

IN THE SUPREME COURT OF BELIZE, A.D., 2008

CLAIM NO. 479 OF 2008

BETWEEN: (CARMELITA ALDANA CLAIMANT
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(AND
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(JOHN SANSONE DEFENDANT

Mr. Hubert Elrington S.C., for the Claimant
Ms. Antoinette Moore S.C., for the Defendant

AWICH CJ Ag

2.2.2011

DECISION

Ex tempore

1. This is a ruling in the claim filed on 30th of October, 2008. It was a claim for possession of land based on a lease that the Claimant obtained from the Minister of Lands and Natural Resources. Subsequent to that, the Defendant was also given a lease of the same

5 land by the Minister.

2. The claim has not been attended to properly. It was filed on the 30th of October, 2008. On 26 November 2008, case management orders were made during a case management conference before the Registrar. On the 22nd of January, 2009, pretrial review was conducted by myself, and both parties attended. It was clear that both sides did not attend to the orders made in the case management conference. Time was extended for both parties to comply with the orders made, in particular, regarding disclosure of documents and exchange of witness statements. At the pretrial review, I also assigned the date of trial as 6th and 7th May, 2009.

3. Then on the 6th of May, 2009, the case had to be adjourned because this court could not reach it on the list of cases for that day. There had been a trial the previous two days and the trial continued to the 6th. I adjourned the case for trial on the 25th of May, 2010. On that day, parties did not attend court and trial was again adjourned to the 27th of October, 2010. On the 27th of October, 2010, again, both parties did not attend. The court made an order that the case was to be

5 adjourned for the last time; and the trial date assigned was today and
tomorrow, the 2nd and 3rd of February, 2011. Consequences for
failure to attend and proceed in the trial were also stated in the
direction order. If the Claimant did not attend today's trial, the case
would be dismissed. If the Claimant attended the trial today but the
10 Defendant did not attend, then the trial would proceed without the
Defendant.

4. Today both parties have attended by Counsel, but the Claimant is not
present in court. The Defendant is present in court. Learned counsel,
15 Mr. Hubert Elrington S.C., for the Claimant, informed the court that
he intended to call only one witness, the Claimant herself, and not the
rest of the witnesses who had made witness statements that were filed
and exchanged. Learned counsel, Ms. Antoinette Moore S.C., for the
Defendant, also said she would call only one witness, the Defendant
20 himself, and not the rest of the witnesses. However, Mr. Elrington
had the difficulty that his witness has not attended today. He applied
for an adjournment. He informed the court that notice for the trial
today was received and that he did not know the reason for non-
attendance by the Claimant.

5 5. I appreciate the difficulty of learned counsel, but clear orders with
consequences were made on 27th October, 2010. I reminded Mr.
Elrington of the several adjournments and the consequences of the
order made on the 27th of October, 2010 that, the claim would be
dismissed. Mr. Elrington then applied from the Bar table for
10 judgment on admission based on paragraph 15 of the defence in
which, he said, the Defendant admitted that the Minister had granted
lease to the Claimant prior to granting another lease to the Defendant.

6. Court suggested to Mr. Elrington that an application should have been
15 made in writing under *Rule 14 of the Supreme Court (Civil
Procedure) Rules 2005*, for judgment on admission. The general rule
is that applications are made in writing in the format of *Form VI*.
That is stated in *Rule 11.6 of the Rules*. So far as practicable,
applications relating to pending proceedings must be made so as to be
20 heard at case management conference or at pretrial review. That is in
Rule 11.3(1) of the Rules. Mr. Elrington then asked that the trial may
proceed by the court simply accepting the witness statement made by
the Claimant as evidence without the need for calling the Claimant as
witness in court. He submitted that it would be proper because there

5 had been no notice from the Defendant to cross-examine the
Claimant.

7. Ms. Moore opposed the application for an adjournment on the ground
that the case has taken a long time it should be finalized. She then
10 informed the Court that the Defendant denied the facts of the claim,
contrary to what Mr. Elrington said. Ms. Moore suggested that Mr.
Elrington should have applied for summary judgment, given the state
of the pleadings, and if he held the views that the facts are not
disputed. She pointed to *Part XV of the Rules*.

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8. *The Supreme Court (Civil Procedure) Rules at 29.2* provides for oral
evidence. I quote *Rule 29.2(1)*:

20 “29.2(1) *The general rules is that any facts which need to
be proved by the evidence of witnesses is to be
proved-*

*(a) at trial, by their oral evidence given in
public; and*

(b) at any hearing, by affidavits.

25 *(2) This is subject-*

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(a) to any provision to the contrary contained in these Rules or any statutory provision or elsewhere; and

(b) to any order of the court.”

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9. This trial falls under **R29.2(1)** which requires oral evidence at trial. The only other Rule that I can think of that excepts oral evidence is **Part 33** which provides for taking evidence in the form of deposition from witnesses who are unable to attend court on the date of trial, and the reasons for non-attendance would have been provided in advance.

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Part 33 does not apply in this situation.

10. Given the difficulties in the case and given the way this case has been attended to by counsel, it is not appropriate for the court to grant a further adjournment.

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11. As the Claimant cannot call witness, the court must dismiss the claim. Both sides were at fault in the course of the proceedings, although for different reasons. There will be no order as to costs. That is the decision of the court.

5 12. I have considered what Mr. Elrington raised when I was dictating this
decision. It should have been raised after the end of the decision. An
order that witness statements stand as evidence-in-chief does not
mean that the witnesses will not be called in court to orally present
their witness statements. **Rule 29** requires that. This may be a good
10 case for Mr. Elrington to take on appeal so that next time attorneys
will not doubt what to do.

13. Delivered (by dictation) this Wednesday the 2nd day of February 2011
At the Supreme Court
15 Belize City

20 Sam Lungole Awich
Chief Justice Ag.
Supreme Court