

IN THE SUPREME COURT OF BELIZE, A.D 2007

CLAIM NO. 575 OF 2006

BETWEEN: (PROVIDENT BANK AND TRUST OF BELIZE LTD CLAIMANT
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(AND
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(BELIZE COMPANIES AND CORPORATE AFFAIRS REGISTRY DEFENDANT

Mr. Dean Barrow S.C., for the claimant.

Mr. Edwin Flowers S.C., Solicitor General, for the defendant.

AWICH J.

6.7.2007

DECISION

1. Notes: *Public Law, alternative remedy (now alternative form of redress) r: 56.1 (1) and (3)(e) and (f): whether an alternative form of redress, a complaints and appeals procedure prescribed by statute, ousts court jurisdiction; whether ss: 28 and 29 of the Stamp Duties Act, which provide that: the Commissioners of Stamps may be required to express their opinion as to whether duty is chargeable, and as to what amount, and that an appeal then lies to the Supreme Court, ousts the*

original jurisdiction of the Court; whether it is an abuse of the process of court for the claimant to come directly to the Supreme Court claiming a declaration by a fixed date claim form under r: 56.1 (1) (c) instead of by an application for judicial review claiming a quashing order; the motive for the choice of which originating process to use; declaration as a discretionary relief..

Interpretation of Statute: whether s: 36 of the International Banking Act exempts from duty instruments of transfer of shares owned by residents, in a domestic bank to an international bank.

2. When writing this decision I discovered that the objection raised by Mr. Edwin Flowers, S.C., learned Solicitor General, representing Belize Companies and Corporate Affairs Registry raised very many issues. That together with the changes brought about by the Supreme Court (Civil Procedure) Rules 2005, necessitated that I write in details the reasons and reasoning for the decision I arrived at below.

3. The claimant, Provident Bank and Trust of Belize Limited, is an international bank, (an off-shore bank), licensed as such under the International Banking Act, Cap 267, Laws of Belize. The defendant is Belize Companies and Corporate Affairs Registry, a government department.

The Facts.

4. On 8.3.2006, the claimant submitted to the defendant 20 instruments of transfer of shares for “registration and recording”. The shares were in Alliance Bank of Belize Limited, a domestic bank. The claimant had bought the shares from three named companies incorporated in Belize under the Companies Act Cap. 205, and two named individuals, who transferred the shares to the claimant. The total price for the shares was \$11,700,000.00 (eleven million seven hundred thousand). On 27.7.2006, Ms. Catherine Smith, Assistant Registrar of Companies, wrote to the claimant demanding payment of \$585,000.00 said to be 5% stamp duty charge payable under s: 64(2) of the Stamp Duties Act, Cap 64, Laws of Belize, and a late filing fee of \$55.00. On 4.8.2006, the claimant wrote to the Assistant Registrar contending that the instruments were exempted from duty under s: 36 of the International Banking Act, since the transfer instruments were executed by an international banking business. The wording of the contention by the claimant was: “The section provides that a document is exempt from stamp duty if it meets one of two requirements: (1) if the document is executed ‘in connection with an

international business’ or (2) if the document is executed ‘by an international banking business’ ”. Based on the contention, the claimant asked for a favourable reply within 14 days or it would take legal action. On 29.8.2006, the Assistant Registrar replied maintaining her demand for payment of the duty and late filing fee. On 19.10.2006, the claimant filed this claim, by a fixed date claim form at court asking for court declaration in terms confirming its contention. The fixed dated claim form did not cite the rule in the Supreme Court (Civil Procedure) Rules, 2005, under which the process of court was issued.

5. The Stamp Duties Act under which duty was charged, provides in ss: 28 and 29 complaints and appeals procedure. The particulars are that, Commissioners of Stamps may be required to give their opinion as to whether duty is chargeable and as to the amount, and that a person who is dissatisfied with the opinion may appeal in 21 days to the Supreme Court. The claimant did not attempt to obtain the opinion of the Commissioners on the question as to whether duty was payable on the twenty instruments of transfer of the shares, and so did not come to the Supreme Court by an appeal as provided for in

the sections; instead the claimant filed this claim for the declaration directly at the Supreme Court.

