IN THE SUPREME COURT OF BELIZE, A.D. 2002

ACTION NO. 408

SYLVIA JIMENEZ
JULIAN KUTE **Plaintiffs**

BETWEEN **AND**

GEORGE CANCHE **Defendant**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Kadian Lewis for the plaintiffs.
Ms. Coleen Lewis for the defendant.

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RULING

1. This is the ruling of the Court on this matter for the record. This is a sad and grave abuse by both counsel of the process of this Court in the light of the provisions of the Civil Procedure Rules 2005, which came into effect on 4th April 2005. This instant action was commenced by a Writ issued on 7th August 2002, almost three years ago and the defendant entered appearance on 13th September 2002 and a summons for direction was taken out on 24th September 2002 and it was not until 1st November 2002 the Order on the summons was made by the Registrar and on 18th November 2002, the Plaintiff filed a statement of claim. A little while later on 22nd November 2002, the defence was filed and the matter was then set to be heard by this Court at 9:30 on 23rd March 2005 and the matter was then adjourned to 11th and 12th May 2005. At that time on 11th May 2005, the defendant's counsel, informed by letter dated 10th May 2005, that the defendant was not available because of the nature of his work. It must be pointed out here in

accordance with Rule 72.2 of the Civil Procedure Rules, matters taken under the old proceedings, proceed under the old rules unless a trial date had not been set. In the instant case a trial date was set and the matter could not proceed because of the defendant's attorney claim that the defendant himself was out of the jurisdiction and the matter was then re-listed to be heard on 8th June 2005 to 9th June 2005. By the express provisions of Rule 72.3 of the Civil Procedure Rules the case became subject to the provisions of the new rules and I will read what Rule 72.3 says:

> *"72.3.1. These rules do not apply to any proceedings in which a trial date has been fixed unless that date is adjourned."* (emphasis added)

2. Consequently, on a plain reading, the trial date having been set in this matter and adjourned at the request of the defendant, the case therefore became subject to the new rules. On the requested adjournment, it was ordered that witnesses' statements be filed on or before 30th May 2005 and costs of $3,000.00 was awarded against the defendant to the Plaintiff. Both Ms. Kadian Lewis and Ms. Coleen Lewis appeared respectively for the plaintiff and the defendant at the time.

3. On 8th June 2005, when the matter finally came up, the Court was under the impression that it was for case management and/or pretrial review of the plaintiff's claim for damages in negligence for a motor accident and personal injuries. Ms. Kadian Lewis then stated that it was trial because all the pretrial positions had been covered. The Court then indicated that only two issues were alive for decision; namely, one liability, and two, quantum. In was on this basis that the hearing was conducted by the witnesses' statements and exhibits that were filed and it was determined that on the documents as they stood, including the attested witnesses'

statements, the defendant could not resist the claim of the plaintiffs for liability for the accident and judgment on this issue would be granted. Subsequently, the Court considered, with the participation of both attorneys, the issue of damages.

First, special damages were considered as per the papers filed and the supporting affidavits and exhibits and the matter was adjourned to the following day to continue the assessment of damages generally. The following day, on the 9th, that is, of June 2005, Ms. Coleen Lewis raised what she called "preliminary objections"; namely, that further conduct of the case be stayed because in her view, her client had been denied his constitutional rights, in particular, section 6 of the Constitution which she says avails a person to challenge and confront his accusers. Although the matter was not then decided, she applied that she would now like to cross-examine the witness for the plaintiff and the Court ruled as follows:

> That the application was most inconvenient as yesterday's, that is, the 8th proceedings, were conducted on reliance on reliance on witnesses' statements in which both attorneys participated and neither of them indicated a desire to have witnesses provided for cross-examination. Accordingly, the matter was set for Friday and Saturday to continue if necessary.

4. At the commencement of the hearing today, Ms. Coleen Lewis again had what she called an application to the court for me to recuse myself, principally she said, for breach of natural justice. Quite what natural justice was she did not indicate but said bias; and quite the contents of the bias she did not indicate, save to say that the Court had made up its mind on the issue of liability and therefore was biased to conduct any further hearing of this matter.

