps taken to address the delay), and the stage of the proceedings.<sup>5</sup> If the AG is unable to rebut the presumption of undue delay, the court must then decide the appropriate redress for the violation of the claimants' constitutional rights.

a) *Has there been inordinate delay in bringing this matter to trial?*

[1] Yes. The passage of an inordinate amount of time raises a rebuttable presumption that the delay is undue.<sup>6</sup> Informed by similar findings at the Caribbean Court of Justice, two recent Belizean cases found a delay of 5 years for sentencing (after waiting 6 years for trial), and a delay of 10 years for trial were presumptively undue.<sup>7</sup> In this case, the constitutional claim was filed almost 11.5 years after the events that led to Ms. Pou and Ms. Budd's indictment are alleged to have occurred. I find that the rebuttable presumption of a breach of their constitutional rights to a fair hearing in a reasonable time arises in this case. The burden shifts to the AG to prove that the delay is reasonable and justified in the circumstances.

b) *If yes, is the delay reasonable and justified?*

[2] Ms. Pou and Ms. Budd's submission compares the total time this matter has taken to other cases in Belize and asks this court to conclude that they have been denied the right to a fair trial within a reasonable time. They highlight a number of cases where conviction, sentencing and appeal have been concluded within 8 years. They also contend that Rule 2.3(viii) of the Criminal Procedure Rules 2016 mandates that trial must be concluded within 2 years of the first hearing. Therefore, Ms. Pou and Ms. Budd argue that it is manifestly clear that their rights have been breached.

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<sup>4</sup> Gibson at para 60.

<sup>5</sup> Gibson at paras 58 and 61.

<sup>6</sup> Attorney General v Gibson [2010] CCJ 3 (AJ) at para 58 [Gibson].

<sup>7</sup> Smith, *ibid.*; Novelo v AG (Belize), Claim No. CV 426 of 2022 [Novelo].

- [3] The AG disagrees and asserts that the claimants are responsible for much of the delay in this case. The AG reminds the court that the Criminal Procedure Rules 2016 were enacted after the criminal matter commenced and consequently are not binding.<sup>8</sup> The AG also argues that Ms. Pou and Ms. Budd have not provided any evidence to show that they are unable to have a fair hearing as a consequence of the delay.
- [4] The parties agreed to proceed by written submissions after Ms. Pou and Ms. Budd submitted no evidence in support of their claim or in response to the AG's evidence. Therefore, I must infer that the timeline of events as presented in the witness statement of Ms. Sheiniza Smith, Senior Crown Counsel and Public Prosecutor with the Department of Public Prosecutions, is undisputed.
- [5] Ms. Pou and Ms. Budd were arrested with a co-accused, on 19<sup>th</sup> September 2011 and charged with attempted murder and dangerous harm. The event that led to the charges allegedly occurred 14 days prior. Ms. Pou and Ms. Budd were granted bail on 21<sup>st</sup> December 2022 and remain on bail to date. On 4<sup>th</sup> September 2013, they were initially indicted to stand trial for attempted murder, but that indictment was amended to dangerous harm on 22<sup>nd</sup> February 2014.
- [6] I can only infer that the criminal matter proceeded in the normal course from arrest to indictment as I have no evidence before me to suggest otherwise. The preliminary inquiry into the information and complaint against Ms. Pou and Ms. Budd was held on 24<sup>th</sup> July 2012 and they were committed to stand trial before the Supreme Court (as it was then called) on 27<sup>th</sup> December 2012.
- [7] The criminal matter was called up 3 times in the Supreme Court between their indictment in September 2013 and October 2014. Ms. Pou, Ms. Budd, and their attorney only appeared on the first occasion where they were told that their matter would be called up when the Supreme Court returned from its summer recess. When the court session resumed, the matter was called up and, in their absence, trial was set for November 2014. That trial was ultimately adjourned to accommodate matters that predated Ms. Pou and Ms. Budd's matter.

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<sup>8</sup> Criminal Procedure Rules 2016 at Preamble.

[8] Ms. Pou and Ms. Budd's prosecution languished until December 2017 when the matter was reassigned to a different judge following the retirement of the initial judge assigned to hear the criminal matter. The matter was then called up in January 2018 and adjourned roughly 20 times between 2018 and the filing of this claim in the civil court. During that time, the criminal matter was twice reassigned to new judges. The matter has recently been reassigned again because the judge who had carriage of the criminal matter when this claim was filed has also left the bench.

[9] In her witness statement, Ms. Smith explains the delay between November 2014 and December 2016 was a consequence of the judge preparing for retirement. The delay between December 2016 and January 2018 is attributable to a judicial vacancy. Ms. Smith states that the delay between January 2018 and March 2019 is largely a consequence of Ms. Pou and Ms. Budd's attorney falling ill and passing away. They also required time to find new legal representation and for that lawyer to prepare. Between March 2019 and March 2021, the criminal matter was adjourned to complete a psychiatric evaluation of their co-accused. In March 2021, Ms. Pou and Ms. Budd appeared without their attorney and were told their co-accused was found fit to stand trial.

