

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM NO. 756 OF 2023

IN THE MATTER OF Sections 3(d), 17(1) and 20(1) of the Belize Constitution

AND

IN THE MATTER of the National Lands Act, Chapter 191

And the Law of Property Act, Chapter 194

AND

IN THE MATTER of Fiat Grants Nos 135, 137, 94 and 99

San Pedro Town, Ambergris Caye

BETWEEN:

ANA HANNA

Claimant

And

ATTORNEY GENERAL OF BELIZE

Defendant

Appearances:

Mr. Richard Bradley for the Claimant

Ms. Samantha Matute and Mr. Sheldon March for the Defendant

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2024 October 10;  
December 18.  
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**JUDGMENT**

[1] **NABIE J.:** This is a constitutional claim brought by the claimant, Ms. Ana Hanna, alleging breaches of her fundamental rights under Sections 3(d) and 17(1) of the Belize Constitution.

The claim arises out of the cancellation of Minister's Fiat Grants and refusal by the defendant to issue titles to certain parcels of land for which the claimant had made payments. The claimant has partially succeeded in this claim for the reasons given below. Additionally, I find that the Attorney General is the proper and sole defendant.

## **Background**

### Documentary evidence

- [2] The claimant applied to purchase 8 parcels of land from Government of Belize (GOB). These parcels of land are identified as parcels 61, 107, 62, 105, 63, 103, 110 and 60 which are located in the Colonia San Diego Phase II Area, San Pedro Town, Belize District.

### Lots 61 and 107

- [3] The claimant applied for a grant of national lands for lots 61 and 107 by application dated 14<sup>th</sup> September 2007. The application was signed as received by the Commissioner of Lands and Surveys (CLS) on 15<sup>th</sup> January 2008. Land purchase approval forms dated 18<sup>th</sup> January 2008 were issued to the claimant for lots 61 and 107 respectively upon approval by the Minister of Natural Resources on 15<sup>th</sup> January 2008 to be sold subject to Lease no. 9/2008 (which was still in effect) and for the purchase price of \$3,000.00 each to be paid immediately or within three years. The claimant was issued land titles for lots 61 and 107 by Minister Fiat Grants dated 6<sup>th</sup> February 2008 for the sum of three thousand dollars each. On 2<sup>nd</sup> February 2012, the purchase approval letters were revoked by Revocation of Purchase Approval Minute under the hand of the Minister because the land was not available. Thereafter the Minister's Fiat Grant No. 99 of 2008 for lot 61 and Minister's Fiat Grant No. 135 of 2008 for lot 107 were crossed out in the records of the Ministry.

### Lots 62 and 105

- [4] The claimant applied for a grant of national lands for lots 62 and 105 by application dated 18<sup>th</sup> October 2007. The application was signed as received by the CLS on 15<sup>th</sup> January 2008. Land purchase approval forms dated 18<sup>th</sup> January 2008 were issued to the claimant for lots 62 and 105 respectively upon approval from the Minister on the 15<sup>th</sup> January 2008 subject to lease no. 9/2008 ( still in effect) and for the sum of \$3,000.00 to paid immediately or within

three years for title to be issued. The claimant was issued land titles for lots 62 and 105 by Minister's Fiat Grants dated 6<sup>th</sup> February 2008 in the sum of three thousand dollars each. On 2<sup>nd</sup> February 2012, the purchase approval letters (BZ-R 18/2008) were revoked by Revocation of Purchase Approval Minute under the hand of the Minister because the land was not available. Thereafter the Minister's Fiat Grant No. 137 of 2008 for lot 105 and Minister's Fiat Grant No. 94 of 2008 for lot 62 were crossed out in the records of the Ministry.

Lots 63 and 103

- [5] The claimant applied for a grant of national lands for lots 63 and 103 by application dated 18<sup>th</sup> October 2007. The application was signed as received by the CLS on 15<sup>th</sup> January 2008. A land purchase approval forms (BZ-R 17/2008) dated 18<sup>th</sup> January 2008 was issued to the claimant for lots 63 and 103 which evidenced that the it was approved by the Minister on 15<sup>th</sup> January 2008 and was subject to lease no 17/2008 (still in effect) for the purchase price of six thousand dollars to be paid immediately or within three years. Letter dated 22<sup>nd</sup> March 2012 addressed to the claimant stated that the following:

*"March 22, 2012*

*Ana Luisa Hanna  
San Pedro Town  
Ambergris Caye  
Belize District*

*Dear Sir/ Madam,*

*I have to inform you that Purchase Approval Letter BZ-R 73/2008 dated January 18, 2008 in respect of Lots Nos. 63 and 103 situate in the Colonia San Diego Phase II Area, San Pedro Town, Belize District has been revoked as the land is not available.*

*Upon submission of original receipts, you will be reimbursed for any payment made towards purchase price for the above-mentioned parcel of land.*

*You no longer hold any legal right or interest on the land.*

*Signed*

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*(For Commissioner of Lands and Surveys)"*

Lots 110 and 60

- [6] The claimant applied for a grant of national lands for lots 60 and 110 by application dated 14<sup>th</sup> September 2007. The application was signed as received by the CLS on 15<sup>th</sup> January 2008. Land purchase approval forms (BZ-R 30/2008) dated 25<sup>th</sup> January 2008 were issued to the claimant for lots 60 and 110 respectively which were approved by the Minister of Natural Resources on 14<sup>th</sup> January 2008 to be sold to the claimant subject to Lease no. 30 of 2008 (still in effect) for the payment of three thousand dollars each to be paid immediately or within three year to be issued title. The purchase approvals for lots 60 and 110 were revoked as they were unavailable to be sold. This revocation was done by Minute dated 2<sup>nd</sup> February 2012 under the hand of the Minister.

