

IN THE SUPREME COURT OF BELIZE, A.D. 2022

Claim No. 250 of 2022

IN THE MATTER of the Contravention of Rights Guaranteed in Sections 3(d), 6(1) and 17(1) of the Belize Constitution

AND

IN THE MATTER of the Compulsory Acquisition of 552 Acres of Land situate in San Pedro Town in August 1992

AND

IN THE MATTER of an Application for Redress made pursuant to Section 20(1) of the Belize Constitution

BETWEEN

HOLIDAY LANDS LIMITED

1st CLAIMANT

WITTE & WITTE, PC

2nd CLAIMANT

AND

THE ATTORNEY GENERAL OF BELIZE

1st DEFENDANT

**MINISTER OF NATURAL RESOURCES AND
THE ENVIRONMENT**

2nd DEFENDANT

Before the Honourable Madam Justice Geneviève Chabot

Date of Written Submissions: July 8, July 25, and July 29, 2022

Appearances

Fred Lumor, S.C., Counsel for the Claimants

Samantha Matute and Imani Burgess, Counsel for the Defendants

RULING ON PRELIMINARY ISSUE OF LAW

Introduction

1. Approximately 30 years ago, the Government of Belize compulsorily acquired 552 acres of land belonging to the Claimants for the purpose of building an airstrip. The airstrip was never built, and the Claimants have yet to be fully compensated for the compulsory acquisition.
2. The Claimants filed a claim in 1994 seeking redress for the Defendants' delay in making compensation for the acquisition. That claim was discontinued following an agreement by the parties to submit the Claimants' claim for compensation to a Board of Assessment constituted under the *Land Acquisition (Public Purposes) Act*.¹ The Award made by the First Board of Assessment was set aside by the Court of Appeal. The Award made by the Second Board of Assessment was also set aside by the Court of Appeal. A Third Board of Assessment was never properly constituted, and the Claimants remain only partially compensated for the acquisition of their property.
3. The Claimants filed this second Claim seeking declarations and compensation in relation to the acquisition of their property. At the First Hearing of this Claim, this Court inquired as to whether it has jurisdiction to hear this Claim given the Court of Appeal's order that a Third Board of Assessment be constituted to determine the compensation due to the Claimants for the acquisition of their property. The parties agreed to have the issue of jurisdiction be determined as a preliminary issue of law.
4. Upon considering the parties' submissions, this Court finds that it has jurisdiction to hear this Claim. The Claimants raise new facts regarding the purpose of the acquisition that must be assessed by this Court in order to determine whether the acquisition was made under the *Land Acquisition (Public Purposes) Act*. The Board of Assessment does not have jurisdiction to determine compensation for an acquisition that is not made for a public purpose under the *Land Acquisition (Public Purposes) Act*. The Claimants did not lose their constitutional right to challenge the purpose of the compulsory acquisition under sections 3(d) and 17 of the *Constitution of Belize* by invoking the jurisdiction of the Board of Assessment.

¹ Cap. 184 of the substantive laws of Belize.

Background

5. On August 1st, 1992, the Defendants compulsorily acquired 552 acres of land situated in San Pedro Town. The land was the property of the Claimants. The compulsory acquisition was made by the Defendants under section 3 of the *Land Acquisition (Public Purposes) Act*. The Claimants allege that the Defendants did not comply with section 6 of the *Land Acquisition (Public Purposes) Act* because the Defendants failed to enter without delay into any negotiations with the Claimants for the purchase of the 552 acres of land.
6. In 1994, the Claimants sought redress under section 20(1) of the *Constitution of Belize* for the Defendants' failure to make any compensation to the Claimants. Action No. 37 of 1994 was discontinued by the Claimants with leave of the Court after the 2nd Defendant set up a Board of Assessment to quantify compensation due to the Claimants. According to the Claimants, the costs awarded against the Defendants in Action No. 37 of 1994 have not been paid.
7. The First Board of Assessment was constituted by the 2nd Defendant on June 2nd, 1997. The Award was published on February 27th, 2002 (the "First Award"). Both parties appealed from the First Award. On March 27th, 2003, the Court of Appeal set aside the First Award and remitted the matter to a new Board to be set up for the matter to be heard *de novo*.
8. The Second Board of Assessment made its Award on May 16th, 2003 (the "Second Award"). The Defendants appealed the Second Award. On October 15th, 2004, the Court of Appeal allowed the appeal, set aside the Second Award, and remitted the matter to a new Board of Assessment to be set up to hear the matter *de novo*.
9. Steps were subsequently taken to constitute the Third Board of Assessment. However, the Third Board of Assessment never convened to hear the Claimants' claim for compensation.
10. In 2017, Mr. David Aguilar Sr., Corporate Valuation Surveyor, was appointed as a sole expert under Part 32 of the *Supreme Court (Civil Procedure) Rules*. The Claimants claim that the appointment was made by consent of the parties. The Defendants dispute having consented to the appointment of Mr. Aguilar Sr. The sole expert was tasked with making an assessment, and quantifying the compensation due to the Claimants. The sole expert submitted his report on March 5th, 2018 (the "Expert Report").
11. According to the Claimants, the Defendants sold almost half of the 552 acres of land they had acquired to 28 private entities. The sale of the properties were unrelated to the declared public purposes stated for the acquisition.
12. The Claimants acknowledge that a partial payment of BZ\$1,105,000.00 was made to them by the Defendants on May 13th, 2004.

