

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CIVIL APPEAL NO. 2 OF 2024

BETWEEN:

MINISTER OF NATURAL RESOURCES, PETROLEUM & MINING

THE ATTORNEY GENERAL OF BELIZE

Appellants

and

FOWLER WORKS ENTERPRISES LIMITED

Respondent

Before:

The Hon. Mme. Louise Esther Blenman
The Hon. Mme. Sandra Minott-Phillips KC
The Hon. Mme. Michelle Arana

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Samantha Matute, Deputy Solicitor General and Ms. Imani Burgess, Crown Counsel for the
Appellants
The Rt. Hon. Dean Barrow, SC and Ms. Agassi Finnegan for the Respondent

2026: June 24;
August 7

JUDGMENT

INTRODUCTION

1. **BLENMAN, CJ:** This is an appeal by the Minister of Natural Resources, Petroleum & Mining and the Attorney General (collectively referred to as “The State”) against the decision of the Honourable Justice Geneviève Chabot (“the learned trial judge”) dated 12 January 2024. By that decision, the learned trial judge found the State liable for breach of contract arising from four agreements for the sale of national lands dated 6 August 2020.

BACKGROUND

2. In 2019, Fowler Works Enterprises Limited (“Fowler Works”) was duly incorporated under the laws of Belize. Fowler Works was desirous of purchasing and developing national lands as a large-scale sustainable farming/homestead project in the Duck Run area in Belize. It sought permission to survey the land in Duck Run and was subsequently granted permission by letter dated 24 June 2020¹. Fowler Works also applied for a lease of some 1850 acres of land, which was approved but was never executed.
3. Fowler Works thereafter completed the survey and demarcated four parcels of national lands for purchase, namely Parcels E19560-B1 (hereafter “Parcel B1”), E19560-B2 (hereafter “Parcel B2”), E19560-B3 (hereafter “Parcel B3”), and E19560-B4 (hereafter “Parcel B4”). On 6 August 2020, the Minister of Natural Resources, Petroleum & Mining and Fowler Works entered into four agreements for the sale of the four parcels for an aggregate purchase price of BZ\$266,894.50. The exact size and purchase prices of the parcels were as follows:
 - a. Parcel B1 – 1850.43 acres for \$257,349.50
 - b. Parcel B2 – 27.31 acres for \$3,500.00
 - c. Parcel B3 – 25.12 acres for \$3,500.00
 - d. Parcel B4 – 19.33 acres for \$2,500.00

¹ The letter has 1850.428 acres. However, the unchallenged testimony of Mr. Reimer on behalf of Fowler Works in the court below is that the figure 1850.428 was written on as an error that was corrected on the letter itself. The figure “1920” was hand-written on the letter and was accompanied by the signature of the representative on behalf of the Commissioner of Lands.

4. Fowler Works paid in full consideration of the purchase price on 22 October 2020. However, general elections were held in Belize on 11 November 2020, which resulted in a change of Government. Thereafter, the State declined to complete the transactions by transferring title to the four parcels. Consequently, Fowler Works commenced its claim against the State.
5. Fowler Works' Statement of Claim alleged that it was entitled to accept and indeed did accept the State's failure to complete as repudiation of the agreements for sale. Accordingly, Fowler Works sought damages and interest against the State rather than specific performance of the sale agreements.
6. The State resisted Fowler Works' claim, maintaining that the sale agreements were illegal, unenforceable, and contrary to public policy by reason of non-compliance with the laws of Belize. As it relates to Parcel B1, the State averred that the agreement failed to comply with **section 9(4) of the National Lands Act² ("NLA")** and **section 22(2) of the Finance and Audit (Reform) Act³ ("FARA")**, as well as the requirement to conduct an Environmental Impact Assessment ("EIA") prior to its lease and sale. As regards the remaining three parcels, the State asserted that the agreements were similarly unenforceable because they had been entered into without compliance with the Ministry of Natural Resources' policy requiring a potential purchaser of national lands to apply for, conduct, submit and authenticate a survey before approval of a purchase.

High Court Judgment on Liability

7. On 27 April 2023, the learned trial judge ordered the bifurcation of the issues on liability and quantum. The claim proceeded on this basis and the learned trial judge delivered judgment on the liability issue on 12 January 2024. In that judgment, the learned trial judge identified four issues. Namely:
 - a. Does the Sale Agreement for Parcel E19560-B1 breach section 9(4) of the **NLA**?
 - b. Does the Sale Agreement for Parcel E19560-B1 breach section 22(2) of the **FARA**?

² Cap 191 of the Substantive Laws of Belize, Revised Edition 2020.

³ Cap 15 of the Substantive Laws of Belize, Revised Edition 2020.

- c. Do the Sale Agreements for Parcels E19560-B2, E19560-B3, and E19560-B4 breach the Minister's policy or requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval?
 - d. What are the consequences, if any, of the breach of the statutory requirements or Minister's policy or requirement on the Sale Agreements?
8. The learned trial judge considered the issues in relation to the four parcels separately. Regarding the first issue, the learned judge concluded that **section 9(4) of the NLA** was breached in so far as it concerned the application for a lease of Parcel B1 but not in relation to its sale. The breach was the failure of Fowler Works to carry out and provide to the Ministry an EIA prior to applying for the lease as required under **section 9(4) of the NLA**.
9. The learned trial judge's conclusion on the second issue was that the Sale Agreement for Parcel B1 breached **section 22(2) of the FARA**. Parcel B1 exceeded five hundred (500) acres. Accordingly, **section 22(2) of the FARA** required resolution of the National Assembly for authorisation of its sale. Such authorisation via resolution of the National Assembly was never granted.
10. The learned trial judge answered the third issue in the negative. The sales of Parcels B2, B3, and B4 did not breach the Minister's policy or requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval. She found that Fowler Works had complied with the Minister's alleged policy. Particularly, she referred to Fowler Works' evidence contained in an authenticated survey plan titled "Plan showing survey of 4 parcels of national land, situate in the Duck Run 111 area". That survey plan showed all four parcels. The learned trial judge further noted that, even if there was no compliance, the breach of the Minister's internal policy would not be a ground for finding that the Sale Agreements for Parcels B2, B3, and B4 were illegal and contrary to public policy.
11. The learned judge expressed that **Rule 3 of the National Land Rules** ("NLR") required an applicant for sale of national lands to provide "*a rough plan, if possible, of the land applied for*" and that there was no evidence that the Minister had, on the advice of the Advisory Council, prescribed (additional) terms and conditions for the sale of national lands as required by **Section 13 of the NLA**. Accordingly, the court refused to infer any policy from **section 13 of the NLA** and the **National**

Lands Rules and refused to find that the Ministry's practice of requiring an applicant to survey a parcel and obtain a lease prior to purchase amounted to a policy prescribed by the Minister.

12. Having concluded that the Sale Agreements for Parcels B2, B3, and B4 did not breach the Minister's policy or requirements, the learned trial judge held that the Sale Agreements for those three parcels were valid and were breached by the State in its failure to complete the sale.
13. The learned trial judge then went on to address the fourth issue; the consequences of the breach of the statutory requirements of **section 9(4) of the NLA** and **section 22(2) the FARA** in relation to the Sale of Parcel B1. She formed the view that engaging the issue required determining whether the Sale Agreement was void for illegality and failure to comply with public policy.
14. The learned trial judge held that the Sale Agreement for Parcel B1 was not void for illegality or failure to comply with public policy. She determined that neither the **NLA** nor the **FARA** specified a sanction for the breach of their provisions and that, the failure to secure the resolution of the National Assembly fell squarely on the State. In those circumstances, she concluded that it would not be proportional to declare the Sale Agreement for Parcel B1 void for illegality. The learned trial judge placed much reliance on the decisions of **Belize International Services Limited v The Attorney General of Belize**⁴ and **Peyrefitte v Minister of Finance & Ors**⁵ in determining the issue.
15. The learned trial judge found that all four sale agreements were valid and determined that the State was liable for their breach. She then made the following orders:

"IT IS HEREBY ORDERED THAT

- (1) The claim is granted.
- (2) The court remains seized of this matter for the purpose of assessing damages.
- (3) Costs in an amount to be determined at the conclusion of the matter are awarded to the claimant."

⁴ [2020] CCJ 9 (AJ).

⁵ Claim No. 563 of 2021.

