

IN THE SUPREME COURT OF BELIZE A.D. 2009

Claim No. 730 of 2009

BETWEEN H.T.A. BOWMAN LIMITED CLAIMANTS  
EMERALD GROVES LIMITED  
ERNEST N. RAYMOND  
KERBO FARMS LIMITED  
ALVA ROSADO  
JORGE ROSADO

AND

THE ATTORNEY GENERAL DEFENDANTS  
CITRUS CONTROL BOARD  
CITRUS GROWER'S ASSOCIATION  
CITRUS PRODUCTS OF BELIZE LIMITED

Before: Honourable Justice Minnet Hafiz-Bertram

Appearances: Mr. E. Andrew Marshalleck SC  
along with Mrs. Naima Barrow-Badillo for Claimants

Ms. Priscilla Banner, Deputy Solicitor General for Defendants

**J U D G M E N T**

*Introduction*

1. The Claimants claim a declaration that the operation and effect of the provisions of **Sections 7(1), 7(2) and 37(1) of the Citrus (Processing and Production) Act** are ultra vires the Belize Constitution in that they contravene the Claimants' rights, under **Section 13(1) of the Belize Constitution**, not to be hindered in the enjoyment of their freedom of association and under **Section 15(1)** of the Belize Constitution, not to be denied the opportunity to gain their living by work or by pursuing an occupation or engaging in a trade which they freely choose. The affidavit

of the Claimants sworn to on 17<sup>th</sup> day of August, 2009 was filed in support of the originating motion for relief under the constitution.

Grounds of the Application

2. The grounds on which the relief is sought are stated in paragraphs 12 to 14 of the affidavit of the Claimants. The broad ground is that the operation and effect of the provisions of **Sections 4(1) and (2), 7 (1) and (2) and 37 of the Citrus (Processing and Production) Act** are in violation of the Claimant's constitutional rights enshrined in **sections 13(1) and 15(1)** of the Belize Constitution and are therefore unlawful and void.
3. Specifically, the Claimants, contend that (i) by mandating that the Association issue licences to producers who are members of the Association and (ii) by prohibiting the sole processor of citrus to purchase or take delivery of citrus from farmers other than licensed producers, the Claimants are hindered in the enjoyment of their freedom of association and are effectively denied the opportunity to gain their living by work or by pursuing an occupation or engaging in a trade which they freely choose.
4. The Claimants further contend that a producer's license is not required under the provisions of the Citrus (Processing and Production) Act as a condition for embarking upon or continuing the work of citrus farming as is permitted by Section 15(2) of the Constitution, but is instead a licence required for farmers to deal with the work product in a particular way, that is, to deliver and sell the fruit to a citrus processor.

The Parties

5. The Claimants, are all citrus growers with producing citrus farms who currently sell and deliver citrus in Belize to the sole citrus processor in Belize, the named Fourth Defendant, Citrus Products of Belize Limited.
  
6. The First Defendant is the Attorney General of Belize. The Second Defendant is the Citrus Control Board, (hereinafter called “**the Board**”) a body corporate established under Section 8 of the Citrus (Processing and Production) Act Chapter 277 of the Laws of Belize 2000 (hereinafter called ‘**the Act**’).
  
7. The Third Defendant is the Citrus Growers’ Association, (hereinafter called “**the Association**”) a body corporate established under Section 19 of the Act.
  
8. The Fourth Defendant is Citrus Products of Belize Limited, a company duly formed under the Companies Act, Chapter 250 of the Laws of Belize 2000.
  
9. By Section 16 of the Act the powers and duties of the Board include *inter alia*, authorizing the Association to issue licenses to producers to deliver citrus to the processor, to determine the basic quota of each producer, and to hear and determine appeals by any person aggrieved at the refusal by the Association to issue a license to him or to accept him as a member of the Association.
  
10. The Association is managed by a committee of Management who may admit persons to membership of the Association and by Section 37 of the Act issue licenses to all producers who are members of the Association.

*Factual Background*

11. The factual background to the dispute is stated in the affidavit of the Claimants. The Claimants deposed that they were all full members of the Third Defendant until on or about the 28<sup>th</sup> July, 2009 when they tendered separate and multiple resignations as members of the Third Defendant with immediate effect. See Exhibit “**C 1 to 5**” for copies of the various resignation letters.
  
12. By the said letters of resignation sent to the Second and Third Defendants and copied to the Fourth Defendant, the Claimants sought written confirmation from the Second and Third Defendants that they will not:
  - (i) prevent them from selling and delivering citrus to the sole processor;
  - (ii) refuse them a license, as non-members of the Association, to sell and deliver citrus to the sole processor; and
  - (iii) prevent the sole processor from purchasing or taking delivery of any citrus from them as non-members of the Association.
  
13. On or about the 29<sup>th</sup> July, 2009 the Claimants received separate letters from Citrus Products of Belize Limited, the Fourth Defendant, informing them that it had been advised that it is unlawful for it to purchase and take delivery of any citrus from producers not licensed by the Association and that the Association may only license its members to sell and deliver citrus to Citrus Products of Belize Limited. See Exhibit “**C 6 to 10**” for copies of the said letters.
  
