

IN THE SUPREME COURT OF BELIZE A.D. 2001

Action No. 309 of 2001

	(Jose Luis Reyes	PLAINTIFFS
	(Oscar Orlando Maradiaga	
	(Julio Carceres Hernandez	
	(Cornelio Rubio Guterrez	
	(Emelina Bautista Rivera	
	(Rigoberto Maldonado	
	(
BETWEEN (AND	
	(
	(John Zabaneh	DEFENDANTS
	(Mayan King Ltd.	

Mr. V. H. Courtenay SC, for the applicants/defendants
Ms. A. Moore for the respondents/plaintiffs

AWICH J.

14.6.2004

RULING

1. On 3.6. 2004, Mr. V. H. Courtenay SC, and learned counsel for both defendants presented a notice of motion application dated, 12.3.2004, which he said was “preliminary to the trial of the action...” In the application he asked for an order to the effect that the plaintiffs did not meet “preconditions” for membership in a trade union and therefore could “not qualify to enjoy and be entitled to rights, benefits and advantages conferred by the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act Cap 304, Laws of Belize.
2. The action had been before Denys Barrow Ag Judge, on 10.3.2004, for trial,

and the subject of this application was raised as “a preliminary point...” The learned Ag judge after hearing both counsel, ordered that the defendant file “notice of preliminary objection together with skeleton arguments in support”. The application was then listed before me for hearing.

3. The application is substantial. It is not just about irregularity which can be corrected by amendment and or an order for costs or by setting aside the proceeding. The application has the effect of disposing of the action altogether should it succeed. I associate myself with the direction of the learned Ag Judge that it was to be made in writing.
4. Not much pleading was done before the plaintiffs set down the action for hearing and obtained a hearing date. It is my view, however, that during the pleading the subject of this application could have been raised in a summons application to strike out the statement of claim on the ground that it disclosed no reasonable cause of action because of the reason put forward, namely, that the, “plaintiffs [did] not satisfy the precondition of membership in a trade union pursuant to S; 13(2) of the Trade Unions and Employers’ Organisations (Registration, Recognition and Status) Act”. An application to strike out a statement of claim is authorised by ***O. 28 r 4, of the Supreme Court Rules***. If the application was made successfully, the statement of claim would have been struck out and the case dismissed. If unsuccessful, the case would have proceeded to trial without a preliminary application on the day of trial.
5. The present notice of motion is in reality an application in *limine*, raising a

point of law the determination of which if in favour of the applicant will dispose of the whole case. Such an application is authorised under *O.28 r 2 of the Rules of the Supreme Court*.

6. To determine whether or not the plaintiffs have the status or standing to make the claim in the action, I have to examine the basis of their claim and their standing.

7. The plaintiffs' claim was stated in the indorsement on the writ of summons as:

“(a) The plaintiffs’s claim of discriminatory and illegal dismissal on the 7th and 13th of June 2001 from their employment at Mayan King, Ltd. against the defendants is pursuant to sections 4(1), 5(1), 5(2)(a), (b), and (c) of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act, 2000, and the plaintiffs seek remedies for the defendants contravention of those provisions of the said Act pursuant to section 11(1) et seq.

(b) The plaintiffs seek an order from the court prohibiting the defendants from evicting or removing the plaintiffs from their respective homes situate on the defendants’s property in the Stann Creek District of Belize since their eviction or removal would arise directly from the aforementioned discriminatory and illegal dismissals.”

8. The statement of claim together with further and better particulars which are

rather verbose, expanded on the indorsement. It is not convenient nor practical to quote all the eight pages. In very brief summary, the statement of claim averred among other things, that the plaintiffs were employed by the defendants on their banana plantation, the plaintiffs participated in “union organising efforts” handing out membership application forms for the Christian Workers Union, and attended meetings. Further it was averred that the defendants dismissed the plaintiffs because of those activities and demanded that they leave their homes on the plantation. The plaintiffs claimed that they were entitled to redress under S:11(1) of the Trade Unions and Employers’ Organisations (Registration, Recognition and Status)Act.

9. Those averred activities are enumerated in S:4 (1), described as “basic rights of employees”, and in SS: 5(1), 5(2)(a), (b) and (c) which are said to be provisions for the protection of employees from discrimination based on the exercise of the rights in S:4. Note that reference to S:4(1) necessarily brings in S:4(2) because S:4 (1) merely declares that an employee is entitled to the rights in S:4(2).
10. Section 11(1) under which the plaintiffs “[sought] remedies” does authorise an employee to apply to the Supreme Court for redress. The Court may grant the redress specified in subsections (3)and (4).
11. It is my view that the rights declared in S:4 and 5 are personal to an employee or even prospective employee; they are not rights of employees’ trade unions. The redress in S:11 are to the employee not to his trade union.

12. For convenience I quote here SS: 4(1), 4(2), 5(1), 5(2)(a), (b) , (c) and S:11(1) of the Act.

“

PART II

Freedom of Association

4-(1) Subject to section 13 of the Belize Constitution, every employee shall have and be entitled to enjoy the basic rights specified in subsection (2).

