

**IN THE COURT OF APPEAL OF BELIZE AD 2026
CIVIL APPEAL NO 4 OF 2023**

BETWEEN:

JOSE LUIS SALAZAR

Appellant

and

COROZAL SUGAR CANE PRODUCERS ASSOCIATION

Respondent

Before:

The Honourable Mde. Marguerite Woodstock Riley, KC
The Honourable Mr. Peter I Foster, KC
The Honourable Mde. Michelle Arana

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Velda Flowers for the Appellant
Mr. Nigel Ebanks for the Respondent

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2025: 13 March
2026: 23 April
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JUDGMENT

- [1] **Foster, JA:** This appeal stems from a decision of Shoman J made on 17th January 2023 in which she declared that the appellant was not entitled to damages as a consequence of his removal from the membership of the Board of Directors of the respondent. The learned judge also ordered that the appellant was not entitled to a declaration that the decision of the respondent to expel him as a member of the respondent was invalid and void.

Background

- [2] The respondent is a statutory corporation and registered association under section 32 of the **Sugar Industry Act** of Belize.¹ The appellant, a sugar cane farmer, was a founding member of the respondent and served as a director and treasurer of the respondent's Board of Directors. The respondent also served as Harvest Group leader.

¹ Cap 238, Laws of Belize.

- [3] The claim in the court below arose out of two decisions of the respondent: removing the appellant as director of the respondent's Board of Directors ("removal decision") and officially expelling him as a member of the Association ("expulsion decision"). The removal decision resulted in the appellant also being removed as a Harvest Group leader, since he was no longer a member of the Board.
- [4] The expulsion decision was purportedly taken at an Annual General Meeting on 19th November 2017. By letter dated 30th November 2017, the appellant was informed of his official expulsion. In that letter, the Chairperson of the respondent noted that the membership through a resolution voted for the expulsion of the appellant. The letter cited "negative and destructive behaviour" and noted that the Board of Directors tried to work along with the appellant who continuously did not support the programs and decisions of the industry.²
- [5] The purported expulsion of the appellant's membership was preceded by a vote of no confidence which was communicated to the appellant by letter dated 11th May 2017.³ The letter stated that the respondent convened a special emergency board meeting to discuss "reports" received by the Sugar Cane Production Committee in relation to the appellant. Further, the letter stated that the Board of Directors took the decision to apply a vote of no confidence, with the result that the appellant was officially relieved of any duties and responsibilities that he held as a director of the respondent, with immediate effect. The letter was signed by the Chairman, Vice Chairman, Secretary, Assistant Secretary, Assistant Treasurer and Councillor.
- [6] By fixed date claim form dated 30th January 2020, the appellant sought declarations that both decisions were unlawful, invalid and void. The appellant also sought special damages in the sum of BZD\$10,500.00 and general damages.
- [7] Before the learned judge, the appellant argued that his purported removal as a director by a vote of no confidence in May 2017 is ultra vires the Bye-laws of the respondent, unlawful, invalid and void. The appellant argued that pursuant to articles 9.0 and 9.4, there was no express power of the Board to remove a director who was elected by the general membership at the general meeting. Indeed, article 9.4 lists three circumstances where an elected member ceases to be a director – where he is subject to disqualification mentioned in the Act; subject to him being heard, where he has absented himself from more than three consecutive

² See Record of Appeal p. 45.

³ See Record of Appeal p. 47.

meetings and where he resigns. The appellant further argued that even if such power is implied to the powers of the Board, there would also have to be an implied requirement for the director to be heard and be given an opportunity to respond to any allegations against him before a decision can be taken. The appellant claimed that he was never informed by the Board of the reports made against him before the decision of the Board was taken and that he was not given an opportunity as a member and director to respond to any allegations or adverse statement in any such report.