13. The Claimants seek the following reliefs:

- (1) A Declaration that the Defendants contravened the rights of the Claimants guaranteed in sections 3(d), 6(l) and 17(l)(b)(ii), (iii) and (iv) of the *Constitution of Belize*, when the Defendants abused their powers by the failure to pay compensation to the Claimants for almost thirty (30) years after the compulsory acquisition of their 552 acres of land situate in San Pedro Town on Ambergris Caye in the Belize District.
- (2) A Declaration that the Defendants contravened the rights of the Claimants guaranteed in sections 3(d), 6(l) and 17(l)(b)(ii), (iii) and (iv) of the *Constitution of Belize* –
 - i) when the Defendants abused their powers, by failure to totally utilize the acquired parcels of land for the declared public purposes;
 - ii) but rather sold approximately 252.512 acres of the said parcels of land to private entities, unrelated to the declared public purposes, who in turn made private gains off the property of the Claimants; and
 - iii) at the time when the Claimants have been denied full compensation due by virtue of the compulsory acquisition.
- (3) A Declaration that the Claimants have been arbitrarily deprived of their properties by the actions and omissions of the Defendants contrary to sections 3(d), 6(l) and 17(l)(b)(ii), (iii) and (iv) of the *Constitution of Belize* and sections 3, 4 and 6 of the *Land Acquisition (Public Purposes) Act*, Chapter 184.
- (4) An order that the Defendants do pay to the Claimants:-
 - i) The sum of BZ\$33,276,606.00 assessed as compensation due to the Claimants by David P. Aguilar Sr., Corporate Valuation Surveyor, the sole expert appointed by the consent of the parties, in his Report dated 5th March, 2018;
 - ii) Interest on the aforementioned compensation from 6th March, 2018 until payment at the rate of 8.2% per annum; the interest paid by commercial banks in Belize on fixed deposits at the material time;
 - iii) Costs and disbursements in the total sum of BZ\$342,855.86;
 - iv) 50% of the sum of BZ\$10,000.00 (costs of the services of the sole expert).

- (5) Interest on the amount stated in paragraph 4(iii) and (iv) at the rate of 6% per annum or in accordance with section 166 of the *Supreme Court of Judicature Act*, Cap. 91.
 - (6) In addition, or in the alternative, appropriate declarations or orders as will secure or enforce the rights of the Claimants guaranteed in the *Constitution of Belize* in accordance with section 20(2)(a).
 - (7) Costs.
14. The Defendants submit that this Claim is an abuse of process of the Court because there is a statutory regime under the *Land Acquisition (Public Purpose) Act* which prescribes how to deal with compulsory acquisitions. The process before the Assessment Board is ongoing and contingent on the compensation hearing before the Third Board of Assessment, as ordered by the Court of Appeal in 2004. The Claimants did not appeal the decision of the Court of Appeal ordering the convening of the Third Board of Assessment. The Defendants deny being responsible for the delay in convening the Third Board of Assessment.
 15. In addition, the Defendants argue that the Claimants' invocation of the procedure under the *Land Acquisition (Public Purpose) Act* amounted to a waiver, or failure, of the Claimants to exercise their rights under the *Constitution of Belize*.

