

**IN THE HIGH COURT OF BELIZE, A.D. 2022**

**Claim No. 414 of 2021**

**BETWEEN**

**LILLIAN LOCKWOOD**

**CLAIMANT/RESPONDENT**

**AND**

**KEISHA CHRISTIAN**

**DEFENDANT/APPLICANT**

**Before** the Honourable Madam Justice Geneviève Chabot

**Date of Hearing:** November 11<sup>th</sup>, 2022

**Appearances**

Magalie Perdomo, for the Claimant

Stevanni Duncan Ferrera, for the Defendant

**RULING ON APPLICATION TO SET ASIDE SERVICE  
AND DISCHARGE THE INTERIM ORDER**

**Background**

1. This is an Application to set aside an Order for Substituted Service, and to discharge an Interim Order with Penal Notice issued by this Court as a result of the Defendant's failure to file an Acknowledgement of Service, a Defence, or enter an appearance within 14 days of service.
2. The Claimant, Lillian Lockwood (the "Respondent" in this Application), filed on June 16<sup>th</sup>, 2021 an Application for an Injunction and a Fixed Date Claim Form seeking various declarations and orders against the Defendant (the "Applicant" in this Application) in relation to a piece of property located near Mile 17½ in the Village of Sandhill, Belize District, Belize (the "Property"). An amended Fixed Date Claim Form was filed on

November 30<sup>th</sup>, 2021 and an Amended Notice of Application for an Urgent Injunction was filed on December 10<sup>th</sup>, 2021.

3. On December 16<sup>th</sup>, 2021, the Claimant filed a Notice of Application for Substituted Service. The Application was accompanied by the Affidavit of the process server, PC Gregory Witty, dated December 15<sup>th</sup>, 2021. In his Affidavit, PC Witty swore that he attempted to serve the Defendant on three occasions, but the Defendant was not found at the Property. PC Witty swore that he made various enquiries around the Property, and that he verily believed that the Defendant no longer resided in the area. PC Witty went on to swear that he believed that service by publication in a widely circulated newspaper would be sufficient to bring the Fixed Date Claim Form and Statement of Claim, and the Amended Fixed Date Claim Form and Statement of Claim, to the attention of the Defendant.
4. The Application was granted by this Court on February 17<sup>th</sup>, 2022. The Claimant was granted permission to effect service of the Fixed Date Claim Form and Statement of Claim, the Amended Fixed Date Claim Form and Statement of Claim, and the Amended Urgent Notice of Application “by two consecutive publications in a principal newspaper of general circulation in the country of Belize”.
5. On March 25<sup>th</sup>, 2022, Claimant’s counsel advised the Court that an error had been made in the publication, and requested permission to publish the above-noted documents again. The Court issued an Order to that effect on March 31<sup>st</sup>, 2022.
6. Notice of the Fixed Date Claim Form and Statement of Claim, the Amended Fixed Date Claim Form and Statement of Claim, and the Amended Urgent Notice of Application was published in two consecutive issues of the Amandala Newspaper on April 15<sup>th</sup>, 2022 and April 22<sup>nd</sup>, 2022. In the absence of an Acknowledgment of Service, a Defence, or the entry of an appearance from the Defendant, the Claimant sought, and this Court granted, an Order with Penal Notice declaring that the Claimant was entitled to immediate possession of the Property and ordering the Defendant to deliver vacant possession by August 12<sup>th</sup>, 2022 and to return all documents and properties in her possession which belonged to the Claimant.
7. On September 1<sup>st</sup>, 2022, the Defendant filed an Acknowledgment of Service and on October 5<sup>th</sup>, 2022, she filed this Application.

### **The Application**

8. The Defendant applies for the following orders:
  1. That the Order made on 31<sup>st</sup> March 2022 granting permission to the Claimant to effect service of the Fixed Date Claim Form and Statement of Claim, the Amended Fixed Date Claim Form and Statement of Claim, and the Amended

Urgent Notice of Application with draft order by way of “two consecutive publications in a principal newspaper of general circulation in the country of Belize” be set aside;

2. That, further or alternatively, the service effected pursuant to the said Order made on 31<sup>st</sup> March 2022 be deemed bad and improper service;
3. That the Interim Order with Penal Notice made on 25<sup>th</sup> July 2022 be discharged pursuant to rule 17.4(8) of the *Supreme Court (Civil Procedure) Rules, 2005*;
4. That time within which the Defendant is to file a Defence is extended for up to twenty-eight (28) days;
5. Costs; and
6. Such further and other relief as the Honourable Court deems just.

