

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 313 of 2011

VINCENT ROSE **CLAIMANTS**
CHERIE CHENOT ROSE (jointly d.b.a. ACES)

AND

MINISTER OF FINANCE **DEFENDANTS**
THE ATTORNEY GENERAL

Hearings

2012

5th March

16th March

24th May

28th June

27th July

17th August

Mrs. Agnes Gillett-Segura and Mrs. Andrea McKoy-McSweeney for the claimants.

Mr. Andrew Bennett and Ms. Magalie Perdomo for the defendants.

LEGALL J.

JUDGMENT

1. The claimants are married white American citizens who obtained official Belizean residential status in 2004. Prior to obtaining that

status, they acquired legal ownership of 21.78 acres of land at Water Hole road, Forest Home Village, Toledo District Belize. They also obtained an additional 15.89 acres adjoining the 21.78 acres giving them ownership of about 37.67 acres of land (the property). Between the years 2004 and 2008, the first claimant who is a general contractor constructed houses on the property to use as their residence or home. The claimants furnished the houses with household utensils and furniture and other facilities required for residential purposes. The claimants also constructed on the property other structures for purposes of establishing a business which they named the American Crocodile Education Sanctuary (ACES) which was established between 2004 to 2006 and which was registered as a business under the Business Names Act Chapter 247 and located at the property. The claimants say that ACES is a non profit organization whose purposes are, according to the second claimant, who is a biologist, to conserve “Belize’s critical wet land habitats and protected species, specifically crocodilians, through scientific research and education; to institute a crocodile refuge for ill, injured and problematic crocodiles; to reduce crocodile morality, and to protect crocodile nesting site habitats and monitoring crocodile habitat water qualities.” In all, the claimants had about eighteen crocodiles at ACES; and also two dogs.

2. The claimants having established their home on the property, lived there comfortably; and carried on their business of crocodile protection, conservation and treatment. On 29th August, 2010, with the intention of establishing a branch of ACES in another part of Belize – San Pedro Ambergris Caye – and for dealing there with three

ill crocodiles, the claimant travelled to San Pedro, leaving her husband at the property. While in San Pedro, she realized that she would need assistance in dealing with the three crocodiles, so she requested her husband to join her in San Pedro. He left the property intact about 11:00 a.m. on 2nd September, 2010 under the control of an employee, Eleias Tut, a handyman, and joined his wife in San Pedro at about 6:00 p.m. on the said date.

Missing children

3. On 30th August, 2010 at about 11:00 p.m. Pedro Rash, of Marcos Village, Toledo District reported to the police that his two children, Benjamin Rash, eleven years old, and Oniela Rash, nine years old, were missing. He reported that they went to Punta Gorda Town, Toledo, to sell limes and craboo earlier that day, and had not returned home. The police carried out investigations; and about eighty policemen and villagers carried out extensive searches for the children, but they have not, up to this date, been found. Not getting required answers from the police investigations and searches, the parents of the missing children turned to the occult, and the world of so called witch doctors. The parents lived at San Marcos Village, Toledo and contacted a local “witch doctor” named Delfina Selgado who allegedly told the parents that the children were held at ACES, the claimants’ property. On 2nd September, 2010 at about 10:00 a.m. four persons went to ACES armed with machetes and asked to speak to the first claimant, who was at the property at the time, concerning the missing children from San Marcos Village. They spoke to the first claimant who advised them that he had not seen nor heard of the

missing children. The men left ACES, and on the said day, the first claimant left ACES for San Pedro, to join his wife leaving only the handyman Eleias Tut there, who later left ACES unoccupied with no person there and went to his home.

Armed Group and Destruction of property

4. About 7:00 a.m. on the 3rd September, 2010, Tut returned to ACES to find footprints and other evidence that persons were at the property. He slept at ACES on the night of the 3rd September, 2010 and on rising on the morning of the 4th September, 2010, he saw evidence of persons searching the houses on ACES, such as open windows and cupboard doors and waste food paraphernalia on the property. The next day 5th September, 2010 at about 7:30 a.m. almost the entire village of San Marcos, a group of about one hundred persons, boarded a bus, among them were two alcaldes or local mayors of the village, namely Francisco Cuz and Marcos Choc. Cuz had his licenced firearm, and some other members of the group had guns, machetes and sticks. According to alcalde Cuz, “we armed ourselves because we need to show the white man that we mean business and we need the children. Our intention was not to hurt the white man.” The bus with the armed villagers headed for Punta Gorda Police Station. At the station, about twenty of the villagers entered at about 8:00 a.m. the station, including the two alcaldes. They spoke to the officer in charge of the station, Robert Mariano, Senior Superintendent of Police, requesting police assistance to accompany them to search the Water Hole area, in which ACES is located, for the two children. The officer said that he would attend the area as soon as he got

transportation. He also told the alcaldes that the police and Belize Defence Force personnel would be going to the area and the villagers must not enter ACES as it was private property. The driver of the bus with its armed villagers went to Water Hole road and stopped at two cross roads leading to ACES. The bus stopped and waited for the Police and the BDF to arrive; but according to Francisco Cuz, they waited for about five minutes, and after the military and the police did not arrive, they turned back and returned home.

