

IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 245 OF 2007

PHILIPPA BAILEY
(Secretary General of the United Democratic Party) **Applicant**

BETWEEN AND

THE ATTORNEY GENERAL
THE COMMISSIONER OF POLICE **Defendants**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean Barrow S.C. for the applicant.

Mr. Edwin Flowers S.C., Solicitor General, for the defendants.

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RULING

1. This application raises in a stark form the viability of part of the foundation of a democratic society, namely the freedom of expression and the freedom of assembly and association.
2. These freedoms are expressly recognized and protected by the Belize Constitution in sections 12 and 13 respectively.
3. There is in practice, some overlap between these two freedoms necessary as they are in a free and democratic society.

The freedom of expression assures the right to hold and to receive opinions, ideas and information and to communicate these without interference. The freedom of assembly and association secures the right to assemble freely and associate with others in particular to form a trade union or other associations for the protection of one's interests or to form or belong to political parties or other political associations.

4. The interface between these two freedoms is, without doubt, part of the essential foundation of a democratic society.
5. However, these rights are not unqualified or unlimited: subsection (2) of sections 12 and 13 respectively of the Constitution respectively recognizes this. The common sub-section (2) of the two provisions expresses the limitations thus:

“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section (i.e. 12 or 13) to the extent that the law in question makes reasonable provision ...”

And in the case of sub-section (2) of section 12, paragraphs a – c lists the limitations; as in the case of section 13 these are listed in paragraphs a – d of its subsection (2).

6. In this application the incompatibility of Chapter 132 of the Laws of Belize, the Control of Public Meetings and Public Processions Act with the Constitution, is being raised by the applicant. In the meantime, they are seeking an interim injunction against the Commissioner of Police from requiring a permit for or

prohibiting the holding of a public meeting they wish to convene on 25th May 2007 between 9:00 a.m. and 3:00 p.m. in the square in front of the National Assembly in Belmopan.

7. It is instructive to note that the proposed date is only two days away.
8. The applicant, who is the Secretary General of the United Democratic Party, the official opposition Party, says as well that her constitutional rights of freedom of expression and assembly are being infringed by the Commissioner of Police's refusal to grant a permit for and his prohibition of the meeting the applicant desires to hold on 25th May 2007.
9. The applicant, Philippa Bailey, filed an affidavit dated 22nd May 2007 in support in which, at paragraph 5, she avers that the Commissioner of Police informed her at 10:00 a.m. on Tuesday 22nd May 2007 that he was going to refuse permission to hold the meeting and that officer Keith Lino would write formally to inform her, within the hour, of the decision. Ms. Bailey deposes that up until midday of yesterday, no formal letter has been sent to her.
10. The crucial point in all of this, however, is in my view, the court does not have the benefit or assistance of any reason why the proposed meeting is being banned or prohibited.
11. Instead, there are three affidavits on behalf of the defendants: one by Sr. Supt. David Henderson, the second by Supt. Rudolph Orio and the third by Cpl. Guido Wright. They all, together or singly however, do not aver to the reason why permission to hold the meeting by the applicant is being denied. Rather, all they attest to

is about the demonstration last Friday, the 18th of May in Belmopan. Undoubtedly, certain regrettable incidents might have occurred in the course of last's Friday meeting in Belmopan. Nowhere in the rather laconic refusal letter on behalf of the Commissioner dated 22nd May 2007 is the refusal of the ground as specified in subsection (2) of section 4 mentioned. The law on the refusal of permission is, in my view, clear, for by subsection (2) of section 4 the appropriate officer may only refuse to issue a permit if he is of the opinion that the holding of such meeting is likely to cause any obstruction of traffic, or cause inconvenience to the public or cause a breach of the peace; otherwise he shall issue a permit in writing for such a meeting. Nowhere is any of this ground stated in the affidavits on behalf of the defendants or the letter purporting to refuse permission. The so-called breaches of conditions 2 to 7 averred to in the letter denying permission is not, in my view, within the contemplation of subsection (2), section 4.

12. Therefore the refusal of permission strikes me as a blanket ban. This without more in my considered view runs counter to the constitutionally guaranteed rights of freedoms of expression and assembly.
13. The scheme of Chapter 137 is to require a person desirous of holding, convening or organizing a public meeting in any place other than a designated place, to inform the appropriate officer in writing at least 36 hours before such a meeting – section 4(1).

By subsection (2), the appropriate officer shall issue a permit in writing for such a meeting unless he is of the opinion that the holding of that meeting is likely to cause any obstruction to traffic,

or to cause inconvenience to the public or to cause a breach of the peace.

The “appropriate officer” is defined to mean the Commissioner of Police in the case of meetings in the Belize Judicial District, or in any other judicial district, an officer designated by the Commissioner of Police.

14. As presently informed, the ban or prohibition of the meeting is disproportionate and unreasonable and finds no justification under any of the limitations on these two primordial civil and democratic rights, nor for that matter within Chapter 137.
15. Yes, the right to assemble is not unqualified, it can be restricted, but only where such restrictions are lawful, legitimate, necessary and proportionate.
16. I have nothing before me to determine the reasonableness or proportionality of the prohibition by the Commissioner of Police of the proposed meeting.
17. I might add that where there is a threat of disruption or disorder from others (other than those organizing the meeting in question), the relevant authorities are under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly. I find support for this from the decision of the European Court of Human Rights in interpreting and apply Article II of the European Convention on Human Rights in the case of Platform “Auzte fur das Leben v Austria, (1988) 13 EHRR 204 E Ct. HR at para. 32, the court stated:

“... a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must however be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.

Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the state not to interfere, a purely negative conception would not be compatible with the object and purpose of Article 11.”

(This case concerned counter-demonstrations repeatedly breaking up the applicants’ peaceful assembly).

18. The European Convention on Human Rights, of course, provided part of the inspiration for the provisions of Commonwealth Caribbean Constitutions, including Belize’s, on the Protection of Fundamental Rights and Freedom.
19. In the light of all this, I am constrained to grant the application. Accordingly, I order that the Commissioner of Police, whether by his servants, agents or howsoever, be restrained from prohibiting the applicant from holding a public meeting in Belmopan in the square in front of the National Assembly between the hours of 9:00 a.m. and 3:00 p.m. until further order of this Court.

I order as well that the applicant shall within a fortnight of the date of this order file a substantive Claim Form in this matter.

A. O. CONTEH
Chief Justice

DATED: 23rd May 2007.