

IN THE SUPREME COURT OF BELIZE, A. D. 2014

ACTION NO. 20

IN THE MATTER OF an Application by BALTAZAR CAMPOS under Part V of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize

AND

IN THE MATTER of Section 148:05 of the Supreme Court of Judicature Act, Chapter 91 of the Laws of Belize

BETWEEN	(BALTAZAR CAMPOS	APPLICANT
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	(AND	
	(
	(NELLIE BRICEÑO	RESPONDENT
	(
	(SHALINIE CAMPOS	INTERESTED PARTIES
	(JAIRO CAMPOS	

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Magali Marin Young SC for the Respondent/Applicant

Mrs. Agnes Segura Gillett of Arnold and Company for the Applicant/Respondent

D E C I S I O N

1. This is an Application by the Respondent/Applicant Nellie Briceño to strike out a Claim brought by the Applicant/Respondent Baltazar Campos. Ms. Nellie Briceño and Mr. Baltazar Campos were living together as husband and wife since 1998 and remained in a common law union until 2011 when Mr. Campos left the home. They have two

children from that union, Shalinie Campos born March 1989 and Jairo Campos born in July 1995 and those children are the Interested Parties in this matter.

2. Baltazar Campos and Nellie Briceño each acquired assets (real and personal) separately, before their common law union, and together, during the period of their cohabitation from 1998 to 2011. Since that relationship has disintegrated, Ms. Briceño filed an Originating Summons under section 148 of the Supreme Court of Judicature Act on September 25th, 2012 in Action No. 30 of 2012 Nellie Briceño v. Baltazar Campos (“the Original Action”) seeking a declaration of her interest in the properties acquired during the period of their cohabitation. Mr. Baltazar has also filed his own Originating Summons in Action No. 20 of 2014 Baltazar Campos v. Nellie Briceño (“the New Action”) on May 23rd, 2014 seeking *inter alia* a declaration as to his interest in properties acquired during the time that he and Ms. Briceño lived together in a common law union.

Issue

3. Should the court grant this application to strike out Action No. 20 of 2014 Baltazar Campos v. Nellie Briceño?

Mrs. Marin Young, SC, on behalf of Ms. Briceño applies to strike out Mr. Campos’ Originating Summons on the basis that Action No. 20 of 2014 is wholly unnecessary and an abuse of the court process, vexatious and brought to delay and frustrate Action No. 30 of 2012. She argues that the Respondent could simply apply to amend his Answer in Action No. 30 of 2012 to include a counter claim to Ms. Briceño’s properties, instead of bringing a completely new action. If the matter is not struck out, this will cause

unnecessary delay and prejudice to the original action brought by Ms. Briceño. All claims by the parties in relation to properties acquired by them should have been made before the Court in the original action. If the new action is allowed to proceed, it will cause a delay of the original action and prejudice Ms. Briceño because she is not in possession of the income producing assets, and any delay is causing her to suffer financially. Mr. Campos alone is the person in control of the wholesale vegetable outlet and their farm. In order to answer this new action, Ms. Briceño will be required to re-file all the documents and new affidavits which will only cause her to incur more costs and expense when these matters are already before the Court in the original action. The new action is brought pursuant to exactly the same jurisdiction under Part V of the Supreme Court of Judicature Act and Section 148:05 of the Supreme Court of Judicature Act, and regurgitates the same facts borne out in the affidavits filed by both parties in the original action.

4. Mrs. Marin Young, SC, further argues that this Court has the express jurisdiction under Order 22 Rule 31 of the Supreme Court of Judicature Rules Chapter 91 of the Laws of Belize to strike out claims which may be *“unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of an action; and may in any such case, if the court shall think fit, order costs of the application to be paid between solicitor and client.”* In addition to the express authority of Order 22 Rule 31, Mrs. Marin Young, SC, also cites the inherent jurisdiction of the court to stay all proceedings before it that are obviously frivolous, vexatious or an abuse of its process: ***The White Book 1985 para 18/19/18***. She also cites the Australian case of ***In the Marriage of: Garth Charles***

Davidson Appellant/Husband and Karen Maree Shearer Respondent/Wife [1992] Fam CA 14 as authority for the point that the Court enjoys an inherent jurisdiction to strike out cases which are an abuse of process because they are unnecessary or scandalous or which may tend to prejudice embarrass or delay the fair trial of an action, *especially* where there are concurrent proceedings instituted by the same parties in relation to the same cause of action. Learned Counsel also cites the case of **Slough Estates Ltd v. Slough Borough Council** [1967] 2 All ER 270 where Ungood-Thomas said:

“It is common ground that to obtain relief the defendants must establish i) duplication between two sets of proceedings ;(ii) opposition, vexation or abuse of the process of the court resulting from the continuation of the proceedings sought to be stayed,; and (iii) the absence of any other consideration against the relief sought such as what was suggested in this case, viz, unreasonable delay or acquiescence on the part of the plaintiff.”

