[2014] CCJ 14 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Application BZCV2014/003
BZ Civil Appeal No 8 of 2011

BETWEEN

YA'AXCHÈ CONSERVATION TRUST	**APPLICANT/ INTENDED APPELLANT**

AND

1. WILBER SABIDO, CHIEF FOREST OFFICER **2. THE ATTORNEY GENERAL** **3. BELIZE HYDROELECTRIC DEVELOPMENT AND MANAGEMENT COMPANY LIMITED**	**RESPONDENTS**

Before The Honourables:- **Mr Justice Saunders**
Mr Justice Hayton
Mr Justice Anderson

<u>On Written Submissions</u>

Ms. Magali Marin Young for the Applicant

JUDGMENT
of
Justices Saunders, Hayton, and Anderson
Delivered by
The Honourable Mr Justice Anderson
on the 31st day of July, 2014

[1] This is an application for special leave to appeal to this Court against the decision of the Court of Appeal of Belize dated 14th March, 2014[1] that section 6 of the National Parks System Act (the 'Act') properly authorized the Administrator of the Bladen Branch Nature Reserve (the 'reserve' or 'nature reserve') to issue a permit to the third Respondent, Belize Hydroelectric Development and Management Company Limited,

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[1] *Ya'axché Conservation Trust v Wilber Sabido et al,* Civil Appeal No. 8 of 2011, (Mendes JA delivered judgment in which Sosa P. and Awich JA concurred).

to conduct hydro-electric feasibility studies on approximately 4 miles of Central River which is situated within the reserve. The Applicant, which is a non-governmental conservation organization appointed to co-manage the reserve, contends that the Court of Appeal erred in its interpretation of the powers of the Administrator since the object of the Act was to protect biological communities or species and to maintain natural processes in the nature reserve, broadly speaking, in an undisturbed state. The Respondents declined to make submissions in response to the application.

[2] As in any application for special leave the Applicant must prove that he or she has an arguable case on the merits but in this application the Applicant faces the additional hurdle that the appeal has become academic. The authorization to conduct the hydro-electric feasibility studies in the reserve was issued on 13th October, 2009 by the Chief Forest Officer and the Applicant launched judicial review proceedings on 26th January, 2010 challenging the legality of the permit. The matter came up for trial on 24th September, 2010 but by this time the permit had already expired and was not renewed. The matter was therefore academic or theoretical in the sense that there was no live issue to be resolved between the parties. Nonetheless, the matter was heard and decided by Legall J. Dissatisfied with that decision, the Applicant managed to persuade the Court of Appeal that it should hear and determine its appeal, albeit academic. Still dissatisfied, the Applicant now seeks special leave from this Court to appeal the decision of the Court of Appeal.

[3] The question arises as to whether this Court can hear academic appeals and, if so, in what circumstances and subject to what considerations should it do so. The rules governing appeals to this Court are stated in very broad terms. Section 104 (3) of the Constitution of Belize says that “an appeal shall lie to the Caribbean Court of Justice with the special leave of the Court from *any* decision of the Court of Appeal in *any* civil or criminal matter” (emphasis added). Section 8 of the Caribbean Court of Justice Act 2010 is, in all material respects, identically worded. Notwithstanding this broad competence to entertain “any” appeal, it is an important feature of our judicial system that this Court decides disputes between the parties before it and does not pronounce

on abstract or hypothetical questions of law where there is no dispute to be resolved. In general, there must exist between the parties a matter in actual dispute or controversy which this Court can decide as a live issue.

[4] However, there is not an absolute rule that bars the hearing of a matter even if by the time the appeal reaches this Court there is no longer a live issue between the parties. Several Caribbean courts have accepted that an academic appeal may be heard if it raises an issue of public interest involving a distinct or discrete point of statutory interpretation which has arisen in the past and may arise again in the future.[2] These circumstances approximate to those in which a final court should exercise its discretion to entertain an academic appeal as discussed by the House of Lords in *R v Secretary of State for the Home Dept, ex parte Salem*[3] and by the Judicial Committee of the Privy Council in *Antigua Power Company v Attorney General of Antigua and Barbuda;*[4] decisions that we find highly persuasive. For the reasons given at [3] we agree that this Court should be cautious in the exercise of its discretion to entertain an academic appeal and should in principle only do so where the question is one of public law (as distinct from private law rights disputes between parties) and where there are good reasons in the public interest to hear such an appeal. We agree with Lord Slynn of Hadley who, in delivering the judgment of the House in *ex parte Salem*, stated that an appropriate circumstance for hearing an academic appeal may be where the appeal raises a discrete point of statutory interpretation of the powers of a public authority without need for detailed consideration of the factual situation, especially where the issue is likely to arise again for resolution in the future.