GROUND OF APPEAL

16. The State being dissatisfied with decision of the learned judge regarding the liability issue, filed a Notice of Appeal challenging the entirety of the decision and alleging eight (8) grounds on which the judge is said to have erred. For completeness, the grounds are:

- a. The Learned Trial Judge erred in law when she concluded that, notwithstanding recognizing that the lease and subsequent sale of Parcel B1 breached the National Lands Act, Cap. 191 ("NLA") and the Finance and Audit (Reform) Act, Cap. 15 ("FARA"), it would not be proportional to declare the Sale Agreement for Parcel B1 to be invalid for illegality.
- b. The Learned Trial Judge erred in law when she concluded that it would not be proportional to declare the Sale Agreement of Parcel B2, B3 and B4 be invalid for illegality as a result of non-compliance with public policy.
- c. The Learned Trial Judge erred in law when she found that the Court should not imply a sanction where Parliament has not so mandated, despite there being a breach by either Party as a result of non-compliance with public policy, the National Lands Act, Cap. 191 ("NLA") or the Finance and Audit (Reform) Act, Cap. 15 ("FARA").
- d. The Learned Trial Judge erred in law by finding that the contracts were valid on the basis that the FARA and/or the NLA did not specifically express a sanction or expressly provided invalidity as a consequence for failure to comply with its provisions.
- e. The Learned Trial Judge erred in law in the application and distinction of *Belize International Services Limited v The Attorney General of Belize* [2020] CCJ 9 (AJ) ("BISL") and *BCB Holdings Limited and Belize Bank Limited v Attorney General of Belize* [2013] CCJ 5 in the recognition of the importance of Finance and Audit (Reform) Act, Cap. 15 ("FARA").
- f. The Learned Trial Judge erred in law and/or fact when she found that the contract for the sale of Parcel B1 was valid as she failed to sufficiently appreciate that the fons et origo of the Government's ability to sell national lands exceeding 500 acres is in the required authorisation contained in a resolution of the National Assembly.

- g. The Learned Trial Judge erred in law and/or fact by failing to appreciate and give reasonable consideration to the internal policies, practices and procedures applied at the Ministry of Natural Resources. Particularly those internal policies, practices and procedures relating to the requirement to receive permission to survey land, procure an authenticated survey plan and obtain a formal lease prior to purchasing a fee simple interest in large tracts national land.
 - h. The Learned Trial Judge erred in law and/or fact by failing to appreciate and give reasonable consideration to the internal requirements of the Ministry of Natural Resources in relation to the lease and purchase national land as she reasoned that the germane internal memos relating to the relevant requirements were not tendered into evidence, despite hearing viva-voce evidence from the Defendants' witnesses on the said requirements.
17. The relief sought by the State is that the following Orders be granted:
- a. An Order setting aside, in its entirety, the Judgment Order of the High Court of Belize in Claim No. CV 725 of 2022, dated the 12th day of January 2024;
 - b. An Order Staying the Proceedings of any application for the assessment of damages emanating out of Claim No. CV 725 of 2022;
 - c. An Order that costs to be costs in the appeal; and
 - d. Any other Order as the Court may deem fit in the circumstances.

CONDENSED ISSUES ON APPEAL

18. Upon careful examination of the State's Notice of Appeal and the parties' written submissions and having heard the oral arguments of learned counsel for the parties, the issues that have been distilled for determination by this Court are:
- a. Whether the learned trial judge erred in holding that the Sale Agreement for Parcel B1 was enforceable notwithstanding non-compliance with **section 22(2) of the FARA**.
 - b. Whether the learned trial judge erred in holding that the sale of Parcels B2, B3, and B4 did not breach the Minister's policy or requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval.

19. The Court finds it convenient to address the submissions of learned counsel for the parties in respect of the issues.

State's Submissions – Sale of Parcel B1

20. Learned Deputy Solicitor General, Ms. Samantha Matute, proffered oral submissions on behalf of the State. In both her oral arguments and the State's written submissions, reliance was placed on the decision of the Caribbean Court of Justice's ("CCJ") in **Belize International Services Limited v The Attorney General of Belize**⁶. In particular, Ms. Matute invited this Court to adopt and apply the "range of factors" test for illegality articulated by the United Kingdom Supreme Court in **Patel v Mirza**⁷ which was applied by the Honourable Justice Burgess JCCJ in **Belize International Services Limited**. Ms. Matute structured the State's submissions on three steps: Interpretation Analysis Step, Public Policy Analysis Step and Proportionality Analysis Step.

Interpretation Analysis Step

21. As it concerns the Interpretation Analysis Step, Ms. Matute accepted the learned judge's finding that the sale of Parcel B1 breached **section 9(4) of the NLA** and **Section 22(2) of the FARA**. Her submissions concerned, in large extent, the second and third steps.

Public Policy Analysis Step

22. Learned Deputy Solicitor General Ms. Matute submitted that the purpose of **section 9(4) of the NLA** was to ensure that EIAs are conducted before the lease and/or sale of national lands in excess of 500 acres. It was her contention that the use of the mandatory word "*shall*" in the provision demonstrates the importance of the requirement for EIAs in the management and distribution of national lands and that this intertwines with the purpose of **section 22(2) of the FARA**. Ms. Matute averred that **Section 22(2) of the FARA**, provides an open and democratic avenue for the people,

⁶ [2020] CCJ 9 (AJ) BZ.

⁷ [2016] UKSC 42.

by virtue of Parliament, to have a say in the manner in which public assets are disposed of, ensuring transparency, good governance and proper administration.

23. In written submissions, the State contended that the failure to obtain an EIA and Parliamentary approval prior to the sale showed that there was no power to contract. The State, in its submissions, rejected the learned trial judge's position that an EIA was only necessary when seeking a lease of national lands as opposed to the sale of national lands. The State's counterargument was that the requirement for an EIA is aimed at mitigating environmental impact and it not tied solely to the Government's lease. The State maintained that Fowler Works' project, a large-scale farming subdivision, fell under the Environmental Impact Assessment Regulations and that, as a consequence, to allow Fowler Works' claim would compromise the legal system in Belize.

Proportionality Analysis Step

24. Ms. Matute also advanced that the learned trial judge failed to sufficiently appreciate that the *fons et origo* (source and origin) of the Government's ability to sell national land exceeding 500 acres is found in the authorisation contained in a resolution of the National Assembly. It is her contention that a denial of Fowler Works' claim would be a proportionate response to the illegality primarily because the mandatory provisions under **section 9(4) of the NLA** and **section 22(2) of the FARA**, for an EIA and for parliamentary approval respectively, represent a precondition for disposal of national lands and were substantial to the power to contract. In support of this contention, Ms. Matute referred to the decisions in **Attorney General of Trinidad and Tobago v Trinsalvage Enterprises Limited**⁸ and **National Transport Co-operative Society Limited v The Attorney General of Jamaica**.⁹

25. Ms. Matute also submitted that it was the onus of both the State and Fowler Works to obtain National Assembly approval. She maintained that Fowler Works' failure to conduct an EIA and seek Parliamentary approval was intentional because the Director of Fowler Works was well versed with the process of leasing and/or selling national lands in excess of 500 acres given that he owned a land consultancy company.

⁸ [2023] UKPC 26.

⁹ [2009] UKPC 48.

26. Ms. Matute contended that any enforcement of Fowler Works' claim would be harmful to the integrity of the legal system of Belize. She therefore urged this Court to uphold its defence of illegality.

Fowler Works' Submissions – Sale of Parcel B1

27. Learned Senior Counsel Mr. Dean Barrow, for Fowler Works, advanced during oral arguments, that the State conflated the scope and applicability of **section 9(4) of the NLA** as that section concerns the requirements for leases of national lands and not sales of national lands. He submitted that, in the present circumstances, there was never any lease of Parcel B1 prior to the agreement for sale. Therefore, the **section 9(4) of the NLA** breach was immaterial to the sale contract, and the sale had overtaken that breach. Accordingly, the only relevant question, as learned Senior Counsel assessed it, was whether the sale agreement violated **section 22(2) of the FARA**. Mr. Barrow SC, in both oral and written submissions contended that, if this Court applied the range of factors test from **Belize International Services Limited**, it will conclude that it would be disproportionate to declare the Parcel B1 contract invalid without more.

Interpretation Analysis Step

28. Mr. Barrow SC submitted that in circumstances where the proposed sale of national lands exceeds 500 acres, **Section 13 of the NLA** and **Rule 3 of the National Lands Rules (NLR)** ought to be read together with **Section 22(2) of the FARA**. He argued that there is no ambiguity in these provisions and that, while these provisions indicate that parliamentary approval is required, there is no express or implied prohibition against the Minister entering into such contractual arrangements.