14. On or about the 3<sup>rd</sup> day of August 2009 the Claimants received separate letters from the Third Defendant advising that the Second Defendant will be convening a meeting to address the issues raised in their letters of resignation. The Third Defendant further indicated that for its part it would

not seek to infringe on the constitutional rights of any grower and recognized that the factory is in need of as much fruit as it can get. See Exhibit “**C11**” for a copy of the said letter.

15. At paragraphs 23 and 24 of the Claimants affidavit they state that the Second and Third Defendants have for some time been aware that certain provisions of the Act may be unconstitutional. In **Claim No. 93 of 2007** between ***H.T.A. Bowman Limited et.al v The Attorney General, Citrus Growers’ Association and Citrus Products of Belize Limited*** the Court found that Section 38 (1) of the Citrus (Processing and Production) Act imposing a cess upon citrus delivered to processors was unconstitutional and in violation of the Claimants’ constitutional rights enshrined in **Section 17** of the Belize Constitution. See Exhibit “**C 12**” for a copy of the decision in Claim No. 93 of 2007.
16. The Claimants further say that there exists no person or market in Belize capable of purchasing the quantity of citrus fruit produced by them, save for the Fourth Defendant. Further, there is no other person in Belize apart from the Fourth Defendant licensed to process citrus fruit in Belize.
17. At paragraph 27 of the Affidavit, the Claimants say that if they are prohibited from selling citrus fruit produced by their farms to the Fourth Defendant they will be unable to gain a living by way of citrus farming which has been their chosen occupation and business for most of their lives because they will be unable to recover the investments made by them in their citrus groves or to gain income from same.
18. The Claimants say that all of them have mature producing citrus groves of substantial acreages which were planted many years ago, and have

been nurtured by them for many years at great expense. Further, that they have all chosen citrus farming as the means of gaining a livelihood.

19. The Relief Sought

- (i) A Declaration that the operation and effect of the provisions of Section 7(1) and (2) and 37(1) of the Citrus (Processing and Production) Act are *ultra vires* the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 13(1) of the Belize Constitution, not to be hindered in the enjoyment of their freedom of association.
- (ii) A Declaration that the operation and effect of the provisions of Sections 7(1) and (2) and 37 of the Citrus (Processing and Production) Act are *ultra vires* the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 15(1) of the Belize Constitution, not to be denied the opportunity to gain a living by work or by pursuing an occupation or engaging in a trade which they freely choose.
- (iii) An injunction to restrain the Second and Third Defendants whether by themselves, their servants, agents or howsoever from:
  - a. Issuing producers licenses to sell and deliver citrus only to members of the Citrus Growers Association;
  - b. Requiring Citrus Products of Belize Limited to purchase or take delivery of citrus only from members of the Citrus Growers' Association holding valid producers licenses.
- (iv) An Order for damages for each Claimant for breaches of their constitutional rights perpetrated by the Second and Third Defendants.
- (v) Costs
- (vi) Such other relief as may be just.

Evidence of the First Defendant – Attorney General

20. Ms. Elisa Montalvo, Deputy Solicitor General (Legislative Drafting) of the Attorney General's Ministry swore two affidavits. In the affidavit sworn to on 19<sup>th</sup> August, 2009, Learned Counsel stated that the amendments to sections 37 and 38 of the Citrus Act had been drafted and was being reviewed by Cabinet. In her second affidavit sworn to on 26<sup>th</sup> October, 2009, Ms. Montalvo again deposed that steps were being taken to affect the said amendments. At paragraph 5 of her affidavit she said that section 38(1) is being amended as it has been declared unconstitutional by the Supreme Court in Claim No. 93 of 2007.

21. Further at paragraph 6, Learned Counsel deposed also that section 37 is also being amended but the first Defendant makes no admission as to the unconstitutionality of same and puts the Claimants to strict proof of their assertions in respect of section 37. Ms. Montalvo further deposed that the first defendant puts the Claimants to strict proof of their assertions that sections 7(1) and (2) and 37(1) of the Citrus (Processing and Production) Act are ultra vires the Belize Constitution as asserted in paragraph 9(i) and (ii) and paragraph 11 of their affidavit.

22. Issues for determination

There are two issues in this claim. These are:

- (1) Whether or not the operation and effect of the provisions of Sections 7(1), 7(2) and 37(1) of the Act contravene the Claimants' constitutional right not to be hindered in the enjoyment of their freedom of association conferred by section 13(1) of the Belize Constitution.

- (2) Whether or not the operation and effect of the provisions of Sections 7(1), 7 (2) and 37 of the Act contravene the Claimants' constitutional right not to be denied the opportunity to gain their living by work or by pursuing an occupation or engaging in a trade which they freely choose conferred by section 15(1) of the Belize Constitution.

**Issue 1:**

*Whether or not the operation and effect of the provisions of Section 7(1) 7(2) and 37(1) of the Act contravene the Claimants' constitutional right not to be hindered in the enjoyment of their freedom of association conferred by section 13(1) of the Constitution.*

**Claimant's submissions**

23. The Claimants in their written submissions and oral submissions state that the right to freedom of association includes the right not to become a member of an association. They relied on the case of ***Trinidad Island-Wide Cane Farmers' Association Inc. and Attorney General v Prakash Seereeram*** where Chief Justice Hyatali accepted the proposition stated by Dr J Henry Richardson, a renowned author in the field of industrial relations, that "*the right to form an association carries with it two significant implications. The first is negative; it is the freedom of individuals not to become members of an association and also freedom to terminate their membership of an association.*"
24. Learned Senior Counsel, Mr. Marshalleck relying on the **Seereeram case** supra submitted that the compulsory membership of an Association infringes the constitutional right of freedom of association because the protected freedom subsumes the right not to be a member of an association.

