IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. Civ 661 of 2024 (No. 1)

BETWEEN:

MOSES BARROW
MICHAEL PEYRIFITTEE
SHARI MEDINA
ALBERTO AUGUST
HUGO PATT

Claimants/Applicants

AND

TRACEY TAEGAR PANTON

PHILLIPA GRIFFITH BAILEY

Defendants/Respondents

Appearances:

Mr Immanuel P.O. Williams for the Applicants
The Respondents as litigants in person

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8 November 2024

14 November 2024

JUDGMENT

Interlocutory relief – injunction - test to be satisfied for an interlocutory injunction – ex parte proceedings – general rule – application to appear as amicus curiae – general rule – duty of candour by attorneys-at-law requesting to participate in proceedings as amicus curiae

[1] **HONDORA J:** The United Democratic Party (UDP), the former ruling party in Belize, has hit stormy waters. The party, which now sits in the opposition benches, is reeling from an all-out internecine conflict as different factions battle for influence, control and leadership. The party's headquarters located at the property known as Registration Section, Lake Independence, Block 45, Parcel No. 00969 is now the subject of bitter contestation.

[2] On 28 October 2024, there was a hostile takeover of the UDP's headquarters led by the first respondent, the Hon. Tracey Taeger Panton (Ms Panton). That prompted the applicants, who say they are the current and legitimate executives of the UDP to initiate litigation seeking a permanent injunction barring Ms Panton and Ms Phillipa Griffith Bailey (the second respondent) from occupying and using the party's headquarters. They have also sought an interim injunction pending the resolution of the dispute in the main matter over the occupation, control, management and use of the party's headquarters.

[3] The five applicants (claimants in the main matter) say they are the lawful and legitimate executive of the UDP known as the central executive committee. Article 8 of the UDP's constitution provides that the central executive committee is responsible for the party's day-to-day operations. The first applicant is Hon. Moses Barrow (Mr Barrow) who is the UDP Party Leader and Leader of the Opposition in the House of Representatives. Mr Michael Peyrefitte, the second applicant, is the party chairperson and chairperson of the Central Executive Committee of the UDP. According to Article 10(3) of the UDP's constitution, the party chairman is "*the managing director of the Party*". Ms Shary Medina, the third applicant, is the secretary general of the UDP. According to Article 10(5) of the UDP's constitution, the secretary general is the Chief Executive Officer of the Party. Mr Alberto August, the fourth applicant, is the second Deputy Party Chairperson of the UDP. Mr Hugo Patt, the fifth applicant, is the Deputy Party Leader of the UDP.

[4] In my decision, I shall refer to the parties, their titles and positions as they relate to the UDP as outlined in the applicants' pleadings. I am aware that Ms Panton disputes that the applicants continue to hold positions in the UDP following a convention/meeting said to have been held by or at the instance of Ms Panton on 20 October 2024. If it be the case that the applicants no longer hold those executive positions that issue will be addressed (and potentially resolved) either in the main proceedings or via a different set of proceedings before this court. The parties may of course resolve the issue between themselves acting pursuant to the UDP's constitution – a route I commend to the parties. That said, it is not necessary, at this stage of the proceedings, for me to rule on the parties' disputed claims regarding their contestations over their claimed positions and titles in the UDP.

[5] The first respondent, Ms Panton, is a member of the House of Representatives for the Albert Division. The applicants dispute that Ms Panton holds any status in the UDP. According to Mr Barrow, Ms Panton was expelled from the UDP. For her part, Ms Panton disputes the validity of the decision taken to expel her from the party. Ms Panton asserts that she is now the leader of the UDP. The second respondent is Phillipa Griffith Bailey (Ms Bailey) who is described by the Mr Barrow as being a former secretary general of the UDP who demitted office in or around 2013.

[6] Following an urgent hearing held on **8 November 2024**, I issued an oral decision and granted an interim injunction restoring the applicants' occupation, control, management and use of the UDP's headquarters. I undertook to provide reasons for my decision, which I set out below.

I. Context

[7] According to Mr Barrow, whose affidavit was the only one used in these proceedings, on 27 March 2022, the UDP held a convention during which he (Mr Barrow) and Ms Panton contested for the position of party leader. Mr Barrow was pronounced the winner of that contest. Thereafter, Mr Barrow and the new executive comprised of the applicants took up office at the UDP headquarters. This much is not in dispute.

[8] The UDP headquarters houses the offices of the party leader, the party chairperson and the secretary-general. It also houses what I call the UDP's communications unit, i.e., the Guardian newspaper and Wave Radio. According to Mr Barrow, the party also uses the headquarters to hold its central executive committee meetings, national party council meetings and for purposes of election training.