5. On the said 5th September, 2010, Darly Capps, a neighbour of the claimants, while leaving his farm which is some distance away from ACES observed at about 8:30 or 9:00 a.m., smoke coming from the direction of ACES and of Water Hole Road. He headed to his property. This is what he testified he saw: “When I arrived at my property, I headed to the care taker’s house. . . This house is located on a hill and from there I have a clear view into Vince and Cherie’s (the claimants) property. As I looked over, I observed smoke coming from the main house which was on fire.” Superintendent Mariano testified that when he arrived at ACES the same day he “observed two buildings and a vehicle in flames.” The witness McKenzie swore that he saw approximately fifty angry people, men, women and children armed with shotguns, machetes and sticks. He said he heard gunshots from the direction of claimants property and heard a blow torch sound. Soon after he saw smoke over the tree tops and realized that the claimants’ property was on fire.

6. The next day 6th September, 2010 the first claimant, on information received, returned to ACES only to find that the houses were totally burnt and almost totally destroyed, along with household furniture and utensils and one motor vehicle. The claimants due to the fire lost all the structures on the property, household items and utensils and one motor vehicle. Another motor vehicle, belonging to the first claimant, was seriously damaged. Photographs of the destruction were tendered as exhibit V.R. 11 and showed several persons assembled near the claimants' property: see also exhibits L.M. 1 to L.M. 8. A video of the destruction was also shown to the court. Of the eighteen crocodiles at ACES only five survived. The claimants lost almost everything they owned at the property. But scattered around the property, not burnt, were some of the claimants' personal kitchen and household items discarded, it would appear, by persons in a frantic search.

7. **The Claim**

After attempts to get compensation from the government for their loss failed, the claimants filed on 20th May, 2011, a claim for reliefs. On 4th August, 2011, the claimants filed an amended claim for the following reliefs:

“(1) A Declaration that the some 100 persons who assembled on the claimants' property on September 5th 2010, with an aim to trespass upon and burn the claimants' home and proceeded to execute said common purpose, constituted a “Riot” within the meaning of section 245 of the Criminal

- Code, Chapter 101 of the Laws of Belize, Revised Edition 2000 and constituted a “Riotous Assembly” within the meaning of the Riots Compensation Act, Chapter 338 of the Laws of Belize, Revised Edition 2000;
- (2) An Order that the defendants pay the claimants the sum of nine hundred seven thousand three hundred eighty dollars and seventy one cents (BZ\$907,380.71) (equivalent to US\$449,755.00) as compensation under the Riots Compensation Act, Chapter 338 of the Laws of Belize, Revised Edition 2000 in respect of loss sustained by them by reason of the damage, theft or destruction caused by the Riot on September 5th 2010;
 - (3) Interest pursuant to sections 166 and 167 of the Supreme Court of Judicature Act;
 - (4) Costs;
 - (5) Any other such relief which the court thinks fit.”

Section 2 of the Riot Compensation Act Chapter 238 states as follows:

“Riotous assembly” means an assembly of rioters or of persons assembled or together with a purpose of committing a riot as defined by section 241 of the Criminal Code.”

Section 3(1) states:

“3.-(1) Where a house, shop or building has been damaged or destroyed, or any property therein has been damaged, stolen or destroyed by any persons riotously assembled together, such compensation as mentioned in section 4 shall be paid to any

person who has sustained loss by reason of such damage, stealing or destruction.”

Section 245 (previously 241) of the Criminal Code Chapter 101 defines riot:

“245.-(1) If five or more person together in any public or private place commence or attempt to do either of the following things, namely –

- (a) to execute any common purpose with violence and without lawful authority to use such violence for that purpose; or
- (b) to execute a common purpose of obstructing or resisting the execution of any legal process or authority; or
- (c) to facilitate by force or by show of force or of numbers the commission of any crime, they are guilty of a riot.”

8. Bearing in mind the above claim and legislation, it seems to me for the purposes of this case, the questions for the court are these: Does the evidence establish that there was an assembly of rioters or persons assembled or together to execute a common purpose with violence and without lawful authority to use such violence for that purpose? Or does the evidence establish such rioters or persons facilitate by force or by show of force or of numbers the commission of any crime. If any of the above is established by the evidence, a riot or a riotous assembly is proven. The claimant would however have to go further

and prove that their houses or buildings were damaged or destroyed by persons riotously assembled together for that purpose.