## **Submissions**

### *Applicant's Submissions*

9. The Applicant, Ms. Christian, argues that for an order for substituted service to be granted pursuant to Rule 5.14 of the *Supreme Court (Civil Procedure) Rules, 2005* (the “Rules”), it must be accompanied by an affidavit “showing that the method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim”. The Applicant submits that the Affidavit filed in support of the Application for Substituted Service failed to show that the method of service, namely publication by way of two consecutive publications in a principal newspaper of general circulation in the country of Belize, was likely to enable her to ascertain the contents of the Statement of Claim.
10. The Applicant further argues that the service was bad and improper because she was at all material times, in fact, not aware of these proceedings or the contents of the Statement of Claim. The Respondent could have employed another method of service that would have much more effectively enabled the Applicant to ascertain the contents of the Statement of Claim. In her First Affidavit sworn in support of this Application, the Applicant explains that the Respondent is her biological grand-aunt and that she knows that the Applicant ordinarily resides in the United States of America. The Applicant alleges that the Respondent also ordinarily resides in the United States, and that the Applicant had stayed with her there. The Applicant further explains that when she was in Belize to handle the estate affairs of her adoptive mother, documents regarding the property were delivered to her by the process server for Erlington & Company (the Respondent’s former counsel)

which contained her US address where she lives. These documents were attached to a Second Affidavit sworn by the Applicant in support of the Application.

11. According to the Applicant, on the date the process server attempted to serve her, and when the notices were published in the Amandala, she was in the United States with her husband and children, and the Claimant was aware of this. The Applicant exhibited in her Second Affidavit receipts showing purchases made, and salary earned, in the United States at that time. The Applicant categorically denies paragraphs 6 and 7 of the Third Affidavit of Lillian Lockwood sworn in response to this Application. In those paragraphs, Ms. Lockwood alleges that she was unaware that the Applicant was a resident of the United States during the relevant period, because as far as she knew the Applicant was exclusively residing in Belize. The Applicant points out that the process server, PC Witty, was unable to locate her at the property despite making three attempts, which shows that she was not a resident of Belize at that time.
12. The Applicant submits that the Claimant should have exhausted every opportunity to effect personal service before substituted service was considered. The Applicant suggests that she could have been served at her address in the United States, or that she could have been served through her biological mother, who resides in Belize and could have brought the Claim to her attention.
13. The Applicant notes that the Respondent failed to strictly comply with the March 31<sup>st</sup>, 2022 Order because she only published a general notice, and not the Fixed Date Claim Form and Statement of Claim, the Amended Fixed Date Claim Form and Statement of Claim, and the Amended Urgent Notice of Application in the newspaper as ordered by this Court.
14. With respect to the Interim Order with Penal Notice, the Applicant argues that it should be set aside because the Respondent failed to provide an undertaking to abide by any order of damages as required by Rules 17.4(2) of the *Rules*. The Applicant also alleges that because she had not been properly served outside of the jurisdiction, she was not subject to the jurisdiction of the Court and could therefore not be the subject of the Interim Order.
15. The Applicant contends that the parties should return to the way things were before the Order for Substituted Service was obtained. The Applicant was then in possession of the Property. The Applicant submits that the Respondent can now properly make an application for an interim order or injunctive relief if necessary. The Respondent should not be able to flout the processes of the Court for the sake of personal ease and convenience.

### *Respondent's Submissions*

16. The Respondent argues that the Order for Substituted Service was properly granted by this Court. The process server, PC Witty, swore in his supporting Affidavit that he made various enquiries and came to the conclusion that service in a widely circulated newspaper would be sufficient to bring the Claim to the attention of the Applicant. The belief of PC Witty that the Applicant did not reside in the area was not sufficient to determine that she resided outside the jurisdiction and/or that she had left Belize.
17. In her Third Affidavit, Ms. Lockwood alleges that she knew the Applicant had occupied the Property since March 2021 and that she was ordinarily resident of Belize during the relevant time period. She notes that the Applicant had commenced eviction proceedings against her for the purpose of taking possession of the Property, and that as a result she, the Respondent, had to relocate to the United States. The Respondent categorically denies that she had knowledge that the Applicant was a resident of the United States during the relevant period. The Respondent alleges that the evidence brought by the Applicant in her Second Affidavit in support of her claim that she was a resident of the United States during the relevant time is insufficient because it does not show that any purchase was made by Ms. Christian personally, or that she was present in the United States at the time.
18. In response to the Applicant's contention that the publication of the notice did not comply with the Order of this Court, the Respondent argues that substituted service is effected by publishing a notice in the newspaper, not by reproducing the entire Fixed Date Claim Form or Statement of Claim.