Public Policy Analysis Step

29. Mr. Barrow SC alleged that it was the State who violated the **FARA**. Accordingly, he maintained that to award the State for this malfeasance would further undermine the **FARA** by encouraging official wrongdoing and demonstrating that those with authority over national patrimony can injure innocent

citizens and rob them of their investment with impunity. Mr. Barrow SC relied on the decision in **The Cepap Company Limited v Xander Contractors Limited**¹⁰ to undergird this contention.

30. Mr. Barrow also argued that a contract's non-compliance with statute does not axiomatically result in invalidity.

Proportionality Analysis Test

31. Learned Senior Counsel Mr. Barrow submitted that a finding of invalidity would be inappropriate in the circumstances as **section 22(2) of the FARA** is regulatory rather than prohibitory. It does not indicate that the Minister has no power to sell land in excess of 500 acres. Rather, he argued that it only seeks to regulate the sale of large acreages by requiring the Minister to obtain a resolution approving those dispositions. Fowler Works further contended that the responsibility to secure parliamentary approval is that of the Government and that Fowler Works should not now unjustly suffer for relying on the Minister's actual and ostensible authority to complete the sale when that completion was frustrated by the Minister's own deliberate default.

State's Submissions – Sale of Parcels B2, B3 and B4

32. The State applied a similar "*range of factors*" analysis in its submissions on the illegality of the sale agreements for Parcels B2, B3 and B4.

Interpretation Analysis Step

33. Learned Deputy Solicitor General, Ms. Samantha Matute, submitted that the learned trial judge erred by not taking a purposive approach in the interpretation of the **NLA** along with the **National Lands Rules**. She invited the Court to consider that the requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval for Parcels B2 to B4 may be derived from **section 13 of the NLA** read together with **rule 3 of the NLR**. It was Ms. Matute's contention that those provisions allow for the initiating process in the distribution of national lands and the requirements

¹⁰ Civil Appeal No P.376 of 2019 (unreported, delivered on May 18, 2023) (Mendonça JA).

thereunder assist in the management and proper record keeping of the distribution of national lands by the Government.

34. Ms. Matute further submitted that a failure to consider these two provisions undermines the broad discretion given to the Minister to prescribe processes, procedures and policies to be followed when considering applications for the purchase of national lands.

35. The learned Deputy Solicitor General argued that the learned trial judge was wrong to conclude that the plan showing survey of four parcels in Duck Run 111 shows that Fowler Works adhered to this policy as Fowler Works was only given permission to survey Parcel B1. Accordingly, the sale agreements for Parcels B2, B3 and B4 cannot be upheld as legal because they represent a flagrant disregard for the law and internal policies and contravene the purpose of the **NLA**.

Public Policy Analysis Step

36. Ms. Matute invited this Court to hold that the purpose of **section 13 of the NLA** and **Rule 3 of the NLR** will be enhanced with the denial of Fowler Works' claim since doing so will ensure fairness, good governance and administration in Belize and will emphasise the importance of the internal policy requirements in the management and distribution of national lands. She further submitted that to grant Fowler Works' claim would be setting a bad precedent and would compromise Belize's legal system by allowing Fowler Works to enjoy damages for its failure to comply with the laws of Belize.

Proportionality Analysis Step

37. The State deployed similar arguments as it did in relation to Parcel B1. In particular, Ms. Matute submitted that Fowler Works knew of the requirement to conduct a survey prior to lease and purchase approval as these are requirements provided at the time an application for a lease is made. This knowledge, and failure to adhere to the Minister's internal policy, learned Deputy Solicitor General contended, is misconduct that goes to the centrality of the contract. She further submitted that the Government's culpability was nominal, and that to enforce Fowler Works' claim would be harmful to the integrity of the legal system of Belize.

Fowler Works' Submissions – Sale of Parcels B2, B3 and B4

38. Learned Senior Counsel Mr. Barrow asserted that **Section 13 of the NLA** and **Rule 3 of the NLR** do not oblige a party to “*apply for, conduct, submit and authenticate a survey*” prior to the purchase of national lands. He submitted that **Rule 3 of the NLR** only requires that the applicant provide a rough plan and that, in the circumstances, the provision of an authenticated survey plan over the four parcels exceeded the requirements of the rule. Mr. Barrow SC maintained that although **Section 13 of the NLA** empowers the Minister to demand other conditions for sale, the Minister accepted Fowler Works’ application to purchase national lands and approved the sales without more. It was Mr. Barrow SC’s contention that the State’s reliance on ghost policies and practices that were never promulgated or publicly notified cannot serve.

COURT’S ANALYSIS AND DISCUSSION

Relevant Statutory Framework

39. The resolution of this appeal turns in large measure on the proper interpretation to be given to provisions within the **National Lands Act**, **The National Lands Rules** and the **Finance and Audit (Reform) Act**. It is convenient to set out the relevant statutory provisions that have a direct bearing on the issues in this appeal.

National Lands Act

40. **Section 9 of the NLA** concerns applications for leases. In particular, Section 9(4) stipulates that:

(4) Every person who applies to lease 500 acres or more of national land shall be required to carry out, at his own expense, an environmental impact assessment and provide the same to the Minister before the determination of his application for lease, and if the lease is approved, the lessee shall cause such assessment to be revised and provided to the Minister in like manner after every five years until the expiry of the lease.

41. **Section 13 of the NLA** sets out the general power of the Minister responsible for lands to sell national lands in the following terms:

13.-(1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.

(2) An application to purchase national lands shall be made in the form in Schedule II.

National Lands Rules

42. **Rule 3 of the NLR** provides as follows:

3. Every application to purchase land shall be made in the form shown in Schedule II to the National Lands Act and shall be accompanied by- (a) the appropriate fee; (b) a rough plan, if possible, of the land applied for.

Finance and Audit (Reform) Act

43. **FARA** governs the disposal of public assets. Specifically, **section 22(2)** states that:

(2) The disposal of national land, or any dealing or transaction relating to national land, shall continue to be dealt with under the procedures specified in, and the provisions of the National Lands Act, Cap. 191 and Regulations made thereunder,

Provided that the sale or lease of any national land in excess of five hundred acres, or any caye of whatever size, by Government shall first be authorized by a resolution of the National Assembly.

44. While the relevant legislation establishes the statutory framework governing the disposition of national lands, the consequences of any non-compliance with that framework are ultimately informed by the common law doctrine of illegality. It is therefore necessary to examine the authorities governing the application of that doctrine in Belize. Relevant modern authorities are considered below.

Legal Framework – Principles from Belize International Services Limited v The Attorney General

45. The foremost authority on statutory illegality in Belize is the CCJ's decision in **Belize International Services Limited v Attorney General of Belize**. There, our apex court considered the circumstances in which non-compliance with the requirements of a statute would impact the validity of a contract between the government and a private individual. It is apt to set out the procedural

history of that case in the Court of Appeal and the CCJ to better appreciate the legal principles governing illegality in Belize.

Court of Appeal decision in Belize International Services v The Attorney General¹¹

46. For reasons that will become apparent later, the decision of the Court of Appeal assumes great significance in the determination of this appeal. That appeal had its genesis in a suit initiated by Belize International Services Ltd (“BISL”) against the decision of the Government of Belize to take control of the government-owned International Business Company Registry (“IBCR”) and the International Merchant Marine Registry of Belize (“IMMARBE”) from BISL. The pertinent facts are that in 1993, the Government of Belize and BSIL entered into a Management Services Agreement under which BSIL managed both the IBCR and the IMMARBE on behalf of the Government. This agreement was later extended in 2005 (The Extension Agreement).
47. Under the Extension Agreement, BSIL was permitted to, amongst other things, deposit monies collected in respect of the IBCR and IMMARBE into its own bank and thereafter withdraw and disburse funds. The Supreme Court (as it then was) ruled in favour of the Government, primarily on the basis that the Extension Agreement was unconstitutional, illegal and invalid as being against section 114 of the Constitution of Belize and Section 4 of the Finance and Audit Act on the basis that both directed that public funds collected on behalf of the Government should be deposited into the Consolidated Revenue Fund.
48. BSIL appealed to the Court of Appeal. There, Campbell JA, who delivered judgment on behalf of the Court, did not demur from BISL’s submission relying on the range of factors test as propounded in **Patel v Mirza** as the applicable test for determining statutory illegality.¹² Campbell JA then concisely applied this test to the facts of the appeal before him at paragraph 87. The Court of Appeal concluded that:
1. The legislation (**Section 114 of the Constitution** and **Section 4 of the Finance and Audit Act**) directed that public funds collected on behalf of the Government should be deposited

¹¹ Civil Appeal No. 36 of 2016.

¹² *Ibid* at [48]-[49].

into the Consolidated Revenue Fund, which directions BISL flagrantly disregarded and substituted a procedure which contravened the constitutional and legislative control and safeguards of public moneys. Though Campbell JA did not expressly indicate so, this conclusion engaged the interpretation analysis step from **Patel v Mirza**.