Who caused the Destruction?

9. There is overwhelming evidence, especially from Linsmore McKenzie and Eldora Chacon that the claimants' houses and property and items were destroyed and damaged by fire on 5th September, 2010. But was the fire caused by a riotous assembly of persons? The defendant submitted that, firstly, the claimants failed to prove that there was a riot and secondly the claimants failed to establish by evidence that the destruction of the property was caused by the group of villagers assembled on the date in question. There is no direct evidence from witnesses in this case as to who or what caused the fire to the claimants' property and houses. But is there circumstantial evidence?

10. Before answering this question, a word on the standard of proof. This is a civil case and the standard of proof in such a case generally is on a balance of probabilities. But in this civil case, in order for the claimants to succeed they will have to prove that there was an assembly of rioters with a purpose of committing a riot as defined by the Criminal Code. For the purpose of offences under the Criminal Code the standard of proof is beyond a reasonable doubt. So this is a civil case, but in order to be successful, the claimants have to prove the commission of a criminal offence namely a riot. In those circumstances what is the required standard of proof? Lord Halsbury in Halsbury's Laws of England 5th Ed Vol. 11 paragraph 775 gives some guidance:

“In civil cases the standard of proof is satisfied on a **balance of probabilities**. It has been said that, even within this formula variations in subject matter or in allegations may affect the standard required, it has commonly been said that the more serious the allegation, for example fraud, crime or professional misconduct or the sexual abuse of children, the higher will be the required degree of proof..... However, it is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged; the more serious of the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.”

11. In *Bater v. Bater 1950 2AER 458* on a petition by a wife for divorce on the ground of cruelty, the court of first instance ruled that the petitioner had to “prove her case beyond a reasonable doubt” and dismissed the petition on the petitioner’s failure to so prove her case. On appeal, it was held that that ruling was a correct statement of the law. In *McCann v. Crown Court of Manchester 2003 1 AC 787*, the police applied under section 1 of the Crime and Disorder Act 1998 (UK) for an anti social behaviour order to prohibit three brothers from entering a particular area of the city in which they lived. The court granted the order. An appeal to the Crown Court, was not only

dismissed; but, though the court held that the application for the order was a civil proceeding, the court also applied the criminal standard of proof of being “satisfied so that it was sure that the order should be made.” On further appeal up to the House of Lords it was decided that given the seriousness of the matter involved, the court should be satisfied to the criminal standard of proof that the defendant had acted in an anti-social manner before making such an order, and that the appropriate standard of proof had been applied” Lord Hope made the point at page 826:

“I think that there are good reasons, in the interest of fairness for applying a higher standard when allegations are made of criminal or quasi criminal conduct which, if proved, would have serious consequences for the persons against whom they are made.”

In civil proceedings based on statutory provisions under which liability depends largely on the commission of some kind of criminal conduct required by the statute, including fraud or sexual conduct, or riot, as in this before me, I think in such cases higher standard of proof than that of a balance of probabilities should be applied, namely the criminal standard of proof beyond a reasonable doubt. It follows therefore that in this case before me, the court has to be satisfied to the extent of feeling sure that on the evidence there was a riotous assembly as defined; and that the claimants’ properties were damaged and destroyed by that riotous assembly.

12. Let us examine the evidence again to determine who caused the destruction or damage. Two children from San Marcos Village went missing. Their parents reported the matter to the police. After police investigations did not provide answers, the parents consulted a local “witch doctor” who advised them that the children were at the claimants’ property. Four persons turned up at the claimants’ property and spoke to No.1 claimant, who denied knowing the whereabouts of the children. About all the people of San Marcos Village – about 100 of them – joined a bus some armed with guns, machetes, and sticks and went to the police station and asked the police to accompany them to the claimants’ property. This was about 8:00 a.m. The police agreed to meet them there. The persons arrived in front of the claimants’ property before the police. They believed that the children were at the claimants’ property. The villagers were angry and were noisy. Persons were seen entering the claimants’ property that morning. Smoke was seen coming from the claimants’ property that morning. Shortly after seeing the smoke the claimants’ houses were on fire. Witnesses saw the fire. One witness made a video of the fire which video was tendered in evidence. The police saw the fire. Sometime after the fire started, the villagers joined the bus and left the area and headed toward San Marcos Village. On their way, the police stopped the bus and escorted them to the station. Guns, machetes and sticks were found by the police in the bus. They were later released without any charges. Persons among the villagers testified and denied that they or any of them set the fire to the claimants’ property. One witness testified, as we saw above, that the villagers armed themselves “because we need to show the white man

that we mean business and that we need the children. Our intention was not to hurt the white man.” Senior Superintendent Mariano swore that:

“At no time did I observe the villagers to display any riotous behavior. The investigations conducted by the police did not result in any findings that there was a riot nor did we find that the group attended the area to cause destruction to the property. As is customary in the community, the police, alcaldes and villagers worked together throughout the entire week in searching for the missing children.”