[9] The seeds for the current phase of the internecine conflict in the UDP appear to have been sown during this year's August "little dry" season. Apparently, on 6 August 2024, Ms Panton sent a petition to the second applicant seeking the holding of a national convention. Thereafter, on 27 August 2024, Ms Panton sent a petition to the party chairperson (Mr Peyrefitte) seeking the recall of Mr Barrow as party leader. In that letter to which was attached the petition, Ms Panton signed off as UDP representative for the Albert Constituency. However, the letter itself was drafted on an 'Alliance for Democracy' letterhead. According to Mr Barrow, the party chairperson rejected the petition because in August 2023, the national convention agreed that those elected to the party's leadership would hold those positions until the national convention to be held after the next general election. Mr Barrow also referenced the UDP's constitution, which provides in Article 6(4) that:

> "A sitting of the National Convention shall be convened on the first weekend in October in every odd-numbered year on such date and at such time and place as the National Party Council shall decide…"

[10] The hurricane season has witnessed a consolidation of efforts to remove Mr Barrow as party leader. Apparently, on **20 October 2024**, Ms Panton organised or was involved in the organisation of a meeting during which it is said she was elected as the UDP party leader. Mr Barrow alleges that the meeting was held in breach of the party's constitution and was led by an association called Alliance for Democracy, which is made up of former members who were expelled from the UDP. In her oral submissions to the court, Ms Panton expressed the view that there is now in existence a new set of leaders in the UDP.

[11] According to Mr Barrow, "*On Monday, October 28th, 2024, the 1st Respondent, her supporters, operating under the association, The Alliance for Democracy, forcibly entered the UDP Headquarters by breaking the locks and gaining access to the Property*." In her oral submissions, Ms Panton denied that any violence was used to take over the UDP headquarters. According to Mr Barrow, since the hostile takeover of the party's headquarters, Ms Panton's supporters have prevented the applicants from entering and using the premises, which in turn has impeded their ability to discharge their official roles.

[12] On the same day, i.e., **28 October 2024** Ms Bailey, the second respondent, wrote to Ms Shary Medina (the third applicant and Secretary General of the UDP) and informed her that she (Ms Bailey) held ownership rights over the property housing the UDP headquarters as a trustee for the UDP. Ms Bailey also indicated in her letter that she had taken note of the "*National Convention held on October 20th,*

2024 at which Hon. Tracey Taegar Panton was overwhelming (sic) voted to replace Hon. Shyne Barrow." Ms Bailey also stated that she had been informed that Ms Panton had held a meeting on 26 October 2024 during which "*a unanimous decision was taken to direct [her] to authorise [Ms Panton] and the new leadership team to access, occupy, and control the Headquarters in furtherance of the business of the party*." Ms Bailey concluded her letter by stating that she was therefore authorising Ms Panton to "*access, occupy, and control the [UDP] Headquarters to do the business of the Opposition. I hasten to add that this authorization extends to replacing locks, installing security systems, and any and/or all that may be necessary to secure the property and preserve the assets of the Party*."

[13] On **31 October 2024** the applicants filed a fixed date claim form seeking a number of declarations and an order that the respondents be permanently interdicted "*from interfering with/unlawfully occupying*" the party's headquarters. The applicants also seek damages for unlawful possession and conversion of property, including exemplary damages.

[14] On the same day, i.e., **31 October 2024**, the applicants also filed an ex-parte application seeking immediate possession and control of the UDP headquarters and an injunction against the respondents barring them from interfering with the UDP headquarters until the determination of the proceedings in the main matter or further order of the court.

[15] Both matters were placed on my list on **Tuesday, 5 November 2024**. On the same day, I issued case management orders directing the applicant to serve its application on the respondents no later **than 1 PM on Thursday, 7 November 2024** and scheduling an inter-partes hearing for **Friday, 8 November 2024.**

[16] For completeness, I must state that on **4 November 2024**, the applicants filed an amended claim form seeking a number of additional declarations, including one restraining Ms Panton from holding herself out and/or passing off as the party leader of the UDP.

[17] When the matter came up for hearing on **8 November 2024**, the respondents' appeared as litigants in person while the applicants were represented by Mr Williams. After hearing the parties' submissions, I granted the interlocutory orders sought by the applicants as set out in **Section IV** below.

[18] Below, I briefly outline my reasons for:

(a) dismissing the applicants' application for an ex parte hearing;

(b) dismissing the respondent's application for an adjournment of the 8 November 2024 hearing;

(c) dismissing the application made by learned counsel, Ms Sheena Pitts, for permission to appear as amicus curiae; and

(d) granting the applicants' request for interlocutory injunctive relief restoring the status quo ante.

II. Issues falling for determination

(a) Whether the matter should have been heard ex parte

[19] In the exercise of my case management powers, I ordered on 5 November 2024 that the applicants give the respondents notice of their application for injunctive relief. In his written submissions, Mr Williams stated that I dismissed *"the Applicants' application for an injunction*". Learned counsel regrettably misapprehended my decision. I directed that the respondents be given notice of the application because I was not satisfied that an adequate case had been made, which justified this court hearing the injunction request without affording the respondents an opportunity to be heard.

[20] I address this issue not because learned counsel requested that I reconsider my decision. Rather, I do so to reaffirm the rule that barring exceptional circumstances, this court will require applications to be heard inter-partes and to explain why I dismissed the application for the matter to be heard and determined on an ex parte basis.

