

IN THE COURT OF APPEAL OF BELIZE, A.D. 2009
CIVIL APPEAL NO. 31 OF 2008

BETWEEN:

TILVAN KING

Appellant

AND

LINDA AGUILAR KING

Respondent

BEFORE:

The Hon. Mr. Justice Mottley
The Hon. Mr. Justice Sosa
The Hon. Mr. Justice Carey

- **President**
- **Justice of Appeal**
- **Justice of Appeal**

E. Andrew Marshalleck, Mrs. Liesje Barrow-Chung for the appellant.
Ms. Lois Young SC for the respondent.

26 March 2009; 19 June 2009

MOTTLEY P

[1] The appeal relates to the issue whether the Supreme Court has jurisdiction to award maintenance to a wife on an application other than on an application for divorce or nullity of marriage. The facts of the case are not relevant and will not be rehearsed in the judgment other than to say that the parties were before the Supreme Court on an application under section 16 of the Married Woman's Property Act Cap 176. In those proceedings the respondent sought from the court, "under its inherent jurisdiction", an order that the appellant pay her reasonable maintenance.

[2] The Chief Justice in his judgment conceded that he had problems with the concept of a wife, who was still married, applying to the court for maintenance without “any judicial proceedings for divorce or separation from the husband”.

[3] The Chief Justice recognized that section 152 of the Supreme Court of Judicature Act Cap 91 was relevant. I shall come back to this later. He concluded that:

“57. After some anxious consideration and reflect, I have come to the conclusion that the Court has jurisdiction, in the circumstances of this case, particularly in the face of the undoubted status of the parties’ relationship, that is, that they are legally married, to entertain an application for maintenance.”

The Chief Justice then proceeded to make an order for maintenance.

[4] It is against that order that the appellant has appealed. The appellant has filed three grounds of appeal. Both Mr. Marshalleck and Ms. Lois Young agreed at the commencement of the appeal that the issue was whether the Supreme Court had jurisdiction in the absence of a petition seeking divorce or nullity or judicial separation to award maintenance to the wife.

[5] Before this Court Ms. Young did not seek to rely on the submission that the Supreme Court had an inherent jurisdiction to award maintenance. She however argued that, notwithstanding the provision of section 152 of the Supreme Court of Judicature Act, the court had jurisdiction by virtue of section 18 of the same Act. She contended that section 18 should be interpreted as giving the Supreme Court of Belize the jurisdiction which the High Court of Justice in England had when the Supreme Court of Judicature Act came into force in 1953. That being so, she contended that section 5 of the Law Reform (Miscellaneous Provisions) Act 1949 of England applied to give the Supreme Court of Belize

jurisdiction to award maintenance in the absence of the granting of a decree for divorce or nullity of marriage.

[6] Under the provisions of section 152 of the Supreme Court of Judicature Act, the Supreme Court in Belize only has jurisdiction to award maintenance on the grant of a decree for divorce or nullity or marriage. Section 152 (1) provides:

“152.-(1) The Court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money or annual sum of (the proviso to this sub-section is not relevant for the purposes of this judgment) money for any term, not exceeding her life, as having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the Court may think to be reasonable, and the Court may for that purpose order that it shall be referred to the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties, and may, if he thinks fit, suspend the pronouncing of the decree until the deed or instrument has been duly executed.

[7] As stated earlier, counsel for the respondent, in seeking to justify the assumption by the Chief Justice of jurisdiction to award maintenance sought refuge in the provisions of section 18 of the Supreme Court Act of Judicature. Counsel urged upon the Court that section 18 gave the Supreme Court, not only the jurisdiction of the Supreme Court of Judicature (Consolidation) Act, in 1925 of England but also all the jurisdiction vested in the High Court of England when the Supreme Court of Judicature Act of Belize was enacted in 1953. Included in that jurisdiction she argued, was the jurisdiction vested in the High Court of England by the Law Reform Miscellaneous Provisions Act 1949 of England.

