

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

CLAIM NO: 23 of 2003

	(VILMA VASQUEZ)	PLAINTIFFS
	(SHENI VASQUEZ	
	(BOBBY VASQUEZ	
	(STANLEY VASQUEZ	
	(Beneficiaries and intended Administrators	
	(of the estate of Moises Vasquez, deceased	
	(
BETWEEN(AND	
	(
	(BARTOLO VASQUEZ	DEFENDANTS
	(ROBERT VASQUEZ	
	(ANTONIO VASQUEZ (added as Defendant	
	(by Order of Justice Awich dated 3 rd October	
	(2004	

Mr. H. Elrington, for the applicants/claimants
Mr. M. Peyrefitte, for the respondents/defendants

AWICH J.

9.5.2006

JUDGMENT

Ex tempore

1. On Friday, 5th May 2006 after court hours, Mr. H. Elrington, learned counsel for the claimants/applicants made an *ex parte* urgent application for, among others, an order to set aside the order made earlier on 3.5.2006, by Arana J., and an order for interim injunction restraining the defendants respondents from removing cattle, the subject of the case, from a farm. The claimants and the defendants have opposing claim to the cattle, part of a deceased estate. I granted only the order to restrain the removal of the cattle, but the order was to last only until today, Tuesday the 9th of May 2006, when the

application would be presented to Arana J. She is not available today, having gone on circuit, so the application has been listed in my Court.

2. The order by Arana J; complained about, dismissed the claimants' claim for want of prosecution based on failure by the claimants to file a statement of claim by 14.11.2005, ordered at case management conference on 20.10.2005. By 14.12.2005, when the application for dismissal was filed, the claimants had not filed the statement of claim.
3. The claimants have submitted that the order by Arana J. was erroneous in law because the application for order to dismiss was an abuse of court process, the defendants themselves had failed to comply with an earlier order to file affidavits regarding the number of cattle, and they knew there was an interlocutory injunction order restraining both sides from dealing with or removing of cattle. In answer to Court, Mr. Elrington said that the claimants did not apply for an order compelling the defendants to comply with the order of 31.3.2003, for family considerations, and that they did not raise the default at case management conference because they did not expect that the defendants would later make an application for dismissal.
4. It might have been a better option to make first an "unless order" compelling the claimants to file the statement of claim and to order appropriate costs. The learned judge opted otherwise. There had certainly been inordinate delay by the applicants. The reason, they gave was not good enough.
5. The above aside, I decide this application on the reason that a judge of the Supreme Court had made a final decision after hearing both sides. The application was not heard in the absence of the claimants, so that they would be entitled to apply for an order to have the order made set aside – *see R11.18 of the Supreme Court (Civil Procedure) Rules 2005*. The decision and order made by Arana J. on 3.5.2006 cannot be revisited by another judge of the Supreme Court. I dismiss the application dated 5.5.2006, by the applicant.

6. The applicants will pay the cost of the application.

7. Read this Tuesday the 9th day of May 2006

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court