6 The exchange of correspondence between the claimant and the Assistant Register is a commendable pre-action protocol (now pre-claim protocol), whatever may be the intended originating process for the proceedings. In judicial review proceedings under *Part 56 of the Supreme Court (Civil Procedures) Rules 2005*, in particular, a letter from the claimant seeking a resolution of the dispute, and a reply from the defendant, are two important steps in pre-claim protocol that should be complied with or the claimant, or the defendant if he ignores the initiative of the claimant, may suffer the costs of the litigation, in any event. In the case, *Regina (Cowl and others) v Plymouth City Council (Practice Notes) [2001] [2002] 1WLR803*, Lord Woolf C J, in the Court of Appeal (UK), expressed in very strong words the desirability and need to explore the possibility of settling out of court, public law claims.

The Claim and Preliminary Objection.

7. The claim by a fixed date claim form sought a single declaratory relief which it stated as: “An administrative order for, a declaration that the twenty (20) Instruments of Transfer of Shares submitted to the defendant for registration/recording and evidencing the transfer of shares in Alliance Bank of Belize Limited to the claimant (an International Bank), are exempt from stamp duty under s: 36 of the International Banking Act”.

8 At the first hearing on 27.2.2007, the Court suggested to learned Senior Counsel Mr. Dean Barrow, for the claimant, that the subject matter was one that raised issues which were wholly in public law; and in reality the claim and the declaration prayed for, challenged and would nullify the decision of a public official, the Assistant Registrar; the effect of the declaration would be the same as that of a quashing order. Court went on to suggest that the more direct and usual proceedings nowadays would be by an application for judicial review and a quashing order and, if desirable, a mandatory order requiring the Registrar to register the instruments without demanding duty. Mr. Barrow was invited to address the court as to whether the

choice of proceedings by a fixed date claim form for a declaration did not occasion or was not motivated by abuse (misuse) of process, or would not prejudice the defendant in advancing its defence. Before Mr. Barrow made his address, Mr. Flowers informed the Court that he intended to raise a preliminary objection to the entire proceedings.

The Contentions.

9. In his submission, Mr. Flowers raised an all embracing point of law. He submitted that the claimant did not follow the prescribed procedure in the Stamp Duties Act, which provided remedy to the claimant for the complaint it raised. Mr. Flowers explained that s: 28 of the Stamp Duties Act provides for any person to require the Commissioners of Stamps to express their opinion as to whether any executed instrument is chargeable with duty, and if so, with what amount of duty, so the claimant, if dissatisfied with the decision and demand by the Assistant Registrar, should take up the matter with the Commissioners and require them to express their opinion. The supporting affidavit by Ms. Smith stated that she advised the claimant accordingly, but the claimant has not done so. Mr. Flowers urged

that the claimant should not be allowed to come to court before getting the expert opinion of the Commissioners, which expert opinion would benefit the court. He further submitted that the Act in s: 29 specifically provides that a person dissatisfied with the opinion of the Commissioners may appeal to the Supreme Court within 21 days, so, Mr. Flowers submitted, the claimant could come to the Supreme Court, but only on appeal against the opinion of the Commissioners, and in the event that the opinion of the Commissioners was that duty was payable, the claimant would be required to pay the duty under s: 29 of the Act while it proceeded to appeal. The third submission by Mr. Flowers was that if the Court allowed the claimant to bypass the Commissioners of Stamps, a precedent would be set for complainants to bypass the Commissioners; and that would be contrary to the intention in the Act that the Commissioners give their opinion before a complaint is taken to the Supreme Court.

10. I understood Mr. Flowers to contend that the claimant should not be allowed to come to the Supreme Court directly at all, whether by, a common law fixed date claim form claim under Part 8 of the

Supreme Court (Civil Procedure) Rules, for a declaration, or by a fixed date claim form claim under r: 56.1 (1) (c) for a declaration which is an administrative order, or by an application for judicial review for a quashing order. The claimant was restricted, Mr. Flowers submitted, to making use of the procedure prescribed by the Act, and to coming to the Supreme Court only on appeal against the opinion of the Commissioners, in accordance with the procedure prescribed in ss: 28 and 29 of the Stamp Duties Act.

11. About the question raised by court, namely, whether there was any misuse of process by the claimant coming to court by a fixed date claim form asking for a declaration, instead of by an application for judicial review asking for a quashing order, Mr. Barrow submitted that the right to bring a “common law action” has not been abolished by Part 56 of the Supreme Court (Civil Procedure) Rules, 2005. Secondly, he submitted that Part 56 of the Supreme Court (Civil Procedures) Rules, 2005 dealing with proceedings in: “*Constitutional and Administrative Law*” claims provides in r: 56.1(1), for four different sets of proceedings, namely applications: “(a) for judicial review; (b) for relief under the Constitution; (c) for a declaration in

which a party is the Crown....; and (d) where the court has power by virtue of any enactment to quash any order, scheme, certificate and decision of a Minister or Government Department”; so, Mr. Barrow submitted, proceedings under r: 56.1 (1) (c) in which the procedure for an application for a declaration in public law is claimed and in which the Crown (a Government Department) is a party does not share the same procedure as proceedings for judicial review, one could choose the proceedings under r: 56.1 (1) (c) to claim only the relief of a declaration by a fixed date claim as the claimant has done, or one could choose to make an application for judicial review for a quashing order.

