

IN THE SUPREME COURT OF BELIZE A.D. 2016

CLAIM NO. 560 OF 2016

BETWEEN

JULIUS ESPAT

Member of the House of Representatives

CLAIMANT

AND

MICHAEL PEYREFITTE

Speaker of the House of Representatives

EDDIE WEBSTER

Clerk of the National Assembly

DEFENDANTS

Before: The Hon Westmin R.A. James (Ag)

Date: August 2021

Appearances: Mr Andrew Marshalleck SC for the Claimant

Ms Agassi Finnegan for the Defendants

JUDGMENT

Background

1. This case concerns the naming and suspending of the Claimant on 26th August, 2016 by the then Speaker of the House, the 1st Defendant.
2. The Claimant filed a Fixed Date Claim against the Speaker of the House of Representatives, the Clerk of the House of Representatives, the Attorney General seeking a number of declaratory order and injunctive relief namely;

- a. A declaration that the suspension and consequent forcible removal of the Claimant from the meeting of the House of Representatives held on the 26th day of August, 2016 without a resolution of the House of Representatives duly passed by affirmative vote of a majority of the members present at the meeting authorizing the Claimant's suspension from service of the House was in breach of the provisions of Order 44 of the Standing Orders of the House and Section 73 of the Belize Constitution and in breach of the Claimant's fundamental right to protection of the law guaranteed by Section 3(a) and /or 6(1) of the Belize Constitution; and/or
- b. A declaration that the suspension and consequent forcible removal of the Claimant from the meeting of the House of Representatives held on the 26th August 2016, by order of the Defendant in the absence of a majority vote by the House authorizing suspension of the Claimant in breach of the Standing Orders of the House and/or Section 73 of the Belize Constitution was further in breach of the Claimant's fundamental rights to freely communicate ideas and information in the House of Representatives without interference and to assemble freely and associate with other persons in the House of Representatives for the protection of his interests guaranteed by Sections 12 and 13 of the Belize Constitution when read together with Section 70(1) and 89(2) of the Belize Constitution; and/or
- c. Declaration that the direction by the Clerk of the National Assembly not to pay the Claimant for service to the House for the period September 2016 until there is a resolution of the House in accordance with Section 44(7) of the Standing Orders is unlawful;
- d. An Order that the Clerk of the National Assembly shall forthwith procure the payment to the Claimant of all sums payable to him for service to the House;
- e. An injunction to restrain the First Defendant whether by himself, his servants, agents or howsoever from in any way exercising powers of the Speaker of the House to give effect to the purported suspension of the Claimant from the service of the House of Representatives and to require that the Defendants forthwith restore and/or recognise and give effect to all rights and privileges of the Claimant to membership in the House including

the right to participate in meetings and any remuneration for service to the House; and/or

- f. Damages for the breach of the Claimant's fundamental constitutional rights;
 - g. Costs; and/or
 - h. Such other reliefs as may be just.
3. The Defendant by Notice of Application filed an application to strike out the claim and the application was successful before the former Chief Justice, Kenneth Benjamin who on 6th December, 2016 struck out the Claimant's claim. That decision was appealed to the Court of Appeal who on 16th May, 2019 overturned the decision of the former Chief Justice and remitted the matter back to the Court of first instance.
4. This case was assigned to this Court in May, 2021 wherein this Court made order relative to filing of a defence, legal submissions and oral arguments. The Defendants to date have not filed a defence even though the Court had granted extension on two occasions for the Defendants to do so. There is therefore no defence filed by the Defendants on the merits of this claim. The Court also gave directions for submissions on the preliminary point and the substantive matter.