#### **Claimant's evidence**

- [7] The claimant deposed she has been granted titles to lots 107, 105, 62 and 61 by virtue of the Minister's Fiat Grants as aforementioned.
- [8] The claimant further deposed that with respect to the lots 60, 63, 103 and 110 that she paid for these titles using her Atlantic Bank Checking account on 24<sup>th</sup> January 2008. The claimant listed the cheque numbers and was able to produce three of the four cheques in the amounts of \$12,000.00, \$12,000.00 and \$10,000.00 made out to GOB. She does not state the amount of the fourth cheque not produced. The cheque numbers were No. 2574113, No. 2574115, No. 2574116 and No. 2574117. Cheque no. 2574117 was not produced. I have observed the cheques have handwritten notations namely, that Cheque no. 2574113 in the amount of \$10,000.00 has a note Lots # 60,61 and 110; Cheque no. 2574115 in the sum of \$12,000.00 has noted lots #62, 61, 105 and 107 and Cheque no. 2574116 in the sum of \$12,000.00 has noted lots #63 and #103.

- [9] The claimant further deposed with respect to lots 60, 63, 103 and 110, she paid a surveyor Roque Marin a sum of \$46,000.00 to survey those properties from her Atlantic Bank Checking account. Four cheques made out to Roque Marin were produced to support this contention. I have observed that these cheques have handwritten notations, cheque no. 2551003 in the sum of ten thousand dollars has noted lots no. 60 and 110; cheque no. 2551004 in the sum of twelve thousand dollars has noted lots no 61 and 107; cheque no. 2550839 in the sum of twelve thousand dollars has noted lots no. 63 and 103 and cheque no. 255840 in the sum of twelve thousand dollars has noted lots no. 62, 61, 105 and 107.
- [10] The claimant deposed that she has paid taxes to San Pedro Town Council for the four titles granted (lots 61, 62, 105 and 107) since 2008 but in 2022 she was informed that they could no longer accept payments from her. The claimant was referred to the Lands Department. She also deposed that the property tax statements for lots 61, 62, 105 and 107 are in the name of the claimant. The claimant has produced the statement of account for fiscal year 2017 to 2018 for each of the properties, and cheques evidencing payments. The claimant has also produced statements showing that the records of the San Pedro Town Council as at June 2023 which still showed the accounts in the name of the claimant and the property taxed owed in the sum of \$900.00 each and which was not paid since 2017.
- [11] The claimant had an appraisal of the 8 lots of land done by one Claudio Azueta. The appraisal was exhibited by the claimant, wherein the properties were valued at \$433,831.00 each. The total for the 8 parcels being \$3,470,648.00.
- [12] The claimant states that in 2020, Minister Perez assured her that those properties belonged to her. In furtherance of his statement Minister Perez promised to send the Lands Department officials to San Pedro Town. The claimant visited the Lands Department on 6<sup>th</sup> August 2021 but received no attention. Thereafter, she attended a Lands Department clinic in San Pedro where she spoke to one Sandra Carranza who informed the claimant that she had no land and that no land existed under her name.

- [13] The claimant deposed in response that it was upon reading the affidavit of the CSL that she was aware for the first time that the four Minister's Fiat Grants and the purchase approvals were revoked. She deposed that she was never in receipt of the March 22<sup>nd</sup> 2012 letter regarding lots 63 and 103. She denied that she was not required to survey the properties, but that in fact she did do the survey of the 8 properties and supports this by reference to her evidence of payment to the surveyor.
- [14] Anna Patricia Arceo aka Patty Arceo swore an affidavit on behalf of the claimant. She is a former Minister of Government. Her evidence is that in May 2006 she was given permission to survey a 400 acre tract of national lands in San Pedro. She retained Mr. A. Roque Marin in this regard. She states that on 24<sup>th</sup> September 2007, permission to survey was given to Grand Belizean Island Company Ltd. to survey approximately 300 acres of national lands in San Pedro, Ambergris Caye. She indicated that there was no overlap of these 2 tracts of land. According to Ms. Arceo the surveyor John Hertula for Grand Belize Island Company Ltd submitted survey plans for a 300 acre tract of land on top of the 400 acre plan already submitted by Mr. Marin.
- [15] Ms. Arceo further deposed that Mr. Marin informed her that no survey was carried out by the Grand Belize Island Company.

#### **Defendant's evidence**

- [16] The CSL's evidence is that the claimant was not required to conduct any survey. He deposed that Survey Plan entry no 11157 registration number 3 was done by the Government of Belize (GOB), however, this was superseded and/or cancelled as it overlapped with survey plan entry no 11104 registration no. 18 done by Grand Belize Island Co. Ltd. (Grand Belize). This 192.81 acres included the parcels of land applied for by the claimant and the GOB therefore could not give titles to lots 61, 62, 105 and 107 nor issue purchase approvals for lots 60, 63, 103 and 110. On 11th January 2008, Minister Fiat Grant no. 1322 of 2007 was granted to Grand Belize for 192.81 acres of land situate in Ambergris Bay area, on the west coast of Ambergris Caye.

[17] The CSL asserted that the claimant would have known since 2012 (as a result of the aforesaid letter) that parcels 63 and 103 could not be granted to her. The accounts for lots 63 and 103 were locked since 1<sup>st</sup> April 2012 and no payments could be made to the accounts. The CSL stated that the accounts for lots 60 and 110 were locked since 11<sup>th</sup> April 2012 and no payments could be made to the accounts.