5. I was at pains to point out that it is part of the Court's position or duty to make a determination one way or the other and this could not satisfy the issue of bias she raised and her reliance on the case of **Re Godden [1971] 3 All E.R. 20**, was wholly, in my respectful view, inapplicable here, as that concerned a police surgeon who had done a preliminary assessment on an inspector who was about to be retired and the issue was finally sent to that doctor for determination and the Court did say that in that case, he having made the determination on the mental state of the applicant, could not well conduct a further hearing on the matter. This, however, is a Court of law, unlike the doctor in that case.

6. The Court's duty is to make rulings, decisions, and determinations and give judgments on issues. I fail to see how a party could in that process claim bias, particularly when the issue was determined **in court or in chambers**, which is the duty of the Court to decide. I am of the overall view, therefore, that this case, its conduct and handling particularly by the attorneys has been attended by a misapprehension and confusion pertaining to the rules themselves, the new Civil Procedure Rules. It is early days yet and things are yet to settle down; but for the record, let me say that even if it was a pretrial review, Rule 38.3. on **pre-trial review** confers upon the court where appropriate, powers that are available under Parts 25 and 26 on **case management** and Part 26.3 provides in particular that in the Court's exercise of case management powers it may strike out a statement of case which includes both the claim and the defence if the statement of case or the part to be struck out, discloses no reasonable ground for bringing or **defending** a claim. It was guided by these powers vested in the court, that after a reading of the statements in this case, the witnesses'; statements which have been filed, the Court came to the view that there was

no basis for the defendant to resist the claim of the plaintiffs on liability.

7. Further, I should add that both attorneys operated under the misapprehension of the court's powers pursuant to the Civil Procedure Rules, to grant or give summary judgment without the bother or need for a full blown trial.

The governing rule is stated in **Part 15.2** thus:

> *"15.2 The court may give summary judgment on the claim or on a particular issue if it considers that:*
>
> *(a) the claimant has no real prospect of succeeding on the claim or issue; or*
>
> (b) *the defendant has no real prospect of successfully defending the claim or issue* (emphasis added)

Thus **the new test** is whether the defendant "has no real prospect of successfully defending the claim or issue" or the claimant "has no real prospect of succeeding on the claim or issue".

8. The test is called **new** because it is markedly different from the old Order 15 of the former Rules of the Supreme Court. Under the old Rule a plaintiff desirous of obtaining judgment on a specially endorsed writ may apply for leave by summons to sign judgment with a supporting affidavit stating that in his belief there is no defence to the action. But even then the defendant was entitled, by affidavit or **viva voce** evidence or otherwise, to apply to the court that he has a good defence to the action on the merits.

9. This Order was very infrequently used, as summary judgment was not a regular feature of the litigation landscape in Belize.

Consequently virtually **every** action was allowed to plod its way wearily through the litigation threadmill. This undoubtedly contributed to the legendary backlog of cases awaiting trial. Both attorneys expected that the case would wearily ward its way to a trial Royale as it were, hence their misapprehension. For though the action proper itself was taken out in the days of the Old Rules of the Supreme Court and a trial date was fixed but by the operation of Part 72 of the Civil Procedure Rules, the action later came under the new Civil Procedure Rules regime as a result of the adjournment of the hearing at the instance of the defendant (for which costs were awarded to the plaintiff).

10. In particular, **Part 72.2** of the Civil Procedure Rules states:

> *"Any application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard".*

11. On granting the adjournment it was ordered that the parties should among other things, exchange and file witnesses' statements. This was duly done.

12. On the resumption of the hearing, at pre-trial review, the Court indicated that from a perusal of all the documents in the case, including the witnesses' statements, there were two issues to be addressed namely a) liability if any, and b) quantum.

13. If attorneys had read these rules and their interrelationships with each other, probably they would have taken a different view of the case and be of more assistance to the Court. But, in the interest of justice, and to indulge both attorneys, given the newness of the rules, I will stand this case out of the list of this court and it will be set before another judge.

14. I must say that I hope that the Court when it finally comes to determine this case will take the necessary action as provided for in terms of awarding of costs or disallowing costs.

A. O. CONTEH
Chief Justice

DATED: June 2005.