

IN THE SUPREME COURT OF BELIZE, A.D. 2012

Claim No. 668 of 2010

IN THE MATTER OF THE CONSTITUTION OF BELIIZE

AND

**IN THE MATTER OF THE ALLEGED UNCONSTITUTIONALITY OF SECTION 53
OF THE CRIMINAL CODE**

AND

**IN THE MATTER OF AN APPLICATION MADE PURSUANT TO SECTION 20(1)
OF THE SAID CONSTITUTION**

BETWEEN

CALEB OROSCO

UNITED BELIZE ADVOCACY MOVEMENT

CLAIMANTS

AND

THE ATTORNEY GENERAL OF BELIZE

DEFENDANT

AND

THE COMMONWEALTH LAWYERS ASSOCIATION

THE HUMAN DIGNITY TRUST

INTERESTED

THE INTERNATIONAL COMMISSION OF JURISTS

PARTIES

AND

THE ROMAN CATHOLIC CHURCH OF BELIZE

THE BELIZE CHURCH OF ENGLAND CORPORATE BODY INTERESTED

THE BELIZE EVANGELICAL ASSOCIATION OF CHURCHES PARTIES

Before the Honourable Madam Justice Michelle Arana

Ms. Lisa Shoman, S.C., and Simeon Sampson, S.C., for the Claimants

Mr. Michel Chebat, S.C., Mr. Rodwell Williams, S.C., and Mrs. Jacqueline Marshalleck for the Church Interested Parties

Mr. Nigel Hawke and Ms. Magali Perdomo for the Attorney General

RULING

1. FACTS

This matter began by way of a Fixed Date Claim Form dated 24th September, 2010 by which the Claimants, Caleb Orosco and United Belize Advocacy Movement (UNIBAM) are seeking constitutional relief pursuant to Rule 56 of the Supreme Court (Civil Procedure) Rules as follows:

- i) **A Declaration that Section 53 of the Belize Criminal Code Chapter 101 which provides that:**

“Every person who has carnal intercourse against the order of nature with any person or animal shall be liable to imprisonment for ten years” **contravenes the constitutional rights of the Applicant enshrined in Sections 3, 6 and 14 of the Belize Constitution and affirmed in the Preamble of the Belize Constitution, and is accordingly null and void and of no effect to the extent that it applies to carnal intercourse between persons;**

- ii) **An Order striking out the words “with any person or” appearing in the said Section 53;**

- iii) **Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned Declaration and Order;**

- iv) **Such further or other relief as the Court thinks just;**

- v) **Costs.**

2. There are presently two applications before this court. The first is an application by the Church Interested Parties namely the Roman Catholic Church, the Belize Church of England Corporate Body and the Evangelical Association of Churches pursuant to C.P.R. 32 and C.P.R. 32.6 seeking orders as follows:

(1) That the Second Claimant UNIBAM be struck out as a Claimant in this action on the basis that it has no constitutional rights guaranteed by Sections 3, 6(1) and or 14(1) of the Constitution of Belize;

(2) That the affidavits of Jacqueline Sharpe dated the 8th day of April, 2011 and of Ryan Goodman dated the 12th day of April, 2011, and of Nicole Haylock dated the 8th day of July, 2011 and of Joan Burke dated the 15th day of September, 2011 be struck out as being filed in violation of Part 32 of the Supreme Court (Civil Procedure) Rules 2005;

- (3) That Bruce Abramson of 41 Rue de Zurich, Geneva CH 1201, Switzerland; Grover Joseph Rees of 1931 East Willow Street, Lafayette, Louisiana 70501; Dr. John R' Diggs Jr. of No. 2 Burnett Ave, South Hadley, Massachusetts, United States of America and Dr, Brenda Bain of 15 Margaret Drive, Hope Pastures, St. Andrew , Jamaica be admitted as expert witnesses in this matter;**
- (4) That the reports of the said experts be submitted to the Court and the other parties within 60 days from the date of the appointment;**
- (5) That the Applicants, the Church Interested Parties, be entitled, upon serving copy of the experts report upon the Parties to this action, be allowed to rely on the reports as evidence of the Claim herein;**
- (6) Such further or other Order as the Court deems just;**
- (7) Costs.**