[18] The CSL in response to Ms. Arceo deposed that in his office is the only office which can determine whether a survey properly exists. He clarified that Mr. Marin's survey on behalf of the GOB was done on 5<sup>th</sup> January 2008 and authenticated on 25<sup>th</sup> January 2008 according to survey plan entry number 11157 registration no. 3 while the Grand Belize survey was done 28<sup>th</sup> December 2007 and thereafter authenticated on 8<sup>th</sup> January 2008 according to survey plan entry no. 11104 registration no. 18. The Grand Belize survey plan was registered before the GOB plan and therefore survey plan entry number 11157 registration no. 3 was cancelled or superseded.

[19] The claimant filed a fixed date claim for the following reliefs:

- (1) A declaration that the Government Defendants contravened the rights of the Claimant guaranteed in section 3(d) and 17(1) of the Belize Constitution when they abused their powers in refusing to accept the validity of four Minister's Fiat Grant title thereby depriving the Claimant of properties.
- (2) A declaration that the Government Defendants contravened the rights of the Claimant guaranteed in section 3(d) and 17(1) of the Belize Constitution when they abused their powers in refusing to grant the Claimant four titles to four separate parcels of land she paid the Government of Belize for.
- (3) A declaration that the Government's refusal to accept the validity of the Claimant's four Minister's Fiat Grant titles breached Sections 3(d) and 17(1) of the Belize Constitution and contravened the rights of the Claimants guaranteed in the said provisions of the Constitution.
- (4) A declaration that the Government's refusal to grant the Claimant four titles to separate parcels of land breached Sections 3(d) and 17(1) of the Belize

Constitution and contravened the rights of the Claimants guaranteed in the said provisions of the Constitution.

- (5) A declaration that the Government's refusal to accept the validity of the Claimant's four Minister's Fiat Grant titles is ultra vires the National Lands Act, Cap. 191, specifically Section 2 of the Act and unconstitutional and in breach of sections 3(d) and 17(1) of the Belize Constitution.
- (6) A declaration that the Government's refusal to grant the Claimant four titles to separate parcels of land is ultra vires the National Lands Act, Cap 191, specifically Section 2 of the Act, and unconstitutional and in breach of sections 3(d) and 17(1) of the Belize Constitution.
- (7) A declaration that the Claimant has a legitimate expectation that the Ministry of Natural Resources, Lands Department would have granted and issued titles to the Claimant in respect to the other four parcels of land she paid the Government of Belize for.
- (8) Damages and/or compensation.
- (9) Interest
- (10) Costs.
- (11) Such further or other relief or order as to the Court seems just.

[20] The key issues to be determined by this Court are:

- (a) Whether the claimant had an alternative remedy in contract, precluding the filing of a constitutional motion.
- (b) Whether the claimant delayed unreasonably in bringing the constitutional claim.
- (c) Whether the defendants breached the claimant's constitutional rights under Sections 3(d) and 17(1).



(d) Whether the claimant is entitled to damages, including compensatory and vindictory damages.

(e) Whether the Attorney General's Ministry and the Minister of Natural Resources are proper defendants to this claim.

Whether the Claimant had an alternative remedy in contract/ Abuse of Process

[21] The defendant argued that the claimant's claim is improperly brought as a constitutional motion because the alleged breaches could be remedied through an action for breach of contract. The defendant contends that the dispute is one of contractual obligations and not constitutional rights.

[22] However, this Court recognizes that an alternative remedy, while a relevant factor, is not an automatic bar to constitutional relief. The Privy Council in **Harrikissoon v Attorney General of Trinidad and Tobago** (1980) 31 WIR 348 emphasized that a constitutional motion should not be used as a substitute for ordinary remedies, except where the actions complained of strike at the heart of constitutional safeguards.

[23] This Court is required to determine whether the Claimant's use of the constitutional jurisdiction constitutes an abuse of process in light of the availability of an alternative remedy in contract. Based on the facts presented, the Court finds that this claim does not amount to an abuse of process for the reasons outlined below.

[24] The issue of whether a constitutional claim is barred by the availability of an alternative remedy underlines the principle that constitutional motions should not be used to circumvent the ordinary civil proceedings. This is particularly significant in cases where a claimant could have pursued relief under contract law. Courts have reiterated that the constitutional jurisdiction must be invoked only in exceptional circumstances.

[25] The Privy Council decision of **Harrikissoon v Attorney General of Trinidad and Tobago** (supra) established that the invocation of the constitutional jurisdiction is inappropriate where alternative remedies exist and are adequate. Lord Diplock emphasized that constitutional

motions should not serve as substitutes for ordinary legal remedies, as this would diminish the unique role of constitutional safeguards. The Privy Council decision of **Thakur Persad Jaroo v Attorney General of Trinidad and Tobago** [2002] 1 AC 871 confirmed that constitutional relief should be reserved for exceptional cases where ordinary remedies are inadequate. Lord Hope stated at paragraph 39:

".....the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and will be an abuse of process to resort to it. If, as in this case it becomes clear, after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will be an abuse of process."

- [26] In **Attorney General v Siewchand Ramanoop** [2005] UKPC 15, the Board clarified that while constitutional relief can include damages, its invocation requires a special feature that makes it necessary to bypass alternative remedies.
- [27] The availability of a private law remedy often signals that constitutional jurisdiction should not be invoked. In **Durity v Attorney General of Trinidad and Tobago** [2003] 1 AC 405, Lord Nicholls observed that where the impugned action is redressable under private or statutory law, constitutional motions must demonstrate a cogent explanation for bypassing these mechanisms.
- [28] The notion of abuse of process is pivotal in cases involving parallel remedies. Abuse arises when the claimant seeks to invoke the court's constitutional jurisdiction in circumstances where existing remedies are available and adequate. In **Antonio Webster v The Attorney General of Trinidad and Tobago** [2011] UKPC 22, the Privy Council reaffirmed that constitutional motions filed solely to secure procedural advantages such as reduced costs or expedited hearings constitute a misuse of the court's process.
- [29] The essence of the claim revolves around allegations of procedural unfairness, arbitrary conduct, and a breach of fundamental rights, specifically the constitutional right to property under Section 17(1) of the Belize Constitution and the right to protection under the law under Section 3(d).