[5] Another indication of an appropriate circumstance may be where the issue is a recurrent one that is likely to become moot before it reaches the ultimate court of appeal. A typical example is litigation that questions the legality of issuance of an annual licence or permit. In the normal course of events such an authorization would

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[2] *Attorney General of Trinidad and Tobago v The Tobago House of Assembly*, H.C. CV 2013 – 00135, dated 30 April 2014 (Boodoosingh J.); *Ya'axché Conservation Trust v Wilber Sabido et al,* Civil Appeal No. 8 of 2011, dated 14 March 2014 (Mendes JA); *Belize Bank Ltd v Central Bank of Belize* (C.A. 25 of 2008), 19 March 2010; *Attorney General of Belize v Barry* Bowen (C.A. 7 of 2009), 19 March 2010.

[3] [1992] 2 All ER 42.

[4] [2013] UKPC 23.

expire before the issue of its vires reaches the ultimate court of appeal. It may be worthy of note that Article III, Section 2, Clause 1 of the American Constitution limits the jurisdiction of the US Supreme Court to deciding actual cases or controversies; that court has no competence to, and is prohibited from, issuing opinions in which no actual live issue exists between the parties.[5] However in *Roe v Wade*[6] the Supreme Court held that the ban on abortion was unconstitutional even though by the time the matter reached that court the natural limitation of the human gestation period meant that the issue was no longer a live one. It was said that issues concerning pregnancy would always come to term before the appellate process was complete; to rigidly and inflexibly apply the actual controversy requirement would effectively deny review of an important issue.

[6] There are compelling features of the present case which would make it appropriate for us to hear the appeal, though academic. This matter does not concern private law rights but rather a narrow and discrete point of public law namely the proper construction to be placed on the statutory power of the Administrator to grant authorization to conduct otherwise forbidden activities within a nature reserve. There are no complex facts to be sorted or resolved. The issue of statutory interpretation is of great significance to the protection of the environment in Belize and, in particular, the protection of areas declared for the protection under the Act such as national parks, nature reserves, wildlife sanctuaries and natural monuments and the underlying principle of the rule of law. Cases raising similar issues have occurred in the past and are likely to recur in the future. Moreover, the matter of the validity of the annual permit is unlikely to come before the ultimate court before the period of the permit is exhausted. In these circumstances we consider that we can and should hear the appeal provided that the Applicant has met the applicable standard for the grant of leave.

[7] We are not persuaded that the Applicant has made out an arguable case that special leave should be granted. Special leave will not be granted "where it is clear that the

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[5] The U.S. Supreme Court observed in *DaimlerChrysler Corp v. Cuno* (2006): "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." See also *Lujan v Defenders of Wildlife* 504 US 555 (1992).

[6] 410 U.S. 113.

appeal as presented is wholly devoid of merit and is bound to fail": *Griffith v Guyana Revenue Authority*.[7] The judgment of Mendes JA in the court below was closely reasoned and unanimously agreed. The learned Justice of Appeal reasoned that the discretion enjoyed by the Administrator or the Chief Forest Officer in this case[8] under section 6 was not unlimited. Basic public law principles required that the extent of the powers conferred and the scope of the discretion vested in the public authority were to be determined on a proper construction of the Act as a whole. Section 6 expressly empowered the Administrator to authorize activities that could have detrimental effects on the nature reserve but public law principles forbad that the power could be exercised to alter the essential characteristics of the nature reserve.

[8] In the present case the court below found that the Authorization would not have the detrimental effect of undermining the essential nature of the reserve. Rather, the court found that the terms and conditions of the Authorization showed sensitivity to protecting the nature reserve while at the same time authorizing activities which the Legislature expressly empowered the Administrator to authorize. The court therefore held that the permit had not been granted unlawfully.

[9] We do not consider that there is any realistic possibility of overturning this decision. It is true that the learned Justice of Appeal adhered closely to the traditional tenets of statutory interpretation and did not venture into the vibrant body of environmental jurisprudence regarding protected areas. We are sensitive to the fundamental importance of ensuring that the environment is protected and preserved in accordance with the law enacted by Parliament. But we do not think that there is anything in the arguments raised in the application to suggest that the court below may have erred in its substantive assessment of the powers of the Chief Forest Officer in granting of the permit to the third Respondent, or that this Court is likely to come to a contrary

[7] [2006] CCJ 2 (AJ), (2006) 69 WIR 320; *Barbados Turf Club v Melnyk* (2011) 79 WIR 153.

[8] At first instance the issue had been raised that the Authorization had been issued by the Chief Forest Officer and not the Administrator of the reserve, as envisaged by section 6 of the Act. It appears no Administrator had been appointed under section 10 and that the Chief Forest Officer had been performing the duties of the Administrator for all nature reserves. But this issue was not pursued before the Court of Appeal and was not raised in these proceedings. At all events the Court has been informed that an Administrator has now been appointed.

conclusion, whatever the environmental words we may employ or environmental cases to which we may refer.

[10] Accordingly, the application for special leave is refused. There shall be no order as to costs in these proceedings.

The Hon Mr Justice A Saunders

The Hon Mr Justice D Hayton

The Hon Mr Justice W Anderson