

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

CLAIM NO. 271 of 2006

BETWEEN

RAYMOND BROWN

APPLICANT/CLAIMANT

AND

1. CENTRAL BANK OF BELIZE

RESPONDENT/DEFENDANT

2. PROVIDENT BANK AND TRUST  
LIMITED

INTERESTED PARTY

Mr. Wilfred Elrington S.C., for the applicant  
Dr. Kaseke for the interested party

AWICH J.

21.01.2008

DECISION

1. *Notes:-Ex parte application-application without giving notice to the respondent; whether the application discloses circumstances of exceptional urgency; an interim application is for an interim order, not a permanent order; part 17 of the Supreme Court (Civil Procedure)Rules, 2005.*

2. This application was presented on Friday 21.12.2007, after 8:00 p.m., immediately after the conclusion of a related one, in claim No. 620 of 2007. Both applications were presented as urgent applications. The urgency in both was in the fact that an extraordinary general meeting of the interested party company, the Provident Bank and Trust of Belize Limited, PBTB, was due to be held the following morning, Saturday, 22.12.2007. In application No. 620 of 2007, the applicant sought court order to stop the meeting proceeding. In this application the applicant, Raymond Brown, sought court restraining order that would effectively allow him to attend the same extraordinary general meeting, the subject of the application in Claim No. 620 of 2007. He had received a letter dated 7.3.2006, from the Central Bank of Belize, cancelling approval for him to be a shareholder of PBTB. The Central Bank was said to be carrying out its statutory function under the International Bank Act Cap 267. On 6.6.2006, the applicant challenged the cancellation by filing at the Supreme Court, a judicial review claim against the Central Bank, for a judicial review of the decision of the Central Bank, and an order quashing the decision. He joined PBTB as an interested party. The claim is pending.

3. At the end of hearing this application, I announced the decision granting only the order at paragraph 2 of the application, namely:

“an injunction [order] to restrain the Defendant **and** the Interested Party through any person acting on their behalf or on their instructions or with their encouragement from refusing or otherwise preventing the Claimant from attending an extra ordinary General Meeting of the Provident Bank scheduled for **22<sup>nd</sup> December, 2007**, and from voting at said meeting and from exercising any other rights or privileges vested in him as a person whose name is entered upon the register of members of the Bank.”

I did not make an order for costs of the application. I now give the full reasons for the decision.

4. In view of the request by Mr. W. Elrington S.C., learned counsel for the applicant, that I give written decision, I suspect because during the hearing I put many procedural questions to him, I begin my reasons by outlining the procedural points that I raised.

5. First, I am obliged to mention two procedural points which are matters for the staff of the Registrar to note. The number of the claim was type-written as 271 of 2007, twice on the first page of the application. They were altered by hand-writing six on top of the type-written seven, so that the year of the claim was altered to 2006. That should not happen. The court official responsible should reject such altered paper unless of course, the alteration is the subject of the claim itself. However, if the urgency of the case does not allow time to the person filing the papers to prepare the entire page afresh, at least the attorney or the party making the alteration should sign acknowledging the alteration. The hand written alterations in the applications were not acknowledged by a signature.
6. The second point is that the date and the intended time of hearing was not filled in on the last page of the application by the court official. The information is a requirement on the court form and should not be ignored.
7. The material part of this application dated 20.12.2007, and presented on 21.12.2007 is this:

### “Notice of Application

The applicant, **Raymond Brown**, of Post Office Drawer 729, Springfield, Louisiana 70462, U.S.A., businessman applies to the Court for [the following] Orders -

1. An injunction [order] to restrain the Defendant and the Interested Party through any person acting on their behalf or on their instructions or with their encouragement from carrying out or acting on the directive issued by Central Bank of Belize in a letter dated 7<sup>th</sup> March, 2006 directing the Applicant, inter alia, to cease to exercise any rights associated with his shares in the Defendant Bank except for the collection of dividends.

2. An injunction [order] to restrain the Defendant **and** the Interested Party through any person acting on their behalf or on their instructions or with their encouragement from refusing or otherwise preventing the Claimant from attending an extra ordinary General Meeting of the Provident Bank scheduled for **22<sup>nd</sup>**

**December, 2007**, and from voting at said meeting and from exercising any other rights or privileges vested in him as a person whose name is entered upon the register of members of the Bank.”

8. No rules or law under which the application was made was cited. Doing so saves time, especially in an urgent application. The judge and the other party are informed immediately of the authority by which the applicant comes to court and they can straight away check it. Secondly, the application was not entitled, *an ex parte application*, that is; an application without notice to the respondent or anybody. That information came as part of the submissions by counsel. The information should be in the application papers, for the judge to know right from the first moment he sees the application. This application intended as an interim one was made under *rr:17.1(3) and 17.4(4)(a) and (b) of the Supreme Court (Civil Procedure) Rules, 2005*.

