

IN THE SUPREME COURT OF Belize, A.D. 2010

CLAIM NO. 817 OF 2009

BETWEEN:

(MARK SEAWELL CLAIMANT/APPLICANT
(
(AND
(
(THE ATTORNEY-GENERAL DEFENDANT/RESPONDENT

Before: Hon. Justice Sir John Muria

16 July 2010

Appearances:

Dr. E. Kaseke for the Claimant

Ms. P. Banner and *Ms. M. Perdomo* for the Defendant

J U D G M E N T

Fixed Date Claim – extradition proceedings – UK Extradition Acts 1870-1932 (“the Extradition Acts”) – Order in Council 1976 – “existing laws” of Belize – whether applicable to extradition request made under Belize-United States of America Extradition Treaty 2000.
Held: The Extradition Acts apply to extradition proceedings arising out of request for extradition made under the Belize-USA Treaty 2000.

Muria J:

1. On 6 November 2006 the Government of Belize received a request from the Government of the United States of America through its Embassy in Belize for the extradition of Mark Seawell to stand trial in

the United States of America on a number of indictment charges, namely:

- (a) *conspiracy to import over 500 grams of cocaine into the United states, in violation of 21 USC Section 963;*
- (b) *conspiracy to distribute and possess with intent to distribute marijuana, in violation of 21 USC Section 846;*
- (c) *conspiracy to commit money laundering, in violation of 18USC Section 1956(h);*
- (d) *laundering of monetary instruments to promote trafficking in cocaine and marijuana in violation of 18USC Section 1956 (a)(i)(A)(i) and 18 USC Section 2;*
- (e) *laundering of monetary instruments to conceal or disguise the nature, location, source and ownership of the proceeds derived from the sale of cocaine and marijuana, in violation of 18USC Section 1956 (a)(1)(B)(1) and 18USC Section 2;*
- (f) *importation of more than 500 grams of cocaine into the United States, in violation of 21 USC Sections 952(a), 960(a)(1), (960)(b)(2)(B)(ii), and 18 USC Section 2,*

- (g) attempt to import into the US over five kilograms of cocaine, in violation of 21 USC Section 952(a), 960(a)(1), 960(b)(2)(B)(ii), and 963, and 18 USC Section 2;*
- (h) attempt to import into the US more than 500 grams of cocaine, in violation of 21 USC Sections 952(a), 960(a)(1), 960(b)(2)(B)(ii), and 963, and 18 USC Section 2;*
- (i) attempt to possess with intent to distribute over 500 grams of cocaine, in violation of 21 USC Sections 841, 846, and 18 USC Section 2; and*
- (j) continuing criminal enterprise, in violation of 21 USC Section 848, as is more fully set out in the attached documents in support of the extradition request.*

2. Following the request, the Honourable Minister of Foreign Affairs

issued an Order on 10 November 2006, requiring the Chief Magistrate of the Magistrate's Court, Belize to issue a Warrant of Apprehension against **Mark Anthony Seawell** to be brought before the Magistrate's Court for the purpose of extradition proceedings.

3. On 29 December 2006, and pursuant to the Order from the Minister, the learned Chief Magistrate issued a Warrant of Apprehension against the claimant. On 15 February 2007 the claimant was arrested and he has been detained in Hattievilke Prison since then.

4. The extradition proceedings are currently being held before the Chief Magistrate. In the course of the extradition hearing, and as a consequence of issues raised by the claimant, the learned Chief Magistrate ruled that the UK Extradition Act 1870 was part of the Laws of Belize, applicable to the extradition proceedings against the claimant.

5. In the light of the ruling made by the learned Chief Magistrate, the claimant has now brought these proceedings by way of a Fixed Date Claim seeking the following Orders:
 - a. *A Declaration that the UK Extradition Acts 1870, 1873, 1895, 1906, and 1932 are not part of the laws of Belize in respect of the Belize-USA Extradition treaty, 2000.*

- b. A Declaration that the extradition proceedings against the Claimant currently being held by the Chief Magistrate under the 1870 UK Extradition Act are null and void as being contrary to section 3(a), and 6(1) of the Belize Constitution and as not being authorized by a valid law.*
- c. A Declaration that the detention of the Claimant at Hattieville Prison from 15th February, 2007 to present constitutes an unlawful deprivation of personal liberty contrary to section 5 of the Belize Constitution.*
- d. Damages for the unlawful deprivation of the Claimant's liberty.*
- e. An Order quashing the proceeding before the Chief Magistrate and releasing the Claimant from detention.*
- f. Costs.*

6. The claimant filed two affidavits in support of his claim. The case, however, is basically centered on legal arguments.