2. The underlying purpose of the breached constitutional provision was to maintain parliamentary control and safeguards of public moneys for the benefit of the Belizean people. Denial of the claim would act as deterrence, against similar contraventions of constitutional and legislative safeguards which were enacted for the protection of the Belizean people. Though Campbell JA did not expressly indicate so, this conclusion engaged the public policy analysis step from **Patel v Mirza**.
 3. Denial of the claim was a proportionate response to BISL's admitted contravention of the Constitution and International Business Companies Act 1990 in respect of public moneys raised by the International Business Companies Registry on behalf of the Government of Belize, and BISL's unconstitutional control of public moneys raised and received, for the purposes of the Government of Belize. Though Campbell JA did not expressly indicate so, this engaged the proportionality analysis step from **Patel v Mirza**.
49. As a consequence of the foregoing, the Court of Appeal affirmed the trial judge's decision that the Extension Agreement was unconstitutional, illegal and unenforceable, and dismissed the appeal with costs to the Attorney General.

CCJ Decision in Belize International Services Limited v The Attorney General¹³

50. On further appeal by BISL, the CCJ overturned the Court of Appeal's decision. The panel, which comprised of the Honourable Justices Anderson, Rajnauth-Lee, Wit, Burgess and Jamadar, JJCCJ unanimously ruled that although some aspects of the contractual payment agreements were tainted with illegality, the agreements were, in their pith and substance, enforceable. Accordingly, the government could not rely on the illegality to avoid liability for its own breach of contract. BISL was

¹³ [2020] CCJ 9 (AJ) BZ.

awarded damages and the matter was remitted to the Supreme Court (as it then was) for an assessment of damages.

51. Notwithstanding the unanimous outcome, the CCJ remained divided on the appropriate test to be applied when determining whether a contractual agreement is void for having been tainted with illegality. The Honourable Justice Anderson (with whom the Honourable Justice Rajnauth-Lee agreed) favoured the “*proportionality*” test distilled with appropriate modifications by the Singaporean Court of Appeal in **Ting Siew May v Boon Lay Choo and another**¹⁴ and in **Ochroid Trading Ltd v Chua Siok Lui**.¹⁵ The Honourable Justice Burgess and the Honourable Justice Jamadar, in separate mutually concurring opinions, preferred the “*range of factors*” test adopted by the United Kingdom Supreme Court decision in **Patel v Mirza**.¹⁶ I therefore propose to examine the tests as applied by the judges of the CCJ in **Belize International Services Limited**.

Proportionality Test

52. The Honourable Justice Anderson (as he then was) enunciated that the statement of the applicable law, distilled from relevant common law precedents including the Singaporean Court of Appeal decision of Leong JA in **Ochroid Trading** and which is reflected in the **First and Second American Restatements of the Law of Contracts**¹⁷, was to be set out in four propositions, namely that:

- i. A contract that is prohibited by law will not be enforced by the courts.
- ii. A contract that is not prohibited by law, but which is nonetheless otherwise tainted with illegality, may be enforced by the courts if to refuse enforcement would be disproportionate to the degree of illegality involved.
- iii. The prohibition by law of a contract does not prevent the return of moneys or other property or benefit transferred under the contract if such restitutionary relief does not entail the enforcement of the contract.

¹⁴ [2014] 3 SLR 609.

¹⁵ [2018] SGCA 5.

¹⁶ [2016] UKSC 42.

¹⁷ See: Restatement of the Law of Contracts of the American Law Institute, Sections 512-525, (1933) Volume 18 Issue 4, St Louis Law Review 270; The Restatement of the Law of Contracts of the American Law Institute, (2nd.1981), Sections 178-198.

- iv. The return of moneys or other property or other benefit transferred under the contract will be denied, even where no enforcement of the contract is involved, if such restitutionary relief would lead to the stultification of the law prohibiting the contract.
53. Justice Anderson thereafter examined the four propositions in greater depth, applied them to the facts in BISL and concluded that the appeal should be allowed and the breach of contract claim should be sustained.
54. Justice Anderson, however, found it unnecessary to engage in an application of the “*range of factors*” test emanating from Lord Toulson’s decision in **Patel v Mirza** on the basis that the principles as stated were inapplicable to cases involving an allegation of statutory illegality as opposed to cases where common law illegality was being alleged.
55. His Honour also considered it unnecessary to determine whether **Patel v Mirza** should be followed in relation to the broader illegality defence, since the circumstances of the case, in his view, did not require such in-depth canvass. His Honour stated:

“[22] The circumstances in which the illegality defence arose in the present appeal may be briefly sketched as follows. On 28 October 2016, Madame Justice Arana in the High Court of Belize dismissed a claim for breach of contract against the Government of Belize on the ground that the contract was “unconstitutional, illegal, and invalid.” This decision was upheld in a well-reasoned judgment by Campbell JA in the Court of Appeal delivered on 15 March 2019. **The Court of Appeal appeared to have accepted, or at least did not demur from, the recent decision of the UK Supreme Court in Patel v Mirza, which, by majority, introduced a ‘range of factors test’ to determine whether an illegal contract may be enforced by the courts.** The appeal to this Court is against that decision of the Court of Appeal, and by implication, the *‘range of factors test’* on which it apparently relied.

[23] We have determined that the appeal should be allowed and that the claim for breach of contract should be sustained. **To the extent that the decision in Patel v Mirza would have dictated otherwise, we would, respectfully, refuse to follow it. However, as will be evident in what follows, we do not need to decide, and we do not decide, now, whether to follow Patel v Mirza in relation to much broader issues of the illegality defence in contracts, or in relation to the broad spectrum of private law subjects in which the illegality defence may arise. That decision is left for another day.**” (emphasis added)

56. Justice Anderson, in answering the question of whether there is a sustainable distinction between statutory and common law illegality, pronounced:

[58] For present purposes, it suffices to observe that, in the course of his judgment, Lord Toulson, who gave the leading judgment for the majority, made clear that the policy-based ‘range of factors’ test, used to decide upon enforcement of illegal contracts, would apply only to common law illegality, and not, that is, to statutory illegality since, as he put it: “The courts must obviously abide by the terms of any statute...” This is similar to the Second Restatement of the Law of Contract which provides that, “a promise or other terms of agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable...”

[59] It must be entirely clear that a contract prohibited by statute is unenforceable because a court of law is bound to give effect to the terms of the statute. Where a statute prohibits a contract (whether expressly or by implication) it cannot lie in the mouth of any court to give effect to such a contract (in the absence of legislative provision such as that in section 62 of the UK Criminal Justice Act 1993) by reference to the “range of factors test”. That would necessarily be perverse and a threat to the rule of law. It would raise profound philosophical considerations going to separation of powers and democratic rule. Where the contract is rendered illegal and void by statute there is nothing to enforce and that is the end of the matter.

[60] But there is no obvious reason that there should be a major or substantive difference where the contract is prohibited, not by

statute but under the common law. Where a contract is prohibited under an established head of the common law of public policy it would be a contradiction in terms not to find that that contract is, in consequence, void and unenforceable. As Leong JA suggested in **Ochroid Trading**, to hold otherwise would render the whole doctrine of common law illegality entirely nugatory as well as illusory...

[61] We do not consider that it is an answer to this critical concern to reference the fact that courts create the common law. That is undoubtedly so, but creation and development of the common law must be logical and orderly. To preserve the integrity of the doctrine of common law illegality it would appear, as Leong JA states, that “if a particular court is of the view that a contract ought not to be prohibited pursuant to the common law category in question, then perhaps the appropriate way forward might, instead, be to reconsider that particular category altogether.” **We agree and for these reasons, we would adhere to the law which existed prior to Patel v Mirza, and not follow that decision insofar as it directs that a ‘range of factors test’ determines whether to enforce a contract prohibited by the common law.**

57. Thus, Justice Anderson did not outrightly reject the general utility of the “*range of factors*” test from **Patel v Mirza** but was of the opinion that it was inapplicable to the Belize International Services Limited case on the basis that Lord Toulton, who gave the leading judgment in **Patel v Mirza**, made it clear that it only applied to common law illegality and did not concern statutory illegality.¹⁸

Range of Factors Test

58. Conversely, both the Honourable Justice Burgess and the Honourable Justice Jamadar were of the view that the appropriate test was the “*range of factors*” test emanating from the **Patel v Mirza**. Justice Burgess, in a comprehensive judgment, indicated his reason as follows:

[205] **Patel v Mirza** is a decision in the law of unjust enrichment. **Be that as it may, the range of factors test laid down in that case was stated as applicable generally to illegality in civil actions including illegal contract actions.** That case was not raised before Arana J but was raised

¹⁸ Belize International Services Limited v The AG [2020] CCJ 9 AJ at [58].

for the first time before the Court of Appeal. Campbell JA, delivering the judgment of the Court of Appeal, appears to have accepted and applied the Patel v Mirza range of factors test at para [87] of his judgment to the question of whether the 2005 extension was enforceable.