9. ***The Facts.***

The story of this application is much more than meets the eye. The

applicant states that he is a majority shareholder in the Provident Bank and Trust of Belize Limited. Under the International Banking Act, Cap 267, Laws of Belize, approval by the Central Bank of Belize is required for a person to be a shareholder of an international bank. That approval was obtained when the PBTB was registered in 1998. Subsequently, the Central Bank learnt that a judgment was entered against the applicant in the District Court for the Central District of Columbia, USA. The claim was for “advance fees” for investment bonds which did not exist. The Central Bank regarded the claim as based on “security fraud”. On 7.3.2006, it informed the applicant that it withdrew approval for him to continue as a shareholder of PBTB, and directed that the applicant give up his shares and cease exercising any right and privilege except the right to collect dividend in the meantime.

10. On 6.6.2006, the applicant-claimant brought judicial review proceedings against the Central Bank, to review and quash the decision of the Central Bank. PBTB was cited as an interested party. In the affidavit supporting the judicial review it was stated that the

affidavit was sworn to at Belize City, and before a notary public in the USA.

11. At the hearing the respondent applied for an order to strike out the affidavit and dismiss the claim. Counsel for the applicant did not ask for adjournment to allow him time to obtain a good affidavit, he simply asked the court to waive the irregularity. I declined. I made orders striking out the affidavit and dismissing the claim. Since the claim was not decided on evidence, I expected the applicant simply to obtain a good affidavit; and refile his claim. Instead he appealed successfully. On 8.3.2007, the Court of Appeal made the order stating that “. . . *the order of Justice Awich J set aside and the appellant allowed twenty-one days within which to file a supplemental affidavit. . . . the case be remitted to the judge for a hearing and that there be no order as to costs.*” No step was taken by the applicant thereafter to proceed with the trial at the Supreme Court.
  
12. Nine months later, on 21.12.2006, the applicant filed an application dated 16.12.2006, in the following particulars:



**“ NOTICE OF APPLICATION**

The Applicant RAYMOND BROWN, of Post Office Drawer 729, Springfield, Louisiana 70462, U.S.A., businessman applies to the Court for [the following] orders:-

1. An injunction to restrain the Defendant through any person acting on its instruction or with its encouragement from carrying out or acting on the directive issued by Central Bank of Belize in a letter dated 7<sup>th</sup> March, 2006 directing the Applicant, inter alia, to cease to exercise any rights associated with his share in the Defendant Bank except for the collection of dividends.
  
2. An injunction to restrain the Defendant through any person acting on its behalf or on its instruction or with its encouragement from refusing or otherwise preventing the claimant from attending the annual General Meeting of the Provident Bank scheduled for December 2, 2006 and from voting

at said meeting and from exercising any other rights or privileges vested in him as a person whose name is upon the register of members of the Bank....”

13. One notices immediately that the particulars of the above application dated 16.11.2007, are exactly the same as those in the present application before me dated 20.12.2007, except that in paragraph 2 of the application of 16.11.2006, the date of the meeting that the applicant wanted to attend was 2.12.2006, and that the date of the meeting the subject of this application was 22.12.2007. The Application of 16.11.2006 was heard by the learned Chief Justice, on 1.12.2006. He obviously regarded it as an interim application. The Chief Justice granted orders that stated:

***“IT IS ORDERED*** as follows:

1. *That the DEFENDANT PROVIDENT BANK & TRUST OF BELIZE LIMITED be restrained from preventing or in any way interfering with the Applicant attending the Annual General Meeting*

*of Provident Bank & Trust of Belize Limited Scheduled for 2<sup>nd</sup> December, 2006 and from voting as a shareholder of the Bank and or from exercising any other rights or privileges vested in him as a person whose name is entered upon the register of Members of the Bank.*

2. *That the Applicant prepare and file a substantive claim herein and that the Central Bank of Belize be made a party to these proceedings.”*

14. The applicant was lucky that the Chief Justice did not insist on sanction against him for failing over nine months to comply with the order of the Court of Appeal that he file supplemental affidavit within 21 days. Had the applicant complied with the order, the judicial review claim would have been concluded earlier and there would have been no application for interim orders before the Chief Justice on 1.12.2006, and before me 12 months later on 21.12.2007.

15. According to the case papers on case file No. 634 of 2006, which was the case file before the Chief Justice, the applicant even after he obtained the interim order made by the Chief Justice, did nothing further about his substantive judicial review claim. Twelve months later, events forced him to return to court. An extraordinary general meeting was requisitioned and called for 22.12.2007, and an annual general meeting was called for 28.12.2007. He made this application so that he would be able to attend the meeting called for 22.12.2007. The application before me did not ask for an interim order authorizing the applicant to attend the annual general meeting called for 28.12.2007.
  
16. My first question to Mr. W. Elrington S.C., was why the applicant did not proceed with his substantive judicial review claim immediately after the judgment of the Court of Appeal on 8.3.2006. He blamed the Supreme Court. He said that it was not the fault of the applicant; the applicant filed his claim and it was listed for trial before the Chief Justice who had to travel on urgent business.

