IN THE COURT OF APPEAL OF BELIZE A.D. 2008

CIVIL APPEAL NO. 23 OF 2008

BETWEEN:

BELIZE TELEMEDIA LIMITED	**Applicant (Interested Party)**
AND	
BELIZE TELECOM LIMITED **JEFFREY PROSSER** **BOBBY LUBANA** **PUBLIC SERVICE UNION** **BELIZE NATIONAL TEACHER'S UNION**	**Respondents (Claimants)**
THE ATTORNEY GENERAL	**Respondent (Defendant)**

BEFORE:

The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Carey	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Eamon Courtenay, S.C. for the applicant.
Ms. Lois Young, S.C. for the respondents/claimants.
Ms. Priscilla Banner for the Attorney General.

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9 October 2008 & 27 March 2009.

SOSA JA

1. On 9 October 2008 the Court refused the application of the applicant with costs to the respondents, to be taxed if not agreed. I have read the

judgment of Carey JA, in draft, and concur in the reasons for judgment set out in it.

SOSA JA

CAREY JA

2. There is now before this court an application for leave to appeal an order of Muria J dismissing an application to strike out an action of the respondents/claimants against the Attorney General. The matter is renewed before us because Muria J refused leave to appeal.

3. We heard submissions from counsel on 9 October 2008 when we announced that the application would be refused with costs to the respondents/claimants to be taxed if not agreed. We also intimated that we would provide reasons later. My reasons are set out hereunder.

4. Some background information would be helpful in understanding how this matter arose. The applicant, joined as an "interested party," and the Attorney General, who was the defendant in the action brought on behalf of the claimants launched applications to strike out the claim (No. 292 of 2007) which, in the event, were struck out. Only the interested party has been moved to challenge the ruling and sought leave to appeal: the Attorney General was content to be a sleeping partner and allow the applicant to take up the cudgels against the claimants. The claim which provoked the application to dismiss was concerned with the

constitutionality of the Vesting Act 2007. The claimants contended, as we gleaned from the applicant's skeleton arguments, that this statute was in breach of the fundamental rights so far as it related to the deprivation of property, freedom of association and separation of powers.

5. The grounds of the application to strike out the claim, were these:

(i) The issues which the first to third claimants are asking this court to decide are academic and the dispute between the first to third Claimants and the defendants has ceased to be of any practical significance;

(ii) The Constitutional rights of the fourth and fifth claimants have not been contravened by the Vesting Act. Further, in the alternative, there is no practical significance to the claims of the fourth and fifth claimants; and

(iii) The claimants have not demonstrated that they have suffered any loss as a result of the Vesting Act and nor that the defendant acted in a way which would justify the award of exemplary damages against them and are therefore not entitled to any damages, exemplary or otherwise.

6. It is right to note that our task is not to review or rule on the exercise of the judge's discretion in the way he did. We are obliged to consider a fresh application for leave to appeal. In doing so, however, we are informed by the same principles as the judge below. Sosa J (as he then was) articulated the approach of a judge and by extension, this court in a matter of this kind, in *Wang v. Atlantic Insurance Co. Ltd. (unreported) 21 July 1998*. This court in *Prime Minister & Minister of Finance v. Vellos*

(unreported) 14th March 2008 approved and followed *Wang v. Atlantic Insurance Co. Ltd. (supra)*. Mr. Courtenay, S.C. gratefully acknowledged that the applicable test was to be found in this case. Sosa J said at p.9:

"…leave will be granted by the English Court of Appeal in three categories of case, viz:

1. where they see a prima facie case that an error has been made;
2. where the question is one of general principle, decided for the first time; and
3. where the question is one of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage.

Counsel in his careful argument helpfully called our attention to Practice Note *(Court of Appeal procedure) [1999] 1 ALLER 186* relating to application for leave to appeal interlocutory orders. It provides as follows:

"Appeals from interlocutory orders"

> *"An interlocutory order is an order which does not entirely determine the proceedings. Where the applications is for leave to appeal from an interlocutory order, additional conditions arise: (a) the point may not be of sufficient significance to justify the costs of an appeal; (b) the procedural consequences of an appeal (e.g. loss of trial date) may outweigh the significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after the trial. In all such cases leave to appeal should be refused".*

It was his view that so long as he satisfied one or other of the categories of conditions identified in *Wang v. Atlantic Insurance Co. Ltd. (supra)* and he could show that none of the additional conditions set out in the Practice Note operated, then, he was entitled to the grant of leave.

7. He contended that the applicant came within the first conditionality viz, that there was a prima facie case that an error of law had occurred. He particularized that error as conflating the "Academic Argument, viz., that the dispute between the parties had become academic which was one of applicant's grounds for dismissal and the *locus standi* test which was the ground of the Attorney General's application. With all respect to the astutely crafted arguments of Mr. Courtenay, S.C., in my view, there is no error of conflation on the part of the judge. There were two separate and discrete grounds which represented the basis of the respective applications. In a fifty-four page judgment in which the judge sought support from authorities of a great many Commonwealth countries and to which tribute must be paid for his scholarship, he went to great lengths to consider the grounds advanced by the respective applicants. Conflation there was not. Prima facie, there was no case of error as to the "academic argument".

8. Counsel in his skeleton arguments noted that – "the challenge to the constitutionality to the Vesting Act was academic because the shares owned by the first respondent in the applicant (company) had been sold to RBTT Merchant Bank. But, according to Muria J, the shares were "taken away" from them. That does not suggest to me that the "transfer" (to use a neutral word) of these shares was consensual nor that the facts are agreed. The judge said that the claimants were dispossessed of their shares by the operation of the Vesting Act. In that state of affairs, it is plain that no legal argument can properly be mounted. Thus, the contention that a *prima facie* case of error arises, is in my view, misconceived. I would reject it. Moreover, the issue of the constitutionality will require an investigation of how the claimants became dispossessed of this shares which, as a matter of necessity, can only be determined at trial. This conclusion prompts me to say that leave should

be refused - vide Practice Direction – condition (c) viz. it may be more convenient to determine the point at or after trial.

9. This leads me to suggest that the practice which is applicable to these proceedings is that contained in the 1999 Practice Direction which is specific in relation to interlocutory orders. The order in respect of which leave to appeal is being sought is an interlocutory order. Counsel would not have brought it to our attention and sought to rely on it, if he did not think it was relevant to these proceedings. In the result, I am not persuaded that any useful purpose would be served to deal with the further submission deployed by Mr. Courtenay, S.C. and answered by Ms. Lois Young, S.C. on behalf of the respondents (claimants). I am content to rest my decision on the basis I have set out above.

CAREY JA

MORRISON JA

10. I have had the advantage of reading the judgment of Carey JA in draft. I agree with it and can add nothing to it.

MORRISON JA