[206] **I agree with the Court of Appeal that a range of factors test such as the one announced in Patel v Mirza is the correct test to be applied in Belize. I feel bound to emphasize, however, that my opinion is not based on any notion that that court, being subject to the jurisdiction of this Court, was in any sense bound by the decision of the UK Supreme Court in Patel v Mirza.** As Anderson JCCJ observed on the precedential value of House of Lords (and by implication UK Supreme Court) decisions in Marin V Attorney General for Belize [2011] CCJ 9 at para [127] “this Court attaches significant persuasive value to relevant decisions of the House of Lords” [now UK Supreme Court]. However, as that learned Justice opined at para [118], when “faced with a novel point of law on which there is no controlling authority, the matter must be approached from the point of view of the guiding principles of logic, doctrine, and legal policy”.

.....

[218] This Court has on numerous occasions stated that it considers that the role of our courts cannot be limited to determining the rights of the parties and not be troubled about whether a just outcome is reached on the facts. In this Court’s view, that would be to hark back to a bleak period in our history and would be inimical to developing and maintaining the integrity of our Caribbean legal system. **For this reason, I agree with the proposition of Lord Toulson in Mirza v Patel that an approach consistent with upholding the integrity and harmony of the law must be adopted. Such an approach must have as a fundamental objective achieving equitable and transparent results in individual cases even if it may be**

said that the precedential value of those cases may be limited.
(emphasis added)

59. Justice Jamadar indicated his endorsement of the position taken by Justice Burgess in the following terms:

“[357] Burgess JCCJ has made the following findings that are relevant to this discussion. Firstly, that the State, as it turns out quite ironically, relied on the *ex turpi causa* (illegality) defence – that justice (a court) will not assist a person whose cause of action relies on an immoral or illegal act. This approach to litigation is at heart a public policy position taken by the courts (‘ex dolo malo non oritur actio’), and in this case its basis was in alleged statutory illegality. This principle has been relied on to render unenforceable contracts that are contrary to public policy, and to protect the integrity of the just application of the law. **I agree with Burgess JCCJ that in the circumstances of this case, this defence does not benefit the State; and I also agree with Burgess JCCJ, that a suitable ‘range of factors’ test is an appropriate test for Caribbean jurisdictions.** In my opinion, his compelling exposition advances the quest for a relevant and reliable Caribbean jurisprudence in this area of the law, an area that has been in flux for some time throughout common law jurisdictions.” [emphasis added]

Decision of the Honourable Mr. Justice Wit

60. The Honourable Justice Wit, whose decision would have broken the deadlock, declined to cast the deciding vote on the applicable legal test. His Honour opined:

[9] First, as will soon be clear, I do not need to make a choice between these two approaches as I decide the case along a

different route. I also note that the difference in approach, when correctly applied, does not appear to produce a different result, at least not in this matter. Second, the proper approach to an illegality defence was hardly if at all discussed in the courts below. **Patel, although a revolutionary majority decision with strong, authoritative dissents, was simply applied in the Court of Appeal as if it were part of the law of Belize, which it was not.** The impressive Singaporean jurisprudence, favoured by Justices Anderson and Rajnauth-Lee at least for now, was not discussed at all in those courts. **Given this background and given the importance of this difficult area of the law, with which all jurisdictions that I know, both civil law and common law, are still grappling, I do not think this is the proper case to create a precedent. I am hopeful that soon there will be a better case to do so and I think that that case should be dealt with by the full bench of this Court, not by a bench of five.** (emphasis added)

61. The upshot of this is that the divergent, though not entirely incongruous approaches by the Justices of the CCJ in **Belize International Services Ltd** resulted in the Court not deciding what the applicable law is in relation to illegality. In these circumstances where there has been no decision of the apex court as to what the applicable legal principle is, this Court must refer to the CCJ's later decision in **Apsara Restaurants (Barbados) Limited v Guardian General Insurance Limited**.¹⁹ There the CCJ was faced with a similar divergence in views on the applicable test for materiality of non-disclosed facts. The Honourable Justices Burgess, Rajnauth-Lee, and Jamadar, JJCCJ took the view that the test for determining materiality was as laid down by the House of Lords majority in **Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd**. On the other hand, the Honourable Justice Saunders PCCJ, and the Honourable Justices Anderson and Barrow, JJCCJ, agreed with the position adopted by the House of Lords minority in **Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd**. The Honourable Justice Wit, who was once again in a position to break the

¹⁹ [2024] CCJ 3 (AJ) BB.

deadlock, retired on the ground of ill-health and sadly passed away before judgment could be delivered. However, Saunders P enunciated that:

“[12] Unfortunately, this Court is evenly divided on this important question as to the proper test for determining whether a non-disclosed fact is or is not material. **The practical effect of this is that the law in Barbados on this point remains as it was before this judgment was issued.** Whether Pan Atlantic’s want-to-know test is embraced or disapproved by this Court must await another day.”

62. Applying the ratio above from *Apsara* to the case at bar, the fragmentation of the justices of the CCJ in **Belize International Services** meant that the correct interpretation of the law in relation to statutory illegality is to be gleaned from the law as it existed in Belize prior to the CCJ’s decision in *Belize International Services Limited*. In particular, it is the statement of the law adopted by Campbell JA in the Court of Appeal decision in **Belize International Services v The AG** that reflects the applicable law in Belize. As previously stated at paragraphs [46] to [49] above, Campbell JA referenced the decision in **Patel v Mirza** in his interpretation of the law on illegality, the very approach that was expanded on by Justice Burgess, with the support of Justice Jamadar, on appeal to the CCJ.

63. Accordingly, I am of the considered view that the law in relation to illegality in Belize, which is to be applied in the present circumstances, is the “*range of factors*” test applied by Justice Burgess in **Belize International Services v The Attorney General**²⁰. Burgess, JCCJ was of the view that this approach would have the advantage of ensuring coherence in the approach to the illegality defence within the common law Caribbean Community, and opined that:

[214] Based on the review of the recent case law in common law jurisdictions, three steps are to be followed in assessing whether the integrity of the legal system would be harmed in enforcing a contract which is rendered illegal by a statute. These are what may be called (i) the interpretation step; (ii) the public policy analysis step, and (iii) the proportionality analysis step.

²⁰ [2020] CCJ 9 (AJ) BZ.

Interpretation Step

64. As Burgess JCCJ stated, and I agree, this first step may be best explained by the *dicta* of Kirby J in the Australian decision in **Fitzgerald v F.J. Leonhardt Pty Limited**²¹ where he stated it thus:

“The first task of a court is to ascertain the meaning and application of the law which is said to give rise to the illegality affecting the contract. The law in question may be a rule of the Common Law but nowadays it is much more likely to be a provision of legislation. The substantial growth of legislative provisions affecting all aspects of the society in which contracts are made presents a legal environment quite different from that in which the doctrine of illegality was originally expressed. Courts, in this area, are faced with a dilemma. They do not wish to deprive a person of property rights, e.g. under a contract, least of all at the behest of another person who is also involved in a breach of the applicable law. On the other hand, they do not wish to ‘condone or assist a breach of statute, nor must they help to frustrate the operation of a statute.’ **That is why the first function of the court, where a breach of a legislative provision is alleged, is to examine the legislation so as to derive from it a conclusion as to whether a relevant breach is established and, if so, what consequences flow either from the express provisions of the legislation or from implications that may be imputed to the legislators.** Little, if any, assistance will be derived for the ultimate task of a court from examination of the terms of other statutes or judicial classifications of them or by reference to their meaning as found.” [emphasis added]

²¹ [1997] 189 C.L.R. 215.

65. In summary, this step requires the Court to ascertain the meaning and application of the law that is said to give rise to the illegality affecting the contract. The Court must examine the legislation to determine whether a relevant breach has been established and, if so, what consequences flow from the express provisions of the legislation or from implications that may be imputed to the legislators.
66. In conducting this exercise, I am cognisant of the modern approach to statutory interpretation which favours a purposive construction. Indeed, here in Belize, **section 65(a) of the Interpretation Act**²² requires the application of the purposive approach in interpreting legislation. It is worth repeating:

“65. The following shall be included among the principles to be applied in the interpretation of Acts where more than one construction of the provisions in question is reasonably possible, namely, **(a) that a construction which would promote the general legislative purpose underlying the provision is preferred to a construction which would not;**”

67. This position was affirmed by the CCJ in its judgment in **Sersland and Paz v St Matthews University School of Medicine Limited**.²³ There, our apex court proffered:

“[42] The purposive approach is generally regarded as the modern approach and is based on the recognition that the interpretation of a statute cannot be founded on the wording of the legislation alone....”