[21] In their Notice, the applicants indicated that they were filing an application pursuant to Parts 11 and 17 of the Civil Procedure Rules (CPR). CPR 11 sets out the general rules on applications. Notably, CPR 11.8 affirms that applications must be on notice to the intended respondents.

[22] CPR 17.3 provides:

> "(2) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.
>
> (3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given."

[23] Since ex parte proceedings constitute a departure from the general rule that applications must be on notice, an applicant bears the burden of demonstrating that the ends of justice would be defeated if the respondent is given notice of ensuing legal proceedings and that they ought not or that it is impossible that they be heard before the court gives its ruling.

[24] As noted in the case of ***Moat Housing Group South Limited v Harris and*** Another [2006] QB 606 at para. 63:

> "As a matter of principle no order should be made in civil or family proceedings without notice to the other side unless there is a very good reason for departing from the general rule that notice must be given. Needless to say, the more intrusive the order, the stronger must be the reasons for the departure."

[25] Although this principle is of long-vintage, it is not uncommon for these courts to be presented with ex parte applications in which little to no attempt is made to explain why a matter should be heard without affording a respondent a hearing. Litigants should draw guidance from the many cases that explain why as a general rule, applications should be on notice. I find particularly compelling Ormrod LJ's statement in ***Ansah v Ansah*** [1977] 138 Fam 138, 142, which I adopt, in which the learned lord justice stated:

> "Orders made ex parte are anomalies in our system of justice which generally demands service or notice of the proposed proceedings on the opposite party: see Craig v Karssen [1943] KB 256, 262. Nevertheless, the power of the court to intervene immediately and without notice in proper cases is essential to the administration of justice. But this power must be used with great caution and only in circumstances in which it is really necessary to act immediately."

[26] At page 143, Ormrod LJ further stated:

> "…the court should only act ex parte in an emergency when the interests of justice or the protection of the applicant or a child clearly demands immediate intervention by the court. Such cases should be extremely rare, since any urgent application can be heard inter partes on two days' notice to the other side… Circumstances, of course, may arise when prior notice cannot be given to the side; for example, cases where … a spouse, usually the wife, is so frightened of the other spouse that some protection must be provided against a violent response to service of proceedings, but the court must be fairly satisfied that such protection is necessary."

[27] While that case related to family law proceedings, the principle enunciated by Ormrod LJ is of general application to civil cases. In my view, it is a matter of elementary justice that a respondent must be given notice of an application for an interim injunction save where the interests of justice require that the application be determined without affording the respondent a hearing. An applicant must demonstrate the necessity, which justifies an application being heard without the respondent being given notice. That requirement is not satisfied by the simple assertion that a matter is urgent and/or that it ought to be determined ex parte.

[28] I also commend opinion expressed by the Privy Council in the case of ***National Commercial Bank Jamaica v Olint Corporation*** [2009] UKPC 16 in which Lord Hoffman stated on the facts of that commercial dispute that:

> "…there appears to have been no reason why the application for an injunction should have been made ex parte, or at any rate, without some notice to the bank. Although the matter is in the end one for the discretion of the judge, audi alteram partem is a salutary and important principle. Their Lordships therefore consider that a judge should not entertain an application of which no notice has been given unless either giving notice would enable the defendant to take steps to defeat the purpose of the injunction (as in the case of a *Mareva* or *Anton Pillar* order) or there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act."

[29] Although the Privy Council is no longer Belize's final appellate court, the principle laid out in the ***National Commercial Bank of Jamaica v Olint Corporation*** remains binding precedent in this jurisdiction, i.e., until it is set aside or modified by the Caribbean Court of Justice.

[30] Drawing on the applicants' pleadings, I was not persuaded that any adequate attempt had been made to demonstrate that it was necessary for the interim relief sought to be granted on an ex parte basis or that the ends of justice would be defeated if the respondents were given notice. Certainly, the applicants did not aver let alone demonstrate that there existed a risk that the respondents would take steps to defeat the purpose of the injunction if they were given notice of the application and granted an opportunity to appear and be heard. In particular, the respondents were already in occupation of the premises in dispute and it was not alleged that the respondents were on the cusp of further transferring the property to a third party.

[31] I was satisfied that the matter was urgent and needed to be considered on that basis but with the respondents being afforded an opportunity to appear and be heard. That approach also promoted the overriding objective, which requires this court to ensure that disputes are resolved justly in an efficacious manner, at proportionate cost, and avoiding a multiplicity of litigation. Consequently, I ruled that the hearing would take place on an expedited basis but with notice to the respondents.

(b) Adjournment request

[32] When the matter was called on 5 November 2024, the respondents appeared together on the court Microsoft Teams platform as litigants-in-person. This is to say, the respondents were sitting in the same room and without counsel.

[33] I satisfied myself that the applicants had served on the respondents (i) the claim form dated 31 October 2024 and the accompanying statement of claim; (ii) the ex-parte application notice dated 31 October 2024; and (iii) this court's order issued on 5 November 2024.