25. The Claimants submit that albeit the Citrus (Processing and Production) Act does not expressly mandate membership in the Citrus Growers Association, the operation and effect of provisions of sections 7(1) and (2) and 37(1) of the Act is to require such membership by any person desiring to produce and sell citrus to CPBL such as the Claimants and this is therefore in violation of the Claimants' constitutional right not to be hindered in the enjoyment of freedom of association. Learned Senior Counsel contended that the effect of the provisions in law and in fact is to hinder the enjoyment by the Claimants of the fundamental freedom of association.

*Defendants' submissions*

26. The first Defendant submits that the operation of sections 7(1) and (2) and 37(1) of the Citrus (Processing and Production) Act does not contravene the Claimant's constitutional rights under section 13(1) of the Belize Constitution not to be hindered in the enjoyment of their freedom of association.
27. Learned Counsel, Ms. Banner for the first Defendant distinguished the **Seereeram case** from the case at hand. Learned Counsel contended that while the general principle as stated is not in doubt, it is clear that the *Seeraram* legislation dealing with the production of sugar cane, namely the Production of Cane Ordinance, is in stark contrast to the Act under review. That in the *Seereeram* legislation, it was provided that every farmer who had entered into a contract with a sugar manufacturer under the Production of Cane Ordinance should be deemed to be a member of the Association. In view of this, Hyatali CJ enunciated that the "deeming" of a cane farmer as a member of the association was a complete infringement of the right of freedom of association. Hyatali CJ pronounced at page 342 that:

*“from the moment a cane-farmer is deemed a member of the Association his freedom of association is infringed and infringed completely, since nothing more needs to be done to perfect the infringement. That being so, it is impossible to say that the exercise thereafter of a right to resign is capable of preventing or avoiding what is already a fait accompli.”*

28. Ms. Banner submitted that this meant that resignation under the Production of Cane Ordinance for Trinidad and Tobago could not be effective. This is because whenever a contract was consummated between a sugar manufacturer and the cane farmer, the cane farmer became automatically a member of the association and was therefore compelled to become a member.
29. However, Learned Counsel contended that there is no such compulsion in the Belize Act under review. The Act does not compel citrus growers to become members of the Citrus Growers Association (“CGA”). Counsel referred to section 22 of the Act which makes provision for full and provisional membership of the association.
30. Ms. Banner submitted that **section 22** indicates that membership in the CGA must be at the will of the applicant and is consensual as required under section 15 of the Constitution. This, Learned Counsel submitted is distinguished from the **Seereeram** case which interpreted section 4(j) of the Trinidad Constitution dealing with the right to freedom of association, which makes no specific mention of “consent” as is the case in Belize. Learned Counsel submitted that in reviewing Hyatali CJ’s decision in the Seereeram case (page 339), it is clear that the issue of consent was dealt with in such a manner that the reasoning relating to the issue of consent is not applicable to the Act under review. In that decision Hyatali CJ stated that:

*The second submission was based on the alleged consent of the applicant to participate in an industry which he knew was regulated. The fact is that the applicant stated that he did not consent to the deduction of the cess and this was not refuted. However that may be, it is to be noted that the payment of cess is a statutory obligation under the 1965 Act as amended by the 1973 Act. It is therefore beyond the will of the applicant to refuse to pay it. Any such refusal on his part would be to no avail. It is therefore sufficient for present purposes, in my view, that he has protested against it in these proceedings. I therefore reject the submission as unsound.*

31. Learned Counsel submitted that it is clear then that Hyatali CJ did indeed dismiss the argument of consent, but it is also clear that the learned judge did not address the fundamental issue of whether such consent breached the claimant's right to freedom of association. Rather, the learned judge tied the issue of consent in with the property rights issue (which has already been decided in Claim No. 93 of 2007) in saying that the claimants did not consent to deduction of cess but it was beyond their will to refuse to pay it. Ms. Banner submitted that this is not the issue raised in the instant case where the submission is being made that, prior to their resignation, the claimants did consent to be members of the CGA by applying to be members and therefore consented to membership.
  
32. Ms. Banner further submitted that a proper determination of the issue of consent is important in this context for a proper disposal of the instant matter in view of the fact that once it is shown that the claimants consented to membership, then the claimant falls within the exception to **section 13(1)** of the Constitution. That there is no deeming process in the Act under review as with the Trinidad and Tobago Act. Neither is a person restricted in the Act from forming another association akin to that of the CGA despite the fact that it may not be afforded, not being the pioneering association, the right to issue licences authorized by the CCB. This does not mean, however, that persons who are not members of the CGA cannot apply for licences. Where such application is made by a non-

member and it is refused, such non-member is at liberty to appeal the decision of the CGA to the CCB under section 16 of the Act.