And further stated that:

“[45] Thus, the purposive approach emphasises the critical role that context, including textual and historical context, must inevitably play when a court construes the written words of a statute as, indubitably, words take meaning from their context. The purposive approach is therefore a surer route to the intention of Parliament.”

68. With this relevant context, I turn now to analyse **section 9(4) of the NLA** and **section 22(2) of the FARA** respectively.

²² Cap 1 of the Substantive Laws of Belize, Revised 2020;

²³ [2022] CCJ 16 (AJ) BZ.

Section 9(4) of the National Lands

69. **Section 9(4)** has no application to the sale of Parcel B1. I reach this conclusion having considered not only the language of **section 9(4)** but also the structure and purpose of the **NLA**. I am mindful that, in adopting a purposive approach to statutory interpretation, the Court must construe legislation in a manner that gives effect to the purpose which the Legislature intended to achieve. As the marginal note to Section 9 indicates, that section is concerned with “Application for leases”. The marginal note may properly be considered as an aid to ascertaining the purpose of **section 9(4)** although it cannot enlarge its meaning. **Subsection (4)**, consistent with that marginal note, imposes a requirement to conduct an EIA upon every person who applies to lease 500 acres or more of national land. This language is specific and unambiguous. In the present case, the purposive approach does not justify extending **section 9(4)** beyond its natural and ordinary meaning to include, as the State submitted, applications for sale of land.
70. Rather, the statutory context confirms the distinction drawn by Parliament between leases and sales of national land. Although it does so less extensively, the **NLA** makes separate provision for the sale of national lands in **section 13**. Parliament, having established distinct statutory regimes for leases and sales, I see no proper basis for importing into the latter a requirement which the Legislature has expressly attached to the former. To construe **section 9(4)** as applying equally to sales would, in my view, add words to the statute rather than interpret those which Parliament has enacted.
71. The purposive approach is not a licence to disregard the language of the legislation or artfully extend provisions which the Legislature has chosen not to address. If an EIA was intended to constitute a statutory precondition to the sale of national lands, Parliament could readily have so provided in **section 13** or elsewhere in the **NLA**. Accordingly, while the environmental protection objective underlying leases under **section 9(4)** is readily apparent, that objective cannot justify extending the statutory requirement to the sale of national lands. I therefore conclude that **section 9(4)**, properly construed in its statutory context and having regard to its marginal note and the purposive approach to interpretation, does not impose an EIA requirement in respect of the sale of national land in excess of 500 acres. It is also irrelevant to the present appeal that Fowler Works was granted approval to

lease some 1850 acres of land prior to entering into the agreement for sale of parcel B1 with the State. The lease never materialised and is not a precondition to the sale of national lands.

Section 22(2) of the Finance and Audit Reform Act

72. Parcel B1 exceeded 500 acres in size. Accordingly, it was a statutory requirement under **section 22(2) of the FARA** that its sale be authorised by a resolution of the National Assembly. The Minister entered into the agreement for its sale to Fowler Works without seeking said authorisation. This was an act in direct contravention of **section 22(2) of the FARA**. Accordingly, a relevant breach is established. However, the **FARA** does not provide any consequence for non-compliance with **section 22(2)**. Accordingly, this Court is required to ascertain whether Parliament intended invalidity as a consequence of non-compliance.

Effect of Non-Compliance with the FARA

73. The enquiry must commence from the well-established premise that statutory illegality is not to be inferred lightly. As Devlin J observed in **St. John Shipping Corporation v Joseph Rank Ltd**²⁴

“A court should not hold that any contract or class of contracts is prohibited by statute unless there is a clear implication, or “necessary inference”, as Parke, B, put it, that the statute so intended. If a contract has as its whole object the doing of the very act which the statute prohibits, it can be argued that you can hardly make sense of a statute which forbids an act and yet permits to be made a contract to do it; that is a clear implication. But unless you get a clear implication of that sort, I think that a court ought to be very slow to hold that a statute intends to interfere with the rights and remedies given by the ordinary law of contract. Caution in this respect is, I think, especially necessary in these times when so much of commercial life is governed by regulations of one sort or another which may easily be broken without wicked intent. Persons who deliberately set out to break the law cannot expect to be aided in a court of justice, but it is a different matter when the law is unwittingly broken.”

²⁴ [1956] 3 All ER 683.

74. In **Mariette Warrington v Dominica Broadcasting Corporation**,²⁵ the CCJ made a similar observation, that in the absence of clear/defined consequences, legislative non-compliance does not render a contract void *ab initio*. In a majority judgment delivered by the Honourable Justice Barrow, the justices of the CCJ cited with approval, the decision in **Project Blue Sky Inc v Australian Broadcasting Authority** for the proposition that in cases concerning statutory illegality, the law had moved away from an approach that classified legislative provisions into mandatory requirements and directory requirements. As Justice Barrow indicated in **Mariette Warrington**:

“[37] It used to be that a distinction was drawn between mandatory and directory provisions and this enabled courts to conclude that failure to comply with a mandatory requirement made the exercise of power void, whereas failure to comply with a directory requirement made the action unlawful but not void. In *Project Blue Sky Inc v Australian Broadcasting Authority* the majority of the High Court of Australia referred to this distinction, at [92] and the uncertainty that attended it. Their Honours endorsed the criticism of the use of the “elusive distinction between directory and mandatory requirements” and the division of directory acts into those which have substantially complied with a statutory command and those which have not. They stated

“93 ... They are classifications that have outlived their usefulness because they deflect attention from the real issue which is whether an act done in breach of the legislative provision is invalid. The classification of a statutory provision as mandatory or directory records a result which has been reached on other grounds. The classification is the end of the inquiry, not the beginning. ... **A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid** ... In determining the question of purpose, regard must be had to “the language of the relevant provision and the scope and object of the whole statute” [emphasis added].

75. With the above principles in mind, I am of the fortified view that had Parliament intended invalidity as a consequence of failure to acquire authorisation from the National Assembly, it would have clearly

²⁵ [2018] CCJ 31 (AJ) at 30.

indicated so in **section 22(2)** or elsewhere in the **FARA**. This is clear when one contrasts **section 22(2)** with **section 7(2)** of the **FARA**. **Section 7** concerns loans to the Government and states:

“7.-(1) The National Assembly may, subject to subsection (2) of this section, from time to time by resolution authorize the Government to borrow monies or to raise loans and to offer security for such monies or loans, from any public or private bank or financial institution or capital market in or outside Belize, upon such terms and conditions and in an amount not exceeding in the aggregate the sum specified in that behalf in the resolution, to meet current or capital requirements.

(2) Any agreement, contract or other instrument effecting any such borrowing or loan to the Government of or above the equivalent of ten million dollars shall only be validly entered into pursuant to a resolution of the National Assembly authorizing the Government to raise the loan or to borrow the money....”(emphasis added)

76. It is evident that Parliament explicitly indicated that invalidity is the consequence of failure to secure parliamentary authorisation by way of resolution for any loan to the Government of or above \$10,000,000.00. This deliberate and express indication was not replicated in **section 22(2)**. In those circumstances, Parliament must be taken to have legislated deliberately. Had it intended that a failure to comply with the procedure under **section 22(2)** would nullify or void any contract entered in breach thereof, it would have easily made this intention plain. In the absence of language imposing invalidity on a contract entered in breach of **section 22(2)**, the ineluctable conclusion is that the statutory non-compliance, without more, does not render the contract void.