Submissions

Claimants' Submissions

16. The Claimants argue that changes in factual circumstances and in the law since the facts giving rise to this Claim arose in 1992 require this Court to assert jurisdiction over this Claim.
17. With respect to the change in factual circumstances, the Claimants note that during the delay in the payment of compensation for the property acquired by the Defendants, the Government of Belize subdivided a portion of the acquired property and sold 28 parcels of land to private entities not related to the public purposes stated for the acquisition (new San Pedro airstrip and public utilities), or to any public purpose. The properties were sold between 2005 and 2015.
18. With respect to the change in the law, the Claimants argue, citing *British Caribbean Bank Ltd. and Dean Boyce v The Attorney General and another*² and *The Attorney General et al. v Samuel Bruce*,³ that since the acquisition of the land at issue in this matter, the Court of

² Civil Appeal No. 30 and 31 of 2010.

³ Civil Appeal No. 32 of 2010.

Appeal of Belize has recognized a right to be heard before the compulsory acquisition of property.

19. The Claimants note that the Court of Appeal's decision which remitted the issue of compensation to the Third Board of Assessment is an order for trial or hearing *de novo*. New arguments may be given where there has been a change in circumstances, a change in the law, or a change in judicial opinion. The change of circumstances and the change of judicial opinion were made known to the Government of Belize in the instructions to the sole expert, Mr. Aguilar Sr.
20. The Claimants argue that a Board of Assessment established under section 11 of the *Land Acquisition (Public Purposes) Act* has a very limited jurisdiction. Citing the cases of *Banana and Ramie Products Co. Ltd. v Ministry of Lands and Natural Resources*⁴ and *Home Industries Association v The Government of Grenada*,⁵ the Claimants submit that the Board of Assessment does not have jurisdiction to consider whether a person has any interest in the land acquired, or whether the acquisition was duly carried out for a public purpose in accordance with the *Land Acquisition (Public Purposes) Act*. With respect to this Claim, the Board of Assessment does not have jurisdiction to deal with the issues concerning:
 - a) Whether the Government of Belize gave any hearings to the Claimants prior to the publication of the acquisition notice in 1991;
 - b) Whether the Government of Belize acquired and used the properties for the stated public purposes or for a private purpose; and
 - c) Whether the Claimants have been deprived of the protection of the law when the Government of Belize failed to pay full compensation to the Claimants for a period of almost 30 years.
21. This Claim is a claim for redress under section 20 of the *Constitution of Belize*. The *Constitution of Belize* grants a specific right of access in respect of constitutional violations, as are alleged in this Claim. The Board of Assessment does not have jurisdiction to award general damages as compensation under the *Land Acquisition (Public Purposes) Act*.
22. Finally, the Claimants note that the Government of Belize did not raise an objection to the appointment of Mr. Aguilar Sr. as sole expert. Both parties gave instructions to the sole expert on the realisation that the Board of Assessment lacked jurisdiction to deal with the

⁴ (1999) 41 WIR 76.

⁵ (1969) 14 WIR 412.

multiple issues that have arisen during the delay which fall outside the jurisdiction of the Board of Assessment.

Defendants' Submissions

23. The Defendants argue that at the time of their acquisition of the 552 acres of land, the Claimants did not question whether they should have been heard before the acquisition took place, or the purpose for which the properties were acquired. The Claimants did not challenge the acquisition as being unlawful, but only sought compensation for the acquisition of their properties. The issues now raised are matters that could have, and should have been raised in the Claimants' first constitutional Claim, before the Claimants invoked the jurisdiction of the Board of Assessment pursuant to the *Land Acquisition (Public Purposes) Act*.
24. The Claimants seek to raise the above-noted constitutional issues because there has been delay in the determination and payment of compensation to the Claimants. The delay was not caused by the Defendants, but by the Board of Assessment itself. To pursue those issues now is an abuse of process of the Court, as there has been inordinate delay by the Claimants in bringing this Claim since the acquisition took place. The Defendants submit that the Claimants have acquiesced to the acquisition. Undue delay in bringing a constitutional claim without a proper excuse is an abuse of process and can defeat the Claim. The Defendants note that in their Claim, the Claimants seek "compensation" for the taking of their land, and not an "award for damages for breach of constitutional rights". This constitutional claim is a guise for the real Claim at hand, that is, for the payment of compensation.
25. Under section 11 of the *Land Acquisition (Public Purposes) Act*, where property has been compulsorily acquired and there has been no settlement as to due compensation between the parties, the Board of Assessment shall deal with the issue of compensation. In this case, the jurisdiction of the Board of Assessment has been duly invoked, as there have been at least two separate determinations by the Boards to determine the just compensation due to the Claimants, and there is a Third Board of Assessment pending following the Court of Appeal's order. The Claimants did not challenge the order of the Court of Appeal, and by their actions agreed to have the matter continue before the Board.
26. Citing the Caribbean Court of Justice's ("CCJ") decision in *Belmopan Land Development Company Limited v The Attorney General of Belize*,⁶ the Defendants argue that under the *Land Acquisition (Public Purposes) Act*, acquisition of land in accordance with the legislation is lawful and constitutional, and compensation is to be assessed by a Board of