12. About whether the claimant should be denied coming to court unless he has gone through the procedure prescribed in ss: 28 and 29 of the Stamp Duties Act, Mr. Barrow submitted that the claim was a proper case in which the court may bypass the opinion of the Commissioners of Stamps and exercise jurisdiction because the case was a straight forward one about interpretation of statute, s: 36 of the International Banking Act, the section was plain, there was no need for the claimant to take the question first to the Commissioners of Stamps.

Interpretation of statute, Mr. Barrow said, was primarily the business of courts. He suggested that the time taken by the preliminary objection could have been enough for making submissions about the meaning of s: 36, so that the Court would render an early determination. Mr. Barrow submitted further, that ss: 28 and 29 of the Stamp Duties Act did not take away the right of the claimant to bring a claim in common law. Learned counsel cited *Pyx Granite Co Ltd v Ministry of Housing and Local Government and others [1960] A.C. 260 H. L.*, for authority as to when court may grant a declaratory order notwithstanding that a statute provides alternative remedy. He also cited *Harrison v Croydon London Borough Council [1968] Ch. 479*, to support the claim.

Determination.

13. I begin by noting that I appreciate that Mr. Barrow is mindful of the scarce court time available, and I note his well intentioned desire to have the court bypass the objection raised by Mr. Flowers, and proceed straight away to the interpretation of s: 36 of the International Banking Act. However, I do not think it appropriate to allow the pressure of work to cause the court to casually bypass the

important and usually difficult legal point raised, for the sake of saving time. The question as to whether a claimant should be bound to comply with a procedure prescribed by statute before he comes to court has frequently proved difficult even in the House of Lords. If raised at the outset, “*it is convenient to deal with it straight away because it is an objection in limine,*” – See dicta of Lord Lowry in ***Roy v Kensington and Chelsea and Westminster Family Practitioner Committee [1992] A C 624***, at page 636. The question in the objection by the defendant is undoubtedly about the jurisdiction of the court in the claim; it should be considered immediately.

14. I proceed to examine next, the objection raised by Mr. Flowers. First, I would like to point out that this claim is not brought as a common law claim for a common law relief. Mr. Barrow suggested that occasionally in his submission. His submission that the claim was brought under r: 56.1(1) (c) was the correct submission. The claim itself stated that it was for: “An administrative order for a declaration...” Secondly, I accept the submission that under r: 56.1 there are four distinct types of proceedings for claims in public law for administrative order. All the four must commence by a fixed date

claim form under r: 56.7, but only in judicial review proceedings that a prior application for permission to bring the claim must be made.

15. Secondly, I accept Mr. Barrow's submission to the extent that there are occasions on which the Supreme Court will exercise jurisdiction notwithstanding that a statute has provided an alternative form of redress. I have identified three such occasions. The first occasion is when court is presented with a case in which the statute providing the alternative form of redress nevertheless does not make it clear that the statute prohibits recourse to court in view of the prescribed alternative. Court will then regard the statutory form of redress merely as an alternative and not as an exclusive form of redress. The second occasion is when court is presented with an exceptional case in which exceptional circumstances are identifiable; on such an occasion, *court will take account of the alternative form of redress*, but may nevertheless intervene and exercise jurisdiction. Exceptional circumstances arise from the nature of the case as well as from the nature of the remedy prescribed. Examples are common in cases brought by judicial review proceedings. The third occasion is when the case presented to court raises the

question of nullity because the public authority or tribunal or the administrator has *exceeded his power* given in the statutory prescribed form of redress, or has exercised his power or discretion *by unfair means*, or has *refused to exercise* his function; or when the case presented to court discloses *error of law on the face of the record*. Again on such an occasion the court will exercise jurisdiction notwithstanding the statutory form of redress prescribed.

