

IN THE COURT OF APPEAL OF BELIZE A.D. 2024
CIVIL APPEAL NO. 14 OF 2020

BETWEEN:

CLAVER COLLEGE EXTENSION

Appellant

and

THE COUNCIL, CLAVER COLLEGE PARISH

Respondent

Before:

The Hon. Mde. Justice Woodstock Riley
The Hon. Mde. Justice Minott-Phillips
The Hon. Mr. Justice Foster

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Hubert Elrington, S.C. and Mr. Norman Rodriguez for the Appellant
Ms. Karen Munnings for the Respondent

2024: 12 March
20 June

JUDGMENT

[1] **MINOTT-PHILLIPS J.A.:** This is an appeal by Claver College Extension from a decision of the Hon Mdme Justice Shoman pronounced on 9th December 2020 dismissing its statements of case as an abuse of the process of the court (within the meaning of Civil Procedure Rule 26.3(1)(c)) for want of *locus standi*. The trial judge also, consequentially, dismissed the counterclaim of The Council, Claver College Parish. Civil Procedure Rule (CPR) 26.3(1)(c) states,

“In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court—

(a) ...

(b) ...

(c) *that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;”*

[2] The Appellant’s statements of case that were dismissed were its Fixed Date Claim Form and Statement of Claim, both dated 24th June 2020. Those documents identified the Claimant as **The Board of Governors of Claver College Extension** and the Defendant as **The Council Claver College Parish**. In its notice of Appeal, the Appellant identifies itself as **Claver College Extension**

while still referring to the Respondent as **The Council, Claver College Parish**. I'll refer to the Appellant as "**Extension**" and to the Respondent as "**Parish**".

- [3] Extension's claim was for "*a declaration that they were the owners of a license coupled with an equity in and over the said land [previously unspecified] which cannot be terminated by the Defendants serving the Claimant with a notice to quit*" together with a request for corollary orders for the Court to declare the nature of the equity, and for an injunction restraining Parish from interfering with their possession of the property subject of Extension's claim, and with their use and enjoyment of it. Extension claimed to have erected a 2-storey building at a cost of over \$600,000 on land which is not specifically identified in the Claim Form or Particulars of Claim, but [from other material before the court] appears to be owned by the Roman Catholic Church. Extension claims to have gotten permission to do this from the Parish Priest of the day and the Parish Council. The latter is who Extension, in its claim, identifies as the Defendant.
- [4] According to Extension, Parish gave them notice to remove the school they operated from off the parish land and to leave their building there. Extension responded to this notice by asserting that they have "*a legal license coupled with an equity that allows them to stay on the land and to continue to use the building for the purpose of adult education as long as they wish to do so.*"
- [5] Parish commenced its defence to the claim by asserting that Extension "*does not have the legal authority and standing to bring a claim in law*". It went on to say that its proper and legal name is the St. Peter Claver Parish and that it is an advisory body which operates under the authority, direction and control of the Roman Catholic Church of Belize. It asserted that the entire tract of land (together with all buildings on it) is owned by the Roman Catholic Church of Belize which at no time gave any proprietary rights to Extension. Parish maintained that the construction of the entire building and funding was provided by the Roman Catholic Church of Belize. Parish also maintained that the building was constructed for its use and that it granted permission to the then managers of the adult continuing education (ACE) program to house its classes on the upper flat while it utilized the lower flat for its primary school. Parish maintained the managers of the ACE program were given a bare and/or gratuitous license to occupy the upper flat.
- [6] On 4th December 2020 the Hon Mdme Justice Shoman made an order that, "*The Roman Catholic Church of Belize is added as a Defendant in these proceedings.*" The Formal Order is dated 29th December 2020.
- [7] The striking out application filed by Parish on 24th July 2020 sought to have the court strike out Extension's Claim Form pursuant to section 26.3(1)(b) and (c) of the CPR and the inherent jurisdiction of the court on the following grounds [set out *verbatim*]:
- a. The Claim discloses no reasonable cause of action against the Defendant;
 - b. The claim herein discloses no reasonable grounds for bringing the claim having regard to the facts pleaded and/or if [sic.] frivolous and vexatious and an abuse of process;
 - c. The Claimant has no standing in law [*locus standi*] to bring such a claim;

- d. The Orders prayed for if granted would further the Overriding Objectives of the Supreme Court Civil Procedure Rules.

[8] Included as part of the affidavit evidence in support of the application, was an email from the Belize Companies Registry to Parish's Attorneys-at-Law which stated,

*"Dear Mrs. Torres,
Please note that we have conducted a search on both names, "**Claver College Extension**" and "**Board of Governors of Claver College Extension**" and none of the names appear on our registers.*

....

*Kind regards,
Deomedes Flowers (Ms.)
Belize Companies Registry"
[followed by official stamp]*

[9] This is what the judge said when the matter commenced before her on 9th December 2020,

"This [Parish's application to strike out the Claim Form filed on 24th July 2020] is the sole matter we are dealing with this morning. Alright, so it is an application to strike and Counsel has advised that she has not abandoned any of the submissions made on behalf of the Defendant. One of the primary allegations that is made and I think the one which is most fundamental in this matter is the allegation, gentlemen, that the Board of Governors of Claver College Extension does not have legal personality, therefore; does not have locus standi and cannot in fact bring this claim."