33. In further submissions, Learned Counsel, Ms. Banner submitted that the other provisions in the Act also indicate the intent of the legislature in terms of ensuring that there is not a compulsion for growers to join one single association. That it is not stated in the Act that membership of CGA is compulsory for all growers or producers of citrus. Learned Counsel in support of her submission referred to section 21 of the Act which states:

*“...(i) to establish and support and to aid in the establishment and support of any other association and to become members of any such associations in Belize or elsewhere formed for all or any of the objects of the Association...”.*

34. Ms. Banner further referred to the “objects” of the Act in (i) which include the promotion, fostering and encouragement of the growing of citrus among other things. Therefore, Learned Counsel submitted that the Act does not restrict the formation of other associations but it makes provision for such formations. That the intent of the legislature was therefore to ensure that the citrus industry was pioneered by a parent association in the form of the CGA with the attendant institutional framework required for its success, and there was no intent to stifle the growth of the industry or the formation of other associations.
35. Ms. Banner further argued that this intent is also evident in section 41 of the Act which deals with the transferability of licences held by producers. That the section does not contain an obligation on the purchaser to be a member of the CGA and in fact highlights the authority of the Citrus Control Board (“CCB”) to make a determination as to whether the licence

may be transferred to the new owner or lessee of lands. Further, this authority of the CCB is also found in section 37 of the Act.

36. Ms. Banner contended that section 16, which is referred to in the impugned section 37(1), the CCB is empowered to authorize the CGA to issue licences “(c)...to producers to deliver citrus to processors in such quantities and during such periods and subject to such terms and conditions as may be specified in any contracts signed between the Association and the processors or, in the absence of any such contracts, as may be specified in such authorization.” Counsel submitted that this power must however be read along with all the powers of the CCB including the power

*“16...(i)...to hear and determine appeals by any person aggrieved at the refusal by the Association to issue a licence to him or to accept him as a member of the Association or at the terms and conditions of his licence.”*

37. Ms. Banner submitted that it is clear that this final power afforded to the CCB must be interpreted very broadly in view of the statement that “any person aggrieved” who is refused a licence by the issuing body (the CGA) may appeal to the CCB which has the discretion to ultimately determine whether the appellant should be granted a licence. The section is therefore not restricted to producers as defined by the Act but rather is expanded to embrace any person who may be refused a licence from the CGA upon request.

38. Ms. Banner in oral submissions said that the Act facilitates someone who is not a member of the CGA getting a licence and that this is contemplated by the Association.

39. Ms. Banner further submitted that the Act also falls within the exception under section 13(2) which provides for the making of laws in the

interests of defence, public safety and public order. Learned Counsel said that this is because the Act establishes the various bodies such as the CGA and the CCB which are collectively responsible for ensuring that proper order is maintained in the citrus industry which is the largest foreign exchange earner in the agro-productive sector. That the cumulative effect of these elements in the Act under review is that the Act, enacted since 1967, clearly establishes the institutional framework for the citrus industry in Belize and is framed in such a way that it affords appropriate protection for persons in that it neither restricts persons from joining the CGA nor compels such persons to join the CGA. Neither does the Act prevent persons from forming associations of their own and from appealing to the CCB where the CGA (as the issuing body for licences) refuses to grant such licences.

Claimants reply

40. Learned Senior Counsel, Mr. Marshalleck in no uncertain terms submitted that the **Seereeram case** deals with a “*complete annihilation of the right*” as stated by CJ Hyatali. However, Learned Senior Counsel contended that in order to offend the constitution there need not be a complete infringement and that the Belize Constitution provides for hindrance in the enjoyment of the freedom so the law need not completely annihilate the right or mandate compulsory membership.
41. Further, Learned Counsel made it clear that the **Seereeram case** was relied on by the Claimant to show that the right of the freedom of association subsumes the negative. That the statutory regime in the case at bar is so schemed that anybody who is producing citrus and has to sell it to the producer, is forced to make this decision to be a member whether or not they want to join the Association. As such, Mr. Marshalleck submitted that the statutory regime hinders the person in the enjoyment of that freedom of association.

42. With regards to the submission on public order, Learned Senior Counsel, Mr. Marshalleck submitted that public order speaks to civil commotion and strikes, and to riots. That it is not speaking to the ordering of society in a particular way.
43. Mr. Marshalleck referred to section 16 (c) of the Act where it is stated that the Board authorizes the Association to issue licences. Learned Counsel submitted that the Board cannot authorize anyone else to issue licences. Further, the Act is entirely silent as to what is to happen when someone is not a member. This is so, Mr. Marshalleck argued, because the Act is designed to force membership.

Determination

44. According to the evidence which is not disputed, the fourth Defendant, the Citrus Products of Belize Limited is the sole processor of citrus in Belize. As such, a producer of citrus has no alternative market to sell its produce. **The Citrus (Processing and Production) Act, Chapter 277** makes provision for purchasing and selling of the citrus. Section 7 (1) and (2) of the Citrus (Processing and Production) Act (“the Act”) provides as follows:

7. (1) *No processor shall purchase or take delivery of any citrus except from a producer and in accordance with the terms and conditions of such producer’s licence.*
- (2) *No person shall sell or deliver any citrus to a processor other than a producer in accordance with the terms and conditions of his licence.*

45. Section 7 (1) and (2) shows that a licence is required for the purchasing and selling of the citrus and it is done in accordance with the terms and conditions of the producer’s licence.