16. It was an important issue, before the new rules in ***Part 56 of the Supreme Court (Civil Procedures) Rules, 2005***, were promulgated, that when the statutory procedure did not make it clear that it excluded recourse to court, the claimant would select the proper form of proceedings by which to come to court, whether it be an application for judicial review or a common law action – see ***O'Reilly and Others v Mackman and Others [1983] 1.A.C.237***, and also ***Cocks v Thanet District Council [1983] A.C. 286***. The new Rules, in Part 56 has changed that. A claimant may now come to court claiming in public law, an administrative order only, or together with orders for reliefs such as damages, injunction, restitution and even return of property, which are private law reliefs – see ***r: 56.1(4) of***

the Rules. All that he needs to ensure is that if his claim is grounded on public law, he must proceed under Part 56 of the Rules even if some of the reliefs claimed are private law reliefs. Part 56 of the Rules aims at having all claims grounded on public law brought under that Part. However, in my view, the general rule about abuse of court process remains, and depends on the particular facts of the case.

17. *Pyx Granite Company Case*, cited by Mr. Barrow, and *Roy v Kensington, Chelsea and Westminster F. P. Committee Case*, are examples of cases in which the House of Lords held that the statutory prescribed forms of redress did not make it clear that recourse to court was excluded, and so the claimants could go to the High Court, notwithstanding the statutory prescribed form of redress. In both cases the claimants issued writs of summons.

18. In the *Pyx Granite Co Case*, a statute required that permission for development work at a particular place, Malvern Hill, had to be obtained from the Local Authority or from the Minister responsible, and that if the Local Authority refused permission, the complainant

“*may apply*” to the Minister, and in both cases the decision of the Minister “*shall be final*”. The claimant’s case was that by authority of an earlier Act, the Malvern Hill Act, 1924, it had been granted permission so it did not require permission from the Local Authority or from the Minister, for its development work on its freehold area and a licensed area within Malvern Hill. The claimant commenced action by a writ of summons, not by judicial review proceedings, in which it sought declarations that the development which it proposed to carry out on its freehold land and on licensed land was authorized by the Malvern Hill Act 1924, and that two ministerial decisions, one refusing permission for development of one part of the land, and the other granting permission conditionally for development of the other part, were invalid. Two preliminary objections were raised: 1) that the court had no jurisdiction since by statute, the only way to determine the question was to “*apply*” to the Local Authority or to the Minister, and his decision “*shall be final*”. 2) if remedy could be obtained from the High Court, it must be “*by way of judicial review and certiorari*”, because the claim was of a right conferred by statute. Both objections failed in the House of Lords. On page 286 Viscount Simonds said:

“The question is whether the statutory remedy is the only remedy and the right of the subject to have recourse to the courts of law is excluded... It is a principle not by any means to be whittled down that the subject’s recourse to Her Majesty’s courts for the determination of his rights is not to be excluded except by clear words... It must be asked then, what is there in the Act of 1947 which bars such recourse. The answer is that there is nothing except the fact that the Act provided him another remedy. Is it then, an alternative or an exclusive remedy? There is nothing in the Act to suggest that, while a new remedy perhaps cheap and expeditious, is given, the old and as we like to call it, the inalienable remedy of Her Majesty’s subjects to seek redress in her courts is taken away”.

Lord Goddard stated on page 290 as follows:

“I know of no authority for saying that if an order or decision can be attacked by certiorari the court is barred from granting a declaration in an appropriate case. The remedies are not

mutually exclusive though no doubt there are some orders, notably convictions before justices, where the only appropriate remedy is certiorari”.

19. In the *Roy v Kensington, Chelsea and Westminster F.P. Committee Case*, the Committee that decided remuneration to be paid to an individual medical practitioner for the services rendered under a statutory health scheme in the UK, withheld 20% of the remuneration of Dr. Roy. The Committee was of the view that he did not devote “a substantial amount of time” to general practice as required, under a subsidiary legislation. The terms of the scheme gave a practitioner who was dissatisfied with the decision of the Committee, opportunity to place additional information before the Committee, and if they did not alter their decision, the right to make representations to the Secretary of State.

20. Dr. Roy was dissatisfied. He was invited to submit further information. He did not, instead he brought an action by a writ of summons, in contract, claiming payment due, damages and a declaration that the Committee could not abate his practice

allowance. The Committee applied for, among other orders, an order striking out the claim on the ground that it was an abuse of court process to claim by writ of summons (common law action), and not by judicial review, since the claim was based on a breach of the Committee's public duty. It also made submissions at appeal stage, that Dr. Roy was bound to make representations in writing to the Secretary of State before he could challenge the decision of the Committee, "*by any means*", in court. The House of Lords held that in the absence of any mandatory language or necessary implication to the contrary, the making of representations to the Secretary of State was not a condition precedent to the taking of judicial proceedings in respect of the decision of the Committee. Further, that a litigant possessed of a private law right could seek to enforce that right by ordinary action notwithstanding that the proceedings would involve a challenge to a public law act or decision; and that Dr. Roy's relationship with the Committee, whether contractual or statutory, conferred on him private law rights to remuneration in accordance with the statutory terms, and accordingly the bringing of an ordinary action to enforce the right was not an abuse of process. Dr. Roy

succeeded in bringing his claim directly to the High Court instead of using the statutory prescribed form of redress.

