

IN THE SUPREME COURT OF BELIZE A.D. 2011

CLAIM NO. 880 OF 2008

BETWEEN

THE ATTORNEY GENERAL

CLAIMANT

AND

NEWCO LIMITED

DEFENDANT

Ms. Magali Perdomo for the claimant.
Mr. Aldo Reyes for the defendant.

AWICH Chief Justice (Ag)

12.4.2011

DECISION

1. Following service by the Attorney General, the claimant, of the fixed date claim filed in 2008, together with supporting affidavits, on the defendant NEWCO; it filed its defence in the form of affidavits. The Attorney General subsequently filed other affidavits and so he relies on five affidavits, two by one deponent, the other three by other deponents. NEWCO also relies on five affidavits, all sworn by a Mr. Robert Wray, described as a director of NEWCO.

2. Several interlocutory applications have been raised in the proceedings and have been decided upon. Too many interlocutory applications do delay progress of a case. It is desirable that parties discuss interlocutory applications before-hand with a view to obviating the need to make applications formally.
3. The latest disagreement between the parties is in regard to the use of the affidavits sworn by Mr. Wray who has since died. The Attorney General objects to the use of the affidavits of Mr. Wray. I directed a formal written application and written submission.
4. Learned counsel Mr. Aldo Reyes for NEWCO, cites Part 29 and Part 30 of the Supreme Court (Civil Procedure) Rules 2005, as authority, for the use of affidavits by a deponent who has since died. Learned counsel Ms. Magali Perdomo for the Attorney General, contends that those Parts of the Rules do not apply to affidavits of a deceased person, and that no Part of the Rules allows the court to receive such an affidavit.
5. I am surprised at the fight over the admissibility of affidavit of a deceased person. The Rules do not bar such an affidavit, even though they do not specifically states that it may be used. The court has discretion subject of course, to the several rules about admissibility of evidence,

6. Mr. Wray has died. His affidavits will be admitted but the contents may be treated as hearsay because he cannot be called. Hearsays are no longer generally inadmissible, but certain cautions will be attached to them.
7. In this case the Attorney General ought not to have objected anyway because he and NEWCO had failed to give notice of cross-examination by 18 November 2010, in compliance with court direction order.
8. Usually a party would give notice of intention to use affidavit of a deponent who cannot be available for cross-examination. In the circumstances of these proceedings and the application, the court knows that the Attorney General has already got notice. It is not necessary for NEWCO to give notice.
9. The application of NEWCO to use the five affidavits of Mr. Robert Wray is granted. The five affidavits for Attorney General will also be used. There will be no cross-examination as neither party has given notice for cross-examination.
10. Usually affidavit of a person who will not attend court or is not presented for cross-examination is presented through a witness who will attend at the trial. In the circumstances of these proceedings, the court dispenses with that rule.

11. **Delivered today Tuesday 12th day of April 2011**

At the Supreme Court

Belize City

**SAM LUNGOLE AWICH
Acting Chief Justice
Supreme Court**