

IN THE COURT OF APPEAL OF BELIZE AD 2013

CIVIL APPEAL NO 45 OF 2011

RHETT ALLEN FULLER

Appellant/Respondent

v

THE MINISTER OF FOREIGN AFFAIRS

Respondent/Applicant

BEFORE

The Hon Mr Justice Sosa

President

The Hon Mr Justice Morrison

Justice of Appeal

The Hon Mr Justice Mendes

Justice of Appeal

M Perdomo, Senior Crown Counsel, for the applicant.

E H Courtenay SC for the respondent.

Filing of application: 4 April 2013.

Filing of submissions in writing of applicant and respondent : 11 April 2013 and 12 April 2013, respectively.

Handing-down of decision: 28 June 2013.

SOSA P

[1] I agree with the other members of the Court that the application should be granted, if only to the extent that it seeks a variation of the order as to costs

made on 28 March 2013. I have read, in draft, the judgment, of Mendes JA and concur in the reasons for judgment given, and the order proposed, in it.

SOSA P

MORRISON JA

[2] I agree with the judgment of Mendes JA and have nothing to add.

MORRISON JA

MENDES JA

[3] On 28 March 2013, this court allowed the appellant's appeal, quashed the Minister's order surrendering the appellant to the United States to face criminal proceedings there, and ordered that the Minister reconsider whether he should surrender the appellant. We ordered as well that the appellant should have his costs here and in the court below, but we gave leave to the parties to apply to have this order varied. Pursuant to such leave, the respondent has asked us to order instead that each party bear his own costs, having regard to the fact that

we rejected a number of the arguments put forward by the appellant in support of his application for judicial review of the Minister's decision and in support of his appeal against the judgment of Awich J dismissing his application for judicial review.

[4] I would say straightaway that it would be wrong to order that the appellant bear the burden of the legal expenses he has incurred in what has turned out, thus far, to be a successful campaign to overturn the Minister's decision to surrender him for extradition. Costs will usually follow the event, and I can see no basis in this case for depriving the appellant of at least a portion of his costs. It is not unusual that the decision of a public authority is challenged on a number of grounds, not all of which are successful. It would have too much of a chilling effect to deprive a successful litigant in judicial review proceedings of all of his costs because some of his arguments have failed. That might have the unwelcome result that potential victims of violations of public law rights would, to their detriment, pare down their grounds of challenge, or decide not to launch a judicial review challenge at all, because the risk that they might not be able to recover any of their costs is too high a price to pay.

[5] On the other hand, I am satisfied that in this case there is good reason to apportion the costs having regard to our rejection of some of the appellant's arguments. The question is, by how much should we discount his entitlement?

[6] We found no merit in the appellant's argument that the request for his extradition was made in bad faith, that it would be unjust to extradite him because of the delay since the alleged commission of the offence, that the Minister failed to give adequate reasons for his decision and that in the absence of the Magistrate's report, the Minister had no jurisdiction to surrender the appellant. On the other hand, we rejected the respondent's more substantive submission that the effect of the Privy Council's decision in *Rhett Allen Fuller v The Attorney General of Belize* [2011] UKPC 23 was that the Minister no longer

had jurisdiction to refuse to surrender the appellant on the ground that it would be unjust or oppressive to do so and that the Magistrate could decide not to produce any report at all. Instead, we found, consistent with the appellant's submission, that it was unfair not to have asked the magistrate, now a sitting judge, to reconstruct his report, although we did not grant relief on this basis. And, of course, we found that the Minister had asked himself the wrong question in deciding that it would not be oppressive to surrender the appellant and quashed his decision on this basis.

[7] Taking all these factors into account, I would order that the appellant have 75% of his costs here and in the court below, certified fit for Senior Counsel, to be taxed, if not agreed. I would vary the order dated 28 March 2013 accordingly.

MENDES JA