

IN THE SUPREME COURT OF BELIZE, A. D. 2006

CLAIM NO: 212 OF 2006

BETWEEN:	(SATIIM	PLAINTIFF
	(
	(AND	
	(
	(FOREST DEPT./MIN. OF	
	(NATURAL RESOURCES	DEFENDANT
	(
	(U. S. CAPITAL ENERGY –	INTERESTED
	(BELIZE LTD.	PARTY

Mr. Dean Barrow SC, Ms. Lois Young Barrow SC, with
Ms. Antoinette Moore, for the Claimant
Mr. Elson Kaseke, for the Defendant
Mr. Derek Courtenay SC, for the Interested Party

AWICH J.

8.6.2006.

DECISION

1. *Notes: Permission for judicial review proceedings; the threshold of establishing a case for granting permission, arguable case as to whether permit to enter national park and conduct seismic surveys for exploration for petroleum was issued unlawfully, whether interim injunction restraining entry and seismic surveys may be granted.*
2. Sarstoon – Temash Institute for Indigenous Management (SATIIM), the applicant herein, has formulated a case for judicial review of the decision taken by the Forest Department, Ministry of Natural Resources and Environment, “to give permission” and to “issue a permit” to U.S. Capital Energy – Belize Limited, to conduct seismic testing in the Sarstoon – Temash National Park. The issuance of the “permit” followed from a “permission” given in a memorandum dated

7.4.2006, "to enter upon the Sarstoon – Temash National Park for the purpose of acquiring seismic data, referred to also as conducting seismic surveys". The memorandum was signed by Mr. Wilber Sabido, Chief Forest Officer, and Mr. Alister King for U.S. Capital Energy – Belize Ltd. The "permit" was not produced in court. The activities for which the "permission" and "permit" were given were parts of exploration for petroleum operation. In the case, SATIIM intends to ask the Court to "issue administrative orders" quashing the decision of the Department and cancelling the permit in as far as it allows entering the park and seismic testing therein.

3. SATIIM also asks for interim Court orders to stay the permit and to restrain U. S. Capital Energy – Belize Ltd. from conducting seismic surveys in the park while the case proceeds to determination. The area in which U. S. Capital Energy – Belize Ltd. has been authorized to conduct exploration for petroleum is Block 19, a very large area extending from the border with Guatemala to Atlantic Ocean. The Sarstoon – Temash National Park occupies about 42,000.00 acres, regarded as only a very small portion of the land to be explored. SATIIM's case is limited to the park area and excludes exploration activities on the much larger portion of Block 19. Though the park area is only a small part of the land "licensed" for surveys, it is very important to U.S. Capital Energy – Belize Ltd. because, according to its president and a major share-holder, Mr. Brian Richter, identification has been made of, "a particularly interesting structure lying within the park, which evinced gravity highs, magnetic highs and anti-cline and some surface oil, which rendered this site the most promising within the licensed area".
4. In our law, a case in which an administrative decision is challenged can only be filed and proceeded with if the Court has granted permission that the case may be filed see – *R. 56.3 of the Supreme*

Court (Civil Procedure) Rules, 2005. The hearing, which ended yesterday, was for the Court to decide whether permission may be granted for the case formulated by SATIIM to be filed. The purpose of the rule for permission is to exclude trivial cases against administrative decisions from the Court, and to protect public administration from unnecessary disruption by persons who may bring baseless challenges to administrative decisions. The case law is in, among others, *Inland Revenue Commissioners v National Federation of Self-employed and Small Businesses Ltd. [1981] All E.R. 93*, cited by learned counsel for the claimant.

5. It is common sense therefore, and indeed the law, that at the stage when the Court considers whether or not to grant permission to proceed with a case to challenge administrative decision, the Court requires, on the affidavit evidence made available, no more than an arguable case, not a proven case – see *Inland Revenue Commissioners v National Federation of Self-employed and Small Businesses Ltd.*, cited earlier. It is at the final trial that the Court will consider, upon full hearing of parties, full appraisal of the evidence and full examination of the law, whether the case has been proved to the standard of a balance of probabilities, for judgment to be entered in favour of the claimant. Given the law about the threshold of proof at this stage when permission is being sought from the Court, it is my respectful view that it is unnecessary for learned counsel to invite the Court to make detailed analysis of the affidavit evidence and detailed examination of the law in issue. Moreover, the usual practice is that the Court decides whether or not to grant permission without a hearing and directs a hearing only when: (1) it is minded to refuse permission; (2) an interim order to stay the decision to be challenged, or to impose interim injunction has been asked for; or (3) it appears that a hearing is necessary in the interest of justice – see *R 56.4(2) and (3)*. This is not the stage at which to use much court time. It

must be remembered that shutting litigants out of Court is not the aim of Rule 56.3. The aim is to exclude frivolous cases.