17. According to papers on case file No. 634 of 2006, I think Mr. Elrington unjustifiably shifted the blame on the court. His answer seems to be erroneous. Nine months had passed after the Court of Appeal made the order that the applicant file supplemental affidavit when the applicant made the application before the Chief Justice. Then another twelve months passed before the applicant made this application for yet another set of interim court orders. Upto the time he filed this application he had not filed the supplemental affidavit and had not complied with the direction orders made by the Chief Justice on 1.12.2006. The default continues. The trial of the judicial review claim could not have been listed before the Chief Justice before the applicant complied with the order made by the Court of Appeal on 8.3.2006, and the orders made by the Chief Justice on 1.12.2006.

18. Secondly, I asked Mr. Elrington to point out the evidence in the supporting affidavit that would make his application one of exceptional urgency and would warrant hearing *ex parte*. He could not. He simply made a statement that he had for over thirty years come to the Supreme Court in the same way and was always heard *ex*

*parte*; he added that it has been done that way in all the commonwealth jurisdictions.

19. With due respect to Mr. Elrington, that was a brazen statement and erroneous. Mr. Elrington is usually guarded and accurate. I need not search far afield to support my view that the statement is erroneous. ***Rule 17.1(3) of the Supreme Court (Civil Procedure) Rules 2005***, states that: “*the evidence in support of an application made without giving notice must state the reasons why notice has not been given.*” The provision is not totally new in our rules of procedure– see ***Order 54 in the Old Rules***. No just system of law can have the rule otherwise. Further, the court may grant an interim order on an application made without notice, only in circumstances of exceptional urgency when giving notice is not possible, or when giving notice would defeat the purpose of the application such as when an order to freeze a bank account is applied for – see ***rr:17.4.(4)(a) and (b)***. Moreover, the interim order granted *ex parte* lasts only upto 28 days, and must be returned to court to be applied for *inter partes* – see ***r: 17.4(4)***. Again that is not an innovation introduced recently in the 2005 Rules. A well known case authority on the point is ***Bates v.***

*Lord Hailshan of Marylebone [1972] 1 W.L.R. 1373*, - see also; *Inglis v. Granberg, Civil Appeal No. 100 of 1989 (Jamaica)*, and *Goodman v. Kayside Concrete Works Ltd, Civil Action No. 577 of 1988 (Barbados)*.

20 I was minded to refuse this application because the applicant has not, since the judgment of the Court of Appeal on 8.3.2006, filed the supplemental affidavit ordered, and has not complied with any of the direction orders made by the Chief Justice on 1.12.2006, and has not generally pursued the substantive judicial review claim. He attempted before the Chief Justice on 1.12.2006, and before me now, to obtain the entire judicial review final relief by the back door, by his request at paragraph 1 of each application asking that the interested party be “restrained from carrying out the directive of the Central Bank”. The Chief Justice denied the order, and I denied it. Another reason for which I was minded to refuse the application was that there have been no statements in the affidavit evidence giving the reasons why the respondent, the Central Bank of Belize, and the interested party, PBTB, could not be served with three days notice or even shorter notice, as required by *rr:17.1(3) and 17.4(4)(a) and (b)*. There was

no danger whatsoever that the Central Bank or PBTB would then act to defeat the purpose of the application.

21. Reluctantly, however, for the sake of consistency with the orders made by the learned Chief Justice, and relying on the assurance given by Mr. Elrington (no notes), that the Chief Justice on 1.12.2006, found very strong constitutional rights ground for allowing the earlier similar application dated 16.11.2006, I allowed the present application to the limited extent that the order proposed in paragraph 2 only was granted. No order as to costs.

22. I refused the order proposed in paragraph 1 of the application. It was not in the nature of an interim order. It proposed the final order that would be granted permanently if the applicant-claimant succeeded in the substantive judicial review claim.

23. ***Observation.***

The papers assembled on case file No. 643 of 2006, which was the case file on which the application before the Chief Justice was made, did not include the supplemental affidavit ordered by the Court of



Appeal to be filed. Mindful of the need to expedite the finalization of the substantive judicial review claim, the Chief Justice in his orders of 1.12.2006, ordered, “*that the applicant prepare and file a substantive claim*”, and that, *the Central Bank of Belize be made a party...*” There is nothing on the file to show that the applicant has complied with the orders since.

24. It seems to me that the application made before the Chief Justice on 1.12.2006, and before me on 21.12.2007, when the applicant has not complied with the order made by the Court of Appeal, were applications made in abuse of the process of court. Further, the fact that in paragraph 1 of each application the applicant pursued an order for permanent relief which would cancel permanently the purpose of the letter of the Central Bank, and render the substantive judicial review claim useless, is another reason for my view that the applications were made in abuse of the process of court. It seems the applicant has settled to avoiding or delaying the instructions in the letter of the Central Bank of Belize, dated 7.3.2006, by obtaining interim court orders. I expected that the respondent and or the

interested party would apply for court order to strike out the judicial review claim after the applications were made.

25. It has been said in court that the substantive judicial review claim has been listed before the Chief Justice. The Acting Chief Justice requested me to hear the interim application on 21.12.2007, because the Chief Justice was not available. I have completed what was required of me. The file returns to the Chief Justice.

26. Read on Monday the 21st day of January, 2008  
At the Supreme Court  
Belize City

Sam Lungole Awich  
Judge  
Supreme Court