⁶ [2022] CCJ 1 AJ ("*Belmopan Land Development Company*").

Assessment. Since there was previously no challenge to the lawfulness of the acquisition, the issue of compensation is to be properly dealt with by the Board, and not this Court.

27. The Defendants note that once jurisdiction of the Board has been invoked, there is nothing in the *Land Acquisition (Public Purposes) Act* that would allow to revoke its jurisdiction. Despite the Claimants' argument that there has been a change in circumstances, the Claimants have presented no evidence that they have taken steps to inform the Board of the purported changes in circumstances; only that the instructions to Mr. Aguilar Sr. included the changes in circumstances.
28. With respect to the purpose of the acquisition, the Defendants state that the *Land Acquisition (Public Purposes) Act* confers wide discretion on the Minister. The stated public purpose for which the Claimants' properties were acquired included for public utilities. The Defendants cite excerpts of Mr. Aguilar's Report, in which Mr. Aguilar Sr. noted that at the time the properties were acquired, there was no running water and that works have been carried out by Belize Water Services Limited on the construction of an access road. The use of the property by Belize Water Services Limited is in the general interest of the people in San Pedro and not a particular interest of individuals, and in line with the purpose for which the properties were acquired.
29. The issue of compensation is already before a Board that has the requisite expertise to determine the market value of the land. The Court does not have the requisite expertise to make that determination without the assistance of experts. The matter should proceed to the Board.
30. Finally, with respect to the Claimants' argument that the Board does not have jurisdiction to deal with the question of unreasonable delay in the payment of compensation, the Defendants note that under section 22 of the *Land Acquisition (Public Purposes) Act*, the Board has the power to award interest.

Claimants' Reply

31. In reply, the Claimants note that the Defendants' submissions are not responsive to the preliminary issue submitted to this Court for determination. None of the Defendants' submissions address the issue of jurisdiction.
32. The Claimants say that the CCJ's decision in *Belmopan Land Development Company* does not assist the Defendants' position because the majority decision distinguished the facts of that case from compulsory acquisition.

Analysis

33. This Court has jurisdiction to hear this constitutional Claim.
34. Section 3 of the *Constitution of Belize* protects the right of every person in Belize from arbitrary deprivation of their property. Pursuant to section 17(1) of the *Constitution of Belize*, the State can compulsorily acquire property under a law that “prescribes the principles on which and the manner in which reasonable compensation thereof is to be determined and given within a reasonable time”, and secures the right of any person claiming an interest in, or right over the property to have access to the courts for the purpose of:
 - i. Establishing his interest or right (if any);
 - ii. Determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;
 - iii. Determining the amount of the compensation to which he may be entitled; and
 - iv. Enforcing his right to any such compensation.
35. It is with those principles in mind that the *Land Acquisition (Public Purposes) Act* must be interpreted.
36. This is the second constitutional claim filed by the Claimants with respect to the acquisition of the 552 acres of land situated in San Pedro Town. The first constitutional Claim was filed in 1994, two years after the acquisition. It is not disputed that at the time of the acquisition, the Minister declared a public purpose for the acquisition. The Claimants had no reason to dispute the public purpose of the acquisition and did not do so. The acquisition was made under the *Land Acquisition (Public Purposes) Act* and the parties followed its provisions. As noted above, two Boards of Assessment made Awards which were subsequently reversed by the Court of Appeal. A Third Board of Assessment has yet to be constituted to determine the Claimant’s claim for compensation.
37. This second constitutional Claim was filed on April 10, 2022. While this second Claim stems from the same events, this second Claim is different in nature from the first. According to the Claimants, the Government of Belize sold, between 2005 and 2015, 28 parcels of land from the property it acquired from the Claimants to private entities. The Claimants argue that the 552 acres were therefore not acquired for a public purpose under the *Land Acquisition (Public Purposes) Act*. These facts were not known when the 552 acres were acquired in 1992.