[10] The delay between March 2021 and March 2022 was again explained by judicial vacancies and the backlog of cases those vacancies created. From March 2022 until the filing of this claim, Ms. Smith explains that the matter was scheduled for a sentencing indication hearing on 11<sup>th</sup> April 2022 and a trial by jury on 25<sup>th</sup> April 2022. During this time, the Crown sought another psychiatric evaluation of their co-accused and moved to sever his case. Ms. Pou and Ms. Budd's trial was further adjourned to May 2022. Ms. Pou and Ms. Budd filed this constitutional claim prior to the May 2022 trial date and the trial judge stayed the criminal matter pending the release of this decision.

[11] I find almost 13 months of delay can be attributed to Ms. Pou and Ms. Budd:

1. 7-27 October 2014 (non-appearance): 3 weeks
2. 23 January 2018 to 5 February 2019 (no legal representation): 12 months

I also find that over 4 years of delay is a result of further court adjournments and, therefore, attributable to the Crown:

1. 14 November 2014 to December 2016 (pending judicial retirement): 12.5 months
2. January 2016 to January 2018 (judicial vacancy): 24 months
3. March 2021 to March 2022 (judicial vacancy): 12 months

[12] The AG wants much more of the delay attributed to Ms. Pou and Ms. Budd's conduct between 2013 and 2018 and 2018 and 2020. During that time, the claimants failed to attend hearings or appeared without legal representation. The evidence, however, does not support the AG's position. While it is true that Ms. Pou and Ms. Budd failed to attend court in October 2014, the matter was still set for trial in November 2014. Ms. Smith clearly explains that the November 2014 trial was subsequently adjourned to accommodate the court's priorities:<sup>9</sup>

Between November 2014 and December 2016, Justice Gonzales [sic] Court was consumed with criminal trials which predated the Claimants' case owing to his impending date for retirement. As such the Claimants' Case was adjourned until the court had an available date to hear the matter.

The matter was not called up again until January 2018. I cannot infer that the claimants would not have been prepared for trial if the trial proceeded in November 2014 as scheduled. Because trial was set despite the adjournments, the adjournments prior to November 2014 cannot be said to have caused "a cascading effect" as recently found in **Novelo**.<sup>10</sup>

[13] After 2018, Ms. Pou and Ms. Budd continued to appear without legal counsel, and I have identified the 12 months where the AG has established that adjournments were granted as a result. At other times, however, the AG has not proven that had the claimants' attorney appeared, the matter would have proceeded. On several occasions, Ms. Smith explains the matter was adjourned to facilitate the psychiatric evaluations of Ms. Pou and Ms. Budd's co-accused.

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<sup>9</sup> Witness Statement of Sheiniza Smith at para 15.

<sup>10</sup> **Novelo** at para 49.

[14] Moreover, I am unprepared to set the precedent of counting Ms. Pou and Ms. Budd's request for a sentencing indication in contemplation of a plea or the filing of a constitutional claim against them. Much can be gained from an accused admitting guilt, including saving the victim and witnesses from having to testify and freeing up court resources. Principles of access to justice, which underscore the rule of law, require that those aggrieved not face barriers to enforcing their rights in court. Penalizing the claimants for exercising their rights to bring a constitutional challenge creates a disincentive that acts as a barrier to access to justice. In addition, I have not been presented evidence that the judge's decision to stay the proceedings in 2022 was not of her own initiative.

[15] When the delays caused by Ms. Pou and Ms. Budd and the Crown are excluded, the criminal matter would have progressed to trial within 6 years in the normal course. Six years is three times the timeframe now binding on this court, but between the range of 4 to 7 years (excluding appeals), which is the average time for the trial process to conclude in Belize.<sup>11</sup> In the absence of any evidence that a fair trial is no longer possible, a delay of 6 years would be reasonable in the circumstances. When 4 years of delay attributable to the Crown is added, however, the normal range of time for the trial process is exceeded by 3 years.

[16] Three years of delay are attributable to judicial vacancies. I do not find these are exceptional circumstances that ought to be considered in determining a claim for a breach of the right to a fair hearing within a reasonable time. I am acutely aware that vacancies in the High Court have created challenges for the timely disposition of matters. I am also aware, however, that judicial vacancies are a recurring problem in Belize. Ms. Pou and Ms. Budd have had three judges assigned to their matter leave the bench resulting in lengthy delays on at least two occasions. While I am sympathetic to the AG's position, the cause of the delay can no longer be considered exceptional.

[17] The jurisprudence is clear. Administrative inefficiencies and financial pressures do not excuse delay.<sup>12</sup> Retirements, expirations of contracts, and resignations are events that can be planned

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<sup>11</sup> Novelo at para 50.