[34] After I confirmed that she had been served with the applicants' pleadings as per my direction of 5 November 2024, Ms Panton submitted that she was seeking an adjournment of the hearing to allow her and Ms Bailey to secure legal counsel but one that was based outside the jurisdiction. Although a litigant in person, Ms Panton spoke very well and confidently regarding her adjournment request. By way of justification, Ms Panton indicated that the issues raised in the application were complex and she needed the assistance of legal counsel. Ms Panton also indicated that the matter was political in nature, and she wanted to retain legal counsel from outside of Belize. I heard Mr Williams who, on behalf of the applicants, opposed the request for an adjournment.

[35] I dismissed the respondent's application for an adjournment. I did so because it was readily apparent that after receiving the applicants' application for interim relief, Ms Panton took the decision not to secure the services of a lawyer from the local bar. I was not persuaded by the suggestion that Ms Panton would not be able to secure the services of a lawyer willing to represent her because the proceedings were political in nature, relating as they do to disputes in the UDP. In addition, Ms Panton did not indicate that she had tried but had failed to secure adequate legal representation from the local bar. In the circumstances, I decided to hold Ms Panton and Ms Bailey to their election to be unrepresented. In arriving at this decision, I also considered that since it was the decisions and actions taken by Ms Panton and Ms Bailey that gave rise to the application for interim relief both were able to assist the court in determining whether it was necessary to grant the interim relief sought by the applicants.

[36] In arriving at this decision, I also reminded myself of the need to allow both respondents (as litigants in person) a wider degree of latitude in how their presented and prosecuted their opposition to the application for interim remedies. I also made sure to put to the respondents the points raised by Mr Williams, learned counsel for the applicants, to ensure that they were able to provide a full response to the application before the court.

(c) Ms Sheena Pitts' application to appear as amicus curiae

[37] After Mr Williams had made his oral submissions in support of the applicants' case, I turned to Ms Panton and asked her to address the court. Ms Panton asked for a short adjournment to consider Mr Williams' submissions and to prepare her oral submissions. In consideration of the fact that she was a litigant in person, I granted Ms Panton's request.

[38] When the proceedings resumed, I was surprised to see on screen Ms Sheena Pitts who introduced herself and stated that she was an attorney. Ms Pitts indicated that she was seeking leave to appear as amicus curiae. In response to my question on why it was necessary for her to appear as an amicus curiae and on the issue(s) she intended to address the court, learned counsel indicated without providing any specifics that she wished to assist the court on the legal issues arising for determination in the matter. I requested learned counsel to outline the complex issues of law on which the court needed her assistance. Learned counsel was unable to point to any. I decided not to make an immediate decision on the learned counsel's application until after I had heard from the respondents. I directed Ms Panton to continue with her address to the court.

[39] During the proceedings, I had become aware that there were more than three people in the same room with Ms Panton. On one occasion, Ms Panton switched off her camera and I heard someone communicate to her. That person turned out to be Ms Pitts. I also noticed that Ms Pitts appeared to be informing or advising Ms Panton on how to respond to the questions I put to her arising from the submissions that had been tendered by Mr Williams. After several of such incidents, I asked to speak to Ms Pitts. I enquired from learned counsel if she had a relationship with Ms Pitts, which she ought to disclose to the court and whether she was in fact advising Ms Panton on how to present her opposition to the applicant's application for interim relief. Ms Pitts requested an opportunity to talk to Ms Panton and see if she could appear as Ms Panton's lawyer instead and not as an amicus curiae.

[40] I was not at all impressed by Ms Pitt's apparent sleight of hand in informing the court that she intended to appear as an amicus while also actively advising the respondents. Consequently, I informed learned counsel that I would not permit her to appear before me in the capacity of an amicus curiae. In my view, Ms Pitts was an interested party, and it would appear was part of Ms Panton's legal team. I was not persuaded that the interests of justice were promoted by Ms Pitts' participation as an amicus curiae in the proceedings, which did not involve any complex issue of law or raise any issue of general

importance. In addition, Ms Panton had indicated that she did not wish to be represented by a lawyer from the local bar, which submission was made in the presence of Ms Pitts, and I surmised – with Ms Pitts active participation. That litigation strategy may have been deployed to secure a postponement of the hearing. If that is indeed the case, had I granted the requests both for an adjournment and Ms Pitt's participation, it would have increased litigation costs for the parties and undermined the efficacious resolution of what was an urgent matter.

[41] I also note reports (albeit postscript) suggesting that Ms Pitts was appointed by Ms Panton as an interim Chairperson of the UDP on or after the 20 October 2024 convention/meeting, which it appears appointed Ms Panton as party leader or was used by Ms Panton to hold herself out as the UDP's new leader and to undertake a hostile takeover the UDP's headquarters. If true that Ms Pitts was appointed as the interim Chairperson, it follows that she has a claim to the same role as that asserted by the second applicant, Mr Peyrefitte. It would also follow that Ms Pitts has (and had) a personal interest in the outcome both of the interlocutory application and the main matter – a fact that would not have been lost on Ms Pitts when she made her application to be heard as an amicus curiae.