6. SATIIM's Claim for evaluation at this stage is as follows. In January 2006, SATIIM met with an official of the Forest Department and a representative of U. S. Capital Energy – Belize Ltd. and discussed petroleum exploration in the Sartstoon – Temash National Park. On the 16.2.2006, SATIIM wrote to the Department expressing its fear about the "*change to ecological character of the Park*", that oil exploration would cause. On 7.4. 2006, a memorandum granting permission to US Capital Energy-Belize Ltd; "*to enter upon the Sarstoon – Temash National Park for the purpose of acquiring seismic data referred to as conducting seismic surveys*", was signed by Mr. Wilber Sabido, Chief Forest Officer, for the Forest Department and Mr. Alister King for US Capital Energy Belize Ltd. The memorandum was produced in Court. On 12.4.2006, the Department wrote a letter addressed to Mr. Gregorio Choc, Managing Director of SATIIM, informing SATIIM that the Department had taken a decision to issue a permit to U. S. Capital Energy – Belize Ltd. to conduct seismic testing in the Sarstoon – Temash National Park. The permit was not produced in Court. By a letter dated 27.4.2006, U. S. Capital Energy – Belize Ltd. informed SATIIM that "*the seismic program had started on the 24.4.2006*". On the 9.5.2006, attorneys for SATIIM gave notice to U.S. Capital Energy – Belize Ltd. that it would apply for judicial review by the Supreme Court. The Department and U.S. Capital Energy – Belize Ltd. do not contest these facts, they contest the points of law advanced on behalf of SATIIM in challenging the administrative decision and action by the Department.

7. U.S. Capital Energy – Belize Ltd. has been cited as an interested party in these proceedings, it was afforded opportunity to present its case.

8. SATIIM is an interested party in the management of the Sartstoon – Temash National Park. It had made arrangement with the Government to participate in the management of the park. It made submissions in this case as follows: 1. The permit was not granted by an official designated “Administrator” of the National Park, a requirement under S: 5 of the National Parks Systems Act Cap. 215, Laws of Belize; 2. The purpose for which the permit was issued, seismic surveys for exploration for petroleum, is not a purpose for which the Administrator has authority to issue permit under S: 5 of the Act. 3. Seismic surveys involves digging and constructing roads or trails, activities under S: 6 (e) for which a “*written authorization of the Administrator*”, under S: 6 is required, there was no such written authorization. 4. The permit or permission cannot be regarded as an authorization by the Minister under S: 7 of the Act and in any case authorization by the Minister would be for the limited purposes stated in the section, so the Department cannot rely on S: 7 of the Act. 5. Seismic surveys are part of petroleum exploration, a project for which an environmental impact assessment must be carried out, submitted to the Department of Environment and recommended before the project is proceeded with, in this case, no EIA had been done before the permit was granted, so the permit was issued contrary to S: 20 of the Environmental Protection Act, Cap., 328 Laws of Belize. 6. The decision to grant permission and the permit was unreasonable because the Government had declared the particular area a national park, agreed with SATIIM to co-manage the park with SATIIM, and imposed limitation on subsistence activities of the indigenous people of the area. 7. Finally, SATIIM has a legitimate expectation that the park, “would continue to be managed with the objective of conserving its bio-diversity”.

