IN THE COURT OF APPEAL OF BELIZE, A.D. 2003

CIVIL APPEAL NO. 11 OF 2003

RICHARD A. HOARE	**Appellant**
v.	
REGISTRAR OF LANDS **ATTORNEY GENERAL**	**Respondent**

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BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President (Ag.)**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**

Mr. Fred Lumor, S.C. for appellant.
Mr. Jose Cardona for respondent.

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October 10, 2003 & March 12, 2004.

CAREY JA

1. We are concerned with the question of costs, an area of procedure with which we are seldom troubled. The situation arose in this way. The appellant's father lodged a caution in which he claimed an interest in land registered in the appellant's name, and he also filed a writ against his son, seeking recovery of and a declaration of his one-third beneficial interest in the property, an injunction and damages. For his part, the appellant

sought judicial review against the Registrar of Lands and the Attorney General. The action (624 of 2002) and a companion action, both between father and son came on for hearing at the same time as the judicial review proceeding before the judge. The actions were discontinued and costs awarded to the defendant (Richard Hoare). The caution was announced to be withdrawn which rendered the application for judicial review, altogether academic. Mr. Lumor, S.C. who appeared for the appellant, made an application for costs. It is unclear against whom this order for costs would have been made, seeing that costs had already been disposed of in relation to the writs. Howsoever that might be, the judge required that submissions be put before him for a ruling. In the event, he refused to make the order.

2. The matter comes before us by leave, seemingly granted out of time.

3. The basis of this appeal is that the judge erred in law in refusing to award costs. The error identified by Mr. Lumor SC, was that the judge failed to consider the issues raised for determination in the application for judicial review. Learned counsel did specify the particular issues which he submitted, properly arose, but I do not think it is necessary for purposes of this appeal to rehearse them.

4. It is important to emphasize the appellate role in its consideration of the exercise of judicial discretion. The matter before us, relates to such a matter. Order 66 R1 Supreme Court states:

> "…The costs of and incident to all proceedings in the Supreme Court … shall be in the discretion of the court…."

This court can only interfere with the exercise of that discretion if it is shown that the judge's decision was informed by a wrong principle, or took into

account irrelevant matters so that the ultimate decision is so aberrant that no reasonable judge could have reached it. See the observations of Lord Diplock in *Hadmor Productions Ltd v. Hamilton [1982] 1 ALL ER 1042.*

5. The learned judge at paragraph 10 of his judgment, succinctly and pithily gave the reason for the exercise of his discretion. He stated as follows:

> "…In the circumstances of an adequate and alternative remedy being available, I am of the view that an application to apply for judicial review was and is unwarranted…"

The judge was well aware that the remedy of judicial review is discretionary. The Registered Land Act, chapter 194 Laws of Belize (Revised Edition 2000) provides in section 131 a procedure for the removal of cautions, which is to a great extent administrative. It must have seemed to the judge that there was no need to call for a sledgehammer when a smaller tool was at hand.

6. It was also plain that in the light of the discontinuance of the actions and the withdrawal of the caution, the court would hardly have entertained an application for judicial review, the *raison d'ệtre* of which had entirely vanished. This was a result that Mr. Lumor readily accepted. Indeed, I would have thought it altogether extraordinary that in the circumstances where an applicant had discontinued an action, he could blithely ask the respondents to pay his costs. They had not lost, the applicant had not succeeded. It would seem that the discontinuance was the equivalent of having judgment in his favour. The conclusion is inescapable that it must be unfair to the respondents in this application.

7. Mr. Lumor, S.C. endeavoured to support his application for costs on the basis that essentially he had solid grounds for seeking the remedy of judicial review, and accordingly, he was entitled to have costs. Mr. Lumor did not provide any authority to support his submission. Order 62 Rule 5/2 which deals with costs upon discontinuance in an application for judicial review, was drawn to his attention. It provides as follows:

> "…Where an application for judicial review is discontinued because the respondents have rendered the proceedings academic, costs should lie where they fall, unless the respondents have acted to pre-empt the applications likely success…"

Of course, it was not the respondents who rendered the proceedings academic: it was the withdrawal of the caution by the plaintiff in the action against the appellant. This rule cannot assist the appellant. It does show that even where the respondents have rendered the proceedings academic costs lie where they fall; in short, each side bears its own costs.

8. Mr. Cardona, in his helpful skeleton arguments called our attention to *Scherer and Anor v. Counting Instruments Ltd. And Anor. [1986] 2 ALL ER 528.* There it was held that:

> "…The general rule in relation to costs was that costs normally followed the event. Accordingly, the party who, as it turned out, had unjustifiably brought the other party before the court or had given the other party cause to have recourse to the court to obtain his rights was required to recompense the other party's costs. However, that was subject to the judge's unlimited discretion under [Order 66 R1 Supreme Court Rules in

> Belize] to make what order as to costs be considered the justice of the case required, and consequently a successful party's reasonable expectation of obtaining an order for costs depended on the exercise of the Court's discretion. The judge was required to exercise his discretion judicially, i.e. in accordance with established principles and in relation to the facts of the case and on relevant grounds connected with the case, which included any matter relating to the litigation, the parties' conduct in it and the circumstances leading to the litigation, but nothing else. If there were no grounds for departing from the normal rule or the judge acted on extraneous grounds he had in effect not exercised his discretion at all and a dissatisfied party was entitled to appeal to the Court of Appeal …"

Mr. Lumor, S.C. did not suggest that the judge departed from the normal rule. This was not, as I have suggested, a successful litigant with a legitimate expectation of obtaining an order for costs. On the application for costs, the judge was required to exercise his discretion judicially. He gave a reason which related to the facts of the case and on a relevant ground connected with the case. This ruling could not be described as so aberrant that no reasonable judge could have made it. It could not and was not urged that the appellant was being deprived of his costs because he most certainly was not entitled to costs on the footing that costs followed the event. In my judgment, there was no basis shown on which costs could properly be granted in favour of the appellant. Indeed, on the face of it, it was the respondents who would normally have been entitled to have an order for costs in their favour.

9. I conclude therefore that the judge correctly exercised his discretion in refusing an order for costs in favour of the appellant upon his discontinuance of his application for judicial review.

10. It was for these reasons that I concurred with my brothers Mottley P (Ag.) and Sosa JA that the appeal should be dismissed and the order of the judge affirmed. It was agreed that there would be no order as to costs.

MOTTLEY P (Ag.)

11. I have read the draft judgment of Carey JA and I agree with it.

SOSA JA

12. On 10 October 2003 I agreed that the appeal should be dismissed and that there should be no order as to costs. I have read, in draft, the reasons for judgment to be delivered by Carey JA and I concur in those reasons.