13. The above circumstantial evidence shows an angry armed group of people who believed the claimants had the missing children, assembled at Water Hole road leading to the claimants’ property and some of them entered it. Smoke and the fire engulfed the claimants’ property, while members of the angry group were in the area of the claimants’ property. Do the above circumstances amount to circumstantial evidence enough to prove that members of the angry group from San Marcos Village, believing that the claimants had something to do with the missing children, set fire to the houses and buildings and property of the claimants? If the villagers did not go to that area to execute a common purpose with violence or to facilitate by force or of numbers the commission of any crime, why go there so heavily armed? If the intention was not to hurt the “white man” why the guns and machetes? Couple the arming, with their anger, and the aforesaid belief that the claimants had something to do with the

children being missing, I think the answer is irresistible that members of that group committed destruction to the claimants' property. The circumstantial evidence points to the conclusion that members of the angry group, more than five persons according to the photographs and the evidence were at the area of the claimants' property, and set fire to the claimants' property. The evidence above of the alcaldes that the group of people in the bus went to Water Hole road, and not having seen the arrival of the police, turned around the bus and returned home is wholly outweighed, in my view, by the relevance and nature of the circumstantial evidence in this case. This court considers that before it could find liability from circumstantial evidence, the court must be certain that every possible inference but the inference of liability can be ruled out. In a case of circumstantial evidence, the court before finding liability, must be satisfied beyond reasonable doubt that members of the angry group set the claimants' house on fire. The circumstantial evidence, before finding liability, must be such that all possible inferences other than liability must be eliminated: see *Daniel (Marlon) et al v. The State 2007 70 WIR 267 per Lord Carwell*.

14. Was the said destruction caused by persons riotously assembled together under section 3(1) of the Riots Compensation Act above? It is clear from the above evidence that the villagers were together in a public place, the road; and some were also in the claimants' property. A drawing exhibit V.R. 10 was admitted in evidence showing the claimants' property and showing where the villagers were. The villagers had guns and machetes. They were angry and vociferous.

They believed that the claimants had something to do with the disappearance of the children. They wanted to teach the white man a lesson. I do not accept the evidence that they did not intend harm to the claimants. If this was so why all those machetes and guns? Certainly all those weapons were not needed for protection from wild animals or crocodiles. Considering the circumstantial evidence in this case, I am satisfied beyond a reasonable doubt to the extent of feeling sure, that persons, more than five persons from that angry group of persons set fire to the claimant's houses and property because they felt that the claimants had something to do with the missing of the children.

15. The question often arises: Why should the Crown or State be liable for the acts of persons who riotously assemble and cause loss or damage to the property of others? In *JW Dwyer Ltd., v. Receivers For the Metropolitan Police District 1967 2 AER 1061* a decision brought to the attention of the court by Mrs. Agnes Segura Gillett, for the claimants, Lyell J said at page 1055:

“If a crowd of people collect in angry and threatening fashion this should become obvious to the local forces of order, and it would then become their duty to prevent the crowd from becoming a riot. This is a duty which has been recognized for centuries, and which until the nineteenth century was put on the local administrative area, the hundred or wapentake, or whatever name it might be called; and there was duty on them to compensate for damage which was done by persons assembled riotously and tumultuously.”

16. I am also satisfied beyond a reasonable doubt on the evidence above and that there was a riot or riotous assembly as defined by the section 2 of the Riots Compensation Act and that the claimants' properties were destroyed or damaged by persons riotously assembled and that the claimants are entitled to compensation under section 3(1) of that Act. The parties agreed that the issue of compensation would be addressed after the issue of liability had been determined.

17. For all the above reasons, I give judgment for the claimants as follows:
 - (1) A declaration is granted that a riotous assembly of persons, as defined in section 2 of the Riot Compensation Act Chapter 338 assembled at the claimants' property situate at Water Hole Road, Forest Home village, Toledo District for the purpose of executing a common purpose with violence and without lawful authority used such violence for that purpose to wit: they intentionally set fire and destroyed three houses, furniture, household utensils and other property owned by the claimants.

18. I will now hear the parties on the issue of compensation.

Oswell Legall
JUDGE OF THE SUPREME COURT
17th August, 2012