77. Notwithstanding this conclusion on the interpretation of **section 22(2)** of the **FARA**, it remains a fact that the procedure for sale of national lands in excess of 500 acres was not complied with. By virtue of this non-compliance, the contract is tainted with illegality and the question now becomes, would

enforcing that claim be contrary to the public interest in that to enforce it would be harmful to the integrity of the legal system of Belize? This naturally engages the second of the three steps itemised by the Honourable Justice Burgess in paragraph 63 above: **The Public Policy Analysis Step**

The Public Policy Analysis Step

78. In **Patel v Mirza**, Lord Toulson remarked that:

“...one cannot judge whether allowing a claim which is in some way tainted by illegality would be contrary to the public interest, because it would be harmful to the integrity of the legal system, without a) considering the underlying purpose of the prohibition which has been transgressed, b) considering conversely any other relevant public policies which may be rendered ineffective or less effective by denial of the claim.”²⁶

79. This statement of the law accords with the erudite offerings of learned Barrister, Mr. Graham Sinclair, in his article “*The Effect of Illegality since Patel v Mirza*”²⁷, which proffered:

“Where, however, the relevant legislation is silent as to whether any particular type of contract is to be regarded as void or unenforceable, the court must consider whether the requirements of public policy (which suggest that a court refrain from enforcing a contract tainted by illegality) and the policy of the legislation concerned, gleaned from its terms, are such as require that, in addition to whatever express consequences are provided for in the relevant legislation, an additional sanction or consequence in the form of treating relevant contracts as being void or unenforceable must be imposed.”

²⁶[2016] UKSC 42 at [101].

²⁷ Graham Sinclair, ‘The Effect of Illegality Since Patel v Mirza’ (East Anglian Chambers, 26 May 2019) <https://ealaw.co.uk/the-effect-of-illegality-since-patel-v-mirza/>.

This Court must assess whether, as a matter of public policy and the policy of the **FARA**, the Sale Agreement ought to be treated as void or unenforceable. In other words, whether enforcement of the contract would harm the integrity of the justice system.

80. The key question is what is the underlying policy purpose of **section 22(2) of the FARA**, and will that purpose be enhanced by the denial of Fowler Works' claim? This underlying purpose for the enactment of the **FARA** may be gleaned from the legislation itself. When first enacted in 2005 as **Act No. 12 of 2005**²⁸, the long title of the **FARA** read:

"AN ACT to make new and better provisions regulating public revenue, expenditure and contracts; to repeal the Finance and Audit Act, Chapter 15 of the Substantive Laws of Belize, Revised Edition 2000-2003; to clarify the legal status of the Financial Order and Stores Order; and to provide for matters connected therewith or incidental thereto."

81. **Section 22(2) of the FARA** must therefore be construed in accordance with the aforementioned long title. Its purpose, in the context of agreements for sale of lands in excess of 500 acres, is part of the wider scheme to regulate public revenue, expenditure and contracts. With this purpose established, the Court must then consider whether that purpose would be enhanced by denying Fowler Works' claim. This requires an assessment of several questions including whether this policy or purpose of **section 22(2) of the FARA** is designed to apply equally to both parties to the agreement for Sale of Parcel B1.²⁹ In this regard, the State has submitted that obtaining authorisation from the National Assembly under **Section 22(2)** is an onus on both the State and the agents of Fowler Works.

82. I am unable to accept the State's contention that the burden of compliance with **section 22(2)** of the **FARA** rests equally on the State and Fowler Works. In Belize, it is the responsible minister who is required to table a motion seeking authorisation for the sale of land pursuant to **section 22(2) of the FARA**. To impose a corresponding obligation upon Fowler Works, or any other private purchaser of national lands in excess of 500 acres, would be inconsistent with both the legal framework,

²⁸ Tab 9 of the Record of Appeal.

²⁹ Graham Sinclair, 'The Effect of Illegality Since *Patel v Mirza*' (East Anglian Chambers, 26 May 2019) <https://ealaw.co.uk/the-effect-of-illegality-since-patel-v-mirza/>.

constitutional architecture and practices of Parliament in Westminster Style parliamentary systems such as Belize.

83. Parliament, a co-equal branch of government, controls its own processes, it is the sole master of its internal procedures, and its processes cannot usually be invoked or compelled by private persons (or *personae fictae*). It is therefore most unclear, as a matter of law and practical reality, what steps Fowler Works could have taken to secure compliance with **section 22(2) of the FARA**, absent the action by the responsible Minister. To impute an equal or corollary obligation of ensuring compliance with **section 22(2) of the FARA** to Fowler Works would impose an onerous obligation upon a private party, who has neither the legal capacity nor the constitutional standing to perform such compliance acts. Such a course cannot be countenanced.
84. In those circumstances, the State's contention of an equal or corollary obligation on the part of agents of Fowler Works to ensure compliance with **section 22(2) of the FARA** cannot be sustained. Those are matters lying wholly outside Fowler Works' competence and within the exclusive province of Parliament and those entitled to conduct its business including the Minister of Natural Resources, Mining and Petroleum.
85. Consequently, it would be unfair to deny Fowler Works' claim and such a denial would not enhance the purpose of **section 22(2) of the FARA**. **Section 22(2)**, on its plain language, is not designed to regulate Fowler Works' conduct, nor does it impose a duty on Fowler Works in respect of seeking authorisation from the National Assembly. The responsibility to ensure compliance rests squarely on the shoulders of the State. To deny Fowler Works' claim as being against public policy would be to undermine the underlying purpose of **section 22(2) of the FARA** for regulating public revenue, expenditure and contracts as the State would be rewarded, at Fowler Works' expense, for non-compliance with the State's statutory obligation.
86. Of course, this Court cannot endorse or will not endorse private individuals or companies entering into illegal contracts with the government. That, however, is not the situation live or extant here. The sale of national lands (whether in excess of 500 acres or otherwise) is not prohibited under statute or common law. The Minister is empowered to sell national lands, just as Fowler Works is legally

entitled to purchase them. What arises in the present case is that the sale of national lands exceeding 500 acres engages an additional statutory duty on the part of the State: The Minister must obtain the requisite parliamentary authorisation by resolution of the National Assembly pursuant to **section 22(2) of the FARA**. The Minister failed to do so, and the State ultimately opted to unilaterally revoke the contract with Fowler Works. Such a course of action, in the realm of government contracts, has the potential to undermine legal certainty in dealings with the State and to diminish public confidence that the Government will honour its obligations which it has voluntarily undertaken.

87. The State has urged this Court to deny Fowler Works' claim on the basis that enforcement would offend public policy. However, public policy is a comprehensive and intersectional concept that does not inure in one direction. There is also a substantial public interest in ensuring that the State acts consistently, lawfully and with due regard to contractual obligations which it has freely assumed. For the Court to permit or endorse the State relying upon its own failure to undertake the statutory process required of it as a basis for escaping those obligations would itself risk undermining the very considerations of public policy upon which the State seeks to rely.

88. In my judgment, the foregoing considerations lead inexorably to the conclusion that the enforcement of the Agreement for Sale for Parcel B1 in favour of Fowler Works would not be contrary to the public interest, nor would it be harmful to the integrity of the justice system.

The Proportionality Analysis Step

89. The third step, the proportionality analysis step, is of fundamental importance. This step involves an analysis of whether the imposition of voidness or unenforceability may be disproportionate to the seriousness of the unlawful conduct in question in the context of the relevant statutory regime in general. In **Patel v Mirza**, Lord Toulson identified four potentially relevant factors including "the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability."

90. As has already been identified, the illegality alleged was the act of entering into an agreement for sale without seeking approval from the National Assembly to authorise the sale of land in excess of

500 acres. This wrongful conduct is a serious breach of **section 22(2) of the FARA** and is central to whether the contract is enforceable. However, it is not open to this Court to determine the intentionality or otherwise in the absence of evidence on this point. As has been earlier determined, there was marked disparity in the parties' respective culpability. It is the State that has fallen in breach of its statutory obligation and any culpability for failure to seek parliamentary approval must be ascribed to the State.

91. As Wit JCCJ enunciated in **Belize International Services Ltd**,

"The State is indeed under the Constitution obliged to treat with contracting parties in accordance with the rule of law, not understood as a mechanical but as a rich and normative principle, and, flowing therefrom, the principle of good governance... Good governance is down to earth fairness and reasonableness in the public domain. And in contract law, the duty of the Government implies treating with contracting parties fairly, honestly, openly, in short - in good faith."³⁰

92. The Minister had a duty to seek authorisation for the sale of Parcel B1 or to, at the very least, enter into negotiations with Fowler Works to come to an amicable solution in good faith. I find it apposite to further quote the dictum of Wit JCCJ:

"Having flouted that duty, the Government would be liable to pay the damages caused by its breach of contract despite the taint of illegality on that contract. In such a case, legal logic would justifiably be caught up by justice and fairness: *nemo turpitudinem suam allegans auditur* (nobody shall derive rights from his own wrongful behaviour)!"³¹

³⁰ Belize International Services Ltd v AG [2020] CCJ 9 AJ at para 16.

³¹ *ibid* at para 10.

93. I have no doubt that, as a matter of proportionality, the State, having entered into the agreement for sale of land in excess of 500 acres without seeking a resolution of the National Assembly authorising this sale, cannot now rely on its own failure to avoid its obligations under the agreement for sale.