<sup>12</sup> Gibson at para 61.

for, and processes established to minimize the duration of any vacancies. To hold otherwise would result in the reasonable time guarantee having “just symbolic meaning”.<sup>13</sup> The AG has failed to establish that the delay in bringing Ms. Pou and Ms. Budd to trial is justified.

[18] Before turning to the remedy, I wish to address the AG’s assertion that a breach of subsection 6(2) should not be found because Ms. Pou and Ms. Budd have not provided evidence that their right to a fair trial has been jeopardized by the unreasonable delay. While it is certainly open to, and likely advisable, for claimants to bring evidence to challenge the AG’s evidence that the breach of a constitutional right was justified, they are not obligated to do so. The effect of the AG’s position would be to shift the burden back to the claimants. A shift of the onus back to a claimant at this stage is inconsistent with how the court treats claims for the violation of other fundamental rights.<sup>14</sup> The burden rests with the AG because they are in the best position to provide the court with clear evidence that the violation is justified.

c) *What remedy is appropriate if the court finds that delay is unreasonable and unjustified?*

[19] Remedies for a violation of subsection 6(2) of the Constitution can include a declaration, damages, orders to expedite sentencing, staying proceedings, and quashing the conviction.<sup>15</sup> Ms. Pou and Ms. Budd have requested a declaration that their rights under subsection 6(2) of the Constitution to a trial within a reasonable time have been breached, that further proceedings in the criminal matter be permanently stayed, their costs, and any further relief the Court considers just. The AG has made no submission as to remedy other than to say that the claimants are not allowed to evade their prosecution given the seriousness of the charge against them.

[20] I find a declaration is warranted in this case. Ms. Pou and Ms. Budd’s rights under subsection 6(2) of the Constitution, to a hearing within a reasonable time, have been breached. The AG has not provided sufficient justification for the 10-year delay in bringing this matter to trial.

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<sup>13</sup> Gibson at para 61.

<sup>14</sup> See e.g. Belize Sugar Industries Limited et al. v AG (Belize) HC Claim No. 215 of 2022 at para 11.

<sup>15</sup> Henry at para 41.



- [21] There is no doubt that I have the discretion to grant a permanent stay of proceedings on a constitutional claim.<sup>16</sup> A permanent stay, however, is “a remedy of last resort.”<sup>17</sup> This discretion “must be exercised carefully, sparingly and only for compelling reasons”<sup>18</sup> such as in exceptional cases where the delay makes it impossible to conduct a fair trial or the accused has suffered prejudice.<sup>19</sup> The burden is on Ms. Pou and Ms. Budd to prove the impossibility of a fair trial or prejudice.
- [22] Ms. Pou and Ms. Budd have offered little evidence of the impossibility of a fair trial. They point to the time since their arrest and the fact that their co-accused has been found unfit to stand trial. The passage of time does not necessarily mean a fair trial is no longer possible.<sup>20</sup> The claimants have also not explained why the status of their co-accused prevents them from having a fair trial. If the co-accused’s inability to participate in the trial is prejudicial, that fact can be raised by the claimants and addressed by the trial judge.
- [23] I have no reason to conclude the trial of this matter cannot proceed forthwith. The High Court has a full complement of judges, and this matter has been reassigned. Given that the reason for the delay is largely the result of judicial vacancies, the problem has been remedied. I, therefore, decline to order a stay of proceedings and will make orders to bring this matter to trial. If those orders are not complied with, the matter will be stayed.
- [24] Although not specifically pleaded, I also do not find an award of damages is just in the circumstances. The CCJ has held that the court should not consider an award of damages for the violation of the right to a fair trial within a reasonable time if the claimant will stand trial.<sup>21</sup>
- [25] Finally, I find Ms. Pou and Ms. Budd are entitled to the costs of this claim.

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<sup>16</sup> R v Horseferry Road Magistrates Court, ex p Bennett, [1994] AC 42.

<sup>17</sup> Attorney General v. Henry and Noel SLUHCVP2020/0004 at para 140 [Henry and Noel].

<sup>18</sup> Henry and Noel at para 140.

<sup>19</sup> Gibson at para 63.

<sup>20</sup> Gibson at para 53.

<sup>21</sup> Gibson at para 69.

## **Disposition**

[26] The court hereby declares and orders that:

1. Ms. Ormencia Pou and Ms. Irene Budd's rights under subsection 6(2) of the Constitution to a fair trial within a reasonable time have been breached;
2. Ms. Pou and Ms. Budd's trial is to be concluded, and if convicted, sentence handed down within 12 months of the release of this decision, failing which further proceedings against the claimants in respect of Indictment No. C146 of 2013, will be permanently stayed; and
3. Prescribed costs are awarded to Ms. Pou and Ms. Budd.

**Patricia Farnese  
High Court Judge**