21. The two cases are clear authorities that where statutory prescribed form of redress does not make it clear by *express words or by implication*, that it is an exclusive form of redress, common law claim or any form of public law claim may be brought at court. The question as to whether to come by a common law claim or by judicial review proceedings should now be muted, given the rules in Part 56 of the Supreme Court (Civil) Procedures Rules, 2005, which allow public law reliefs as well as private law reliefs to be claimed together in a public law claim.

22. I would like to note, lest it be overlooked, that it is not impossible for statute to make it clear that a decision by a public authority, tribunal, administrator and others, in a particular matter shall be the exclusive domain of the public authority, administrator, appeal tribunal and others, so that court has no jurisdiction, except in regard to the fundamental questions of nullity, and error of law on the face. That may be detestable, but it is possible within the law. The earliest case

I could find in support is the case of *Barraclough v Brown and Others [1897] A.C. 615*, an action by a writ of summons, in which the House of Lords was satisfied that the statutory procedure prescribed for the claimant developer to recover expenses incurred in the removal of sunken vessels in a particular river, the River Ouse (UK), compelled the claimant to making its claim in the court of summary jurisdiction so the claim could not be brought at first instance at the High Court. The reason was that the duty on the claimant to remove sunken vessels was created by statute and the claimant's right and the forum at which to enforce the right were also created by statute; the right and the forum were given *uno flatu*, so the claimant could not go outside the forum, the court of summary jurisdiction. Lord Herschell said at page 619:

"I think it would be very mischievous to hold that when a party is compelled by statute to resort to an inferior court he can come first to the High Court to have his right to recover...determined".

23. The case, *Pyx Granite Co. Ltd.* was distinguished from *Barracough Case* on the ground that in *Pyx Granite Co. Ltd.*, the claimant's right, to carry out work on his land, was a private common law right the statute did not create it; the claim merely alleged that the statute under which the local authority purported to act, unlawfully imposed restriction to the common law right which had already existed. My respectful view is that it was a nebulous reason for distinguishing. Compare, for example, the joint appeals *R v Devon County Council ex parte Baker, and R v Durham City Council ex parte Curtis [1995] 1 All E.R.73*, in which the duties of both councils and the rights of the claimants, residents of care homes, were created by statutes; and it was held that the court had jurisdiction in spite of the statutory alternative form of redress on the ground that there was exceptional circumstance that the question of consultation was particularly appropriate to be determined by court rather than by the Secretary of State. The fact that in *Barracough Case* the statutory form of redress was a court, albeit of summary jurisdiction, seems to have been an important consideration, as appears in the judgment; I think it was the distinguishing feature.

24. In this claim therefore, I have to examine the provisions of ss: 28 and 29 of the Stamp Duties Act, which create the alternative form of redress to the complaint of a tax payer in order to determine whether it is clear therefrom that recourse to court has been excluded. The sections state as follows:

“28 – (1) Subject to such legislation as may be prescribed, the Commissioners may be required by any person to express their opinion with reference to any executed instrument upon the following questions -

(a) whether it is chargeable with any duty,

(b) with what amount of duty it is chargeable.

(2) The Commissioners may require to be furnished with an abstract or copy of the instrument and also with such evidence as they may think necessary in order to show to their satisfaction whether all the facts and circumstances affecting the instrument with regard to duty or the amount of duty chargeable thereon are fully and truly set forth therein.

29 – (1) *Any person who is dissatisfied with the assessment of the Commissioners may within twenty one days after the date of the assessment and on payment of duty in conformity therewith, appeal against the assessment to the Supreme Court and may for that purpose require the Commissioners to state and sign a case setting forth the question upon which their opinion was required and assessment made by them and the reasons therefore.*

(2) *The Commissioners shall thereupon state and sign a case and shall transmit to the Registrar of the Supreme Court and the case may within fourteen days thereafter be set down for hearing.”*

25. Having compared the provisions in ss: 28 and 29 of the Stamp Duties Act with the respective statutory provisions considered in, *Pyx Granite Co Case* and *Roy v Kensington, Chelsea and Westminster, F.P. Committee Case*, I found that the provisions in contention in the

former case went far closer to excluding recourse to court than the provisions in ss: 28 and 29 of the stamp Duties Act. It is my view therefore, that the provisions in ss: 28 and 29 do not expressly make it clear that recourse to court is excluded.