[8] Section 18 (1) of the Supreme Court of Judicature Act Cap 91 deals with the original jurisdictions of the Supreme Court in Belize. The section provides:

“18-(1) There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdictions, powers and authorities whatever possessed and vested in the High Court of Justice in England, including the jurisdictions, powers and authorities in relation to matrimonial causes and matters and in respect of suits to establish legitimacy and validity of marriages and the right to be deemed natural-born Belizean citizens as are, by the Supreme Court of Judicature (Consolidation) Act 1925 vested in the High Court of Justice in England.”

[9] In section 18(2) of the Supreme Court Act which deal with practice and procedure states:

“18.-(2) Subject to rules of court, the jurisdictions, powers and authorities hereby vested in the Court shall be exercised as nearly as possible in accordance with the law, practice and procedure for the time being in force in the High Court of Justice in England.”

[10] In my view, this section vests in the Supreme Court of Belize all the jurisdiction powers and authorities possessed and vested in the High Court of Justice in England by the Supreme Court of Judicature (Consolidation) Act 1925 of England. In my view, the section purport to vest in the Supreme Court of Belize the same jurisdiction as existed in England by virtue of the Supreme Court of Judicature (Consolidation) Act 1925. It is the jurisdiction which the High Court of Justice in England exercises pursuant to the 1925 Act that is vested. The Act does not purport to vest any jurisdiction subsequent to the coming into force of the 1925 Act. If it was so intended, words such as “as amended” would have been used in section 18(1).

[11] In section 18(2) it is the “practice and procedure for the time being in force in the High Court of Justice in England”. This is to be contrasted to section 18(1) where it is stated that the jurisdiction to be vested in the Supreme Court of Belize is the jurisdiction which is vested in the High Court of Justice in England under

the Supreme Court of Judicature (Consolidation) Act 1925. If it was intended that the jurisdiction of the Supreme Court of Belize was to keep pace with changes made to the jurisdiction of the High Court of Justice in England, Parliament no doubt would have made that abundantly clear by inserting the words “for the time being”. Nothing in the Act shows that Parliament intended that the jurisdiction should be extended whenever the jurisdiction of the High Court in England was extended so that the jurisdiction of Supreme Court of Belize would always be the same as the High Court of Justice in England

[12] Section 5 of the Law Reform (Miscellaneous Provisions) Act 1949 of England for the first time conferred on the High Court of Justice in England jurisdiction to award maintenance to the wife other than granting of a decree of divorce or nullity of marriage. The section provides:

“Where a husband has been guilty of willful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the High Court in England, if it would have jurisdiction to entertain proceedings by the wife for judicial separation, may, on the application of the wife, order the husband to make to her such periodical payments as may be just; and the order may be enforced in the same manner as an order an alimony in proceedings for judicial separation.”

[13] Ms. Young did concede that if the Court came to the conclusion that the jurisdiction of the Supreme Court of Belize was limited to the jurisdiction of the High Court of Justice in England as it existed under the 1925 Act, then the Court in Belize would have no jurisdiction to award maintenance except as set out in section 152 of the Supreme Court Act.

[14] It was for these reasons that I agreed that the appeal should be allowed and the order of the Chief Justice awarding maintenance to the wife should be set aside.

[15] The Court made no order as to costs.

MOTTLEY P

SOSA JA

[16] On 26 March 2009 I was in agreement with the other members of the Court that the appeal should be allowed and the order of the court below set aside and that there should be no order as to costs. I concur in the reasons for judgment given by Mottley P in his judgment, which I have now read, in draft.

SOSA JA

CAREY JA

[17] I agree.

[18] Having conceded that the court had no inherent jurisdiction to grant maintenance to a wife, the appeal was at an end. As Mottley P has shown, Ms. Young's attempt to invoke section 18 of the Supreme Court of Judicature Act, was but clutching at a straw. It was too plain for words that this provision

conferred no power to grant maintenance to a wife. That power must rest on a statute of the Belize Parliament.

CAREY JA