7. It is evident from the claimant's first affidavit that attempts were made by the attorneys for the claimant to persuade the Minister of

Foreign Affairs of Belize, to stop the extradition proceedings against the claimant. A six page written legal opinion from the claimant's attorneys out the reasons and citing legal authorities as to why the extradition proceedings should be stopped.

8. Following legal advice from the Attorney-General's Ministry, the Minister of Foreign Affairs and Foreign Trade declined to accede to the claimant's request to halt the extradition proceedings against the claimant. The basis for that refusal was that the claimant would not be prejudiced or embarrassed in presenting his defence at the extradition proceedings.

The claimant's case.

9. The claimant's case is that the UK Extradition Acts were never extended to apply to Belize in respect of the Belize-USA Treaty, 2000. Thus, it is contended that the said Extradition Acts are not "laws" in Belize and therefore not applicable to the current extradition proceedings against the claimant now before the learned Chief Magistrate. Consequently, the claimant says that the extradition proceedings against him are null and void.

10. Then it is also argued that by holding the current extradition proceedings under the 1870 Extradition Act and not under section 9 of the Belize Extradition Act (Cap. 112) it resulted in a breach of the claimant's right protected under sections 3 (a) (fundamental rights and freedoms) and section 6(1) (protection of law) of the Constitution.
11. Dr. Kaseke of Counsel for the claimant, pivoted the claimant's case on section 9 of the Extradition Act 2000 (Cap 112). That provision is found in Part IV of the Act dealing with the Extradition Treaty between the Government of Belize and the Government of the United States of America, signed on 30th March, 2000. Since the section is important in this case, I shall set it out here.

“PART IV

Extradition (United States of America)

9. **The extradition** of fugitive criminals between Belize and the United States of America **shall be as directed in accordance with the Extradition Treaty** between the Government of Belize and the Government of the United States of America signed on

the 30th day of March, 2000, a copy of which is set out in the Schedule hereto.” (Emphasis mine)

The schedule sets out the body of the Extradition Treaty between the Government of Belize and the Government of the United States of America.

Submissions and determination

12. In respect of grounds 1, 2, and 3 of the claimant’s claim, Dr. Kaseke argued that in respect of the 2000 Extradition Treaty between Belize and the United States of America, the U.K. Extradition Acts 1870, 1873, 1895, 1906, and 1932 were never extended to apply to Belize. As such, counsel submitted that the current extradition proceedings before the learned Chief Magistrate are null and void.

13. In support of the claimant’s case, Dr. Kaseke dealt with each of the U.K. Extradition Acts and their relevance to Belize. Counsel then made a number of submissions on the applicability of the Extradition Acts to Belize. Without reciting each of the points relied on by Dr. Kaseke, it is safe to say that the main contention of Counsel is that the various legislation including the 1919 Extradition Ordinance, having

all been incorporated into the Extradition Act 1870, ceased to apply to Belize in so far as extradition proceedings are concerned arising out of the Belize-USA Extradition Treaty 2000.

14. Counsel further found support for his contention on section 2 of the Extradition Act 1870 and the Order in Council 2144 of 1976. I set out the relevant parts of these two provisions. Section 2 of the 1870 Act provides as follows:

“Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals. Her Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign state.

.....

Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.”

Order in Council 2144 of 1976 provides as follows (in part):

“Whereas a Treaty with Protocol of signature was concluded on 8th June 1972 between the Government of the United

Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the reciprocal extradition of offenders the terms of which are set out in Schedule 1 to this Order:

.....

Now therefore, her Majesty, in exercise of the powers conferred on Her by sections 2, 17, and 21 of the Extradition Act, 1870(c) or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered as follows:-

1.
2.
3. *The Extradition Acts 1870 to 1935, as amended or extended by any subsequent enactment, shall apply in the case of the United States of America in accordance with the said Treaty of the 8th June 1972.*
4. *The operation of this Order is limited to the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, and the other territories (including their dependencies) specified in Schedule 2 to this Order.”*
5.”

15. Counsel for the claimant submitted that by virtue of section 2 of the 1870 Act and the Order in Council 2144, the Extradition Acts are no longer part of the Laws of Belize for the purpose of the Belize-United States of America Extradition Treaty, 2000. It is further argued by Dr. Kaseke that the Order in Council 2144 of 1976 which applied the 1972 Treaty and Extradition Acts to Belize, were automatically “*spent*” once the Belize-USA Extradition Treaty 2000 came into force.