- [30] The claimant asserts that the defendant unilaterally revoked Minister's Fiat Grants and failed to provide adequate notice or a fair opportunity to challenge the decision, thereby depriving the claimant of her property.
- [31] The cancellation of the Minister's Fiat Grants, which the claimant had paid for and relied upon, was conducted without adherence to procedural safeguards. The claimant was not given sufficient notice or any notice, nor was an opportunity afforded to contest the revocation. The claimant was not informed of the revocation and offered reimbursement. This procedural deficiency elevates the matter beyond a simple contractual dispute, as it implicates the constitutional principle of procedural fairness. These facts present and satisfy the element of a special feature of which the authorities discussed above refer.
- [32] In **Attorney General v Siewchand Ramanoop** (supra), the Privy Council highlighted that procedural unfairness by the state can justify constitutional relief especially where the actions undermine the fundamental rights provisions. Similarly, in **Durity v Attorney General of Trinidad and Tobago** (supra), Lord Nicholls emphasized that constitutional motions are warranted where ordinary remedies cannot adequately address the breach.
- [33] The evidence suggests that the defendant through his agents acted in an arbitrary manner by revoking the grants and the purchase approval as the case may be without notice or an opportunity to be heard and by not providing compensation or re-imbusement of the monies expended. There is no evidence that the claimant was informed save an except the March 22, 2012 letter which was only regarding lots 63 and 103 in any event. Section 17(1) of the Belize Constitution mandates that no property shall be compulsorily taken possession of without the provision of compensation. The failure to comply with this constitutional safeguard underscores the exceptional nature of the breach.
- [34] While the defendant argues that the claimant could pursue a remedy in contract, such remedies would not address the constitutional dimensions of the alleged breaches. In **Jaroo v Attorney General of Trinidad and Tobago** (supra), the Privy Council stated that the presence of a parallel remedy does not preclude constitutional claims where the circumstances include features that make such claims appropriate. The facts herein illustrate

that the conduct of the government agents in revoking the grants and the purchase approvals was high handed due the lack of notification and compensation.

[35] In light of the above, this Court finds that the claim does not constitute an abuse of process. The exceptional features of procedural unfairness, arbitrary conduct, and the inadequacy of contractual remedies justify the invocation of constitutional jurisdiction. The defendant's actions strike at the heart of the claimant's fundamental rights, and ordinary remedies would not sufficiently address the breaches alleged.

[36] The constitutional claim is appropriately before this Court. The actions of the defendant's agents exhibit exceptional conduct that undermines the claimant's fundamental rights, warranting constitutional intervention. In this matter, the cancellation of Minister's Fiat Grants and the refusal to issue land titles touch upon the claimant's rights to property and protection under the law as enshrined in Section 3(d) of the Belize Constitution. The alleged governmental actions exceed the scope of private contractual relations and involve constitutional obligations. This Court finds that the claimant was entitled to bring this motion.

Whether the Claimant delayed in filing the constitutional motion/ Abuse of Process

[37] The defendant asserts that the claimant delayed unreasonably in filing this motion, as the Minister's Fiat Grants and purchase approval were revoked in 2012, and the claim was brought more than a decade later. While delay is a relevant factor, constitutional claims are not defeated solely by the passage of time. **Section 20(1) of the Belize Constitution** provides an avenue for redress "*without prejudice to any other action with respect to the same matter that is lawfully available.*" Courts must balance the timeliness of a claim against the nature and gravity of the alleged breach. The Privy Council in **Jaroo v Attorney General of Trinidad and Tobago** (supra) affirmed that courts should not bar constitutional claims where delay does not prejudice the defendant or undermine judicial fairness.

[38] In this case, although the claimant delayed in bringing the claim, the defendants has not shown any prejudice or detriment arising from the delay. The Court must also weigh the gravity of the alleged constitutional violations. Accordingly, this Court finds that the delay is not fatal to the claim.

[39] The issue of delay in filing constitutional motions is often intertwined with principles of abuse of process, equity, and the need to respect the sanctity of fundamental rights. While there is no statutory limitation period for filing constitutional motions in the Caribbean, courts have consistently emphasized that claimants must act with expedition and provide cogent explanations for any delay.

[40] In **Durity v The Attorney General of Trinidad and Tobago** supra Lord Nicholls clarified the approach to delay in constitutional proceedings. He noted that while no express limitation period exists for constitutional claims, courts should assess whether the impugned decision could have been addressed through ordinary jurisdictional remedies. If such remedies were available but not pursued in a timely manner, courts may consider the constitutional claim an abuse of process.

[41] In a Court of Appeal decision from Trinidad and Tobago **Michael Dindayal v AG of Trinidad and Tobago** C.A. 257 of 2008, the Court had to consider whether a delay of five years, nine years and sixteen years amounted to inordinate delay and constituted an abuse of process. Of relevance, **Bereaux, J.A** noted at paragraphs 44 and 45 that:

*"[44] The appellant has alleged that his right to equality before the law and the protection of the law and his right to equality of treatment were infringed in the years 1987, 1994 and 1998. The period of delay is sixteen years in respect of the 1987 claim and nine years in the case of the 1994 claim. In respect of 1998 the delay is five years. The trial judge held that the claims for 1987, 1994 and 1998 were unduly delayed. He found that no sufficient detail was provided in the appellant's explanation that he could not afford to finance the process. I agree with his reasons. Further, of equal importance was an explanation of how he was now able to finance it. In respect of 1987 and 1994, the periods of delay are sufficient to prejudice the state in the conduct of its defence of the action.*