[42] Notwithstanding her duties as an officer of the court, including the duty of candour, Ms Pitts did not disclose this material information to the court in her oral application for permission to be heard as an amicus curiae. In my view, an amicus curiae or third-party intervenor should not have a conflict of interest with one or other of the substantive parties. A party with an interest in the outcome of a matter should seek to be admitted as an interested party.

[43] If Ms Pitts had disclosed her relationship with Ms Panton and Ms Bailey, I would have allowed her to participate in the proceedings together with the respondents or as a representative of Ms Panton and Ms Bailey in consideration of the fact that the matter was urgent.

[44] I must stress that the privilege of appearing before these courts as an attorney-at-law should not be abused. Lawyers must be aware of their duties to the court, including the duty not to mislead the court either intentionally or through the negligent failure to disclose material facts regarding their personal interests or knowledge of facts that are material to the just resolution of the dispute before the court.

[45] An attorney or organisation that intends to participate in legal proceedings as an amicus curiae owes the court a high degree of candour. They must also make an application pursuant to CPR 11 and on

notice to all the parties explaining their interest, which principally must be to assist the court in arriving at a just and accurate decision on the law and/or on issues of general importance. A court may permit a person/organisation to appear as an amicus curiae or third-party intervenor either by themselves or through counsel. They will also be expected to file brief and succinct written submissions, and they will normally not be permitted to make oral submissions unless if their participation in that regard is considered necessary. In addition, such a party's participation should be structured not to substantially increase litigation costs for the main parties. In addition, they should not advocate for one or other of the parties. Failures in this regard may result in a party permitted to participate as a third-party intervenor or amicus being subjected to an order for costs arising from the legal proceedings.

[46] As noted by Lord Woolfe in ***Re Northern Ireland Human Rights Commission (Northern Ireland)*** [2002] UKHL 25 (see para. 32):

> The practice of allowing third persons to intervene in proceedings brought by and against other persons which do not directly involve the person seeking to intervene has become more common in recent years but it is still a relatively a rare event. The intervention is always subject to the control of the court and whether the third person is allowed by the court to intervene is usually dependent upon the court's judgment as to whether the interests of justice will be promoted by allowing the intervention. Frequently the answer will depend upon whether the intervention will assist the court itself to perform the role upon which it is engaged. The court has always to balance the benefits which are to be derived from the intervention as against the inconvenience, delay and expense which an intervention by a third person can cause to the existing parties."

[47] In sum, I was not persuaded that Ms Pitts' intervention would further the interests of justice and as a consequence, I dismissed her application. I will now turn to the substantive dispute.

(d) Whether the applicants are entitled to interim injunctive relief

[48] At issue in these proceedings is not only the possession and control of the UDP's headquarters, but also the facilities contained in or enabled through the party's headquarters, which include the party's newspaper and radio station. Relatedly, whoever controls the party's nerve centre, i.e., its headquarters, whether de jure or de facto will in the public eye be considered to be the leader of the opposition. Perception, in relation to political matters, can often be conflated with reality.

[49] In my assessment, there are or were at least two factions within the UDP. The first is led by Mr Barrow and those elected and/or appointed to their roles at the 27 March 2022 UDP convention. Mr Barrow is the current leader of the opposition in parliament. The respondents did not dispute this fact.

[50] The second faction is led my Ms Panton, whose authority it appears is derived from the convention/meeting held on 20 October 2024. Drawing on the evidence presented, and which was not disputed by Ms Panton, her faction is called the Alliance for Democracy or draws its support from the same. As noted above, Ms Panton used an Alliance for Democracy letterhead to send her 27 August 2024 petition to the second respondent seeking the recall of Mr Barrow as party leader.

[51] Its unclear whether the Alliance for Democracy is a separate party (i.e., separate and distinct from the UDP) or a party within a party comprising current or former members of the UDP who are disgruntled with Mr Barrow's leadership. If the Alliance for Democracy is a separate party, it would have no claim to the property owned by the UDP unless it is able to establish that it is recognised as being part or an organ of the UDP and/or possesses rights and interests to property owned or held by third parties in the name and for the benefit of the UDP.

[52] In her submissions, Ms Panton did not dispute that up and until 28 October 2024, the applicants occupied and controlled the UDP's headquarters in their various roles as party leader, party chairperson, secretary general, deputy party chairperson and deputy party leader, respectively. Although I make no definitive ruling, I do not at present have reason to doubt Mr Barrow's sworn testimony that in discharging their respective roles, together with the other applicants, he used the party's headquarters in, among others:

(a) the day-to-day management of the office of the party leader;
(b) management of the office of the party chairperson;
(c) management of the office of the secretary general;
(d) management of the UPD media organs – the Guardian newspaper and the Wave Radio;
(e) hosting of the central committee meetings and the national party council meetings; and
(f) organising election training.