[10] Compendiously, the first 6 of Extension's 8 grounds of appeal focused on the alleged effect of the order granted by the court on 4th December 2020 that the Catholic Church be added as a Defendant, and maintained that order "superseded" Parish's application to strike, so that it was "no longer before the Court". All 6 of those grounds fail for reasons included in those we give in this decision. The 2 remaining grounds of appeal, presented as an alternative to the first 6, were:

- a. *Even if the application to strike out the Claimant's Claim was still properly before the Court, the learned trial judge misdirected herself as to the law governing the striking out of a Claimant's Claim on the ground that the claimant had no locus standi.*
- b. *The learned trial judge held that evidence that the claimant was not a registered limited liability company or that the Claimant's name did not appear on the list of limited liability companies or unincorporated associations kept at the Companies Registry was sufficient in law to prove that the Claimant had no locus standi to bring a claim in law. This is not the law governing whether a litigant has locus standi or not.*

[11] The reasons of the court below for making its order emerge from the transcript of the proceedings before the judge on 9th December 2020. Shortly after the hearing commenced, counsel for Extension raised a preliminary point of objection to the judge proceeding to hear Parish's application. What follows is the exchange between Bar and Bench:

MR RODRIGUEZ: If it pleases you, we wish to raise a preliminary point of objection.
THE COURT: Mr Rodriguez, what is your preliminary point? Go ahead.
MR RODRIGUEZ: My Lady, the Court made Orders on the 4th December, last Friday. One of those points was for the Fixed Date Claim Form or the Claim overall to be amended so that the Catholic Church of Belize is added as a Second Defendant.
THE COURT: You are misapprehended. The Court made an Order that the Catholic Church of Belize could be added. But, that is neither here nor there, in terms of what I am asking you. This stage at which you are asking at, Mr Rodriguez and we will get to where you want to go. The stage at where the court is at this morning is this. Does your Claimant have legal personality? Yes or no?

[12] Then later in the transcript,

THE COURT: Can you inform the Court whether the Board of Governors of Claver College Extension has a legal personality or not?
MR. ELRINGTON: That is our position.
THE COURT: You are taking the position that they do?
MR ELRINGTON: They do.
THE COURT: Okay, you have provided me with no proof. Mrs. Torres Arzu on the other hand has stated to the Court and this is a fundamental point that—are you with me?
I am going to take you directly to the application. I am looking at the strike out applications ground no.3, the Claimant has no standing in law to bring such a claim...I am saying Ground No. 3 of the application to strike is that the Claimant has no standing in Law. Do you see that?
MR ELRINGTON: My Lady, I would like to say that at this stage, we would like to ask Your Ladyship permission to permit us to withdraw from the proceedings. Whatever Your Ladyship decides—
THE COURT: Mr. Elrington, I am about to make an Order—
MR ELRINGTON: We will simply abide by your Order but we are asking permission to withdraw from these proceedings.
THE COURT: I can't stop you Mr. Elrington, but I have never seen such a dereliction of duty. And as a Senior Counsel, that is indeed regrettable. If you wish to leave, no problem. My preference would be there is at least only one of you on the record that remains or it will be contemptuous.
MR ELRINGTON: But, both of us are requesting Your Ladyship's permission to leave now.
THE COURT: I cannot see why, Mr. Elrington. You will explain this to your client.
THE COURT: Mrs. Torres, I am striking this claim.
MRS TORRES: Obligated, My Lady.

THE COURT: *Regrettably, Ms. Torres-Arzu, because there is no legal personality in the Claimants that will unfortunately also include the counterclaim. You cannot counterclaim against a body that does not exist.*

MRS TORRES: *Obliged, My Lady.*

THE COURT: *Can you please make the draft order that the entire claim is struck and regrettably, that the counter-claim also falls away.*