Licensing

46. I will now look at who is responsible for granting the licence and to whom a licence is given. **Section 16 of the Citrus (Processing and Production) Act** provides that the powers and duties of **the Board**, include *inter alia*, authorizing the Association to issue licenses to producers to deliver citrus to the processor. So, it is the duty of the Board to authorize the Association to issue licences. However, the Association which is managed by a Committee has rules to follow before such issuance of a licence. **Section 37(1) of the Citrus (Processing and Production) Act** provides:

*37. (1) The Committee, as soon as practicable after the receipt of an authorisation issued by the Board under section 16, shall issue licenses in accordance with the following provisions of this section to all producers who are members of the Association desiring to produce and deliver citrus to processors. (emphasis added).*

47. Section 37(1) shows that licenses shall only be issued to producers who are members of the Association. This section unambiguously states that the Committee shall issue licenses to producers who are members of the Association. I respectfully disagree with Learned Counsel, Ms. Banner that the Act facilitates someone who is not a member of the CGA to get a licence. If this happens, it would be a breach of section 37(1) of the Act. The Act, in my view, does not make any provision for a producer who is not a member of the Association.
48. The fact that licences can only be issued to members is the reason for the Claimants to seek constitutional redress. The evidence shows that the Claimants have resigned as members of the third Defendant, the Citrus Growers Association. The Claimants sought written confirmation from

the Board and the Association that they would not be refused a licence to sell to the sole processor. In response, the Claimants received letters from the Fourth Defendant, Citrus Products of Belize Limited that it is unlawful for it to purchase and take delivery of any citrus from producers not licensed by the Association. See **Exhibit 6 – 10** for letters. Each of the letters states:

.....

*We acknowledge receipt of your letter dated July 28, 2009, addressed to the Citrus Growers Association (the Association) and the Citrus Control Board (the Board) and copied to us, resigning as a member of the Association with immediate effect.*

*We hereby bring to your attention that, under section 7 (1) of the Citrus (Processing and Production) Act (the Act), Chapter 277 of the Laws of Belize, Revised Edition 2000, Citrus Products of Belize Limited (CPBL) is prohibited from purchasing or taking delivery of any citrus from any citrus producer save and except in accordance with the terms and conditions of a producer's licenses. We note that section 37(1) provides that the Committee of Management of the Association "shall issue licences .. to all producers who are members of the Association desiring to produce and deliver citrus to processors."*

*Consequently, the current legal position is that CPBL will be unable to accept citrus from you without a valid producer's licence and in order to be issued a licence from the Association you must be a member of the Association.*

*Dr. Henry Canton  
Chief Executive Officer*

49. This letter further disposes of Learned Counsel, Ms. Banner's argument that the Act facilitates someone who is not a member of the CGA getting a licence. Here it is the CEO of Citrus Products of Belize Limited saying that CPBL will be unable to accept citrus without a producer's licence and in order to be issued a licence from the Association you must be a member of the said Association.
50. It should be noted further that section 7(4) of the Act provides that any person who contravenes the provisions of that section, which is the section that provides for licenses, commits an offence. Thus, it would be an offence if one sells citrus to the producer without a licence.
51. I further disagree with Learned Counsel, Ms. Banner's submission that the Citrus Act falls within section 13(2) of the Constitution. I agree with the submission of Learned Senior Counsel, Mr. Marshalleck that public order speaks to civil commotion, strikes, and to riots and not ordering of society in a particular way. As such, the Citrus Act does not fall within section 13(2) of the Constitution.

Freedom of Association

52. This brings me to the issue of whether or not the operation and effect of the provisions of Section 7(1) and (2) and 37(1) of the Act contravenes the Claimants' constitutional rights under section 13(1) not to be hindered in the enjoyment of their freedom of association. The combined effect of sections 7(1), 7(2) and 37(1) is that the Claimants cannot sell or deliver citrus to the processor without a licence and a license cannot be issued to a person who is not a member of the Association. **Section 13 of the Constitution** provides that:

- (1) *Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons*

*and in particular to form or belong to trade unions or other associations for the protection of his interests or to form or belong to political parties or other political associations.*

(2) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-*

*(a) that is required in the interests of defence, public safety, public order, public morality or public health;*

*(b) that is required for the purpose of protecting the rights or freedoms of other persons;*

*(c) that imposes restrictions on officers in the public service that are required for the proper performance of their functions; or*

*(d) that is required to prohibit any association the membership of which is restricted on grounds of race or colour.”*

53. In Civil Appeal No. 20 of 2004, ***Belize Petroleum Haulers Association v. Daniel Habet et al***, Mottley JA had this to say about **section 13(1)**:

*By this sub-section, the right of the individual to associate with others and to belong to associations of his choice are protected.*

*He cannot be forced against his will to join any association.*

54. The question to be asked is whether the Claimants are being forced against their will to join the Association. In my view, though the Act, and in particular section 22 which provides for full and provisional membership does not expressly mandate that all producers must be members of the Association, the combined effect of the said sections 7(1), 7(2) and 37(1) is to force membership on the Claimants. A producer who does not want to join the Association will be forced to do so in order to get a licence to sell his produce. Section 22 cannot be looked at in isolation to say that membership is at the will of the applicant. In my view, the combined effect of the provisions above is to force the Claimants against their will to join the Association.