- [8] The appellant also argued that under article 6.3 of the Byelaws (which deals with the procedure for expulsion of a member), the process of expulsion begins with a notice being given to the member one month in advance of the intention by the Association to expel him. According to the appellant no notice of the proposed expulsion was given to him. Further, there was no expulsion on the agenda for the Annual General Meeting of 19th November 2017.
- [9] The respondent argued that the appellant's removal as a director was justified due to his conduct which put the association at risk of penalties from its funders. The appellants did not deny that no notice was given to the appellant. However, the respondent argued that the association proceeded to treat the matter of his expulsion based upon and consistent with the appellant's own election and free choice. The respondent emphasised that it was the appellant who initiated the vote for his removal as a member of the association and that he waived any right to protection under the By-Laws in terms of any procedure or notice when he proposed a vote to determine whether he was to remain a member of the association. The appellant did not deny this.
- [10] The learned judge first considered the removal decision of 11th May 2017. At paragraph 20, the judge noted that:

"The decision taken by the Board of Directors of the [respondent] Association was not taken in accordance with the Byelaws of the Association and are therefore ultra vires and invalid. The Court finds that the [appellant] should have been afforded an opportunity to have been heard on the matter in any event, and that in consequence, the decision taken was lacking in natural justice and the right to be heard."

- [11] The judge then considered the expulsion decision of November 2017 and the appellant's argument that there was no notice of the proposed expulsion in accordance with Article 6.3 of the Byelaws. At paragraph 24 of the judgment, the judge noted that:

“[the appellant] was the one who put the matter of his membership to a vote and cannot therefore expect that he would have been provided in the circumstances with any notice, since he was the sole cause of the reason why the vote was brought to the floor and voted upon by the membership of the Association who exercised their right to vote and voted to expel Mr. Salazar. He gambled. He lost.”

- [12] The Court went on to find that although the procedure to remove the appellant from the Board of Directors was ultra vires the powers of the Board members under the respondent's Bye-laws and that it was unfair and breached natural justice principles as the appellant was not given an opportunity to be heard, the events of Annual General Meeting on 19th November 2017 were triggered by the appellants own actions. The court held that:

“[26] There is no difficulty in granting a declaration that the [appellant's] removal from the Board of Directors was ultra vires, unlawful and invalid, however, this Court will not grant Mr. Salazar a declaration with respect to his expulsion from the membership of the Association because it was his own doing that the matter was raised at the Association's AGM and the membership voted to expel him.

[27] The [appellant] cannot expect any relief to be granted to him as a consequence of being expelled as a member of the [respondent] Association.”

- [13] In relation to the appellant's claim for damages as a result of the unlawful and invalid decision by the Board of Directors to dismiss him as a director, the judge found that the appellant would not be a director of the respondent once he had been expelled as a member and any damages he may claim as a consequence of his ultra vires dismissal as a director would have ended perforce on 19th November 2017. The judge went on to find that the appellant failed to provide sufficient evidence that the ultra vires dismissal from the Board of Directors resulted in any direct consequential loss or damage between 11th May and 19th November 2017.

- [14] Accordingly, the learned judge made the following orders:

- (1) “The [appellant] is entitled to a declaration that the decision of the Board of Directors of the [respondent] Association on May 11th, 2017, to pass a vote of no confidence relieving him of all his duties and responsibilities as a director was ultra vires and is invalid;
- (2) The [appellant] is not entitled to a declaration that the decision of the [respondent] Association on November 19th, 2017 at the 4th Annual General Meeting to expel the [appellant] as a member of the [respondent] Association was invalid and void;
- (3) The [appellant's] claim for special damages in the sum of \$10,500 does not succeed;
- (4) The [appellant] shall pay costs in the sum of \$4000.00 to the [respondent].”

[15] Dissatisfied with the decision, the appellant appealed. There are four grounds of appeal:

- (1) The learned trial judge erred in law and/or fact and/or misdirected herself in finding that the Claimant is not entitled to damages as a consequence of being removed from the Board of Directors of the Defendant Association which was found to be ultra vires and invalid.
- (2) The learned trial judge erred in law and/or fact and/or misdirected herself in finding that the Claimant is not entitled to a declaration that the decision of the Defendant Association on November 19th 2017, at the 4th Annual General Meeting, to expel the Claimant as a member of the Defendant Association was invalid and void or to any consequential damages flowing therefrom.
- (3) The learned trial judge erred in law and/or fact and/or misdirected herself in finding that the evidence provided by the Claimant for special damages were unsatisfactory;
- (4) The learned trial judge erred in law and/or misdirected herself in ordering the Claimant to pay costs to the Defendant.