*[45] Mr. Ramlogan submitted that the judge failed to consider that the appellant had sought to have his complaints amicably resolved out of court by engaging the Commission. This, he said, was consistent with the modern approach taken by the courts and the Civil Proceedings Rules 1998. The appellant only came to the court as a last*

*resort. However commendable that approach may have been, nine and sixteen year efforts to amicably resolve a complaint speak eloquently to the fact that, at some stage, there ought to come a realisation that some other action is required. Moreover it is unreasonable to require the state to prepare a defence in respect of matters so dated, when witnesses may have retired or even died and records may have been destroyed or misplaced. In the case of the 1998 claim however the delay was five years. Even though the explanation was not cogent, the delay was not so inordinate as to render the claim an abuse, given the reluctance of our courts to shut out constitutional claims. I consider that the judge erred in respect of this claim.”*

[42] The Privy Council in **Webster v Attorney General of Trinidad and Tobago** [2015] UKPC 10 reiterated that delay is a discretionary factor in constitutional claims. Courts must weigh the gravity of the alleged breach against the impact of the delay on the administration of justice. At paragraph 46 the Board stated:

*“.....There is no statutory time limit for bringing a constitutional motion. However, constitutional relief is discretionary and the lapse of time since the events in question is a relevant factor in the exercise of that discretion...”*

[43] In **Farouk Warris v Comptroller of Customs and Excise** HCA No. 2354 of 1990 (Trinidad and Tobago), the court emphasized that claimants who "sleep on their rights" may face dismissal of their claims unless they provide a satisfactory explanation for the delay.

[44] In the present matter, the delay between the revocation of the Minister's Fiat Grants in 2012 and the filing of the constitutional claim is significant. While the claimant argues that she was unaware of the revocation until 2024, this assertion must be weighed against the duty of a diligent claimant to actively monitor her legal rights.

[45] The defendants argue that the claimant's delay undermines the integrity of the proceedings and renders the constitutional motion an abuse of process. However, the court must also consider whether the alleged breaches deprivation of property and protection under the law are of such gravity that they merit judicial intervention despite the delay.

[46] The claimant's explanation for the delay, her efforts to resolve the matter administratively, and the severity of the alleged constitutional breaches will be pivotal in determining whether this court should exercise its discretion to grant relief. The claimant's evidence is that she did not receive the letter regarding lots 63 and 103, these were lots for which there were no Minister's Fiat Grants. According to the claimant's evidence, in 2008 she paid for 4 lots – 60, 63, 103 and 110 for which she never received a Minister's Fiat Grant. I find that that the claimant delayed in pursuing a claim for those lots. With respect to lots 61, 62, 105 and 107, I considered that Grants were made in the name of the claimant, payment was made for the lots and the claimant paid the property taxes to the San Pedro Town Council until 2017. There is no evidence that the claimant was ever informed of the revocation of the grants. The claimant became aware of an issue in 2022 when she was not allowed to pay the property taxes for those lots. In that regard there has been no delay.

[47] I find that the claimant's constitutional claim regarding lots 61, 62, 105 and 107 is not defeated by any delay in this matter. Whilst the defendant has argued that the passage of time has undermined the integrity of these proceedings and has rendered this claim an abuse of process. This Court is reminded that there is no statutory limitation for bringing a constitutional claim. Whilst a litigant ought not to sleep on his/her rights, this Court is vested with a discretion to allow claims which raise important issues of constitutional law. As discussed above, this claimant whether at the time of revocation or now did not have available to her any other remedy. The defendant having failed to demonstrate prejudice and given the conduct of the defendant's agents in this claim, I am moved to exercise my discretion to allow this claim even in light of any purported delay.

#### Whether the Defendants breached the Claimant's constitutional rights

[48] The claimant alleges breaches of her rights to property (Section 17(1)) and protection under the law (Section 3(d)) due to the cancellation of her Minister's Fiat Grants and the refusal to recognize her validly paid for land titles. The defendant argues that the lands in question were unavailable and that administrative actions were taken within the scope of the National Lands Act.

- [49] Section 17(1) of the Belize Constitution provides that "*no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except under a law that makes provision for compensation.*" The cancellation of Minister's Fiat Grants, particularly after payment by the claimant, constitutes a deprivation of her property interests without lawful justification or compensation.
- [50] Moreover, Section 3(d) guarantees the right to protection under the law. The unilateral revocation of Minister's Fiat Grants, compounded by the defendant's alleged failure to adequately inform the claimant of the cancellations, undermines procedural fairness and due process, further violating constitutional protections.
- [51] Pleading deprivation of property under the Constitution in cases where the property was initially given by mistake is a nuanced issue. The success of such a claim depends on several factors, including the factual circumstances, the claimant's rights and expectations, and the constitutional and statutory framework of the jurisdiction.
- [52] Constitutions typically protect property rights broadly, encompassing both tangible and intangible assets. Section 17(1) of the Belize Constitution protects individuals from being "compulsorily deprived" of property except under law that provides for compensation. Courts have generally interpreted "property" to include legally recognized ownership or entitlements. If property was granted by mistake, the critical question becomes whether the claimant had a legally recognizable interest or title at the time of the alleged deprivation. Mistaken grants may not confer valid ownership under statutory law, but if the government created a legitimate expectation (e.g., through administrative actions), a constitutional claim may still arise.
- [53] In cases where property was mistakenly granted, the doctrine of legitimate expectation may bolster a constitutional claim. If the government's actions led the claimant to believe the grant was valid (e.g., issuance of official documents, payment for the property), the claimant may argue that the government's subsequent revocation without due process violated her constitutional rights.