MRS TORRES: *Certainly, My Lady*

- [13] Those extracts indicate that the judge’s reason for striking out the claim was that the Claimant was devoid of a legal personality. As it did not exist as a legal entity, Extension was unable to commence an action against anyone for anything. The judge’s conclusion was supported by the documentary evidence before the court (provided by the Companies Registry) certifying that neither of the names used by the Appellant appeared on its registers.
- [14] Only persons, natural or corporate, can sue or be sued. Natural persons, if carrying on business in Belize in names other than their own, must register their business name in the manner set out in the Business Names Act. That registration must, as stipulated in the Business Names Act, be submitted by them to the Registrar of Companies and Corporate Affairs who is the very Registrar referenced in the Companies Act. Otherwise than as may be specifically permitted by statute, if one or more persons, or a body, is bringing an action on behalf of a wider group, then they can only do so if they first obtain a representative order from the court in accordance with Part 21 of the CPR. All litigants must be legal entities and the court must know, and be easily able to identify, and communicate with, them. CPR 3.11 requires all statements of case to have an address for service within Belize and CPR 3.12 requires all statements of case to be verified by a certificate of truth signed by the lay party. Only a person (natural or legal) can certify truth. It is also imperative that every litigant can identify, and communicate with, the other(s) in any given matter. Court orders (including orders for costs) can only be enforced against natural or legal persons.
- [15] In this case Parish took the point that Extension had no *locus standi*. Perhaps the reason for saying so was not articulated as clearly as it could have been, but it was certainly discernible to the court below, as it is to us, that Parish was saying so because Extension does not exist as an identifiable legal person (or group of persons)—natural or corporate. The order adding the Roman Catholic Church as a Defendant would have no bearing on that.
- [16] We are of view that the judge below was correct in her decision to strike out the claim and, consequentially, the counterclaim, for the reasons she expressed (which we have quoted above) and in the absence of any evidence from Extension rebutting the evidence of the Registrar of Companies.
- [17] In advancing its appeal of the judge’s order, Extension’s arguments were presented on the following three bases:
- a. Section 13 of the Constitution is the legal basis for Extension’s claim that it has *locus standi*;

- b. A group of alumni of St. Peter Claver's College (which included Florence Johnson, Mary Parchue Avilez, Lottie Flores, Wallace Cayetano, George Lino, Eva Caytano Middleton, Emogene Garcia, Sydney Lino and others) is a party to the claim.
- c. The Roman Catholic Church dealt with them as an association properly established.

[18] We address each in turn starting with the argument that the judge's order deprived Extension of its rights under section 13 of the Constitution. The first thing we note about this particular submission is that there is nothing in the transcript of the proceedings below indicating that this argument was advanced before the Hon Mdme Justice Shoman. There is also no express reference to the Constitution in Extension's Notice of Appeal. However, given the primacy of the Constitution, we did not prevent Extension from advancing to us its submission on this point. The fact that we allowed Extension to do so on this occasion is not to be regarded as a precedent for, or encouragement of, litigants advancing for the first time before us, arguments not made by them before the court below.

[19] Section 13(1) of the Belize Constitution states,

*"Except with his own consent, a **person** shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests or to form or belong to political parties or other political associations."*

[20] In our view section 13 of the Constitution has no bearing on the application before the court or on the order made by the judge below that is the subject of its appeal. The word "**Person**" appearing in the constitutional provision, is defined in the Interpretation Act to mean,

*"...a **natural person or a legal person** and includes any public body and any body of persons, corporate or unincorporated..."* [my emphasis].

[21] The order of the court below is premised on the fact that there was no natural or legal person before it as Claimant. Nothing in the Fixed Date Claim Form or Statement of Claim provides specifics of the legal personality of Extension. The very first question asked of Extension by this court at the hearing before us was, what is the evidential basis for its opening written submission that, "*The Appellant is an institutional organization doing business as Claver College Extension*"? In response to the court's enquiry, counsel for Extension, (having requested and received a few moments to look over their documents) conceded that Extension had no affidavit evidence to substantiate that statement.

[22] At no time was the court below, or Parish, seeking to hinder any person from enjoying his constitutional right to freedom of assembly and association. Their preoccupation was in ascertaining whether Extension **existed** as a natural or legal person. The evidence before the court was that **Claver College Extension** did not exist as a natural or legal person.

[23] We now address the second submission that a group of alumni of St. Peter Claver's College was a party to the claim. If the "**Board of Governors**" considered itself a collection of individual alumni

doing business as “**Board of Governors, Claver College Extension**”, then that business name ought to have been registered with the Registrar of Companies and Corporate Affairs as a collection of individuals doing business under that business name. By searching the Register, the public would be able to identify those individuals. As certified by the Companies Registry, the name “**Claver College Extension**” (with or with the preceding words “**Board of Governors**”) did not appear in any of its registers.

[24] If it was that “**Board of Governors, Claver College Extension**” was intended to be a representative name for certain alumni of St. Peter Claver’s College, then the action in that name could only be initiated by an order of the court made under part 21 of the CPR allowing the use of that name as representative of those alumni, and following an application made to court by any person or body who wished to be appointed as a representative party. In that event, the application and supporting affidavit filed would contain the names of all legal persons represented by the body bringing the claim. No such order was sought or made.

[25] The third submission of Extension that the Roman Catholic Church dealt with them as an association properly established was of no moment. Aside from the fact that, literally, Parish’s first line of its pleaded Defence was that, “...*the Claimant does not have legal authority and standing to bring a claim in law*”, even if Extension had been treated as a natural or legal person by the Roman Catholic Church, that would not make Extension a natural or legal person.

[26] For all the reasons stated above the remaining 2 grounds of appeal also fail.

[27] Our order is as follows:

- a. The appeal of the order of the Hon Mdme Justice Shoman pronounced on 9th December 2020 (with Formal Order dated 29th December 2020) is dismissed and her order is affirmed.
- b. Costs of the appeal are awarded to the Respondent and are to be taxed if not agreed.

Minott-Phillips
Justice of Appeal

[28] I concur.

Woodstock Riley
Justice of Appeal

[29] I concur.

Foster
Justice of Appeal