[16] I will first deal with ground of appeal 2 which is a challenge to the judge's findings in relation to the expulsion decision. For convenience, I will deal with grounds of appeal 1 and 3 together, as they seek to challenge the judge's decision in relation to damages. Finally, I will deal ground of appeal 4 which seeks to impugn the judge's costs order.

Ground 2 – Opportunity to be heard

[17] The crux of the appellant's argument is that the judge erred in failing to grant a declaration that the expulsion decision was invalid and void. Counsel for the appellant, Ms. Flowers argued that the decision was wrong in law and fact and as the judge misdirected herself having regard to all the evidence adduced in the matter and the legal principles governing the issue. Ms. Flowers forcefully submitted that the expulsion decision was arrived at in breach of the rules of natural justice which consists of three main elements - prior notice of the case against the individual to be affected by the decision of the decision maker; a fair opportunity to answer the case against him/her; and the opportunity to present his/her own case.

[18] While Ms. Flowers accepted that the appellant, by his conduct, waived his right to notice of the expulsion hearing as prescribed by art. 6.3.2 2 of the Respondent Association Articles of Association, she maintained that the appellant certainly did not waive his right to a fair hearing and was not given the opportunity to defend himself and explain his concerns to the membership at the Respondent Association's AGM held on 19th November 2017. She referred the Court to paragraph 22 of the First Witness Statement of the appellant dated 6th May 2021, where he stated: "I did not waive any right to protection under the by-laws in terms of any procedure or notice. Indeed, when I went to present my case to the meeting, I was denied a hearing. At the meeting of 19th November 2017, I was not granted the opportunity to defend myself and to explain my concerns to the membership. A confusion was created, and a minority of farmers participated in the decision making."⁴

[19] Ms. Flowers also referred the Court to the transcript of proceedings which revealed that during re-examination of the appellant, he was asked "What do you mean that there was not an opportunity?" He responded: "The first thing it was not in the agenda, and I was asking for it to be part of the meeting, but the opportunity was not given, and I wanted to present what I had done in favour of the members, and I was not allowed."

[20] At the outset, it is important to state that the appellant's ground of appeal gives rise primarily to issues of fact. It is therefore useful to consider the approach that an appellate court should take on an appeal from the findings of fact of a trial judge. The basic principle which guides our courts in appeals against findings of fact is trite. In **Watt or Thomas v Thomas**,⁵ Lord Thankerton observed that:

"... the principle ... is a simple one, and may be stated thus:

- I. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.*
- II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.*

⁴ Record of Appeal, Volume , p. 81.

⁵ [1947] 1 ALL ER 582, at p. 587.

III. *The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.*

[21] Simply put, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it.” It is also the law that Appellate Court restraint against interfering with findings of fact, unless compelled to do so, applies not only to findings of primary fact, but also to the evaluation of those facts and inferences to be drawn from them.⁶

[22] The appellant’s argument is hinged on what transpired during the AGM on 19th November 2017. Resulting from that Meeting minutes were generated. The minutes were signed by the Respondent’s Chairman and Secretary. It also bears the Association’s seal. Interestingly, under the rubric “Any other Business, the Minute records:

“... Mr. Jose Luis Salazar’s case was raised whereby his presentation was well ventilated to the entire membership. It was noted that Mr. Salazar went on a very personal tone in his presentation being accusatory and conflicting which the members could not support. Several speakers... all presented information expressing negatives and positives of Mr. Salazar’s attitude and behaviour towards not only the CSCPA but to the industry in (SIC) a whole. Most of the presentation were done against Mr. Salazar, which ultimately, he could not defend. Mr. Salazar together with Mr. Guillermo Chi and Mr. Jeremias Tzul were in favour that the membership would determine the decision to be taken by the majority of the farmers present at the AGM. The motion was put to the floor for his expulsion by Mr. Alejandro Ek of the Patchakan Zone and which was seconded by Mrs. Emilia Cob. On a raise of hands which was put twice to the floor, it showed that more than 80% of the membership were in favour of Mrs. (sic) Jose Luis Salazar.”⁷