- [54] If the claimant acted in good faith, relying on the mistaken grant (e.g., making payments, improving the property, or paying taxes), courts may be inclined to protect their interests. Equity often plays a role in determining whether deprivation of property under such circumstances is justifiable without compensation.
- [55] The nature of the mistake is pivotal. If the mistake was induced by government negligence or administrative error, the claimant might have stronger grounds to argue deprivation. Conversely, if the claimant was complicit in the mistake or knew the grant was invalid, the constitutional claim is likely to fail.
- [56] In the authority of **Andre Vega v. The Attorney General of Belize** Civil Appeal No. 17 of 2019, the Court of Appeal, aptly lays out the legal effect of the Minister's Fiat and the resulting consequences where there is a duplication of title. Briefly, the facts of this case are the Government of Belize by Minister's Fiat Grant No 76 of 1988 issued on 2 June 1988, sold 2.28 acres of land near the mouth of the Belize River to Carlton Russell who, in turn, sold that land to Miguel Valencia for \$50,000. The Government of Belize subsequently discovered the acre of land comprised in Minister's Fiat Grant 182 of 2013 dated 7 May 2013 that it sold to another person Hillimar Alamilla was, in fact, part of that 2.28 acres it sold to Carlton Russell pursuant to Minister's Fiat Grant No 76 of 1988 25 years previously. However, before that discovery was made, Alamilla, on 30 December 2013, sold the land subject of Minister's Fiat Grant 182 of 2013 to the Appellant Andre Vega for \$15,000. Upon this discovery the Government of Belize entered into discussions with Mr. Vega and agreed to compensate him in exchange for the return of the Minister's Fiat Grant 182 of 2013. Thus, The settlement agreement granted the parties mutual releases from liability and extinguished any claim each may have against the other and provided for Mr. Vega to surrender or convey to the Government of Belize his claim to ownership of an acre of land subject of Minister's Fiat Grant 182 of 2013 in exchange for \$400,000. After payment was made to Mr. Vega, the Government of Belize instituted proceedings challenging the settlement agreement on the ground that it was contrary to public policy, void and illegal. The Government of Belize was successful at first instance but this decision was overturned on appeal.

[57] The following excerpts of Minnot-Phillips JA's decision are noteworthy:

“ ....

**[6]** *It is accepted by the parties that the GOB issued Minister's Fiat Grant 182 of 2013 on 7 May 2013. The legal effect of a Minister's Fiat Grant is set out in the National Lands Act of Belize.*

**[7]** *Section 17 of the National Lands Act of Belize provides that “all grants ... of national lands ... shall be effected by the issue of a fiat by the Minister to the Registrar in one of the forms of the Fourth Schedule, and the Registrar shall thereupon enter such grant ... in the book named in such fiat, and every grant ... shall be deemed to be dated on the day on which the Minister's fiat is dated”.*

**[8]** *In the definition section, a “grant” is defined as meaning “a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee, subject to the terms and provisions of this Act.” “Registrar” is defined as meaning “the Registrar General or the Registrar of Lands, as the case may be”.*

**[9]** *The Fourth Schedule of the National Lands Act has only two forms, the first one relates to grants and the second to leases. The wording of the form relating to grants is as follows:*

**Minister's Fiat**

**No. Grant**

**Enter in the National Lands Book (grants) A.B. of as the grantee of , acres of land situate at bounded and described as shown by plan No of 20 , herewith for the sum of , dollars, and this shall be your sufficient authority for so doing.**

**Date, Minister**

**To L.M., Registrar 4**

**[10]** *Section 19 of the National Lands Act makes it clear that a Minister's fiat may or may not be accompanied by a plan. The absence of a plan could not, therefore, negate a fiat or its entry by the relevant Registrar and subsequent filing in the fiat book.*

**[11]** *Section 6 of the National Lands Rules of Belize stipulates that “In the Minister's fiat set out in the fourth Schedule to the National Lands Act the word grantee shall be deemed to include and be applicable to the grantee as well as...the allowed assigns of such grantee as fully to all intents and purposes as if they had...been specially mentioned.”*

.....

**[23]** *That grant by the GOB of the later Fiat not being in issue, it is to the law that one looks to determine the legal effect of that fiat. According to the law of Belize, that Minister's Fiat operated as a land certificate or conveyance effectual to pass an*

estate in fee simple to the grantee, ALAMILLA, which was capable of devolving (and in this case did devolve) to his allowable assign, VEGA. That legal state of affairs represented by the Fiat, in all likelihood, is what informed the description by the GOB of the interest held by VEGA in the land subject of Fiat Grant 182 of 2013 as “the freehold interest/land held by him.” It may even have informed the settlement agreement with VEGA that was prepared by the GOB taking the form of a conveyance of the land subject of Minister’s Fiat 182 of 2013 for the consideration of \$400,000

**[24]** *The effect of the Minister’s Fiat being a matter of statute law set out in the National Lands Act, even if the learned trial Judge’s determination (in numbered paragraph 56 of his written reasons) that, as a matter of law, the Minister’s Fiat Grant No 182 “could not create or pass a valid title...” is correct, that is exactly what it purported to do. In fact it was precisely because the GOB realized that its Minister’s Fiat No 182 of 2013, under statute law, operated to pass an estate in fee simple over the land to the grantee and his allowed assign, VEGA that it sought to rectify its mistake in issuing it. The learned trial Judge sought to draw what, in my view, is a somewhat strained distinction between a duplicate grant (which he was prepared to say was possible) and a duplicate title (which he found was not possible).*

**[25]** *Given the provisions of the National Lands Act and Rules, there appears to be no distinction in law between a duplication (or overlap) of grant and a duplication (or overlap) of title.*

.....

