

IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO. 22 of 2006

**THE BELIZE CHAMBER OF COMMERCE
AND INDUSTRY**

Applicant

BETWEEN AND

**THE PRIME MINISTER &
MINISTER OF FINANCE
THE CABINET OF BELIZE
THE COMMISSIONERS OF STAMPS
THE ATTORNEY GENERAL OF BELIZE**

**1st Defendant
2nd Defendant
3rd Defendant
4th Defendant**

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Lois Young S.C. for the applicant.

Mr. Elson Kaseke, Solicitor General, for the defendants.

REASONS FOR DECISION

I have decided to put in writing the reasons for my upholding at first the objection by the Solicitor General to the grant of permission to the applicant to apply for judicial reviews and my subsequent reversal of that decision.

2. I do so first, in order to dispel any mistaken or wrong impression this might have created. But secondly and more importantly, to underline the fact that by the New Civil Procedure Rules 2005, judicial review in Belize has now been expressly provided for and a code for the application and conduct of such a review is now explicitly provided for and contained in Part 56 of the Rules.

3. Until 4th April 2005 when the Civil Procedure Rules 2005 of the Supreme Court came into force, for the purposes of judicial review proceedings in Belize, resort was made by exegesis to the old Order 53 of the English Supreme Court Rules. This was made possible by the application of Order 78 of the old Supreme Court Rules. Since then however, the New Supreme Court (Civil Procedure) Rules, 2005, contain a code of procedure in Part 56 for among other things, **judicial review**.

4. By an application dated 17th January 2006, the applicant, The Belize Chamber of Commerce and Industry, sought permission from this Court to proceed for judicial review of:
 - i) An Order granting the Applicant permission to apply for Judicial Review by way of an Order of Certiorari to quash the decisions of the Prime Minister & Minister of Finance and the Cabinet of Belize, not to recover revenues received by the Belize Intellectual Property Office Limited (BELIPO) during the period 2000 to the 18th October, 2005;
 - ii) An Order of Mandamus to direct the Prime Minister & Minister of Finance and/or the Cabinet to recover such revenue;
 - iii) Order of Mandamus to direct the Commissioners of Stamps to recover the stamp duties collected by BELIPO during the period 2000 to the 18th October, 2005.
 - iv) An Order for costs;
 - v) Other consequential relief as may be necessary.

5. The application was in the standard format of Form 6 of Part 11 of Civil Procedure Rules of the Supreme Court (in force since 4th April 2005), pursuant to Part 11.6(1) which provides that as far as is relevant that:

“11.6(1) The general rule is that an application must be in writing, in Form 6.”

And Part 11 provides for the general rules about applications for court orders, and its scope is stated in Rule 11.1 as dealing with applications for court orders made before, during or after the cause of proceeding.

6. There is no separate or special form provided for in the rules relating to permission for judicial review. But the permission of the court is a prerequisite to seek judicial review. In the circumstances therefore I think that the use of Form 6 in the instant case by the applicant was quite in order as it was seeking an order from the court, namely, permission to bring judicial review proceedings.

7. The applicant through Mr. Kevin Herrera its General Manager filed an affidavit dated 17th January 2006 in support of the application for permission for judicial review. In this affidavit the applicant in addition to stating the reasons it was seeking judicial review, gave as well what it believed to be the facts of the case giving rise to its move to seek judicial review.

8. At the hearing for permission, the learned Solicitor General launched what he called preliminary objection. The purport and sole reason for the preliminary objection was that the application for permission did not contain a statement of truth as is required by Part 3.12 of the Civil Procedure Rules.

This rule states:

“Every statement of case must be verified by a certificate of truth.”

9. The objection taken by the Solicitor General was somewhat peremptory and made orally, and without notice to the applicant or to the Court.
10. Ms. Lois Young S.C. for the applicant tried to parry the trust of the objection to the effect that application for permission for judicial review was not a statement of case as that expression is defined in the rules.
11. The upshot was that I was taken in by the vehemence of the Solicitor General's objection and without a full consideration of the Civil Procedure Rules relating to judicial review proceedings, I conceded the objection raised by the Solicitor General and dismissed the application.
12. A short while later in considering a similar application for permission for judicial review in Claim No. 36 of 2006 which was unopposed, I had the opportunity to look at Part 56 a little more closely. I then asked Mr. Dean Barrow S.C. who was appearing for the applicant in that matter to have it stood over while I recall both the learned Solicitor General and Ms. Young S.C. in the earlier application.
13. Both the Solicitor General and Ms. Young S.C. were then summoned while Mr. Barrow S.C. waited outside my chambers. The Solicitor General who reportedly came in answer to my summons however only stopped at the verandah and left without coming into my chambers to ascertain the reason for the call. In the event, only Ms. Young S.C. came into chambers.