16. Ms. Pricilla Banner of Counsel for the defendant, on the other hand, submitted that the Extradition Acts are part of the existing Laws of Belize and therefore apply to extradition proceedings arising out of the Belize-USA Extradition Treaty 2000. Counsel contended that section 2 of the 1870 Act supports the defendant’s case since that section makes it clear that Order in Council “*direct that this Act shall apply in the case of such foreign state,*” that is to say, the 1870 Extradition Act shall apply to USA with whom the UK had treaty arrangement.

17. Further Counsel for the defendant submitted that section 17 of the 1870 Extradition Act extended the said Act to every British Possession of which Belize was one. Section 17 states as follows:

“This Act, when applied by Order in Council, shall, unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require, but with the following modifications.”

Having thus been extended to Belize, the 1870 Act became one of the “existing laws” of Belize at Independence and preserved by section 134 of the Constitution.

18. While section 9 of the Belize Extradition Act 2000 (Cap. 112) is an important provision on the extradition of fugitive criminals between Belize and USA, pursuant to the Treaty arrangement between the two countries, the resolution of this case, in my view, rests on section 3 of the Belize Extradition Act 2000 (Cap.112) as read with sections 2 and

17 of the Extradition Act, 1870. Section 3 of the Belize Extradition Act 2000 (Cap.112) states as follows:

All powers vested in and acts authorized or required to be done by the Chief Metropolitan Magistrate at Bow Street, London, in relation to the surrender of fugitive criminals in the United Kingdom under the Extradition Acts are hereby vested in and may in Belize be exercised and be done by the Chief Magistrate, and any powers vested in and acts authorized to be done under the said Acts in the United Kingdom by any justice of the peace other than the Chief Metropolitan Magistrate at Bow Street, London, are hereby vested in and may in Belize be exercised and done by any senior justice of the peace.”

19. That provision demonstrates that the Belize Extradition Act 2000, the same Act which incorporates the Belize-USA Treaty 2000, clearly affirms the application of the UK Extradition Acts to Belize and conferred on the Chief Magistrate, Magistrate’s Court, Belize Judicial District, the like powers exercisable in the UK by the Chief

Metropolitan Magistrate. See *Bishop – v- Attorney-General* 3 Bel LR 230.

20. It also goes to confirm that the law under which the Chief Magistrate is to conduct extradition proceedings is the UK Extradition Acts. The Belize Extradition Act 2000 (Cap. 112) does not provide or establish a comprehensive legislative scheme for extradition: *Rhett Fuller – v- Attorney-General of Belize* (19 June 2009) Court of Appeal Civ. App. No. 11/2009.

21. On a closer look at section 9 of the Belize Extradition Act 2000, it will be noted that the section directs that “*the extradition... shall be in accordance with the Extradition Treaty...*” between Belize and USA, a function that is executive in nature and one that can only be exercised by the Executive Government of Belize. The Chief Magistrate plays absolutely no part in what section 9 commands to be done. It would therefore be a misconstruction of section 9 of the Belize Extradition Act 2000 to say that the learned Chief Magistrate is obliged to follow section 9 when conducting the extradition proceedings against the claimant in the present case. The role played

by the courts in extradition matters is very limited; namely, to determine whether on the evidence before the court, the person sought is extraditable. *Government of United States of America -v- Guillermo et al G.R. No. 148571; Atkinson -v- United States of America* [1969] 3 W.L.R. 1074; *Rhett Fuller -v- Attorney General of Belize* (above).

22. Again, section 9 of the Belize Extradition Act 2000, in my view, is a typical treaty incorporation clause in a domestic legislation, for the implementation of the Treaty. That is essential in order to clothe the Government (Executive) with statutory authority necessary for the surrender of fugitive criminals to the USA. This is made clear by the High Court of Australia in *Vasiljkovic -v- Commonwealth* [2006] HCA 40; 80 ALJR 1399; 228 ALR 447 where Gleeson CJ stated:

“Although the extradition of fugitive offenders is an executive act, it requires statutory authority. It cannot be exercised except in accordance with the laws which prescribe in detail the precautions to be taken to prevent unwarrantable interference with individual liberty. As Barwick CJ pointed out

in Barton –v- The Commonwealth, legislative authority is necessary for the surrender of a person to another country and to provide for custody and conveyance of such surrender. Although international cooperation in the surrender of fugitives, typically based on reciprocity, is commonly the subject of treaties, in Australia a treaty does not have the effect of law, and the interference with liberty necessarily involved in the apprehension and surrender of a person for extradition can lawfully occur if undertaken in accordance with statute. Treaties, or other international arrangements, providing for extradition are made, and acts in fulfillment of obligations undertaken in those treaties or arrangements are implemented, by the Executive Government, but it is for the Parliament, by legislation, to confer the necessary authority required to make executive action lawful.”

