

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 185 OF 2023

BETWEEN:

DWIGHT FLOWERS	Applicant
AND	
MARTHA ALEXANDER	First Respondent
JUDICIAL SERVICES COMMISSION	Second Respondent
MINISTER OF PUBLIC SERVICE, CONSTITUTIONAL AND POLITICAL REFORM AND RELIGIOUS AFFAIRS	Third Respondent
ATTORNEY GENERAL OF BELIZE	Fourth Respondent

Appearances:

No appearance by and for the Applicant
Mr Hector D Guerra for the First Respondent
Ms Samantha Matute for the Second, Third and Fourth Respondents

22 April 2024

2 May 2024

RULING

STRIKING OUT OF CLAIM

Striking out for non-appearance and want of prosecution – lawyer’s duty to attend hearings - Applicant seeking review of High Court decisions – general principles on the remedy of judicial review of High Court decisions – general principles on judicial immunity

[1] **HONDORA, J.** this is my ruling and reasons striking out the Applicant’s motion for leave to judicially review parts of the judgment issued by Alexander J on 13 March 2023 in Case No. 480 of 2020. I struck out the Applicant’s case against the four Respondents for lack of appearance and want of prosecution with no Order as to costs.

INTRODUCTION

- [2] Mr Dwight Flowers, the applicant was sued by Best Buy Limited in High Court Claim No. 480 of 2020 in relation to his occupation of a piece of land known as Lot 2140 Heusner Crescent, Belize City (the property). In that case, Best Buy Limited sought to evict Mr Flowers from the property on the basis that it had title to the same. It sought, among others, an injunction against Mr Flowers on the basis that he was a trespasser.
- [3] Mr Flowers' lawyer of record in that case and in these proceedings is Ms Sharryn Dawson of Yellowberg Chambers.
- [4] In November 2022, after exchange and closure of pleadings but before trial, Flowers made an interlocutory application seeking, among others, the striking out of Best Buy's statement of claim. Mr Flowers' strike out application was heard on 20 February 2023 by the presiding judge, Alexander J, who handed down her decision on 13 March 2023 dismissing Mr Flowers' application with costs.
- [5] Alexander J's 13 March 2023 decision set the stage for an extraordinary, if dramatic, turn of events.

JUDICIAL REVIEW

- [6] Mr Flowers was aggrieved by Alexander J's decision. On 28 March 2023, he sought leave to apply for the judicial review of Alexander J's 13 March 2023 decision. In his application, which is peppered with intemperate language, Mr Flowers made several unsupported allegations of impropriety against Alexander J.
- [7] In sum and substance, Mr Flowers sought leave to challenge the merits of Alexander J's 13 March 2023 decision as well as her qualifications for judicial office. He accused Alexander J of misbehaviour and inability to perform the functions of a judge. He was particularly aggrieved that Alexander J issued a written judgment on 13 March 2023 following the hearing held on 20 February 2023 on his application to strike out Best Buy's claim. Inexplicably, he considered Alexander's decision-making "hasty". Mr Flowers also sought an interim interdict barring Alexander J from continuing to act as a judge of the High Court of Belize. He also averred that the High Court owed him numerous duties, which he alleged were breached. In addition, Mr Flowers sought unsubstantiated damages and costs.
- [8] On 13 October 2023, Chabot J heard Mr Flowers' application focusing on the issue of jurisdiction. In a reasoned and compelling judgment issued on 13 December 2024, Chabot J dismissed Mr Flowers' application for leave to challenge the merits of Alexander J's 13 March 2023 decision on the grounds of lack of jurisdiction. However, Chabot J allowed Mr Flowers to pursue his request for leave to apply for the judicial review of Alexander J's appointment as a Judge of the High Court of Belize.
- [9] I am not surprised that Mr Flowers' application seeking leave to judicially review the merits of the decision issued by Alexander J was dismissed. In a statement that applies with equal force in this jurisdiction, Lord Diplock aptly noted in the case of *In re Racal Communications Ltd* [1981] AC 374 at 384 that:

"Judicial review is available as a remedy for mistakes of law made by inferior courts and tribunals only. Mistakes of law made by judges of the High Court acting in their capacity as such can be corrected only by means of appeal to an appellate court..."

- [10] In addition, it would, as a rule, be an abuse of process for a party to initiate litigation requesting the High Court to exercise judicial review jurisdiction over the legality of the judicial decisions of another High Court judge, i.e., acts and decisions taken by a fellow judge in discharging their role as a judge.
- [11] The High Court is a court of unlimited jurisdiction, and its decisions are not subject to judicial review by the High Court. Its decisions can, of course, be challenged through the medium of an appeal as set out in section 199 of the Senior Courts Act.
- [12] In this case, Mr Flowers sued Alexander J personally, including for unsubstantiated damages, arising from her 13 March 2023 strike out decision. This part of Mr Flowers' suit is surprising given the longstanding rule on judicial immunity. It is unclear if this issue of law was properly raised before and ultimately considered by Chabot J. For clarity, I am not making any decision on the issue since it is already *res judicata* and I have not had the benefit of submissions.
- [13] However, the apparent facts of Mr Flowers' application for leave highlight a need for the restatement of the principles enunciated by Lord Denning MR in ***Sirros v Moore*** [1975] QB 118, at 132, that:

“Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the excess of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred or malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to the Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action in damages. The reason is not because the judge has any privilege to make mistakes or do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden CJ in *Garnett v Ferrand* (1867) 6 B & C 611, 625: ‘This freedom from action or question at the suit of an individual is given by the law to the judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from action, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.’”