55. Does freedom of association include the freedom not to join an association? The Learned Chief Justice in the unreported case, Action No. 224 of 2004, ***Daniel Habet et al v. The Attorney General and The Belize Petroleum Haulers Association*** looked at this right at paragraph 53 of the judgment. The Learned Chief Justice said:

*“This is a recognized and valuable right in any democratic society and it is the bed-rock of any free society. A classic formulation of this right was given in the well-known case of **Collymore and Another v Attorney General** (1967) 12 WIR 5 (1968) A.C. 538, by the late Sir Hugh Wooding, former Chief Justice of Trinidad and Tobago when he stated at page 15:*

*“..... freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the association group. The objects may be any of many. They may be religious or social, political, or philosophical, economic or professional, educational or cultural, sporting or charitable.”*

*The parameters of this right have been defined by Dr. J. Henry Richardson, a renowned author in the field of labour relations in his book, *An Introduction to the Study of Industrial Relations*, at page 143 and cited with approbation by Hyatali CJ in ***Trinidad Island-Wide Cane Farmers’ Association Inc. and Attorney General v Prakash Seereeram*** (1975) 27 WIR 329 at page 341 as follows:*

*“The right to form an association carries with it two significant implications. **The first is negative; it is the freedom of individuals not to become members of an***

***association and also freedom to terminate their membership of an association.*** *The second is, freedom to form new association alongside existing ones, including freedom to withdraw from an organization in order to set up a rival one.”* (emphasis mine)

56. The **Seereeram case supra** mentioned above by the Learned Chief Justice was relied on by the Claimants to show that freedom of information carries two implications, one being the negative, that is, the freedom not to associate. The freedom not to associate is what the Claimants say is being contravened.
57. As stated above, the law is clear and unambiguous and the Claimants are required to be members of the Association in order to obtain licences to sell citrus to the sole processor. The evidence is that the Claimants have resigned from the Association and as the law stands presently they cannot obtain a licence. If they deliver citrus without a licence then it would be an offence. It is evident therefore, that though the Act does not expressly mandate membership in the Citrus Growers Association as in the **Seereeram case supra**, the operation and effect of the provisions of sections 7(1) and (2) and 37(1) is to hinder the enjoyment by the Claimants of the fundamental freedom not to associate. I agree with the submissions of the Claimants that the operation and effect of the said sections of the Act is to require membership by any person desiring to produce and sell citrus to CPBL such as the Claimants and it is therefore, in violation of the Claimants' constitutional right not to be hindered in the enjoyment of their freedom of association. The Claimants do not want to associate with the Association and this in effect puts them at a disadvantage as they cannot deliver fruit without a licence.

58. The combined effect of **sections 7(1), 7(2) and 37(1)** is sort of a condition to associate even if one does not want to associate. In effect, these provisions of the Act fetter the right of the Claimants or their freedom not to associate as guaranteed by section 13(1) of the Constitution. I find that the combined effect of **sections 7(1), 7(2) and 37 (1)** of the Citrus Processing and Production Act is to hinder the Claimants in the enjoyment of their freedom of association.

**Issue 2:**

*Whether or not the operation and effect of the provisions of Sections 7(1) and (2) and 37 of the Act contravene the Claimants' constitutional right not to be denied the opportunity to gain their living by work or by pursuing an occupation or engaging in a trade which they freely choose conferred by section 15(1) of the Belize Constitution.*

Claimants submissions

59. The Claimants submit in their written and oral submissions that the operation and effect of sections 7(1) and (2) and 37 of the Act is also to wrongfully prohibit a person from gaining their living by engaging in the work of a citrus producer in contravention of section 15 of the Constitution.
60. As is clearly indicated by the evidence of the Claimants, they have all chosen to be and have been and continue to be citrus producers. They are responsible for a significant proportion of this country's annual citrus crop. They submit that the effect and operation of the Act in light of their decision to no longer participate in the Citrus Growers Association is to deny them the opportunity to earn a living from continuing to work as citrus producers by failing to make any provision whatsoever for them to secure producers licences and continue to sell and deliver citrus fruit to citrus processors as they have been doing for many years.

61. The Claimants submit that by the terms of section 15(2) of the Constitution it is not inconsistent with the constitution to require as a condition for embarking upon or continuing to work the possession of appropriate licences. However, the Claimants say that the requirement to secure a citrus producer's licence is inconsistent with the constitution because it is required not as a condition for embarking upon or continuing to work as a citrus producer but as a condition for selling the work product (citrus fruit) on the only available market for large quantities of such fruit. The licence therefore effectively prohibits the Claimants from gaining a living by selling its citrus produce to CPBL and thereby fetters the Claimants' right to work as citrus producers as they have long since chosen to do.
62. The Claimants further say that citrus producer licences are not required in the interest of the public health nor are they required to protect the rights or freedoms of other persons.
63. The Claimants relied on the case of ***Belize Petroleum Haulers Association*** in support of their arguments for both the rights under section 13(1) and 15(1) of the Constitution. They submit that the provisions of the Act that require the securing of producer's licences in order to sell and deliver citrus to CPBL coupled with the limited authority conferred by the Act on the Citrus Growers Association to grant producer's licences effectively contravene the Claimants' constitutional rights to freedom of association as well as their right to gain their living by work which they have freely chosen and which they continue to choose and undertake.
64. The Claimants contended that the Court of Appeal of Belize was asked to determine whether the provisions of sections 3(4), 19(1) and 2(c) of the ***Belize Petroleum Haulers' Association Act No. 28 of 2003*** conflicted

with the provisions of sections 13(1) and 15(1) of the Constitution of Belize and were therefore null and void and it was held that the Chief Justice was correct in concluding that:

*“The effect of section 3(4) coupled with section 19(1)(a) and 2(2) of the Act is effectively to chill the right to associate or not to associate, of the applicants and this directly impacts on their right to work in their chosen field, namely the commercial haulage of petroleum products. Together, I find these sections grants the Association an unwarranted imprimatur even to the extent of prohibiting a public officer, the Director of Transport, from issuing special licence to applicants unless “recommended by the Association”. The imprimatur given by these sections to the Association seriously undermines and infringes both the right to associate or not and the right to work guaranteed by sections 13(1) and 15(1) of the Constitution.*

65. The Claimants submit like in ***Belize Petroleum Haulers Association*** case supra the operation and effect of sections 7(1), 7(2) and 37 of the Citrus Processing and Production Act is to hinder the Claimants in the enjoyment of their freedom to associate and their right to work by granting to the Citrus Growers Association and its members an unlawful imprimatur to force membership in the Association in order to participate in the work of citrus production in Belize. In effect sections 7(1), 7(2) and 37 like sections 3(4), 19(1) and 2(c) of the Petroleum Haulers Association Act seek to grant to the Citrus Growers Association and its members the exclusive right to determine who is to gain a living from the business of citrus production in Belize. Learned Senior Counsel, Mr. Marshalleck submitted that this offends and infringes in a fundamental way the freedom of association and the right to work conferred on all persons by the Belize Constitution.

Defendant's submissions

66. The first Defendant submits that the operation of the provisions of sections 7(1) and (2) and 37(1) of the Act does not contravene the Claimant's constitutional right under section 15(1) of the Belize Constitution not to be denied the opportunity to gain their living by work or by pursuing an occupation or engaging in a trade which they freely choose.
  
67. Learned Counsel, Ms. Banner submitted that the Act does not deny the Claimants their opportunity to work. That the Act merely imposes reasonable obligations on the Claimants such as the requirement as seen in section 7(1) and (2) of having a licence in order to deliver citrus and that this is a necessary part of a regulated industry. Learned Counsel submitted that the Claimant's have focused solely on sections 7(1) and (2) in interpreting the rights of persons who require a licence to deliver citrus. However, the entire scheme of the Act and those sections must necessarily be read along with the right of "any person aggrieved" by a decision of the CGA not to issue a licence to appeal to the Citrus Control Board.
  
68. Learned Counsel argued that it is also clear that along with the right to work comes the concomitant responsibility to ensure that certain standards within the citrus industry are maintained. The present issue therefore falls within section 15(2) of the Constitution as it is not inconsistent with the right to work for a legal requirement to be imposed that a person possesses the appropriate licences or qualifications. The fact that the Act has created an institutional framework for the purpose of allowing certain centralized bodies to authorize the issuance of licences (CCB) and to issue the licences (CGA) does not mean that those institutions are denying persons of the opportunity to produce citrus.

Claimants reply

69. Learned Senior Counsel, Mr. Marshalleck in reply submitted that the Claimants do not contend that the Act denies a right to produce. Learned Counsel argued that the Act infringes the right to earn because one can produce but not earn. The reason being, a license is needed and to get a license one must be a member of the Association.

Determination of issue 2

70. The issue whether or not the operation and effect of the provisions of **Sections 7(1) and (2) and 37(1)** of the Citrus Act contravene the Claimants' constitutional right under section 15(1), for present purposes, is inextricably linked to the first issue. In the first issue, the determination was on the contravention of section 13(1) of the Constitution. In the present issue, section 15 of the Constitution is being considered. The sections of the Citrus Act in the first issue is the same in this issue. Section 15 of the Constitution provides as follows:

15. (1) *No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise.*
- (2) *It shall not be inconsistent with subsection (1) of this section to require, as a condition for embarking upon or continuing work, the payment of professional fees, trade or business licence fees, or similar charges, or the possession of appropriate licences or qualifications.*
- (3) *Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-*
- (a) that is required in the interests of defence, public safety, public order, public morality or public health;*

- (b) that is required for the purpose of protecting the rights or freedoms of other persons; or*
- (c) for the imposition of restrictions on the right to work of any person who is not a citizen of Belize.*

71. Section 15 was considered in the Court of Appeal in the case of **Fort Street Tourism Village v Attorney General** et al Civil Appeal No. 4 of 2008 where Mottley P. said:

*Section 15(1) provides that no person shall be denied the opportunity to gain his living by work he freely chooses or accepts .. The Constitution speaks of a denial of the opportunity to work. It is the opportunity that must not be denied to the citizen. If that opportunity is denied then fundamental right as guaranteed by the Constitution is infringed. While it is often referred to as the right to work, what is in fact guaranteed is not the right to work but the opportunity to work.*