[23] It is to be noted that there is no fixed definition of what amounts to being given an opportunity to be heard. In every case it is a question to be determined on the facts and circumstances of each case. Webster JA [Ag.] in **Leonart Matthias v Antigua Commercial Bank**⁸ referred to

⁶ Yates Associates Construction Company Ltd v Blue Sand Investments Limited BVIHCVAP2012/0028 (delivered 20th April 2016, unreported).

⁷ Record of Appeal, Volume 1, P. 184– in blue

⁸ ANULTPAP2017/0002 (delivered 28th May 2020, unreported)

Dr. Albert Fiadjoe in his work **Commonwealth Caribbean Public Law, Text, Cases and Materials**⁹ where he said:

“Fair hearing does not mean a hearing according to what would be required in a court of law. Basically, it means an opportunity to put one’s side of a case before a decision is made. Accordingly, the legal requirement on the adjudicator is nothing more than a basic duty of fairness. Of course, in deciding on what is fair the courts have to balance several interests...There are no fixed rules nor is there a requirement that any rules of evidence should be followed or applied. There is no insistence that there must always be an oral hearing. It all depends on the circumstances of the case. It is however possible to identify from the practice of the courts what are the ingredients of a fair hearing.”

[24] Based on the minutes recorded, there is no evidence that the appellant was denied an opportunity to be heard. Contrary to the appellant’s submission, the minutes recorded that the appellant’s presentation was well ventilated. Unfortunately for the appellant, there is no evidence that the minutes were challenged for inaccuracy. The appellant accepted the minutes in the court below and cannot now take issue with it. I confess that I have great difficulty with the appellant’s submission that he was denied an opportunity to be heard when, not only are the minutes devoid of any such request and denial but the Minutes reflect that it was on the appellant’s request in “Any other Business” that the matter was put to a vote. It was therefore at the appellant’s request that the matter was dealt with.

[25] In my view, the learned judge resolved the claim based on the evidence before her. There is no basis for this Court to interfere with the judge’s findings. Accordingly, this ground of appeal must fail.

Grounds 1 and 3 – Damages in relation to the removal decision

[26] In the main, the appellant submitted that, he ought to have been awarded damages in circumstances where the court found that he was unlawfully removed as a director of the respondent Association’s Board of Directors five (5) months before he was expelled as a member of the Association. The evidence of the appellant, as stated in his first affidavit dated 29th January 2020, was that for the crop year 2016/17, he was assigned responsibility to serve as a quota controller and was to receive a monthly stipend of \$400.00. The appellant argued that he reasonably expected that he would, at the very least, hold this position for the remaining 6 months between his removal from the Board and his expulsion as a member. Hence, he

⁹ Albert Fiadjoe, *Commonwealth Caribbean Public Law*, 4th Edn. Routledge-Cavendish, (UK), 2011.

ought to have been awarded the sum of \$2,400.00 being the total stipend that he would have earned for the 6 months period between May and November. The appellant also argued that he ought to have been awarded general damages for the period.

[27] Notably, there was no challenge by the respondent to the judge's finding that the decision to remove the appellant as a director in May was invalid. Therefore, against this finding, I must determine the issue whether the appellant ought to be paid a stipend for the 6-month period between the removal decision in May and the expulsion decision in November.

[28] It bears noting that the appellant has not provided this Court as well as the court below with any evidence of his "entitlement" or right to this stipend – whether contractual or statutory. Likewise, the appellant has not provided any terms of appointment for his stipendiary post of quota controller. This is especially critical as there is no automatic right to payment of a stipend. A stipend is to be distinguished from salary or wages. The monetary allowance is ordinarily paid to support or defray expenses attendant upon the performance of particular functions. The appellant would not have incurred any expenses attendant upon the execution of the functions of a director. In any event, the burden rests on the appellant to satisfy the court of this. He has failed so to do. In the circumstances, and in the absence of any absolute right in law to payment of a stipend, this ground of appeal cannot succeed.