9. SATIIM's grounds for the application for interim orders to stay the decision of the Department and the permit, and to restrain U. S. Capital Energy Ltd. are these. 1. SATIIM's case is a very strong one, the Department has not made an arguable case at all to cause the Court to refuse the application for an order to stay and an order imposing interim injunction; 2. Seismic surveys would cause irreversible harm to the ecosystems in the park; and 3. Seismic surveys had not started in the park so U. S. Capital Energy - Belize Ltd. will not suffer financially. At first SATIIM did not tender security or cross undertaking as to damages that may be occasioned to U.S. Capital Energy - Belize Ltd. and the Department, in the event SATIIM loses the final case, but did make the offer in the end.
10. The Department and U.S Capital Energy – Belize Ltd. disagree with the contentions of SATIIM on the points of law SATIIM raised. They contend as follows: 1. The application and the judicial review proceedings were out of time under R5 6.5(3) which requires that the application must be made promptly and in any event within 3 months from the date when the grounds for the application first arose. They say the grounds, that is, the complaint, first arose on 22.1.2001, when the Government of Belize entered into an agreement styled Production Sharing Agreement with U. S. Capital Energy – Belize Ltd. They contend that permission and the permit to enter Block 19 area which includes the national park was given in that agreement; the memorandum and letter granting permission and permit were mere "beaucroatic facilitation", so when SATIIM came to Court on 15.5.2006, it was too late. 2. The permit could be issued by the Chief Forest Officer if there was no one in the post of Administrator of the Park; the Administrator is a subordinate of the Chief Forest Officer. 3. The National Parks Systems Act, is an Act earlier in date to the Petroleum Act and where a provision in the former conflicts with a

National Park and conduct seismic surveys. That followed a prior "permission" to enter the park for conducting seismic surveys, the complaint is also about that "permission". The complaint is not about the terms of the Production Sharing Agreement of 21.1.2001, between the Government and U.S. Capital Energy – Belize Ltd. It is absurd and dangerous to suggest that when there has been an agreement by Government, any requirements under existing laws regarding transactions in the agreement become "mere beaurocratic facilitation". It is contrary to the principle of rule of law, and the universally accepted idea of good governance. It is, of course, open to the Government to legally change any existing law by legislation if it considers it to be in the way of an agreement, or to cause the whole agreement to be legislated into law. It is my decision that the grounds for SATIIM's complaint arose on the date it received the letter dated 12.4.2006, informing it of the decision of the Department, not on 22.1.2001, the date of the Production Sharing Agreement. SATIIM did not bring its application late nor did it delay.

13. The contention that SATIIM failed to disclose material facts regarding its meetings and participation in the process leading to the decision taken by the Department also fails. The correspondence exhibited to the affidavit filed for SATIIM does disclose meetings and participation.
14. The ground that the decision to grant permission to enter the park and conduct seismic surveys was unreasonable because of prior arrangement or agreement between the Government and SATIIM cannot succeed. It is completely baseless. The facts made available cannot pass the test for unreasonableness in law, which is that the decision must be such that no reasonable person knowing those facts, could have made such a decision – see *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1K.B. 223*. In this

case, the Department considered the benefit that the people of Belize could receive from exploration and exploitation of possible oil reserve, and the need for conservation of nature and the environment about which it has agreement with SATIIM, and the Department deliberately opted for the possible benefit from petroleum if found and exploited. SATIIM preferred conservation. Both choices are not unreasonable in law. Administratively or politically, when the economic, social and environmental considerations have been taken into account, the benefit from petroleum or from conservation could be preferred. Neither choice is unreasonable in law. From affidavits filed for both sides, the two choices seemed to have divided the people of the area. The merits of the choices are not for Court. Permission to bring judicial review proceedings on the ground that the decision of the Department is unreasonable is refused.

15. The ground that "*granting the permit is substantive violation of the claimant's legitimate expectation*" also fails. It is baseless. The rule about legitimate expectation is merely procedural in nature, it is an item of the duty on the decider to act fairly in the process of making his decision – see *Council of Civil Service Unions and Others v The Minister for the Civil Service [1985] A.C. 374*, the case cited by counsel for SATIIM. I accept that given that the Government promoted SATIIM and agreed to have SATIIM participate in the management of Sarstoon – Temash National Park, SATIIM acquired sufficient legitimate expectation to be consulted or even involved in decisions affecting the park. That does not mean SATIIM is entitled to compel acceptance of its views. If that is the view of SATIIM, then it may bring a case for breach of contract, not for judicial review. The question for the Court to decide in this application is whether SATIIM was not consulted when the Department took the decision to grant permission and permit to U.S. Capital Energy – Belize Ltd. It is from the answer to that question that the Court will decide whether the

Department breached the duty to act fairly when it took the decision, the subject of the application. Factually, and taking only the affidavits and exhibits filed by SATIIM itself, the Department had meetings with SATIIM about the intended exploration for oil. Following those meetings the Department took a decision which SATIIM did not like. That does not mean that SATIIM's legitimate expectation to be consulted and involved as part of a fair procedure leading to the decision was not met by the Department. Permission to bring judicial review proceedings on the ground of legitimate expectation is refused.