26. The question of whether recourse to court has been excluded by implication has been a more difficult one to decide. Section 28 does not only create a duty on the Commissioners to give their opinion, it also authorizes them to gather the material evidence on which they base their opinion. The relevant provision states:

“(2) The Commissioners may require to be furnished with an abstract or copy of the instrument and also with such evidence as they may think necessary in order to show to their satisfaction whether all the facts and circumstances affecting the instrument with regard to duty or the amount of duty chargeable thereon are fully and truly set forth therein”.

27. In my view, that provision is intended to ensure that in any appeal to the Supreme Court, it will have the benefit of evidence showing: “*all the facts and circumstances affecting the instrument with regard to duty or the amount*”. Accordingly, I concluded that a complainant is required by s: 28 to obtain the expert evidence, which is the opinion of the Commissioners, and that the Commissioners are likewise required to gather all the other evidence, namely, all that they considered to be material evidence, before the complaint comes to the Supreme Court, so that the Court has the full evidence on which to make an informed judgment. It follows that in this claim the statute has, by implication, denied recourse to the Supreme Court before the expert evidence, the opinion of the Commissioners, and all the other evidence, if any, have been obtained. On that conclusion alone, I allow the objection.

28. On the occasion when courts have exercised jurisdiction because the circumstances in the cases were exceptional, the cases I have identified were brought by judicial review. The present claim was not brought by judicial review application for a declaration and or a quashing order. But the claim is not any different in any aspects to a

case suitable for judicial review proceedings. The claim is for an administrative order as in any claim by judicial review proceedings; it is a claim made under public law; it is a challenge to a decision made in the performance of a statutory duty in public law. The relief of a declaration prayed in the case is wholly in the nature of a public law relief; and could be claimed together with the relief of a quashing order, or even substituted for it without any prejudice to either party. Moreover, judicial review and a quashing order would be the natural proceedings and relief, given the facts of this claim. I have therefore examined the facts of the claim as if the claim was brought by judicial review proceedings, for the purpose of determining whether there are exceptional circumstances that would distinguish the complaint therein from the type for which the complaints and appeals procedure has been prescribed in ss: 28 and 29 of the Stamp Duties Act; and if so, to overrule the objection.

29. Courts have been generally reluctant to exercise judicial review jurisdiction where there is another form of remedy; and have emphasized the rule that judicial review is a remedy of last resort. Where an alternative form of redress or even an alternative way of

resolving the dispute, that is, alternative dispute resolution arrangement, is made available by statute, *courts have to take account of them* and may refuse to hear the case and require that the claimant first make use of them. Where statutory appeal procedure has been provided as a form of redress, judicial review jurisdiction has been exercised only in exceptional circumstances.

30. A good example of a case in which the Court of Appeal (UK) found exceptional circumstances was *R v Chief Immigration Officer Gatwick Airport ex parte Kharrazi [1980] 1 W.L. R 1396*. The court said that to require the applicant to follow the statutory appeal procedure which required him to leave the UK while his appeal was being considered would cause the applicant, a thirteen year old to return to his parents in Iran where there was a ban on fourteen year olds from leaving the country; his appeal, if successful, would have been rendered nugatory and useless. The Court of Appeal held that it was a proper case in which the High Court would exercise jurisdiction.

31. In the joint appeals *R v Devon City Council ex parte Baker*, and *R v Durham County Council ex parte Curtis*, cited earlier, the Court of Appeal accepted that the question of whether there has been sufficient consultation in the circumstances of the case before the decision to move the applicants from care homes created an exceptional circumstance for court to exercise judicial review jurisdiction. Consultation was necessary, and it was entirely a matter of law which was particularly appropriate for the court rather than the Secretary of State.
32. There are many cases in which courts have found exceptional circumstances and exercised jurisdiction notwithstanding availability of statutory form of redress. Some of the other circumstances regarded as exceptional include the need for speed in the case, whether there is an important question of principle, and whether guidance from the court is desirable.
33. A leading example of a case in which exceptional circumstances were not found is the case *Reg v Home Secretary, Ex parte Swati* [1986] 1 W. L. R 477. The case was an appeal against a refusal to