[53] In my assessment, albeit largely tentative at this juncture, it appears that Ms Panton has been seeking to assume the role of UDP leader for some time and that following the 20 October 2024 meeting/convention, she decided to work with some persons who may be current or former members of the UDP to take over the party's headquarters, which she did on 28 October 2024. The applicants did not take part in the 20 October 2024 convention/meeting, and they contend that the convention/meeting was unconstitutional. In other words, the applicants' dispute that that

convention/meeting resulted in a lawful transfer of authority away from them to Ms Panton over the UDP and its properties and other assets.

[54] Ms Panton stated that no violence was used to take over the party's headquarters. Mr Barrow, for his part, provided (untested) affidavit testimony and video footage showing that force was used to break into the party's headquarters. At this stage of the proceedings, whether violence was used is of little significance. What matters is lawful title to occupation, management, possession and use of the party's headquarters and other relevant organs of the UDP. That said, that there were fears of actual and/or threatened violence is borne out by the fact that the police attended to the party's headquarters on 28 October 2024. However, the perspective of the police on whether there was any actual or simply a heightened risk of violence is not before me. It suffices for current purposes to note (and it is reasonable to conclude) that the police would not have attended to the respondent's takeover of the UDP headquarters if there was not any reasonable concern about the risk of public disorder and potentially actual violence from the intra-party discord over the control, possession, management and use of the party's headquarters as well as the litigants' competing claims to the party's leadership positions.

[55] In short, I am satisfied that the applicants did not agree or acquiesce to Ms Panton's takeover of the party's headquarters and have challenged Ms Panton's actions in this court. I am also satisfied that although aware that her claim to be the new leader of the UDP was disputed as was her claim to be entitled to take possession and control of the party, Ms Panton used a group of persons to effect a hostile takeover and not through any order issued by this court declaring and affirming her rights over the party's headquarters and her claimed leadership.

[56] I drew on these and other facts in determining whether the applicants were entitled to an order for the restoration of the status quo ante, i.e., the situation that existed prior to Ms Panton's 28 October 2024 takeover of the UDP headquarters.

[57] This court's discretionary power to grant interim relief is set out in section 34(1) and (2) of the Senior Courts Act, 2022, which provide:

> "(1) Subject to the rules of court, the Court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so."

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

[58] In the locus classicus, i.e., ***Belize Telemedia Limited v Speednet Communications***, Civil Appeal No. 27 of 2009, the Court of Appeal affirmed the test for determining whether to issue an injunction. That three-pronged test is drawn from the principles laid down in the well-known case of ***American Cyanamid v Ethicon Limited*** [1975] 1 All ER 504, which requires the court to determine:

(a) whether there is a serious issue to be tried between the parties;

(b) whether damages are an adequate remedy; and

(c) whether the balance of convenience or justice favour the granting of an injunction.

[59] In considering how this three-pronged test is to be applied in practice, I draw on the highly persuasive opinion expressed by Lord Hoffman in ***National Commercial Bank Jamaica,*** which I quote in extenso:

> "It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result. As the House of Lords pointed out in American Cyanamid Co v Ethicon Ltd…that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in try to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basis principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the others."

[60] At para. 18, Lord Hoffman continued (in my view for clarity and succinctness) that:

> "Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer is it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an award; and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strengths of the parties' cases."

i. Are there serious issues to be tried between the parties?

[61] Mr Williams (for the applicants) as did Ms Panton stated that there are serious issues to be tried between the parties. I agree.

[62] There is a real (and very public) dispute between the parties over the ownership, possession, control, management and use of the UDP's headquarters, known as Registration Section, Lake Independence Block 45, Parcel 00969 (the property).

[63] Ms Bailey claims ownership of the UDP's headquarters. In a letter 28 October 2024, Ms Bailey wrote to Ms Medina, the UDP's Secretary General and informed her that she (Ms Bailey) *"held*" the property in dispute "*as Trustee, for the United Democratic party*." She also purported to authorise Ms Panton to access and control the party's headquarters and to undertake the business of the opposition from the same. This included "*replacing locks, installing security systems*" and to take any action *"necessary to secure the property and to preserve the assets of the Party*." While not discounting the possibility that Ms Bailey may indeed possess such authority to act as she purported to do, I was not presented with any trusteeship document evincing her authority, including over the business of the opposition and the issue of preservation of assets (in addition to the real estate) belonging and used by the UDP.

[64] Mr Williams asserts that Ms Bailey does not own the UDP's headquarters and is not a trustee of the same. He asserts that Ms Bailey signed the land transfer documents in her capacity as the then Secretary General.

[65] I have also considered that Article 17 of the UDP's constitution provides for three trustees and according to Mr Barrow, Ms Bailey is not one of those trustees. In her 28 October 2024 letter, Ms Bailey did not state or allege that she was one of the trustees envisaged under the party's constitution. I have also considered that Ms Bailey is said to have ceased being the party's secretary general in 2013 and that Article 11(h)(viii) provides that:

> "Any member or group of members expelled, suspended or resigning from the Party shall immediately surrender to the Secretary General all items in…their possession, of whatever description, belonging to, or acquired in the name of the United Democratic Party."