Preliminary point

5. The Attorney General has argued that the Order of the Court of Appeal dated 11th day of July 2019 ordered the "*matter be remitted back to the Supreme Court for hearing of the strike out application before a different trial judge.*" The Claimant has argued that the Court of Appeal effectively dealt with the application to strike out when one looks at the substantive reasoning and that it was an error on the part of the Court in the order. The main argument of the Attorney General in relation to the strike out application is Separation of Powers. They argued that if the Court proceeds with this case it would be breaching the separation of powers and meddling in what is properly the business of the Legislature. The Attorney General also argued that there was an alternative remedy and so is an abuse of process. The arguments put before this Court were the same argument and largely the same authorities

before the Court of Appeal. The Court of Appeal dealt with these two arguments in their judgment. At paragraph [53] the Court of Appeal stated the trial judge failed to consider whether the interpretation is correct and voting is required, whether there would be need for a trial of the constitutional issues raised by the Appellant. In relation to the alternative remedy argument at paras [54] and [55]. The Court of Appeal stated at para [55] the issue of alternative remedy cannot arise at this point in time. If the determination is made in favour of the Appellant, then the issue of alternative remedy would not arise. The trial court would then have to determine whether there was a breach of the constitutional provisions as a result of the failure to vote.

6. Further in its conclusion at paragraph [56] the Court of Appeal held that if the issue was determined in favour of the Appellant, whether the Speaker breached the provisions of the Constitution and contravened the constitutional rights of the Appellant is permissible under the exception of the general rule of the doctrine of separation of powers. Therefore, while the order stated the matter is reverted to another trial judge for determination of the strike out application since there are no new arguments and I am bound by the Court of Appeal relative to the two arguments advanced by the Attorney General, the Appeal effectively determined the strike out application. Even if that is not the case having regard to the Court of Appeal's decision and the fact that a striking out of a claim is the last resort, I would not have in any event struck out the Claimant's case. Where the exercise of parliamentary privilege conflict with other provisions in the Constitution there is strong Commonwealth authority that the Court should intervene, especially if it is a breach of the bill of rights provisions: *Smith v Mutasa* (1990) LRC (Const) 87; *De Lille v Speaker of the National Assembly* (1999) 11 BCLR 1339.

Substantive Claim

7. There is no dispute of fact since there is no defence by the Defendants. The Claimant says that on 26th August 2016, at a meeting of the House of Representatives of the National Assembly of Belize, the 1st Defendant caused the Claimant to be named and suspended him from service of the House of Representatives. The 1st Defendant then proceeded to instruct the police to forcibly

remove the Claimant from the meeting and the precincts of the House and the Claimant was forcibly removed.

8. The Claimant alleges this was in breach of Order 44 of the Standing Order of the House of Representatives and Section 73 of the Belize Constitution which sets out the procedure for the suspension of a member of the House of Representatives and which requires that all decisions of the House be determined by a majority vote of the members of the House present and voting was not complied with.
9. He argues that Order 44 expressly requires that the Speaker name the member and then invite a Minister to move a resolution to have the member suspended from service of the House and thereafter for the Speaker to put the motion to a vote in the House without amendment or debate. Section 73 of the Constitution requires that all questions proposed for decision of the House be determined by a majority of the votes of the members present and voting.
10. The Claimant submitted that the motion for suspension of the Claimant was never put to a vote so that there was no determination of the question by the House and so the 1st Defendant acted in breach of the Standing Orders and Section 73 of the Constitution.
11. The Claimant alleges that the suspension, forcible removal and the withholding of the salary was in breach of the Claimant's constitutional rights in particular Sections 3(a), 6(1), 12 and 13 of the Constitution.
12. There being no dispute of the fact and the Attorney General has not countered the arguments of the Claimant relative to the substantive claim and so seems to have conceded this point. I would therefore hold the motion for suspension of the Claimant was never put to a vote so that there was no determination of the question by the House and so the 1st Defendant acted in breach of the Standing Orders and Section 73 of the Constitution. As a consequence the Claimant's rights under Sections 3(a), 6(1), 12 and 13 of the Constitution were breached and the withholding of his salary was unlawful.