CONCLUSION

94. Although the agreement for sale of Parcel B1 is tainted with illegality for its non-compliance with **section 22(2) of the FARA**, the agreement is not void *ab initio*. Similarly, I am of the considered view that there are no public policy considerations for otherwise invalidating the sale as being harmful to the legal system in Belize. For the reasons already foreshadowed, the *ex turpi causa non oritur actio* (from a dishonourable cause an action does not arise) defence cannot benefit the State in the present proceedings. The illegality here is the State's. It is on one side only, so the parties are not *in pari delicto* (equally at fault). In those circumstances, it would be disproportionate for the Court to void or render the contract unenforceable as a matter of public policy.
95. Accordingly, the learned trial judge's finding that the Sale Agreement for Parcel E19560-B1 was enforceable notwithstanding non-compliance with **section 22(2) of the FARA** is not wrong. The State cannot invoke the illegality defence to defeat Fowler Works' claim for a breach of the agreement for sale of Parcel B1. Its appeal fails in this regard.
96. And so, I turn to the State's argument that the sale of Parcels B2, B3 and B4 was illegal for being contrary to the Minister's policy or requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval.

ISSUE 2: Whether the learned trial judge erred in finding that the sale of Parcels E19560-B2, E19560-B3, and E19560-B4 did not breach the Minister's policy or requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval.

97. The State's submissions in respect of this issue are that the learned trial judge refused to take a purposive approach in interpreting **section 13 of the NLA** together with **Rule 3 of the National Lands Rules**. The State asks that this Court take a purposive approach in implying a statutory prohibition rendering the sale agreements for Parcels B2, B3, and B4 illegal and unenforceable for

failure to adhere the Minister's requirement to apply for, conduct, submit and authenticate a survey prior to purchase approval.

98. Answering this issue also requires an assessment of the '*range of factors*' test as propounded in **Patel v Mirza** and discussed in the judgement of Justice Burgess in **Belize International Services Limited v Attorney General**. In particular, the Court must first assess whether the Sale Agreements are illegal.

99. For completeness, I wish to repeat the legislative provisions that ground the State's submissions.

100. **Section 13 of the NLA** stipulates that:

13.-(1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.

(2) An application to purchase national lands shall be made in the form in Schedule II.

101. In a similar fashion, **Rule 3 of the National Lands Rules** provides:

3. Every application to purchase land shall be made in the form shown in Schedule II to the National Lands Act and shall be accompanied by–

(a) the appropriate fee;

(b) a rough plan, if possible, of the land applied for.

102. In the United Kingdom Supreme Court decision in **R (Lumba) v Secretary of State for the Home Department**,³² Lord Dyson JSC distilled the following principles in relation to the enforcement of ministerial policies:

"First, it must not be a blanket policy admitting of no possibility of exceptions. Secondly, if unpublished, it must not be inconsistent with any published policy. Thirdly, it should be published if it will inform discretionary decisions in respect of which the potential object of those decisions has a right to make representations."

³² [2011] UKSC 12.

103. Albeit that **R (Lumba) v Secretary of State for the Home Department** concerned the lawfulness of the detention of two foreign nationals pending deportation, the Supreme Court held that their detention was unlawful because the Secretary of State had applied an unpublished policy that departed from the published policy governing detention. This case, and the principle above are analogous to circumstances concerning the introduction of policies governing the sale of national lands to private citizens and corporations. Potential purchases must be notified of policies concerning the disposition of land and any such policy must be compliant with the law.

104. Jamadar JCCJ expressed similar principles in **Belize International Services Limited** where he wrote:

“[370] Using State power arbitrarily, unreasonably, and/or unlawfully in the commercial sphere erodes trust and confidence in doing business with government. Such actions impair the credibility of the State and undermine public, private, and international faith and assurance in the political and economic conditions for doing business in a jurisdiction. They are injurious economically and developmentally.

[371] This is not to say that democratically elected governments are not free to establish their own policies, and to change, or withdraw from existing ones. Indeed, all democratically elected governments have the power to make changes to agreements made by previous governments. If they cannot legitimately do so, then their predecessors can control policy decisions beyond the terms of their democratic and constitutionally legitimate mandates. Such a situation is not consistent with representative democracy. However, the precepts of the doctrine of the rule of law mandate that governments seeking to alter contractual arrangements with third party private entities, are constitutionally bound at all times to do so in good faith, fairly, justly, reasonably, and in keeping with the standards of good governance.”

105. This dictum is apposite and I endorse it with the slight adjustment that it applies not only to governments on a whole but also to individual ministers and other state actors. It is not in controversy that the Minister of Natural Resources, Mining and Petroleum has the power to introduce additional terms and conditions in relation to the sale of national lands. Indeed, the **NLA** provides a process for the introduction of additional criteria. **Section 13** contemplates terms and conditions prescribed pursuant to a statutory process involving both the Minister and the Advisory Committee.
106. I am of the considered view that an internal departmental policy from the Lands Department is not synonymous with terms and conditions prescribed under **section 13 of the NLA** unless it can be shown that the Minister, acting on the advice of the Advisory Committee, formally adopted that policy as the terms and conditions governing sale of national lands.
107. Even assuming that the internal policy had been adopted by the Minister on the advice of the Advisory Committee, the evidence in the court below suggests that the Minister's internal policy was never published. The introduction of criteria above and beyond the provisions of the **NLA**, necessitated publication. The introduction of a policy without adequate publication is inconsistent with the requirements of the rule of law, as individuals cannot reasonably be expected to comply with standards of which they have no notice. This remains true even within the realm of government contracts. Public assets must be disposed of through transparent criteria. Publication enhances that transparency. The policy is not itself law and cannot, without proper prescription and publication, alter the legal rights and obligations created under legislation or contract.
108. In any event, the evidence in the Court below is that in letter dated 24th June 2020, Fowler Works was granted permission to survey 19t20 acres of national land situated in the Duck Run 111 Area, Cayo District. On 20th July 2020, Fowler Works submitted a copy of an authenticated survey plan showing survey of four (4) parcels of national land situate in the Duck Run 111 Area. This is a fulfilment of the alleged policy to "apply for, conduct, submit and authenticate a survey prior to purchase approval."

CONCLUSION

109. Accordingly, as Chabot, J correctly found, the requirements of the **NLA** and the instructions from the Lands Department were followed by Fowler Works. In my view, no illegality is made out in the sale process of the three parcels. Again, the State cannot rely on a defence of illegality to shield it from liability. Fairness, in these circumstances where there is no illegality, requires enforcement of the sales of Parcels B2, B3, and B4 by way of an award of damages occasioned by the State's failure to conclude the contract.

110. Having concluded that the trial judge was correct in finding that the sales of Parcels B2, B3 and B4 were not tainted by illegality, it is unnecessary to embark upon the further inquiry required by the range of factors approach in **Patel v Mirza**. That approach is engaged only where illegality has been established and the court is required to determine the consequences that should follow. Since I have found that no illegality is established in the present case, the question whether the sale agreements for Parcels B2, B3 and B4 should nevertheless be denied enforcement by reference to the competing policy considerations identified in **Patel v Mirza** does not arise. There is therefore no reason to proceed to the second or third of the three steps.

DISPOSITION

111. For the reasons I have foreshadowed, I am ineluctably driven to the conclusion that all four sale agreements are valid and were breached by the State in its failure to complete the sales by transferring title to Parcels B1, B2, B3 and B4 to Fowler Works. The State is accordingly liable for the breaches established in respect of those agreements. Accordingly, I would dismiss the appeal and affirm the decision of the learned trial judge that the contracts are valid and enforceable. As Fowler Works seeks damages, rather than completion of the sales, the relief is confined to the assessment and award of damages, the quantum of which is to be assessed.

112. In view of the totality of the circumstances, I make the following orders:

- a. The Minister of Natural Resources Petroleum & Mining and The Attorney General's appeal is dismissed, and the decision of the learned trial judge Chabot J is affirmed.
- b. The matter is remitted to a judge or registrar of the High Court for an assessment of damages.
- c. The Minister of Natural Resources Petroleum & Mining and The Attorney General shall pay to Fowler Works Enterprises Ltd the cost of this appeal.

113. I am grateful to all learned counsel for their assistance.

Louise Esther Blenman
Chief Justice

114. I had the privilege of reading the judgment of the Hon Chief Justice in draft and agree with the order proposed by her for the reasons stated.

Sandra Minott-Phillips, K.C.
Justice of Appeal

115. I fully agree with the decision and the reasons of the Honourable Chief Justice.

Michelle Arana, O.B.E.
Justice of Appeal