**[28]** *... Ministers’ Fiat Grants constitute notice to the world (including VEGA) that the holder owns the estate in fee simple covered by the grant. The public is entitled to rely (and in this case VEGA did rely) on the representation of the GOB set out in Minister’s Fiat Grant 182 of 2013.*

**[29]** *Even if (as obtained here) it subsequently transpired that the GOB ought not to have issued Minister’s Fiat 182 of 2013, it nevertheless did issue it and ALAMILLA and VEGA were entitled to, and did, rely on the representations made by the GOB in that fiat and their legal effect. As it turns out ALAMILLA suffered no loss because he sold the land subject of Fiat 182 of 2013 to VEGA for value received.*

**[30]** *VEGA only did what the law of the land entitled him to do, namely, rely on the representation to the world contained in the Minister’s Fiat Grant 182 of 2013. This, no doubt, informed his counterclaim for damages in the sum of \$400,000 suffered by him arising from Ministry of Natural Resources and Agriculture’s duplication of title in the event the court found the settlement agreement to be of no effect<sup>9</sup>. One of the many odd features of this case, noted at this point, is that the GOB did not file a defence to the Counterclaim.*

*[31] The evidence adduced in this case establishes that the relationship between the parties to the settlement agreement was, on these facts, one of sufficient proximity to give rise to a duty of care owed by the GOB to VEGA which the GOB would have breached if it turned out that it negligently misstated to the public (including VEGA) the facts set out in its Minister's Fiat 182 of 2013. Therefore even if there was no privity of estate VEGA would still have an actionable cause against the GOB for damage sustained from the latter's negligent misrepresentation of the state of affairs set out in Minister's Fiat 182 of 2013."*

- [58] The decision in **Andre Vega** is instructive. Ministers' Fiat Grants constitute notice to the world that the holder owns the estate in fee simple covered by the grant. It is also proof of the holder's ownership of the said property. Therefore, based on the legislative landscape it cannot be disputed by the defendants that upon the issuing of the Minister's Fiat, a fee simple estate passed to the claimant and their revocation of same was the reversal of her purported right to ownership of the said parcels.
- [59] Based on the facts before me, the issuance of the Ministers Fiat Grants for lots 61, 62, 105 and 107 in these circumstances could have only been the fault of the defendant. The claimant, having been granted same was entitled to rely on same to invoke her right to ownership of the said parcels of land. The fact that the Ministers' Fiat Grant may have been issued by mistake does not absolve the defendant from fault and also does not prevent this Court from finding that the Claimant was deprived of her right to ownership of the said property. This Court is of the view that the claimant in ordinary circumstances had a legitimate expectation upon the issuing of the Ministers' Fiat Grants for lots 61, 62, 105 and 107 in her name to presume these grants as valid. Thus, I therefore find that the government's subsequent revocation without due process violated her constitutional rights.
- [60] It has not been disputed by the defendant that there was no notice given to the claimant upon the revocation of the Ministers' Fiat Grants for the four lots. Neither was the claimant given an opportunity to be heard before such action was taken to deprive her of her right to ownership. There was neither any attempt by the defendant to compensate the claimant for her loss. This, in this Court's mind are actions which are arbitrary and high handed, in the least. The defendant argues that the Minister could not give title that he did not have in accordance with the maxim '*nemo dat quod non habet*'. This line of argument proffered by

the defendant is however contrary to the reasoning of the Court of Appeal in **Andre Vega** (supra).

[61] Section 3(d) of the Constitution of Belize guarantees the right to protection from arbitrary deprivation of property. More particularly, section 17 of the Constitution states:

*“No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that-*

- 1. prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and*
- 2. secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of-*
  - 1. establishing his interest or right (if any);*
  - 2. determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;*
  - 3. determining the amount of the compensation to which he may be entitled;*  
*and*
  - 4. enforcing his right to any such compensation.”*

I find that the actions of the defendant in this case has violated the claimant’s rights under section 3(d) and 17(1) of the Constitution of Belize.

[62] In addition to the issue of delay, I also find that the Government’s failure to grant the claimant four titles to lots 60, 63, 103 and 105 has not breached the claimant’s right under sections 3(d) and 17(1) of the Constitution of Belize as no title had passed to the claimant. The issuing of a purchase approval form does not give an applicant any interest in land and therefore any claim to deprivation of the property applied for is not sustainable in law. Further, though the issuing and later revocation of the said purchase approval forms may have placed the claimant in a disadvantageous position, this Court is of the view that these facts do not lend to a special feature which can invoke the constitutional jurisdiction of this Court. Any relief sought for the actions of the State in that instance ought to have been in sought in another manner. The fact that no title has been issued to the claimant since 2008, surely would have signaled that there were issues or complication. In that regard the claimant delayed in seeking redress, such delay being unreasonable.

### Whether the Claimant is entitled to damages

- [63] In this matter, the claimant seeks both compensatory and vindicatory damages. The claimant has demonstrated financial loss arising from payments made for the parcels of land, as well as loss of use and enjoyment of the property. Further, vindicatory damages are granted to reflect the gravity of the constitutional breaches and to deter similar conduct by public authorities.