Mrs. Marin Young, SC, therefore asks the court to strike out Claim No. 20 of 2014 Baltazar Campos v Nellie Briceño and for costs.

5. Mrs. Agnes Segura Gillett on behalf of Mr. Campos resists the application to strike out on the basis that the Court does not have the discretionary power to strike out Claim No. 20 of 2014 because Order 22 Rule 31 speaks to endorsements or pleadings which are likely to prejudice, embarrass or delay the fair hearing of the action in which it is filed; the provisions do not speak to endorsements or pleadings which are likely to prejudice or delay the fair hearing of another action before the court. She then goes on to say that it is not denied that the Court does in fact possess the power to stay or dismiss actions and to strike out pleadings which are vexatious or frivolous or are in any

way an abuse of the process of the court and also cites *The White Book 1985 para 18/19/18*.

6. Mrs. Segura Gillett submits that Action No. 30 of 2012, though filed two years ago, is still not ready for trial. She further argues that Action No. 20 of 2014 was not filed to frustrate or delay the original Action No. 30 of 2012. She states that Mr. Campos offered to discontinue his action if Ms Briceño would consent to an application by him to amend his Answer in the original action to include a counter claim of the distribution of Ms. Briceño's property. In response, Ms. Briceño counter offered insisting that: (1) chattels forming part of the Second Schedule in Action No. 20 of 2014 must be excluded from the Applicant's counterclaim; (2) the Applicant (Mr. Campos) would not object to the Respondent's (Ms.Briceño) application to amend her Originating Summons to include additional properties belonging to him; and (3) the Applicant agree to pay the sum of \$7500 in respect of costs in Action No. 20 of 2014. Mr. Campos viewed the counter proposal as over reaching and could not agree to the terms thereof.
7. Mrs. Segura Gillett submits that there is no intention to proceed with two separate actions and that she will instead ask the court to join the two actions if allowed to proceed. She argues that the application to strike out is an objection based on form rather than substance because Mr. Campos has a legal right to apply for a distribution of assets acquired during the common law union. The Respondent must respond to the Applicant's Claim, whether it is brought by a counter claim in Action No. 30 of 2012 or by way of Originating Summons in Action No. 20 of 2014.

8. Learned Counsel also contends that Action No. 20 of 2014 is not vexatious. The two cases cited by Mrs. Marin Young, SC, can be distinguished from the present case in that those involved matters which proceeded as two separate cases; in this instance, Mrs. Segura Gillett undertakes to apply to join both proceedings as soon as she receives Ms. Briceño's Answer in Action No. 20 of 2014.

Ruling

9. I agree fully with the submissions made by Mrs. Marin Young, SC, on this application to strike out. I see no reason for a separate claim to be filed on behalf of Mr. Campos when a trial of the very same issues based on the very same facts is already before the court. While it is true that the substantive trial has not yet begun as the court has been involved dealing with preliminary skirmishes caused by interrogatories and other applications filed by both sides, the fact remains that no useful purpose will be served by hearing a separate trial arising from identical issues and facts. The court must of necessity, in considering the distribution of property to be awarded to Ms. Briceño, also determine the portion that is due to Mr. Campos, once a counter claim is filed on his behalf. There is absolutely no need for a separate action to be filed and then joined to the original action. I believe that such a course of action would hinder rather than help the court in determining the issues in a matter that is already protracted and extremely contentious.
10. Leave is hereby granted to Mr. Campos to file a counter claim against Ms. Briceño in Action No. 30 of 2012 Nellie Briceño v. Baltazar Campos.

11. Application to strike out Action No. 20 of 2014 Baltazar Campos v. Nellie Briceño is hereby granted. Costs of this application is awarded to Ms. Briceño in the sum of \$2000.

Dated this 28th day of January, 2015

Michelle Arana
Supreme Court Judge