Reliefs

13. In the Attorneys General's submissions, the Attorney General submitted that with regard to the substance of the Claim, the Claimant can only be granted the declarations as sought by the Claimant relative to the repayment of salaries withheld. This is wise as deprivation of salary is considered to be deprivation of property and unconstitutional. The case of *Smith v Mutasa (supra)* is noted. In this case the Court held that even though these privileges had been expressly bestowed on the House of Assembly of Zimbabwe this did not preclude an intervention by the Court if in the exercise of its powers the House of Assembly violated constitutional rights. The Constitution the Court noted was supreme and no law could be made which was inconsistent with the Constitution. As a consequence, unlike the United Kingdom they said, the Parliament of Zimbabwe could not enjoy privileges, immunities and powers which were inconsistent with fundamental rights guaranteed by the Constitution. If a conflict existed it could be resolved only by the Court which in Zimbabwe was the protectors of the supremacy of the Constitution. Such a conflict the Court said would be resolved in favour of the fundamental rights of the citizen. In this particular case Parliament had resolved to punish a member for content by depriving him of his salary. The Court noted that even though the power to punish for contempt was a parliamentary privilege the Appellant's salary was a constitutional right and accordingly the Parliament could not deprive him of that right. The Court therefore intervened to declare that the deprivation of salary as a punishment was unconstitutional.
14. The Claimant in this case is entitled to an order that his salary be restored for the period for which he was suspended. While the Claimant hasn't exactly indicated the sum, this is easily ascertainable and would not detain me from making the order. I would award interest at the rate of 6% from the 26th August 2016 to judgment.
15. Since this case there has been filed, the Claimant was returned to House and there has been a change of circumstances so relief (e) is no longer necessary and no longer pursued.

16. The Claimant request vindicatory damages for breach of his constitutional rights. The Claimant submitted that the actions resulted in not only breaches his constitutional rights in a highly publicized manner coupled with level of mistreatment and oppressive manner of the police in lifting up and removing the Claimant by his limbs, an award of vindicatory damages was necessary. The Claimant referred to cases of *Titan International Securities Inc v The Attorney General and Financial Intelligence Unit [2018] CCJ 28 (AJ)* where a vindicatory award of \$100,000.00 was awarded for the breach of the Appellants constitutional rights by the CCJ. The Claimant also referred to the case of *Civil Appeal No 5 of 2004 Clement Wade v Maria Roches* in which the Court of Appeal of Belize made a vindicatory award for the breach of the constitutional right of the Appellant not to be discriminated against in the sum of \$60,000.00. The Claimant proposes that the sum should be at least \$100,000.00 as in *Titan (supra)* to \$240,000/\$60,000.00 per constitutional right pursuant to *Wade (supra)*.
17. I agree with the Claimant that the actions based on the uncontested facts which include the forcible removal of the Claimant by physically picking up the Claimant and removing him all of which was recorded and carried on television, the Claimant being suspended from House and deprived of his salary for months, justifies an award of vindicatory damages in favour of the Claimant. While the Claimant as all politicians in the House should display greater decorum, the high-handed manner of his removal was unnecessary and not proportionate to his actions.
18. I disagree with the Claimant on the amount. The case of *Titan (supra)* the Appellant business was effectively closed down and vindicatory damages was given in lieu of damages. In *Wade v Roaches (supra)* the person in that case lost her job due to the discrimination on the basis of sex and being pregnant, a very vulnerable position. It was taken into account in that case that she was subsequently rehired by the Ministry of Education. The Claimant in the case at bar while out of Parliament for months did not lose his job, he returned to the House some months after his suspension. The Claimant will also be getting his salary that he was deprived of as compensation for the action. The breach of the Claimant's rights was not the same as the egregious discrimination towards women,

19. The vindicatory awards are for the vindication of the constitutional rights and not each right that is violated. In *Attorney General of Trinidad and Tobago v Ramanoop (2005) 66 WIR 334* the Privy Council said:

“19 An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances...” [emphasis mine]

20. Therefore, a vindicatory award is not an award for compensation in breach of the constitutional right but for the sense of public outrage, show the importance of the right(s) and deter further breaches. I therefore do not accept that each breach of right requires a separate vindicatory award. I am of the view that vindicatory damages of \$100,000.00 would be manifestly excessive in the circumstances of this case.

21. Having looked at the cases in recent time and all the circumstances I would award the sum of \$50,000.00 in vindicatory damages. It is hope that the Legislature whoever is power not continue these kinds of actions in the future.

22. Costs on the prescribed basis of the damages awarded.

/s/Westmin James

Westmin R.A. James

Justice of the Supreme Court (Ag)