

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 273

**BRIAN MOFFITT
MARIA A. MOFFITT**

CLAIMANTS

AND

**THE ATTORNEY GENERAL
THE MINISTER OF NATURAL RESOURCES
AND THE ENVIRONMENT**

DEFENDANTS

Hearings

2010

4th June

21st June

Mr. Oscar A. Sabido SC for the Claimants.

Mr. Samuel Shepherd for the Defendants.

LEGALL J.

JUDGMENT

1. This is an application for permission to apply for judicial review under Rule 56 (3) of the Supreme Court (Civil Procedure) Rules 2005 (The Rules). Briefly, the facts which gave rise to the application are that the Ministry of Natural Resources (The Ministry) on 4th May,

- 2007 approved to the claimants a transfer of a lease in relation to Parcel No. 2466 in Block No. 1 in the Corozal North Registration Section, Corozal District Belize. The claimants paid to the Ministry on 25th May, 2007 the required transfer fee of \$240.00, a receipt for which was issued containing the new lease number namely CZL-278.
2. The claimants claim that they developed the land by filling and leveling it with material known as white mall and built a fence around the land. There is no building on the land and the applicants do not reside there. By letter dated 30th September, 2009 from the Lands and Surveys Department, the applicants were informed that “Your lease No. CZL 278 of 2006 in respect of Parcel No. 2466 has been cancelled from September 30, 2009.” The claimants did not receive the letter of cancellation until 17th November, 2009.
 3. On receipt of the letter of cancellation, the claimants made several approaches to officials of the Ministry, including the Commissioner of lands to have the cancellation revoked, but to no avail. The said land was transferred to third parties, Carlos Rodriguez and Adi Rodriguez, by the Minister of Natural Resources on behalf of the government by transfer form dated 20th January, 2010. This transfer was made just over two months from the date the applicants said they received the letter of cancellation of the lease – 17th November, 2009.
 4. The claimants on 16th April, 2010, more than six months after the date of the letter of cancellation, and about five months after the date they said they received the said letter, filed the application for permission

to apply for judicial review to quash the cancellation of their lease, and for other remedies.

5. At the hearing of the application, it was submitted on behalf of the defendants that the application was not made promptly, and, in any event, not made within three months from the date when grounds for the application first arose, contrary to Rules 56.5 (3) of the Rules. Moreover, say the defendants, the court must consider, on the application for permission, whether the granting of the permission would be likely to cause hardship or prejudice in accordance with Rules 56 5 (2). Rules 56 5 (2) and (3) are as follows:

- “56.5 (2) When considering whether to refuse permission or to grant relief because of delay the judge must consider whether the granting of permission or relief would be likely to -
 - (a) cause substantial hardship to, or substantially prejudice, the rights of any person; or
 - (b) be detrimental to good administration.
- (3) An application for permission to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”

6. It is to be noted that Rule 56 5 (3) applies only to applications for permission to apply for judicial review, whereas Rule 56 5 (2) applies both to applications for permission to apply for judicial review as well as applications for substantive relief. As I understand Rule 56 5 (2), I may consider paragraphs (a) and (b) thereof, at the permission for judicial review stage or at the hearing for substantive relief. It has been urged upon the court by learned senior counsel for the applicants, that it may be better to leave questions of hardship and prejudice under Rule 56 5 (2) at the hearing for substantive relief when the court could be seized with more relevant evidence from which it would be in a better position to pronounce on the questions of hardship or prejudice.
7. As the evidence stands at this stage, says senior counsel, it is not sufficient to come to a reasoned decision on the questions of hardship or prejudice. Rule 56.11 provides for the court to order witness statements, affidavits, the cross-examination of witnesses, disclosure of documents, allowing persons to be heard and to make written submissions. By this process, says learned senior counsel, the court would be in a better position at the substantive hearing, rather than at this preliminary stage, to come to a decision on the questions of hardship or prejudice.
8. Learned counsel for the defendants argued persuasively that the claimants admitted that a lease for the land was transferred to third parties who paid the sum of \$800.00 for same; and certainly it could be readily appreciated that if the court quashed the cancellation of the

claimants lease, it would cause hardship or prejudice to the third parties who are the present owners of the lease. They would suffer hardship or prejudice. They could lose their lease as well as the \$800.00 paid for same. The submission is that since there is evidence of hardship and prejudice at this stage, a decision ought to be made at this stage, rather than leaving it at the substantive relief stage.