[29] This leaves me now to deal with the issue of costs.

Ground 4 – Costs

[30] Counsel for the appellant submitted that the Court erred in awarding costs against him in the sum of \$4,000.00. She argued that in the circumstances where the two substantive issues were determined equally in favour of the parties, namely one in favour of him and the other in favour of the respondent Association, and no damages were awarded to him for his unlawful removal from the Board of Directors, the Court ought not to have made any costs award.

[31] As an award of costs is a matter for the discretion of the trial judge, an appellate court will only interfere with the exercise of a trial judge's discretion in well-defined circumstances.¹⁰ In the Eastern Caribbean Court of Appeal case of **Hon. Attorney General and another v D. Giselle**

¹⁰ SLUHCVP2018/0018 (delivered 12th March 2020, unreported);

Isaac,¹¹ the Court explained that the appellate court will only interfere with the exercise of a trial judge's discretion as to costs if it is established that the judge took into account irrelevant factors or failed to take into account relevant factors or that the judge committed an error in principle.

[32] In **Dr. Abner James v The Medical and Dental Council**,¹² Pereira CJ, in discussing an appeal against a costs award, noted that:

*"The aim is to make an order which reflects the overall justice of the case. In considering the issue of costs, the court should have regard to all the circumstances, including the general principles governing the award of costs set out in rule 64.6 of the CPR. In **Rochamel Construction Limited v National Insurance Corporation [SLUHCVP2003/0010 (delivered 24th November 2003, unreported)]**, Byron CJ elucidated the general principles stated in rule 64.6 of the CPR in the following way:*

"CPR part 64.6 prescribes that where the Court decides to make an order about the costs of any proceedings, the general rule is that, it must order the unsuccessful party to pay the costs of the successful party. The Court is, however, given very wide discretionary powers to vary the application of the general rule. These include the power to order a successful party to pay all or part of the costs of an unsuccessful party or make no order as to costs or to pay only certain portions of another person's cost. In exercising these discretions as to costs the Court is required to have regard to all the circumstances. Particular consideration must be given to the conduct of the parties both before and during the proceedings and the manner in which a party has pursued the case in general and particular issues within the case. Thus the order can be affected by whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings. The Court is also required to consider whether it was reasonable for a party to pursue a particular allegation or raise a particular issue and whether the claimant gave reasonable notice of intention to pursue a claim."

[33] Rule 63.6 of the **Civil Procedure Rules of Belize** is almost identical to rule 64.6 of the Civil Procedure Rules of the Eastern Caribbean. It provides that:

"63.6–(1) If the court decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party."

In the circumstances of the case before us, I can see no reason for the judge to depart from the application of the Civil Procedure Rules. In my view, the circumstances of the case are simply that

¹¹ ANUHCVP2015/0014 (delivered 11th March 2016, unreported).

¹² SLUHCVP2018/0018 (delivered 12th March 2020, unreported);

there were two substantive issues which were decided in favour of each party. Accordingly, as the appellant was successful on the claim against the removal decision, the judge ought to have taken this into account in arriving making an award of costs. In light of this error, this Court is justified in exercising its discretion afresh. In so doing, the respondent having prevailed on the appeal on all grounds save for cost is entitled to \$3,000 cost in the court below and the appellant to \$1,000. On the appeal, the respondent is entitled to two-thirds of its cost to be assessed if not agreed within 21 days.

Disposition

[34] For the foregoing reasons, the orders of the Court are as follows:

1. The appeal is dismissed save as to the ground on cost.
2. Costs are awarded to the respondent at two thirds of the cost in the appeal to be assessed if not agreed, within twenty-one days.
3. Costs in the court below is awarded to the appellant in the sum of \$1,000 and to the respondent in the sum of \$3,000.00

[35] I wish to thank Counsel and the parties for their patience in awaiting the Court's decision.

Peter I Foster KC
Justice of Appeal

Marguerite Woodstock Riley KC
Justice of Appeal

Michelle Arana
Justice of Appeal