IN THE SUPREME COURT OF BELIZE, A.D. 2004

Action No. 283

	(MIGUEL ANGEL ESTALA	PLAINTIFFS
	(MANUEL CONTRERAS	
	(LEOPOLD MENDEZ	
	(MARIA MENDEZ	
	(KENDAL MENDEZ	
	(	
	(	
BETWEEN	(AND	
	(	
	(	
	(BENQUE VIEJO TOWN BOARD	1st DEFENDANT
	(SAID BADI GUERRA MENA	2nd DEFENDANT

Mr. L. Bradley Jr. for the plaintiffs/applicants
Mr. Dean Barrow SC, for the defendants/respondents

AWICH J

14.6.2004. RULING

1. On 20.5.2004, Miquel Angel Estala and four other plaintiffs had a writ of summons issued against Benque Viejo Town Council and Said Badi Guerra Mena, the Mayor of the first named defendant council. The plaintiffs claimed declarations to the effect that they have right to title to land, Lot No. 1137, in Benque Viejo Town, and that the defendants trespassed on the land and that entitled the plaintiffs to damages and perpetual injunction order in regard to the land and adjoining road. Together with the writ the plaintiffs filed summons application for either interim or interlocutory injunction

order, it was not stated. I directed service of the application to be made at least 2 clear days before hearing on 10.6.2004. There is no affidavit of service, but the writ and the application must have been served, the defendants/respondents attended by counsel at the hearing.

2. Mr. Dean Barrow SC, learned counsel for the respondents, raised a preliminary objection to the proceeding for which objection he had filed an affidavit of Mr. Mena only shortly before hearing. His objection was that the applicants had not given notice to Mr. Mena or the Council, "within section 3 of the Public Authorities Protection Act, of intention to sue, or issue process against" the respondents. From the bar table Mr. Barrow added another objection that the second respondent was improperly joined, he was the mayor of the first defendant council and would have acted as such in the subject matter of the case. Mr. Barrow's objection which could have the effect of setting aside the entire proceeding could also have been attacked for lack of notice of it. Mr. Leo Bradley Jr. learned counsel for the plaintiffs, took a magnanimous view and did not demand notice.

3. The second objection is strictly correct, but of little consequence since under ***SS:52 and S:53 of the Town Council Act, Cap. 87 Laws of Belize,*** town councils engage in proceedings by their mayor, administrator or any other officer. It is, however, correct that the Council itself should be cited as a party if it is alleged that Mr. Mena acted in his capacity as mayor. His action would be the Council's action. Any decision against or in favour of him would be a decision against or in favour of the Council. Under SS: 1, 52 and 53 town councils are coporate persons.

4. An example is in the case of ***Mayor of Corozal Town Board v Castillo 1 BZLR 421,*** a case not to be confused with the case cited by Mr. Barrow in support of his first objection - (two of the parties seemed to be the same in both cases). The Court of Appeal allowed an appeal against the order made by the trial judge refusing amendment to delete the word "Mayor" which had the effect of substituting Corozal Town Board for the Mayor of Corozal Town Board as the proper plaintiff.

5. Mr. Barrow's submission that the respondents were required to give notice under S:3 of the Public Authorities Protection Act is correct on the authority of the Court of Appeal judgment in ***Castillo v Corozal Town Board and Acosta 2 BZLR 365,*** the case he cited. In the case, The Court of Appeal held that notice under S:3 of the then Ordinance had to be given prior to issuing a writ of summons against a public authority, the notice was a condition precedent to issuing the writ, and that the notice had to be proved at the trial. As a trial judge, I am bound by the decision.

6. Section 3 of the Act states:

> "3(1) No writ shall be sued our against, nor a copy of any process be served upon any public authority for anything done in the exercise of his office, until one month after notice in writing has been delivered to him, or left at his usual place of abode by the party who intends to sue out such writ or process, or by his attorney or agent, in which notice shall be clearly and explicitly contained the cause of the action, the name and place

of abode of the person who is to bring the action, and the name and place of abode of the attorney or agent."

7. In S:1 a public authority is defined as: " includes every person filling any public position in Belize, as well as police officers, whether temporary or permanently employed, and whether there is or is not attached thereto any salary or renumeration."

8. I had a query as to why S;3 of the Public Authorities Protection Act should apply to proceedings in which town councils or boards are parties when there is a Town Councils Act, Cap 87, and Part 10 specifically provides for the prosecution of criminal and other legal proceedings and does not mention the giving of notice. The use of personal prononuce in S; 3 of the Public Authorities Protection Act and the definition of a public authority also raise queries. These queries will remain unexamined because I am bound by the decision of the Court of Appeal.

9. In this case there was some sort of notice, though not addressed and was dated shorter than one month to the date of issuing proceedings. That was not sufficient notice. It follows that the writ dated, 20 May 2004, was improperly issued, the writ and the whole proceeding is irregular. They are set aside. It is of course open to the applicants/plaintiffs to give proper and adequate notice and issue a writ of summons for the same claim.

10. The application for interlocutory injunction order must fall with the writ. It was not presented to the Court as a matter of extreme urgency which could

be heard even on undertaking to file a writ of summons or even the supporting affidavit. The application is also set aside for irregularity.

11. At the hearing, I raised the question as to whether notice under S: 3 of the Public Authorities Protection Act is required in making an urgent application for an interim injunction order or an interlocutory injunction order. Mr. Barrow's answer was that the present application was not an urgent application for interim injunction order and that in any case notice would be required for an application for an interim or an interlocutory injunction order. I do not think so.

12. The Supreme Court has been accepting such urgent applications for interim and interlocutory injunction order without requiring prior notice under S:3 of the Public Authortities Protection Act. Mr. Barrow himself brought a constitutional motion application without the prior notice under S: 3, in ***Brian Brown v Attorney General, Court Action No. 202 of 2003,*** in which among other orders, Mr. Barrow asked for injunction order to stop demolition of the boundary wall on the plaintiffs' land. Mr. Barrow's reaction to my question was to urge the Court to distinguish Action 202 of 2003 on the explanations that: (1) action 202 of 2003 was against the Attorney General, and (2) the proceeding was a constitutional motion, not an action by a writ of summons. Given that the defination of public authority includes every person filling any public office and given that a constitutional notice of motion is a process issued by court, I do not see the distinction urged by Mr. Barrow. The quastion as to whether notice under S:3 of the Public Authorities Act is required before making applications by

intermediate process for interim or interlocutory order to preserve the subject matter of a suit requires more consideration. I make no conclusion on the quastion. I hope it will be addressed on a proper occasion when it is a direct issue.

13. Dated this Monday the 14th June, 2004,

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court