72. The Claimants have acknowledged in their arguments that section 15(1) is not inconsistent with 15(2) to require as a condition for embarking upon or continuing work, the payment of professional fees, trade or business licence fees, or similar charges, or the possession of appropriate licences or qualifications. The question to be asked is whether the licence required in this case is required for embarking upon or continuing to work as a citrus producer as in section 15(2) or is required in the interest of defence, public safety, public order, public morality or public health as provided in section 15(3). In my view, the licence regime in this case does not fall within section 15(2) nor section 15(3). I agree with the Claimants submissions that the licence is required not as a condition for embarking upon or continuing to work as a citrus producer but as a

condition for selling the citrus to the sole available market. It is clear from the evidence that the Claimants are not being prevented from producing citrus. The challenge they face is the sale of the product which cannot be done without a licence and which can only be granted if the person is a member of the Association.

73. As such, I respectfully disagree with Learned Counsel, Ms. Banner that the present issue falls within section 15(2) of the Constitution where it is not inconsistent with the right to work for a legal requirement to be imposed that a person possesses the appropriate licences or qualifications. Learned Counsel, centered her submissions on the production of citrus as she submitted that the authorization by the Board to issue licences and the issuance of licences by the Association does not mean that those institutions are denying persons the opportunity to produce citrus. This is not the complaint at all and this was made clear by Mr. Marshalleck in reply when he contended that the Act infringes the right to earn because one can produce but not earn as a licence is required and to get a licence one must be a member.
74. In my view, the production of citrus which cannot be sold to the sole citrus producer without a licence and which will only be granted to members of the Association is in effect denying the claimants the opportunity to work in the field which they chose. As mentioned above, Sections 7(1) and 7(2) clearly states that a licence is required for the sale of fruits and section 37(1) states that only members of the Association can obtain a licence.
75. I am further guided by the principles in the **Petroleum Haulers** case supra where it was found that the provisions of sections 3(4), 19(1) and 2 ( c ) of the Belize Petroleum Hauler's Association Act No. 28 of 2003 conflicted with the provisions of sections 13(1) and 15(1) of the Constitution of

Belize and were therefore null and void. See paragraph 64 above for finding of the Chief Justice which was upheld by the Court of Appeal of Belize.

76. My finding above in issue one is that the effect of sections 7(1), 7(2) and 37 of the Citrus Processing and Production Act is to hinder the Claimants in their freedom to associate or not to associate. This impacts on their rights to work in citrus production as they would be unable to sell their produce to the only producer. I find that the Claimants are denied the opportunity to gain their living by work in the citrus industry which they freely chose and this contravenes section 15(1) of the Constitution.

#### Damages

77. There is no evidence of special damages such as fruits being lost by any of the Claimants. The Claimants made no submission on damages except to say that no fruits were lost.
78. Reluctantly, I will not make an order as to damages although the legal rights of the Claimants were infringed by the second and third Defendants. I do so on the basis that amendments are being made to the Citrus Act to address **section 38(1)** and **section 37(1)** by the Attorney General. It is because of the position taken by the Attorney General that this Claim proceeded to trial. See the affidavit of Ms Montalvo at paragraphs 5 and 6 where the Learned Counsel deposed as follows:

5. *Section 38(1) is being amended as it has been declared unconstitutional by the Supreme Court in Claim No. 93 of 2007.*
6. *Section 37 is being amended but the First Defendant makes no admission as to the unconstitutionality of same and puts the Claimants to strict proof of their assertions in respect of section 37.*

Conclusion

79. I find that the effect of **sections 7(1), 7(2) and 37(1)** of the **Citrus Processing and Production Act** is to hinder the Claimants in the enjoyment of their freedom to associate or not to associate and this impacts on their rights to gain their living by work in the citrus industry which they freely chose. This is in contravention of sections 13(1) and 15(1) of the Belize Constitution.

Accordingly, the following is ordered:

80. Order

I grant and declare that the operation and effect of the provisions of Sections 7(1), 7(2) and 37(1) of the Citrus (Processing and Production) Act are *ultra vires* the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 13(1) of the Belize Constitution, not to be hindered in the enjoyment of their freedom of association.

I grant and declare that the operation and effect of the provisions of Sections 7(1), 7(2) and 37(1) of the Citrus (Processing and Production) Act are *ultra vires* the Belize Constitution in that they contravene the Claimants' rights, conferred by Section 15(1) of the Belize Constitution, not to be denied the opportunity to gain a living by work which they freely chose.

An injunction is granted to restrain the Second and Third Defendants whether by themselves, their servants, agents or howsoever from:

- (i) Issuing producers licenses to sell and deliver citrus only to members of the Citrus Growers Association;
- (ii) Requiring Citrus Products of Belize Limited to purchase or take delivery of citrus only from members of the Citrus Growers' Association holding valid producers licenses.

I award prescribed costs to the Claimants. Each of the Defendants to bear 25% of the cost.

.....  
MINNET HAFIZ-BERTRAM  
Supreme Court Judge

Dated 18<sup>th</sup> March, 2010.