### **Determination**

19. The Application is granted. I agree with the Applicant's submission that the Affidavit PC Witty swore in support of the Application for Substituted Service did not meet the requirements of Rule 5.14(2)(b) of the *Rules*. In his Affidavit, PC Witty swore that he made three unsuccessful attempts at serving Ms. Christian at the Property. PC Witty also swore that he "made various enquiries at her home situated at 17 Miles Northern Highway, Belize District, Belize regarding the whereabouts of Keisha Christian". Based on those enquiries, PC Witty concluded that the Applicant no longer resided at the Property.
20. Having satisfied himself that the Applicant no longer resided at the Property, PC Witty made no further attempts at locating the Applicant before concluding that publication in a widely circulated newspaper would be sufficient to bring this Claim to her attention. I find that the Affidavit of PC Witty does not show that this method of service was likely to enable the Applicant to ascertain the contents of the Claim. For this method of service to be effective, one must have reasons to believe that the person intended to be served has access to the newspaper in question, which requires the person to be in Belize at the time of the

publication. PC Witty made no enquiries to satisfy himself that the Applicant might still be in Belize.

21. It was unreasonable of PC Witty not to enquire with the Respondent whether she had knowledge of Ms. Christian's whereabouts. It was also unreasonable of the Respondent not to volunteer potentially relevant information before filing the Application for Substituted Service. The evidence shows that the Applicant and the Respondent know each other well. They are blood relatives, and have lived together in the United States at times. The Respondent does not dispute that she knew the Applicant resided in the United States before taking possession of the Property in February of 2021. The evidence also shows that the Respondent's previous counsel, Erlington & Co., had knowledge of the Applicant's address in the United States.
22. Whether or not the Respondent had actual knowledge that the Applicant was in the United States at the relevant time is not determinative of the issue. Having satisfied himself that the Applicant no longer resided at the Property, the next question PC Witty had to ask himself was: where else could Ms. Christian be? Making simple enquiries with the Respondent herself would have yielded some relevant information, including the fact that the Applicant ordinarily resided in the United States before she took possession of the Property and, potentially, the fact that the Applicant's biological mother resides in Belize. Neither avenue was explored by PC Witty before he concluded that substituted service through publication in a newspaper was likely to enable the Applicant to ascertain the contents of the Claim.
23. The Court is satisfied, on the evidence, that the Applicant was not made aware of the Claim through publication in the Amandala in April of 2022. The Applicant provided evidence of purchases made in the United States during the relevant time period, as well as paychecks earned from "Coco Interior Designs", whose business address is in Pennsylvania, USA, in March of 2022. While the Respondent disputes this evidence, I am satisfied that, on the balance of probabilities, this evidence, coupled with the Respondent's own evidence that the Applicant no longer resided at the Property in Belize at that time, shows that the Applicant was not in Belize at the time of the publication in the Amandala.
24. For these reasons, the Order for Substituted Service is set aside. Because the Applicant was not properly served with the Fixed Date Claim Form and Statement of Claim, the Amended Fixed Date Claim Form and Statement of Claim, and the Amended Urgent Notice of Application, the Interim Order with Penal Notice issued on July 25<sup>th</sup>, 2022 as a result of the Applicant's failure to file an Acknowledgement of Service, a Defence, or enter an appearance, must be discharged.
25. As to what happens now, I disagree that the Applicant should be put back in possession of the Property. Ownership of the Property is disputed. The evidence shows that the Applicant currently resides and is employed in Pennsylvania, USA. On the other hand, the

Respondent argues, in the Claim, that she resided at the Property for 15 years before the Applicant took possession of the Property around March 2021. The Respondent alleges that she was rendered “homeless” and had to move in with her daughter in the United States because of the actions of the Applicant.<sup>1</sup> The Respondent regained possession of the Property around August 2022, as a result of the Order with Penal Notice issued by the Court. Since the Applicant has a residence in the United States and does not allege that she wishes to move back to the Property, and since the Respondent has no other residence and wishes to remain in Belize, I find that the status quo should remain as it is. However, the Applicant must be granted reasonable access to the Property should she wish to retrieve any of her belongings which might still remain at the Property.

**IT IS HEREBY ORDERED**

- (1) The Application is granted;
- (2) The Orders for Substituted Service dated February 17<sup>th</sup>, 2022 and March 31<sup>st</sup>, 2022 are set aside;
- (3) The Interim Order with Penal Notice dated July 25<sup>th</sup>, 2022, is discharged;
- (4) The Defendant shall file a Defence to the Claim within 28 days of this decision;
- (5) Costs are awarded to the Defendant on an agreed-upon basis.

Dated December 29<sup>th</sup>, 2022

Geneviève Chabot  
Justice of the High Court

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<sup>1</sup> Amended Statement of Claim at paras. 8 and 12.