grant leave for judicial review of the decision of an immigration officer refusing Mr. Swati, a Pakistani, entry to the UK for one week as a visitor, on the ground that the official did not believe that Mr. Swati's reason was genuine. The officer did not state the reason for his belief. Mr. Swati was detained pending an arrangement to return him to Pakistan on a particular carrier. There were many similar cases and the questions in the appeal arose in another appeal by another Pakistani, Mr. Nasir Butt. Mr. Swati applied for judicial review and bail. The question for consideration relevant to the present case was, whether, having regard to the alternative remedy provided by the Immigration Act 1971, of the right to appeal to an adjudicator and, further by leave, to an appeal tribunal, the court should grant leave to apply for judicial review. The High Court refused leave and the Court of appeal dismissed the appeal. Sir John Donaldson M. R. said on page 485:

“...it is well established that in giving or refusing leave to apply for judicial review, account must be taken of alternative remedies available to the applicant. This aspect was considered by this court very recently in R v

Chief Constable of the Merseyside Police, ex parte Calveley [1986] 2 WLR 144, and it was held that the jurisdiction would not be exercised where there was an alternative remedy by way of appeal, save in exceptional circumstances...Exceptional circumstances defy definition, but where Parliament provides an appeal procedure, judicial review will have no place, unless the applicant can distinguish his case from the type of cases for which the appeal procedure was provided”

The present case is far from distinguishable from the type for which the complaints and appeals procedure was provided in ss: 28 and 29 of the Stamp Duties Act. It is in fact typical of the cases.

34. The attitude of courts against exercising jurisdiction where alternative form of redress is available has hardened considerably since the advent of the new Rules of Court. In ***R (Cowl) v Plymouth City Council***, cited above, a case decided after the new Rules (UK), adopted in Belize, came into effect, the Court of Appeal (UK) stated that complainants for judicial review were not entitled to judicial

review merely because the complaints procedure on offer constituted an alternative remedy which would not fulfill all the functions of judicial review. The Court dismissed the appeal and made orders by agreement of the parties. On page 805 of the judgment delivered by Lord Woolf C J, the court stated:

“The parties do not today under the Civil Procedure Rules, have a right to have a resolution of their respective contentions by judicial review in the absence of an alternative procedure which would cover exactly the same ground as judicial review. The courts should not permit, except for good reasons, proceedings for judicial review to proceed if a significant part of the issues between the parties could be resolved outside the litigation process... If subsequently it becomes apparent that there is a legal issue to be resolved, that can thereafter be examined by the courts which may be considerably assisted by the findings made by the complaints panel”.

35. Again going by the above observation, I would in the present claim, deny recourse to court by judicial review. Note that from the judgment as a whole, Lord Woolf seemed to intend the above rule to apply to all cases in which there are, “*disputes between public authorities and the members of the public*”. Adopting the above reasoning by Lord Woolf, I am inclined to say that this court would be greatly assisted by the opinion of the Commissioners and the evidence they would gather if the alternative form of redress in ss: 28 and 29 of the Stamp Duties Act was used before coming to court.
36. The above decision seems to overrule, *R v Inland Revenue Commissioners ex parte Mead [1993] 1 All E R 772*, where judicial review jurisdiction was exercised because the alternative remedy covered narrower grounds than would fall within the ambit of judicial review.
37. Cases in which courts have exercised jurisdiction notwithstanding available statutory prescribed complaints and appeals procedures, because the cases posed questions of nullity, unlawfulness generally or error of law on the face, have been straightforward. In *Anisminic*

v Foreign Compensation Commission [1969] AC 147, a claim by common law action, for a declaration that the decision of the Commission was a nullity, was allowed to proceed in court notwithstanding a complaints procedure, because the Commission misconstrued the law as to the extent of their power and wrongly excluded the claimant from persons who were entitled to claim compensation arising from compulsory acquisition of property by Egyptian Government in 1956, following war in the Suez Canal. There have been many cases in this category. In the present claim there has not been an allegation that the Assistant Registrar exceeded her power or that there has been error of law on the face of the record. The alleged error in interpreting s: 36 of the International Banking Act was one which, if it was an error, was made within the scope of authority. Again the claimant in the present claim would not be allowed recourse to court on the ground of nullity and error of law on the face.

38. Besides the three occasions I have identified, on which courts will exercise jurisdiction notwithstanding that there is an alternative form of redress, I have considered whether the fact that the claimant came

to court by an application under r: 56.1.(1) (c) would create prejudice to the defendant, or difficulty to the Court in arriving at a just determination of the dispute. I have already said that in my view, given the facts and nature of the claim, the usual process would be an application for judicial review for the relief of a quashing order even together with a declaration, if desirable. However, the claimant would be entitled to choose the less usual proceedings, provided it did not cause prejudice to the defendant or difficulty to court in reaching a just decision.

