

IN THE SUPREME COURT OF BELIZE A.D. 2010

CLAIM NO. 651 OF 2010

BETWEEN

MAURICE MODAVI

APPLICANT

AND

COMMISSIONER OF LANDS

1ST RESPONDENT

AND

ATTORNEY GENERAL

2ND RESPONDENT

Mr. Kevin Arthurs for the claimant.

Mr. Nigel Hawke, Senior Crown Counsel and Ms. Iliana Swift for the respondents.

AWICH Chief Justice (Ag.)

10.2.2011

DECISION

Ex tempore

1. The applicant has established an arguable claim by his affidavit that, the first respondent, the Commissioner of Lands, may have cancelled the lease dated 3 January 2008, between the parties unlawfully. He has also established by the affidavit that the first respondent may be proceeding to lease or transfer the land to someone else.

2. The more difficult point may be that of time limitation to bring claim against any person for acts in pursuance of an Act or other law. S: 27 limits such a claim to being brought within one year. The applicant received a letter cancelling the lease on 24.1.2009; his claim should have been brought by 23.1.2010. It was brought nearly nine months later. But I note that the wrong complained of may have not been completed. There is also an arguable question on this point which I do not have to resolve now.

3. The submission that the claimant ought to have filed the substantive claim prior to or with his application is also an important one. The applicant ought to have filed a claim form. There is no evidence in the affidavit to show that it was impossible to file a claim form before the application could be made. This is an irregularity, but it does not deny to the application materials on which court may assess the question of serious question to be tried. The materials come from the affidavit.

4. Grant of an interim injunction order is a discretionary power of court that may be exercised if the court considers that in the circumstances of the case it is just and convenient. That is my view in this application. I allow the application for interim injunction order. The respondents are restrained from the actions stated in paragraphs 1 and 2 of the application dated 16 September 2010. The injunction order is to last until determination of the claim or until further order of this court.

5. The applicant must provide undertaking as to damages to the Registrar; the undertaking is to include or specify means by which the applicant would be able to pay damages should he be called upon to pay damages as a consequence of this order.

6. Applicant must file claim form and have served on respondents within two days of today, otherwise the order for interim injunction herein may be set aside on application by the respondent.

7. Costs of this application will be in the cause.

8. **Delivered this Thursday the 10th day of February 2011**
At the Supreme Court
Belize City

SAM LUNGOLE AWICH
Chief Justice Ag.
Supreme Court