3. The Second application is made by the Claimants pursuant to C.P.R. 32 and 38.3 seeking orders as follows:

(1) That the Affidavits of Bishop Phillip Wright filed on 8th September, 2011, Bishop Dorick Wright filed on 7th September, 2011, Pastor Eugene Crawford filed on 7th September, 2011 and Henry Lawrence filed on 13th September, 2011 be struck out as being filed in violation of Part 32 of the Supreme Court (Civil Procedure) Rules and/or violation of CPR Part 30(3);

(2) That Ryan Goodman of 40 Washington Square, New York NY 10012 United States of America; Jacqueline Sharpe 33A Ridgewood Towers, Four Roads, Diego Martin; Nicole Haylock of 1114 Applestar Street, Belize City; Joan Burke of 3222 St. Jude St., Belize City, and Chris Beyer of Johns Hopkins Bloomberg School of Public Health, 111 Market Place, Suite 310, Baltimore, Maryland, United States of America be admitted as experts in this matter;

(3) That the Affidavits of Ryan Goodman, Jacqueline Sharpe, Nicole Haylock and Joan Burke do stand as expert evidence to this action and be allowed to rely on the said affidavits as evidence at the hearing of the Claim herein;

(4) That the service of the reports of Ryan Goodman, Jacqueline Sharpe, Nicole Haylock and Joan Burke the said experts to the Court and the other parties be dispensed with;

(5) That the service of the report of Chris Beyer be submitted to the Court and the Other parties within 40 days from the date of the appointment;

(6) Costs;

(7) Such further or other orders as the Court deems just.

4. I will deal first with the application by the Church Interested Parties.

1) The Church Interested Parties ask that the Second Claimant UNIBAM be struck out as a Claimant in this action on the basis that it has no constitutional rights guaranteed by Sections 3, 6(1) and 14(1) of the Constitution of Belize. The basis of this argument is that locus standi to bring actions for the contravention of

fundamental rights is defined by Section 20 of the Constitution of Belize which states:

20(1) "If any person alleges that any of the provisions of Section 3 to 19 inclusive of this Constitution has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person(or that other person) may apply to the Supreme Court for redress."

The Church Interested Parties submit that the rights guaranteed by S.3, S.6 and S.14 of the Constitution of Belize are rights which are accorded to individuals and for a person to have legal standing he must show how the alleged contravention is in relation to him. They argue that since UNIBAM is an association of men who have sex with men and lesbian, gay, bisexual and transgender people, UNIBAM has no legal standing to claim the orders

sought. UNIBAM as an inanimate applicant is not endowed with the right to have carnal intercourse against the order of nature.

5. The Claimants in response argue that UNIBAM has been authorized by resolutions passed by its 68 LGBT/MSM members to act in the interest of its members and the goals of the organization in bringing this action. They submit that UNIBAM has locus standi because its membership is affected by a law which criminalizes the conduct of a significant part of its membership i.e. men who have sex with men. They also submit that UNIBAM is not a meddlesome busy body and should be allowed to be a Claimant in this matter because the organization has a real and substantial interest in the alleged contravention. (*Law Society of Zimbabwe v. the Ministry of Finance* [2000] 4LRC 52 (Supreme Court Zimbabwe). Counsel for the Claimants also urged this court to take a broad pragmatic approach to the question of locus standi as in the case of *Faroque v Secretary of Ministry of Irrigation, Water Resources and Flood Control(Bangladsh) and Others* [200] 1LRC 1 (SC(AD) Bangladesh

where the Court observed that there can be exceptions to the traditional views that the applicant for relief under the Constitution of Bangladesh must be the person aggrieved. It was held that

“where the infraction of the fundamental right affects an indeterminate number of people it is not necessary for the multitude to bring their individual actions.”