14. I then informed her that having adverted to Part 56 of the Rules on judicial review and in particular 56.3(4), I was satisfied that the affidavit of Mr. Hererra was in keeping with the spirit and provision of sub-rule (4). Consequently, I rescinded the order dismissing the application for permission and granted permission.
15. I however refused one of the grounds of the application for permission for judicial review. This related to order a mandamus for the Prime Minister and Cabinet to collect revenue which the applicant claimed was wrongly forgiven by the decision of the Prime Minister and the Cabinet.
16. My reason for disallowing this is not that mandamus is not available against the Prime Minister or Cabinet. Certainly as public officers both are in principle and law amenable to orders of mandamus. But in my view neither the Prime Minister nor the Cabinet is a revenue collecting agency or authority for an order of mandamus to lie against them.
17. I have decided to put in writing the reasons for the grant of permission because in my view, the behaviour of the learned Solicitor General left much to be desired as an officer of the Court. It is the duty of attorneys not only to cooperate with each other but also to afford the Court itself every assistance in its adjudication of cases they may be involved in. This duty to assist the Court includes, no doubt, to bring to its attention any authority, be it case-law, statute or Rules of Court that might have a bearing on or relevant to the issue of the moment before the Court.

18. In the instant case, the learned Solicitor General verbally without notice before hand to either the other side or the Court, took a point that might be applicable to a party's statement of case (which includes claim, defence etc.) as provided for in Part 3.12.
19. He however singularly or as the less charitable might say, deliberately failed to refer to Part 56 of the Rules, in particular, to Part 56.3(4), which expressly deal with applications for judicial review.
20. To compound what could be seen as an egregious failure, he failed as well in his duty as an officer of the Court to come back when called. This failure may perhaps be attributable to the fact that he full well knew that his objection was unsustainable in the face of the provisions of the rules in Part 56 governing applications for judicial review.
21. The view that permission having been refused the Court was therefore functus cannot be pressed home or relied upon in this case, for the simple reason that the refusal of permission had not ever been perfected or drawn up. In the circumstances, if the Court were to discover that a ruling or order it made was not in accord with explicit provisions governing the issue, I think, it is right in the interest of justice and indeed the duty of the Court to revisit that order or ruling before it is drawn up or perfected.
22. This is all the more so when that ruling or Order was procured by the unhelpful submissions of counsel for one side or the other in total disregard of the correct or applicable provisions.

23. Mr. Elson Kaseke as Solicitor General failed to assist the Court as he should have done. I will stop short of saying that he deliberately misled the Court in the circumstances of the application for permission for judicial review.
24. He certainly showed discourtesy to the Court by deliberately failing to appear when he was called back, instead he came near the chambers and chose to go away, thereby withholding any assistance he could have rendered the Court. He certainly denied himself the opportunity to learn why the earlier decision acceding to his oral objection to permission could no longer stand.
25. His behaviour depicted a certain petulance that is unbecoming and unbecoming of an officer of the Court and it certainly was not that expected of the Solicitor General, a senior law officer of the Crown.
26. In conclusion, I invited back both Ms. Young S.C. and the Solicitor General before the order dismissing the application for permission could even be drawn up or perfected, immediately on my discovery that the application satisfied the provisions as stated in **Part 56.3(4)** for permission for judicial review. I accordingly set aside my order striking out the application and granted permission for the applicant to apply for judicial review by way of an order for **Certiorari** to quash the decision of the Prime Minister and Minister of Finance and the Cabinet of Belize not to recover revenues received by Belize Intellectual Property Office Limited (BELIPO) during the period 2000 to 18th October 2005; and to apply for an order of **mandamus** directed at the Commissioner of Stamps to recover the stamp duties collected by BELIPO during the period 2000 to 18th October 2005.

I am convinced on the materials before me in this case that the applicant satisfied the threshold that it has an arguable case for a substantive judicial review hearing. But I am for the reasons stated in paragraphs 15 and 16 above not convinced that the applicant has such a case in respect of the mandamus it sought directed to the Prime Minister and Minister of Finance and the Cabinet to recover revenue. Having granted permission to the applicant I accordingly set 21st March 2006 as the date for hearing of the judicial review proceedings.

A. O. CONTEH
Chief Justice

DATED: 27th January 2006.