### **Compensatory Damages**

- [64] Constitutional breaches attract remedies that vindicate both the individual's rights and the constitutional framework. The Privy Council in **Attorney General of Trinidad and Tobago v Ramanoop** supra clarified that damages in constitutional cases may include compensatory and vindicatory awards. The JCPC opined:

*"18... If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of his compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.*

*19. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much of the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.* [Emphasis Added]

- [65] The claimant's evidence is that with respect to the lots 60, 63, 103 and 110, she paid for these titles using her Atlantic Bank Checking account on 24<sup>th</sup> January 2008. The claimant has evidenced a payment of \$34,000.00 for the said parcels. However, the documentary evidence is that the lots were at a cost of \$3,000.00 each. This is clearly stated on the purchase approval forms and the Minister's Fiat Grants.
- [66] The claimant's undisputed evidence also is that with respect to lots 60, 63, 103 and 110, she paid a surveyor Roque Marin a sum of \$46,000.00 to survey those properties from her Atlantic Bank Checking account. The claimant has proven this payment by producing four cheques into evidence. I am of the view that the grants could only have been issued if there were surveys conducted and therefore the claimant should be compensated for carrying out the survey.
- [67] The claimant also states that she has paid San Pedro Town Council taxes on the four titles granted (lots 61, 62, 105 and 107) since 2008 until 2022 when she was informed that they could no longer accept payments from her. The claimant was referred to the Land Department. However, the accounts provided show that the claimant paid taxes from 2008 to 2017 at a rate of \$150.00 per year.
- [68] The claimant has put into evidence a report allegedly from a valuator, this evidence I wholly reject. There was never any application for expert evidence and therefore I decline to take it into consideration.

### **Vindictory Damages**

- [69] The learning expounded above explains that vindictory damages are not awarded in every case where there is a breach of a constitutional right. They are awarded in cases where the Court finds that the actions of the State's agents and/or servants were egregious and there is a need to vindicate the aggrieved person's right, to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.

[70] I have already found that the action of the defendant in these proceedings was arbitrary and high-handed. The defendant took no steps to ensure that the claimant was notified of the revocation of her title to the said lots and made no effort to compensate her for her loss. The defendant's response to the allegations of the claimant were that the accounts were locked off and that she ought to have known that these lots were no longer available. This, in this Court's view is a blatant disregard for the rights of the claimant guaranteed under the Constitution. Therefore, this Court is so minded to grant an additional award, to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches

[71] I have considered the trend of awards as laid out in the submissions of the claimant and find that the sum of BZD \$20,000 in vindictory damages as an appropriate award.

#### Proper parties to the constitutional claim

[72] In **Stefan Mungalsingh v Attorney General of Trinidad and Tobago** CV 2022- 00127 Seepersad J. stated in paragraphs 16 to 18:

*"16. Section 2 of the State Liability and Proceedings Act defines "Civil proceedings" to include:*

*"Proceedings in the High Court of Justice or Petty Civil Court for the recovery of fines or penalties but does not include proceedings analogous to proceedings on the Crown Side of the Queen's Bench Division in England".*

*17. This definition of civil proceedings was examined by the Court of Appeal in the local decision of Civ. App. No. S\_244 of 2015 SS (by her next of kin Karen Mohammed) v. Sterling Stewart Commissioner of Prisons, Her Worship Marcia Ayers – Caesar & The Attorney General, and Jamadar JA as he then was, offered this explanation at paragraph 32:*

*"It is reasonably clear that by excluding proceedings analogous to proceedings on the Crown side of the Queen's Bench Division in England, what is intended, was to exclude what today we know as public law administrative actions, and a fortiori, what are now constitutional proceedings."*

*18. For public law matters especially matters challenging decisions of public law bodies, the proper party would be the decision maker."*



Section 2 of the **Crown Proceedings Act** of Belize provides as follows:

*“civil proceedings” includes proceedings in the Supreme Court or a district court for the recovery of fines or penalties, but does not include proceedings such as are brought on the Crown’s side of the Queen’s Bench Division of the High Court of Justice in England.*

Based on the guidance above the Attorney General is the proper defendant in constitutional proceedings. The definition of ‘civil proceedings’ in the Crown Proceedings act is identical to the definition in the Trinidad and Tobago legislation.

[73] The Attorney General’s Ministry and the Minister of Natural Resources are not the proper parties to this claim.

[74] In proceedings for constitutional relief the AG must be made a party. In **AG v Carmel Smith** [2009] UKPC 50, it was held that the Attorney General is the proper party to be a Defendant to a claim for constitutional redress under section 14 of the Constitution.

[75] Accordingly, the Attorney General’s Ministry and the Minister of Natural Resources are struck as parties to these proceedings, and the Attorney General is substituted as the defendant.

### **Conclusion**

[76] Therefore in this case the claimant was successful on a claim for deprivation of property although the property was granted by mistake, because:

- (a) The claimant had a legally recognized interest or legitimate expectation arising from the grant.
- (b) The government’s actions in revoking the property involved procedural unfairness and/or arbitrary conduct.
- (c) The claim is framed around the deprivation being unfair under constitutional standards, rather than as an administrative or contractual dispute.

[77] The success of the claimant was largely due to the specific factual circumstances, especially the conduct of the government officials and the non-availability of an adequate alternative remedy.

[78] The defendant's cancellation of the Minister's Fiat Grants constitute breaches of the claimant's constitutional rights under Sections 3(d) and 17(1) of the Belize Constitution. The claimant is awarded compensatory damages for the amounts paid for the parcels of land in the sum of \$12,000.00 and \$46,000.00 for payment of the surveys and \$6,000.00 for taxes paid. I also award vindicatory damages in the sum of \$20,000. Costs follow the event and are therefore awarded to the claimant.

### **Disposition**

[79] I make the following orders:

1. A declaration that the claimant's rights under sections 3 and 17 of the Constitution were breached with respect to the revocation of the Minister's Fiat grants no. 94, 99, 135 and 157 of 2008, as it was done without due process.
2. Compensatory damages are awarded to the claimant in the sum of \$54,000.00 (fifty-four thousand dollars).
3. Vindicatory damages are awarded to the claimant in the amount of \$20,000.00 (twenty thousand dollars).
4. Interest
5. Costs are awarded to the claimant to be assessed in default of agreement.

**Nadine Nabie**  
**High Court Judge**