38. The Court agrees that these new facts give this Court jurisdiction to hear this Claim because the Board of Assessment may no longer be the adequate forum to consider the Claimants' Claim. Under section 11 of the *Land Acquisition (Public Purposes) Act*, all questions and claims relating to the payment of compensation under the *Land Acquisition (Public Purposes) Act* must be submitted to a Board of Assessment. However, to be submitted to a Board of Assessment, the questions and claims must relate to the payment of compensation under the *Land Acquisition (Public Purposes) Act*:

11.-(1) All questions and claims relating to the payment of compensation under this Act and to the apportionment of such compensation shall, except as is provided in section 18 of this Act, be submitted to a Board of Assessment to be appointed in each case in accordance with section 12 of this Act.

(2) A Board of Assessment shall have full power to assess, award and apportion compensation in such cases, in accordance with this Act [emphasis added].

39. Pursuant to section 3, an acquisition under the *Land Acquisition (Public Purposes) Act* ought to be made "for a public purpose". An acquisition that is not made for a public purpose falls outside of the purview of the *Land Acquisition (Public Purposes) Act*, and cannot be submitted to a Board of Assessment for a determination on compensation.

40. There is no time limit for a person whose land has been compulsorily acquired to challenge the purpose of the acquisition. Section 3(5) of the *Land Acquisition (Public Purposes) Act* provides that:

(5) Any person claiming an interest in or right over the land shall have a right of access to the courts for the purpose of determining whether the acquisition was duly carried out for a public purpose in accordance with this Act [emphasis added].

41. The use of the past tense in section 3(5) of the *Land Acquisition (Public Purposes) Act* suggests that the purpose of an acquisition can be challenged at any time, including after the acquisition was completed. This interpretation is consistent with sections 3(d) and 17 of the *Constitution of Belize*, which impose no time limit on a claim for a breach of the constitutional right not to be arbitrarily deprived of property.

42. The Claimants' contention that the law now recognizes a right to be heard before any compulsory acquisition can be carried out is noted. However, there is no evidence, at this time, that the Claimants sought to be heard at the time of the acquisition. Whether there has been a breach of this principle of natural justice at the time of the acquisition can only be determined following a trial of this Claim.

43. This Court disagrees with the Defendants' suggestion that, having invoked the jurisdiction of the Board of Assessment pursuant to the *Land Acquisition (Public Purposes) Act*, the Claimants are now prohibited from bringing this constitutional Claim. A party does not lose its constitutional rights by pursuing a statutory remedy. The purpose of the *Land Acquisition (Public Purposes) Act* is to realize the guarantee against the arbitrary deprivation of property under the *Constitution of Belize*. The new facts raised by the Claimants in this second constitutional Claim raise the prospect that the acquisition was made in breach of this guarantee. The Claimants have a right to have these issues addressed in a court of law, as provided for under section 20 of the *Constitution of Belize*.
44. The parties made submissions regarding the context surrounding the appointment of Mr. Aguilar Sr., and the value of his Report for this Claim. These submissions have no bearing on this preliminary issue. At issue is whether this Court, or the Board of Assessment, has jurisdiction to hear this Claim. Having determined that this Court has jurisdiction to hear this Claim, the next step will be for this Court to hear the parties on the issues of the constitutional breach and remedy. It is at that stage that the Court will have to determine what weight, if any, to give Mr. Aguilar's Report.
45. While this Court does not have the jurisdiction to stay a decision of the Court of Appeal, in practice the effect of the present decision is to put the process before the Board of Assessment on hold as it would be an abuse of process to pursue both recourses at the same time. At the hearing of this Claim, the parties will have an opportunity to make submissions as to whether a Third Board of Assessment should be constituted as ordered by the Court of Appeal to determine the quantum of the compensation due to the Claimants for the acquisition of the 552 acres.

IT IS THEREFORE DECLARED THAT

- (1) This Court has jurisdiction to hear this matter;
- (2) Each party shall bear their own costs.

Dated November 14th, 2022

Geneviève Chabot
Justice of the Supreme Court