9. On a closer examination of Rule 56 5(2) (a) and (b), the Rules speak of “substantial hardships” or “substantially prejudice.” On the evidence before the court at this permission stage, I have no doubt that hardship or prejudice would befall the third parties. But that is not what I have to decide. I have to decide whether the cancellation will result, not in hardship or prejudice, but in substantial hardship or would substantially prejudice the rights of the third parties. The Rules do not speak simply of hardships or prejudice, but substantial hardship and substantial prejudice. I think the court would be in a better position, after hearing the witnesses and examining further evidence under the Rule 56.11 to come to a decision whether it would be likely to cause substantial hardship or would substantially prejudice the third parties.
10. It seems to me that the claimants were exploring administrative means of obtaining a revocation of the cancellation of their lease, which, had that materialized, there would have been no need for court proceedings. In their pursuit of those means, time elapsed, and, in the end, the pursuit did not bear fruit. The claimants say that they became aware of the cancellation of their lease on 17th November, 2009, and

about two months after the Ministry granted the lease to the third parties. It was admitted that the claimants were not heard by the Ministry prior to the making of the decision to cancel their lease. I believe that the above is good reason for extending the period to apply for permission for judicial review.

11. Learned counsel for the defendants relied on the decision of *R v. Independent Television Commission Exp TV -- LTD The Times December 30, 1991* where it is reported that the Court of Appeal held that “applicants seeking leave to move for judicial review were required to act with utmost promptness, particularly when third party rights might be affect.”
12. Rule 56 5(3) of the Rules supports substantially the above pronouncements. But the said Rule makes an exception to the requirement of promptness which is “unless there is good reason for extending the period within which the application shall be made.” Each case has to be decided on its own facts and circumstances; and as shown above, I believe there is good reason on the facts of this case to extend the period of time to make the application for permission to apply for judicial review.
13. In *Caswell and Another v. Diary Produce Quota Tribunal For England And Wales 1990 2 A.C. 738*, the House of Lords held that although the court granted permission for judicial review, it may still refuse substantive relief where evidence showed that the granting of such relief would be likely to cause substantial hardship or substantial

prejudice, or would be detrimental to good administration, independently of the hardship or prejudice. Lord Goff of Chieveley, giving the judgment for their Lordships says that questions of hardship, prejudice or detriment to good administration could arise on contested applications for permission to apply for judicial review, but even then “it may be thought better to grant leave where there is considered to be good reason to extend the period leaving questions arising under section 36(1)” (UK Legislation which is largely equivalent to Rule 56.5 (2) of the Rules), “to be explored in depth on the hearing of the substantive application”: *Casswell and another* above at p. 747.

14. In Rule 56 5(2) (b) the phrase “detrimental to good administration” is used. It would not be advisable to attempt a definition of this phrase because what is good administration may differ depending on the circumstances. It is, however, to be noted that Rule 56 5(2) recognizes that matters detrimental to good administration can be considered, independently of substantial hardship or prejudice when exercising the powers under the Rule whether to refuse permission for judicial review or to grant substantive relief. But it seems to me that in considering the question what is detrimental to good administration, the court may consider the need for a regular flow of consistent decisions made with reasonable dispatch by the authorities; the need for finality; the need to protect the interest of innocent third parties; the need to protect the citizen from arbitrary use of power; and the effect that would be felt if the relevant decision was to be re-opened: *Casswell and another* above at p 749-750. There may be other

matters to be considered under the topic of what is detrimental to good administration.

15. For the above reasons, I make the following orders:

- (1). The claimants are granted permission to make a claim for judicial review in this matter.
- (2). The claimants are to make the claim for judicial review within 14 days of receipt of this order.
- (3). The claimants and the defendants are at liberty to summon such witnesses, and to file and serve such affidavits, as they think fit.
- (4). Any such affidavits are to be filed and served on or before 22nd July, 2010.
- (5). The hearing of this matter is fixed for 9th August, 2010.

Oswell Legall
JUDGE OF THE SUPREME COURT
21st June, 2010