[66] None of the parties addressed the question how Ms Bailey ceased to hold the role of secretary general or whether she remained a member of the UDP.

[67] In the main matter, this court will be called upon to resolve the question of the person(s) that possess ownership, occupation, management and/or use rights over the disputed property. At this stage of the proceedings, I do not preclude the possibility of Ms Bailey being an owner of the headquarters (as she claimed in her 28 October 2024 letter) or that she holds the party's property as a trustee. That said, her claim of ownership as a trustee, which it appears is based on a Land Transfer document dated 16 June 2010, which reflects that the property in dispute was transferred to Philipa Griffith Bailey for the United Democratic Party will require oral and other evidence to be substantiated and the issue of ownership resolved considering the applicable law and the party's constitution in the overall context where Ms Bailey is said to have ceased to hold office in the UDP since 2013.

[68] A curious feature of the dispute between the parties is that the applicants did not cite the UDP as the first claimant/applicant in these interlocutory proceedings or in the main matter filed under the fixed date claim form. If the property is owned by the UDP, then decisions as to its occupation, management, possession and use will likely be determined for and on behalf of the UDP by those occupying relevant decision-making positions in the party's executive as determined by its constitution. On the other hand, if the property is owned by some other person, such as Ms Bailey and in her personal right but as a trustee for the UDP, the question of who has authority to determine the occupation, management, possession and use of the property will fall to be determined by the terms of the trusteeship agreement, if any, and/or as read with the party's constitution.

[69] In addition, if Ms Bailey owns the property in her own name but as trustee for the UDP or if the UDP owns the property in its own right, this raises the question whether possession, control, management, possession and use of the UDP headquarters is at law to be determined by:

(a) Ms Bailey solely or acting on the instructions or in consultation with other non-disclosed persons and if so, whether Ms Bailey is enjoined to respect and uphold a trustee's fiduciary duties and whether she properly discharged those duties when she authorised and permitted Ms Panton to take over the party's headquarters via her 28 October 2024 letter; and/or

(b) the UDP's executive organs and if so, whether as of 28 October 2024 (or any other material date) those executive organs were or are comprised of the applicants and/or the respondents – with the answer to that question dependant on the legality of the 20 October 2024 convention/meeting that is said to have endorsed/appointed Ms Panton as the new UDP leader.

[70] Relatedly, the parties are in dispute over the control of the UDP's communications organs, i.e., the Guardian newspaper and the Wave radio station – both of which use the UDP's headquarters for their respective operations. The hostile takeover (a phrase I use in the corporate sense) of the UDP's headquarters also resulted in the effective takeover of those communications operations/organs by Ms Panton acting it appears pursuant to Ms Bailey's 28 October 2024 letter and/or potentially the 20 October 2024 convention/meeting. As above, whether either or both the 28 October 2024 letter and the 20 October convention/meeting permitted Ms Panton to act as she did will depend on the interpretation to be given to the UDP's constitution and/or the powers that Ms Bailey claims as trustee. The answers will also determine who between the applicants and the respondents is the legitimate authority possessing the power to determine the possession, control, management and use of the UDP's headquarters, including the newspaper and radio station. Relatedly, those answers will determine whether the applicants should be granted a permanent injunction against the respondents, subject of course to any changes (should those occur) effected by the UDP pursuant to its constitution regarding its headquarters and/or leadership.

[71] In my view, as agreed by the parties, there are real and substantial (i.e., serious) issues to be resolved between the parties and that fall to be determined in the main proceedings. Those issues will crystallise following the respondents' filing of their defence, which will either narrow or widen the issues to be determined in the main proceedings.

ii. Whether damages would be an adequate remedy?

[72] The applicants contend that damages would not be an adequate remedy. Ms Panton did not expressly contest the applicants' averment and neither did she make a cross-undertaking for damages. I note, however, that as a litigant in person, Ms Panton is unlikely to have been aware of the need to consider whether she needed to make a cross-undertaking for damages if this court were inclined to not grant the interim remedy sought by the applicants. Given the technical nature of this issue, I will not use this fact against Ms Panton. This is not to dismiss Mr Williams' well-made submission but to affirm that I am placing little weight on the fact of Ms Panton's failure to make a cross-undertaking of damages.

[73] In my view, damages would not be an adequate remedy for the applicants. The applicants have approached this court to reassert and affirm, pending the resolution of the dispute, their claim to the UDP headquarters on the basis, as they claim it, that they were duly appointed to the Central Executive

Committee and continue to hold those positions. The constitutionality of the convention that resulted in the appointment of the applicants as office holders to the Central Executive Committee does not appear to have been challenged. That convention resulted in the appointment of Mr Barrow as party leader. The 20 October 2024 convention appears (although I make no definitive pronouncement) to have breached the UDP's constitution, including with respect to the participation of the Secretary General in its convening. Ms Panton's reliance on Ms Bailey's claimed role as trustee to effect a hostile takeover of the headquarters as opposed to the 20 October 2024 convention suggests the existence of irregularities in her claims over the party headquarters. Evidence will need to be provided in the main hearing to explain Ms Bailey's claimed trusteeship role after she ceased to be an office bearer in 2013 and how a pro-forma land transfer form signed by her as the then Secretary General gave her personal title to the party's headquarters as a trustee and per her apparent claim in perpetuity.