16. It may well be that the legal defect that the Chief Forest Officer and not the Administrator of the Sarstoon – Temash National Park issued the permit may, if that is the only defect, not cause the permit to be quashed. There are some case authorities to that effect. But the evidence must be appraised with a view to final determination before that can be decided. That means that at this stage, an arguable case has been established that the permit was wrongfully issued by someone other than the Administrator of the Park.
17. It is only a general rule that the Petroleum Act is a later Act so provisions in the National Parks Systems Act that are inconsistent with those in the Petroleum Act are deemed repealed. There must be a proper consideration as to whether ss: 5, 6 and 7 of the National Parks Systems Act are truly inconsistent with the provisions in the Petroleum Act. Moreover, there are sections in the Petroleum Act that seem to render provisions in the Petroleum Act of no effect on the provisions in the National Parks Systems Act. An arguable case, for *ultra vires* under ss: 5, 6 and 7 of the National Parks System has been shown. I grant permission for the ground based on the sections.
18. The ground that environmental impact assessment study was required before the permit to conduct seismic surveys was granted is obviously

an arguable ground, when the Environmental Protection Act and the Petroleum Act are read together, and when the memorandum from the Ag. Director of Geology, and Petroleum Unit, dated 25.11.1998, to Chief Environmental Officer, is taken into consideration. The letter recommended that seismic surveys be re-classified as a schedule II project, that is, a project for which environmental impact study is not compulsory. I grant permission to bring judicial review proceedings on that ground as well.

19. A summary of my decision regarding permission for bringing judicial proceedings is that there are arguable or tenable grounds under *ss: 5,6 and 7 of the National Parks Systems Act*, to challenge the decision of the Department and the issuance of the permit, and there are also grounds under *S: 20 of the Environmental Protection Act*. Permission under *R 56.3 of the Supreme Court (Civil) Procedure Rules*, is granted to SATIM to file judicial review proceedings based on these grounds.
20. The permission granted will last for 14 days. SATIIM must file its claim for judicial review within the 14 days. The first hearing of the claim will be on Thursday, 29.6.2006, at 9:30 am, a date on which any preliminary matter may be raised. The hearing for final determination will be on Wednesday, 19.7.2006, at 9:30 am.

Determination: Interim Relief.

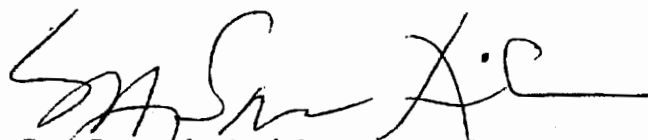
21. It follows from my finding arguable case for judicial review that the same arguable case is sufficient to base an application for an order to stay the decision of the Department to grant permission to US Capital Energy-Belize Ltd to enter the Sarstoon –Temash National Park and conduct seismic surveys, and for an order to stay the permit issued. From the evidence at this stage, I accept that damage to the

ecosystems obtaining in the park may be irreversible, and that an award of damages will not be an adequate relief to SATIIM if interim preservation orders are refused and SATIIM wins its case finally. I also think that on the evidence available, if a stay and interim injunction order is not granted, US Capital Energy-Belize Ltd may complete its operation before this case is finally decided, with the result that should they lose the case, the whole proceedings and any order granted against it will have been rendered nugatory. For these reasons, I grant the application for interim orders to stay the permission and permit issued to US Capital Energy-Belize Ltd, and to restrain it from entering the Sarstoon-Temash National Park and conducting seismic surveys thereon. The interim orders are to last until the final determination of the judicial review case or until further order of this Court. The interim preservatory orders are subject to SATIIM providing undertaking as to damages. SATIIM is ordered to file the undertaking within seven days of today.

22. Costs so far is reserved to the final hearing.

23. Delivered this Thursday, 8th day of June 2006.

At the Supreme Court
Belize City


Sam Lungole Awich
Judge
Supreme Court of Belize