- (1) The basic rights referred to in subsection (1) are:
 - (a) taking part in the formation of a trade union.
 - (b) freely deciding whether to be a member of a trade union or a federation of trade unions;
 - (c) taking part in any lawful trade union activities;
 - (d) holding office in any trade union or a federation of trade unions;
 - (e) taking part in the election of any union representative, shop steward of safety representative or offering himself as a candidate at such election;
 - (f) acting in the capacity of a union representative, shop steward or safety representative if elected as such;
 - (g) exercising any other rights conferred on employees by this Act or any Regulations made hereunder, the Belize Constitution, or any other law governing labour and employment relations, and assisting any

other employee, union representative, shop steward, safety representative or trade union in the exercise of such rights.

5-(1) It shall be unlawful for an employer, or an employers' organisation or federation, or a person acting for and on behalf of an employer or an employers' organisation or federation, to engage in the activities specified in subsection (2) in respect of any employee or person seeking employment.

(2) The activities referred to in subsection (1) are:

- (a) requiring the employee or person seeking employment not to join a trade union or a federation of trade unions or to relinquish his membership therein as a condition precedent to the offer of employment, or as the case may be, the continuation of employment.
- (b) discriminating or engaging in any prejudicial action, including discipline, dismissal or as the case may be, refusal of employment because of the employee's exercise or anticipated exercise, or the person seeking employment's anticipated exercise, of any rights conferred or

recognised by this Act or any Regulations made hereunder, the Belize Constitution, any other law governing labour and employment relations, or under any collective bargaining agreement.

- (c) discriminating or engaging in any prejudicial action, including discipline, dismissal or, as the case may be, refusal of employment against the employee or person seeking employment by reason of trade union membership or anticipated membership, or participation or anticipated participation in lawful trade union activities”

13. It is to be noted that the provisions in the subsections of S:5 aim at protecting even anticipated right to join a trade union or anticipated participation in activities of a trade union. Now I quote S:11 the section for redress. It states:

“11 (1) Any person who considers that any right conferred upon him under this Part has been infringed may apply to the Supreme Court for redress.

(2) Where a complaint made under subsection (1) alleges that an employer or an employers’ organisation, association or

federation has contravened any of the provisions of subsection (2) of section 5, the employer, employers' organisation, association or federation shall have the burden of proving that the act complained of does not amount to a contravention of any of the provisions of subsection (2) of section 5 which is the basis of the complaint.

(3) Where the Supreme Court finds that an employee was dismissed in contravention of subsection (2) of section 5, it may make an order directing the reinstatement of the employee, unless the reinstatement of the employee seems to that Court not to be reasonably practicable, and may further make such other orders as it may deem just and equitable, taking into account the circumstances of the case.

(4) Without prejudice to the Court's powers under subsection (3), where the Supreme Court finds that a complaint made under subsection (1) has been proved to its satisfaction, it may make such orders in relation thereto as it may deem just and equitable, including without limitation orders for the reinstatement of the employee, the restoration of benefits and other advantages, and the payment of compensation".

14. Section 13(2) under which the defendants challenged the status of the plaintiffs is in Part III of the Act, the part which deals with registration,

recognition and status of trade unions and employers' organisations. The section does not concern the personal rights of an employee or an employer, to associate. I quote it here:

“

PART III

Registration and Status.

13- (1) It shall be the duty of the Registrar to keep a Register of all the trade unions and employers' organisations registered under this Act and such Regulations made hereunder.

(2) Only trade unions and employers' organisation registered under this Act shall enjoy and be entitled to the rights, benefits and advantages conferred on them and their members by this Act, and no trade union or employers' organisation which is not registered under this Act shall be legally recognised as such.”

15, It is my view that the rights that accrue under Part III by reason of registration and recognition, the enjoyment of which is restricted under S:13(2) are rights of trade unions and employers' organisations and their members as such trade unions, employers' organisations and members thereof. The restriction does not apply to rights declared in S: 4 and protected by S: 5 in part II, which rights are personal to an employee. To take the contrary view will render the rights and the protection in sections 4 and 5, meaningless. I do not think that the sections were included for no

purpose.

14. For the reasons given, I am unable to accept that the rights of employees, enumerated in SS:4 and 5 are available only to employees who have become members of registered and recognised trade unions and only through their trade unions.
15. The plaintiffs have sufficiently alleged that they are employees and that their dismissal was because of their participating in meetings with a view to forming or belonging to a trade union. That gives them the standing to claim redress under S:11(1). Of course they have to prove their case by evidence.
16. The application by notice of motion dated 12.3. 2004, is dismissed. Costs of the application is to be paid by the defendants to the plaintiffs in any event.
17. A new trial date during the new court term is to be assigned by the Registrar.
18. Dated this Monday the 14th day of June 2004.

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court