- [14] I will say no more on this issue.

CLAIM STRUCK OUT

- [15] Following Justice Chabot's departure from the Belizean bench in January 2024 and pursuant to section 28(2) of the Senior Courts Act, I became the presiding judge over the civil proceedings initiated by Mr Flowers in Case No. 185 of 2023.
- [16] Relatedly, due to Chabot J's 13 December 2023 ruling, proceedings in Case No. 185 of 2023 are now restricted to Mr Flowers' application for leave to apply to judicially review the appointment of Alexander J to the bench. All the issues dismissed by Chabot J are *res judicata* and cannot be the subject of any review by me. Relatedly, I have seen no evidence on file indicating that Mr Flowers has sought leave to appeal Chabot J's 13 December 2023 decision. In addition, there has been no communication from Ms Dawson to that effect.

- [17] On 22 February 2024, the court office issued a Notice for a Mention Hearing set for 25 March 2024 at 9:30 AM. Using the electronic case management system, the Notice was served on all the parties. The same was also sent by email to all parties, including to Messrs Yellowberg's given email address.
- [18] On 25 March 2025, Mr Hector Guerra appeared for the first defendant and Ms Samantha Matute and Mr Jarvis Lou appeared for the second to fourth defendants. There was no appearance from Ms Dawson or Mr Flowers. There is no record on file showing that Ms Dawson informed the court that her client and her could not attend the hearing or that she had ceased representing Mr Flowers.
- [19] As noted by the Court of Appeal in Attorney General of Belize et al v Belize Food and Transport Ltd, Civil Appeal No. 9 of 2003, at para. 3 "unless counsel is excused by the court [they] must attend court fixtures or be otherwise represented". As a rule, it is improper for counsel representing a party to litigation proceedings to not show up for a scheduled hearing following proper service of a Notice of Hearing. In discharging their professional obligations and duties as officers of the court and to their clients and profession, lawyers must appear for scheduled hearings – be they virtual or in-person. When unable to do so, lawyers must inform the court and/or make relevant applications in a timely manner. Relatedly, litigants are not excused from attending court because their lawyers are not available or intending to not attend a scheduled hearing. Such conduct may well be subjected to sanctions or in grievous cases considered as contemptuous.
- [20] I ordered a short adjournment to enable the court office (through my marshal) to call Ms Dawson using the mobile and telephone numbers on file, including the ones for Messrs Yellowberg. My marshal did not manage to get through to Ms Dawson or the offices of Messrs Yellowberg.
- [21] I pause here to remark that it is not the role of the court office to call lawyers and/or litigants not in attendance for a scheduled hearing. Although the court sometimes extends this courtesy to lawyers and litigants this should not give rise to any expectation that proceedings would not commence without the court reaching out to parties and/or their lawyers to ascertain whether they will attend court. Repeated non- or late attendance to fixed hearings will result in cases being struck out by the Court proprio motu or on application by any of the parties to the litigation proceeding. The Court may also make a de bonis proprii Order for costs against defaulting lawyers.
- [22] I gave Mr Guerra and Ms Matute opportunities to make submissions on the claimant's and his lawyer's failure to appear for the scheduled hearing. Both counsel requested an adjournment of the Case Management Conference on the basis that although unclear there may be proper and valid reasons why counsel for the claimant and/or his client were unable to attend the scheduled hearing.
- [23] Considering Mr Guerra's and Ms Matute's considered submissions and the peculiar facts of this matter, I issued the following Order during the 25 March 2023 hearing:
- "1. The matter is adjourned for a report hearing on the 22nd of April 2023 at 2:00PM for a virtual hearing.
 2. If the Applicant, Mr Dwight Flowers and/or his legal practitioner of record do not attend the hearing scheduled for the 22nd of April 2024 at 2:00PM, the application will be struck out with no further notice."
- [24] Per usual practice, the Order was served on all parties using the electronic case management system and was also emailed to all parties.

[25] On 22 April 2024 at 2PM, i.e., the date of the resumed hearing, Mr Guerra appeared for the first defendant and Ms Matute for the other defendants. Once again, there was no appearance from the claimant or his lawyer, Ms Dawson. In addition, the court office did not receive any communications from the claimant or his lawyer regarding the hearing or their intentions following Justice Chabot's 13 December 2023 decision.

[26] In view of para. 2 of my 25 March 2024 Order and in exercising the court's inherent jurisdiction, I strike out the claimant's case for lack of appearance by the party and their respective counsel and for want of prosecution.

[27] The defendants' lawyers indicated that they were not seeking costs. I also note that in her 13 December 2023 decision, Chabot J ordered that each party pay their own costs. In the circumstances, I strike-out the Applicant's case without an order as to costs. However, this Order on costs is without prejudice to each of the Respondent's right to revive their claims to costs relating to proceedings in this matter since Chabot J's 13 December 2023 decision.

ORDER

[28] IT IS HEREBY ORDERED THAT

- (1) The matter is struck out.
- (2) No order as to costs.

**Dr Tawanda Hondora
High Court Judge**