6. I agree with the submissions made by Counsel for the Church Interested Parties on this issue. While it is true that the Courts generally adopt a pragmatic approach to the question of locus standi, and the test is generally satisfied by proving that the party is an aggrieved person and not just a meddling busybody, I find that Section 20 of the Constitution of Belize specifically sets out an additional criteria which UNIBAM as an inanimate object simply cannot satisfy. In Claim No. 292 of 2007 *Belize Telecom Ltd. et.al. v, The Attorney General of Belize and Belize Telemedia Ltd.*, Justice Muria held that :

“For a Claimant to have legal standing to bring a claim based on any provisions of Section 3 to 19 of the Constitution, he

must show that the alleged contravention is 'in relation to him' with the exception only when the alleged contravention or likely contravention is to a person detained...The test of standing that each of the Claimants must satisfy to claim redress for breaches of any of the provisions mentioned, is that the contravention must be 'in relation to him.' Apart from the permitted exception already mentioned no representative action can be brought to enforce the rights protected in Sections 3 to 19 of the Constitution."

I therefore rule that UNIBAM be struck out as a Claimant in this matter as it is an inanimate object and as such it cannot prove that the alleged contravention is "in relation to him" as required by the Constitution of Belize.

- 7. The only outstanding issue for the Court to determine is whether the persons put forward as experts by the Claimants should be disallowed for failure to comply with Rule 32 of the CPR. Rule 32 of the Civil Procedure Rules 2005 sets out the criteria which must be met for witnesses to be called as experts in all civil matters and the**

Church Interested Parties complain that the Claimants have put forward the evidence of Ryan Goodman, Jacqueline Sharpe, Nichole Haylock and Joan Burke as experts without first seeking leave of the Court as per Rule 32.6. The Claimants contend that the affidavits were filed pursuant to Part 56 of the C.P.R. and pursuant to the case management orders of the Court. However, once a party is seeking to put forward expert evidence in a civil trial (even in Part 56 applications as in this case) that party must ensure that leave of the court is first obtained and that the evidence complies with all the requirements of Part 32. These four affidavits filed by the Claimants are therefore struck out for non-compliance with Rule 32.

- 8. The Church Interested Parties have sought leave for Bruce Abramson, Grover Joseph Rees, Dr. John Riggs and Dr. Brendan Bain to be admitted as experts. Having perused the qualifications and experience of these four persons, the Court grants leave and accepts these persons as experts in their respective fields who can assist the Court in determining the substantive claim.**

9. The Claimants on their application have sought to have the affidavits of Bishop Philip Wright, Bishop Dorick Wright, Pastor Eugene Crawford and Henry Lawrence struck out for failure to comply with Rule 30(3) on the basis that the general rule is that affidavits may contain only such fact as the deponent is able to prove from his own knowledge. The Claimants allege that these affidavits contain information which is scandalous, irrelevant and otherwise oppressive. The Church Interested Parties have informed the Court that they are not seeking to put forward any of these affiants as experts. I take it then that as Interested Parties they are merely informing the Court as to the moral position taken by the various Churches in Belize through their leaders with regard to the substantive legal issue. While it is true that the question of the constitutionality of Section 53 of the Criminal Code is a legal and not a moral or religious issue, I believe that since the Constitution of Belize itself in the Preamble begins with the affirmation that the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, the nature of this particular legal and constitutional issue is such that it must be determined

against the backdrop of and in the context of the teachings of the Churches of Belize. To do otherwise would be to ignore the fact that all laws are based on a moral foundation and to deny that this particular legal claim affects public morality and public order in Belize. I therefore allow the affidavits filed by the Church Interested Parties to stand, except for that of Mr. Henry Lawrence as that affidavit is regrettably replete with personal opinion which cannot assist the Court in determining this legal issue.

10. Finally, the Claimants are seeking permission for Ryan Goodman, Jacqueline Sharpe, Nichole Haylock, Joan Burke and Chris Breyer to be admitted as experts. Having looked at the training and expertise of these witnesses, I grant permission for each of these witnesses to be admitted as experts in their respective fields. I believe that they can assist the court in deciding this case, especially in relation to the alleged detrimental effect of Section 53 of the Criminal Code on major public health issues in Belize such as HIV reporting.

11. Written reports of all experts for all parties must be submitted to the Court and to all parties within 60 days from the date of appointment. All reports must comply with the requirements of Rule 32, particularly Rules 32.3, 32.4, 32.12 and 32.13.

12. All parties to bear their own costs.

**Michelle Arana
Justice of the Supreme Court**

Dated this 27th day of April, 2012