[74] The loss caused by Ms Panton to those elected to the Central Executive Committee in 2022 of the party's headquarters, the Guardian newspaper and Wave Radio will irremediably damage their and their authority as party leaders and cannot be compensated by an award of damages. On-going occupation, control, management and use by Ms Panton of the UDP's headquarters until resolution of the main matter will effectively destroy the authority that Mr Barrow and his executive have over the UDP. That prejudice cannot be remedied by an order for damages.

[75] On the other hand, any delayed pronouncement on Ms Panton's claim – assuming that Ms Panton was lawfully elected party leader on 20 October 2024 and has a lawful claim to the party's headquarters and the Guardian newspaper and Wave Radio - will occasion her less prejudice than it would Mr Barrow. Any prejudice suffered by Ms Panton will not be remedied by an order for damages. However, any prejudice can be remedied by Ms Panton applying for the main proceedings to be heard and determined on an expedited basis. This reality also affirms why Ms Panton's application for an adjournment of the interim relief application did not advance the interests of justice.

[76] In my view, the greater harm and prejudice resulting from loss of trust and confidence caused by the loss of control, possession and management of the UDP's headquarters falls on Mr Barrow and not Ms Bailey. If Ms Bailey is successful in the main matter, including through any counterclaims she may be inclined to initiate will affirm her position as the new party leader. On balance, I hold that damages will not provide an adequate remedy either for Mr Barrow or for that matter Ms Bailey and the matter

ultimately turns on whether the injunction sought by the applicants will improve the chances of the court being able to do justice after a determination of the merits at the trial. In my view, it does. An injunction will allow the court to determine one way or the other, the parties' rights and interests in the party's headquarters. While a denial of an injunction will result in Ms Panton gaining control of the party's headquarters by dint of the contested 20 October 2024 meeting/convention and her decision to force out the applicants from the party's headquarters without seeking an order from this court declaring her rights.

[77] In my view, an injunction is the course most likely to cause the least irremediable prejudice to the applicants and the respondents (see ***Belize Telemedia Limited v Speednet Communications Limited***, Civil Appeal No. 27 of 2009, at para. 53).

iii. Balance of convenience and justice

[78] On balance, I have leaned towards granting the mandatory relief sought by the applicants. I do so drawing on the above analysis and for the following reasons.

[79] In my view, the dispute over the leadership of the UDP and control, possession, management and use of its headquarters and other assets should be resolved by the courts and if the parties choose, this can be done on an expedited basis.

[80] Restoring the status quo ante pending the resolution of the parties' dispute will also serve to advance the rule of law and to dissuade parties from resorting to self-help to actualise their claimed rights. This is all the more important for those seeking high political office on whom more and greater responsibility is expected in how they approach and resolve disputes. From a public policy perspective, there is much to be said about and gained from the observance of intra-party constitutionalism, the rule of law and democracy and the use of lawful means and the courts in the resolution of disputes.

[81] Restoring the status quo at least until the resolution by this court of the intra-party dispute relating to the control, possession, management and use of the UDP's headquarters serves the interests of justice and affirms that the use of extrajudicial means, which in many countries round the world have undermined the rule of law plays no part in Belize.

III. Costs

[82] The applicants requested that costs be costs in the cause. I see no reason for hold otherwise and I rule accordingly.

IV. Order

[83] After hearing the parties, I ordered that:

[1] The matter is to be heard on an urgent basis.

[2] The 1st Respondent, whether by herself, assigns, servants and/or agents or otherwise however, are to immediately vacate, surrender, and give up possession of Registration Section, Lake Independence, Block 45, Parcel 00969 (the UDP Headquarters) until the determination of the proceedings in this matter or further order of the Court.

[3] The Applicants, whether by themselves, their assigns, servants and/or agents or otherwise howsoever, shall immediately re-enter and take possession, control, and occupation, management and operation of any and all assets and business thereon.

[4] The status quo ante is restored by granting immediate custody and possession of the property located at Registration Section, Lake Independence, Block 45, Parcel 00969 (the UDP Headquarters) and chattels belonging thereto or located thereon to the Central Executive Committee of the UDP until the determination of the proceedings herein or further Order of this Court.

[5] The 2nd Respondent, whether by herself, her assigns, servants and/or agents or otherwise, is restrained from interfering in anyway with the property located at Registration Section, Lake Independence, Block 45, Parcel 00969 (the UDP Headquarters) until the determination of the proceedings herein or further order of the Court.

[6] Costs be costs in the main claim.

Dr Tawanda Hondora
Judge
High Court Judge