23. I have read the provisions of the Treaty and it seems to me that, in so far as Belize is concerned, the treaty is not self-executing. Thus Belize would have to enact laws to implement the Treaty. See ***Rhett Fuller –v- Attorney-General of Belize*** (above); ***also United States of***

America –v- McVey [1992] 3 SCR 475. That Belize has now done, conferring statutory authority on the Government to carry out the executive act of extraditing fugitive criminals to the USA after, and only after the Chief Magistrate concluded the extradition proceedings under the Extradition Acts.

24. In the present case, pursuant to the Treaty arrangement, the Government of the USA requested the extradition of the claimant to the USA to be tried for the crimes stated in the Request. The Government of Belize (through the Minister responsible) issued an Order directed at the Chief Magistrate to issue a warrant of Apprehension against the claimant and to conduct extradition proceedings against the claimant pursuant to the Extradition Acts. That is the judicial function of the Chief Magistrate who is to decide whether there is sufficient evidence to warrant extradition of the claimant to the USA. The decision whether to extradite the claimant is an executive act by the Minister responsible. But he can only do so, after the Chief Magistrate concluded the extradition proceedings. See *Argentina –v- Mellino* [1987] 1 SCR 536; See also *Commonwealth of Puerto Rico –v- Hernandez* [1975] 1 SCR 228.

25. Dr. Kaseke of Counsel for the Claimant strenuously argued that the Order in Counsel, 2144 of 1976 which extended the Extradition Acts to Belize ceased to operate in Belize when Belize and the USA concluded the 2000 Belize-USA Extradition Treaty. That, says Counsel, was the effect of section 2 of the 1870 Act which provides that the extension of the UK Extradition Acts “shall not remain in force for any longer period than the 1972 UK-USA Extradition Treaty.” Thus, argued Counsel, since the UK Extradition Acts no longer apply to Belize in respect of Belize-USA Extradition Treaty 2000, those UK Acts are not “existing laws” for the purposes of the Belize-USA Extradition Treaty.

26. I feel the argument by Counsel for the claimant is misconceived for a number of reasons. First, section 2 of the 1870 Act, clearly provides that the 1870 Act shall apply in the case of a foreign state with whom the UK has a treaty arrangement. Secondly, section 17 of the 1870 Act then extended the 1870 Act to every British Possession of which Belize is one. Thirdly, what *shall not remain in force for any longer*

period than the arrangement was the order in Council which embodied the terms of the Treaty.

27. In this regard, clearly I have to accept the submission by Ms. Banner that the intention of the Legislature was to ensure that the 1870 Extradition Acts continued to apply to new treaty arrangement between UK-USA, and subsequently, to the Belize-USA Treaty 2000. Even if, for argument's sake, the Order in Council which embodied the treaty arrangement between UK-USA ceased to apply to Belize, the 1870 Act continued to apply to Belize pursuant to section 17 of the Act.

Conclusion.

28. There are issues raised by Counsel dealing with the history of the various related legislation and their application to Belize. I do not think it is necessary to dwell in those issues since the central issue is really whether or not the UK Extradition Acts apply to the present extradition proceedings now before the Chief Magistrate. The answer to that is clearly in the affirmative.

29. There can be no doubt that the 1870 Extradition Act and subsequent Amendments (“The Extradition Acts”) apply in Belize. That is the law which governs the extradition proceedings in Belize and which empowers the Chief Magistrate to conduct such proceedings in relation to extradition of fugitive criminals under the Belize-USA Treaty or any other foreign state with which Belize has an extradition treaty.

30. *Bishop –v- Attorney General* (above) held that the 1870 Act applied to Belize in respect of extradition of the appellant pursuant to the Treaty between the UK-USA 1972 which was extended to Belize on October 21st, 1976 and which had effect as between Belize and the USA. I do not see any legal impediment for the UK Extradition Acts 1870-1932 to now apply and have effect as between Belize and the USA in respect of Belize-USA Treaty 2000.

31. It is beyond doubt that the *UK Extradition Act 1870* as amended apply in Belize. As such the extradition proceedings against the claimant currently being held by the learned Chief Magistrate under the said Act are authorized by law and therefore lawful and valid.

32. It follows also that the arguments based on sections 3(a) and 6(1) of the *Constitution* that the claimant's constitutional rights have been infringed by the current extradition proceedings plainly cannot stand.

33. For the above reasons, the claim by the claimant is dismissed and the orders prayed are refused.

34. In the circumstances of this case, I feel there will be no order as to costs.

Dated this 16th day of July, 2010.

Hon Justice Sir John Muria
Justice of Supreme Court