39. If the claimant came to court by judicial review application, it would have to disclose in its application that an alternative form of redress existed, and details of the consideration given to the dispute at the alternative form of redress forum. That is important because the court in deciding whether to exercise jurisdiction in a claim in public law is required to take account of the fact that such a form of redress is available. The relevant rules are set out in r: 56.3(1) as follows:

“56.3 (1) A person wishing to apply for judicial review must first obtain permission ...

...

(3) the application shall state –

...

(e) whether an alternative form of redress exists, and if so, why judicial review is more appropriate or why the alternative has not been pursued;

(f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant”.

40. The claimant obviously chose to use an application under r: 56.1(1) (c) to avoid the requirements that it must disclose whether it attempted to have its complaint resolved by the alternative form of redress available and the details of consideration thereat. That together with the fact that the claimant deprived the court of the expert opinion of the Commissioners of Stamps, and any further

evidence they may have gathered, led me to conclude that the choice of the proceedings by the claimant in this claim was a misuse of process. There was an attempt from the bar table to inform the court that there were no Commissioners of Stamps in office. It was met by a denial also from the bar table. I regarded the information and denial as not evidence. For reason of abuse of process, I again deny the claimant recourse to court at this stage.

41. One other important point occurred to me in the course of writing this decision. I regret that it did not occur earlier so that I would have put it to counsel. It is this. The relief of a declaration is discretionary, would the court have granted it in the present claim if the court disallowed the objection and the claimant succeeded in persuading the court to accept its interpretation of s: 36 of the International Banking Act? It is unlikely. The declaration proposed is: *“An administrative order for a declaration that the twenty instruments of transfers shares submitted to the defendant for registration and evidencing the transfer of shares in Alliance Bank of Belize Limited to the claimant(an International Bank,) are exempt from stamp duty under s:36 of the International Banking Act”*. Granting the

declaration in the form it is worded would mean that the twenty instruments of transfer of shares were exempt from tax regardless of whose duty it was in law to execute the transfers and regardless of the fact that the instruments were in fact executed by three domestic companies and two individuals who presumably are residents of Belize. An analogous question arose in *R (M) v London Borough Council [2003] Civ 1113*. In the case, the Court of Appeal (UK) refused to make a judicial review order on the ground that granting it would have the effect that the applicant was cleared to work with children. The appellant's case was merely a complaint about the "unfair manner" in which a report to the Minister was made which led to including his name on a list of people who were disqualified from working with children.

42. In the case, *Harrison v Croydon London Borough Council [1968] Ch. 479*, cited by Mr. Barrow, the court also declined as a matter of discretion, to make the declaration proposed because its significance was about only one factor in an assessment for compensation; the declaration would have a misleading effect.

43. The summary of my determination and the decision is this. Sections 28 and 29 of the Stamp Duties Act, create an alternative form of redress for the complaint of the claimant and provide for an appeal to the Supreme Court; the sections do not expressly, but by implication make it clear that recourse to court outside the complaints and appeals procedure is excluded. By making an application under r: 56.1 (1) (c) of the Supreme Court (Civil Procedures) Rules, the claimant intended to avoid to explain whether it attempted to resolve its complaint by the statutory alternative form of redress, and denied the court the expert opinion of the Commissioners of Stamp, and any evidence they might have gathered. The claim was an abuse of process. The claim was not one in which exceptional circumstances distinguished it from the type of cases for which the alternative form of redress in ss: 28 and 29 has been provided, rather it is typical of the cases that should be dealt with under the section. Further, the claim does not raise any question of nullity or error of law on the face of the record. Further still, even if the court were to exercise jurisdiction and accept the interpretation advanced by the claimant, of s: 36 of the International Banking Act, the court would decline to make the declaration in the form it is proposed because the proposed

declaration conveys a decision exempting the twenty instruments from stamp duty regardless of their nature and regardless of the persons whose duty it was to execute the instruments.

Orders Made.

44. The objection by the claimant is upheld; the claim dated, 18.10.2006, filed on 19.10.2006, by Provident Bank and Trust of Belize Limited, is struck out. The claimant will pay costs of the defendant, to be agreed or taxed.

45. Delivered this 6th day of July, 2007
At the Supreme Court
Belize City

Sam Lungole Awich
Judge