IN THE COURT OF APPEAL OF BELIZE, A.D. 2014

CIVIL APPEAL No. 24 of 2012

THE MINISTER OF FINANCE **Appellants**
THE ATTORNEY GENERAL OF BELIZE

v

VINCENT ROSE
CHERIE CHENOT-ROSE
(JOINTLY d.b.a. ACES) **Respondents**

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BEFORE:

The Hon. Mr. Justice Sir Manuel Sosa	President
The Hon. Mr. Justice Samuel Awich	Justice of Appeal
The Hon. Madam Justice Minnet Hafiz-Bertram	Justice of Appeal

N. Hawke, acting Solicitor General along with T. Young for the appellants
A. Segura-Gillett along with A. McSweaney McKoy for the respondents

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23 June and 7 November 2014

SOSA P

[1] At the conclusion of the hearing on 23 June 2014, I was in agreement with the other members of the Court that (i) the appeal should be dismissed, (ii) the orders of Legall J should be confirmed and (iii) the respondents should have their

costs, to be taxed if not sooner agreed. I concur in the reasons for judgment of Hafiz Bertram JA, which I have read in draft.

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SOSA P

AWICH JA

[2] I agree to the reasons stated in the judgment of Madam Justice Hafiz-Bertram JA for the decision and orders of this Court announced on 23 June 2014. There was no ground for this Court, an appellate Court, to interfere with the assessment of the evidence made by Legall J, the learned trial judge, and his interpretation of sections 2 and 3 of the Riots Compensation Act, Cap. 338.

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AWICH JA

HAFIZ-BERTRAM JA

Introduction

[3] On 30 August 2010, Benjamin Rash and Oniela Rash, children of Pedro Rash of San Marcos Village, Toledo district, disappeared without a trace. It was a tragic day which unfortunately resulted into another tragedy some days later, a riot. The police carried out investigations and searches for the children but they were never found. The parents of the children contacted a local "witch doctor" who allegedly told them that the children were held at the property of the

respondents. On 5 September 2010, a group of about 50 -100 persons from the San Marcos village armed with sticks, machetes and some with guns went to the ACES property to search for the children. The respondents were not home at the time. The houses and motor vehicles on the ACES property were set on fire and burnt to the ground. The respondents attempted to get compensation from the appellant but, since that failed, a claim was issued for compensation under the **Riots Compensation Act,** Chapter 338 of the Laws of Belize ("the Act").

[4] On 17 August 2012, Legall J granted a declaration that there was a riotous assembly of persons, as defined in section 2 of the Act, assembled at the respondents property for the purpose of executing a common purpose with violence, and without lawful authority used such violence for the purpose of intentionally setting fire and destroyed three houses, furniture, household utensils and other property owned by the respondents.

[5] On 24 September 2012, the appellants appealed Legall J's judgment which was heard and dismissed by this court on 23 June 2014. We promised to put our reasons in writing and I set out mine below.

Brief background facts

[6] The brief background facts to this matter can be taken from the judgment of Legall J. The Respondents who are Americans and husband and wife, obtained their Belizean status in 2004. They acquired ownership of large acres of land at Water Hole road, Forest Home Village in the Toledo District of Belize on which they constructed houses and other structures for the purposes of their business, American Crocodile Education Sanctuary (ACES) which is a non profit organization. ACES, according to the second respondent, who is a biologist , was established for the purposes of conserving "Belize's critical wet land habitats and protected species, specifically crocodilians, through scientific research and education; to institute a crocodile refuge for ill, injured and

problematic crocodiles; to reduce crocodile mortality, and to protect crocodile nesting site habitats and monitoring crocodile habitat water qualities."

[7] On 29 August 2010, the second respondent went to San Pedro to take care of three sick crocodiles and left the first respondent on their property.

[8] On 30 August 2010 at about 11:00 pm, Pedro Rash reported to the police that his two children, Banjamin Rash, eleven years old, and Oniela Rash, nine years old, ("the missing children") went to sell limes and craboo earlier in the day and had not returned home. The police and the villagers carried out searches for the children but, this proved unsuccessful. The parents then sought the assistance of a local "witch doctor", Delfina Selgado, who allegedly told them that the children were held on the respondents' property.

[9] On 2 September 2010, four persons went to the respondents' property armed with machetes and asked to speak to the first respondent concerning the missing children. He informed them that he had not seen the children and they left. On the said day, he joined his wife in San Pedro since she requested assistance with the sick crocodiles. The property was left under the control of their employee, Eleias Tut, who was their handyman. On the said day, Tut left the property unoccupied and went home.

[10] On 3 September 2010, at about 7:00 a.m., Tut returned to the property and he saw evidence that persons were there. He slept there on the said night and when he woke in the morning, he saw evidence that the houses were searched.

[11] On 5 September 2010, at about 7:30 a.m., a group of about 50 - 100 persons, almost the entire village of San Marcos, went by bus to the Punta Gorda Police Station. About twenty of the villagers entered the police station, which included two alcaldes of the village, and spoke to the officer in charge,

Sergeant Robert Mariano. They requested police assistance to search for the missing children at the Water Hole area, in which ACES was located. Officer Mariano told them that he would attend the area as soon as he got transportation. He further instructed the alcaldes that the police and the Belize Defence Force personnel would be going to the area and that the villagers must not enter ACES as it was a private property. The bus load of armed villagers went to the Water Hole road and stopped at two cross reads leading to ACES. The learned trial judge stated that according to the evidence of Francisco Cuz, the villagers waited there for about five minutes and returned home because the military and police did not show up.

[12] On 5 September 2010, witnesses who testified at the trial observed the respondents property on fire. On 6 September 2010, the first respondent returned to their property and found their houses were burnt and almost totally destroyed. They lost all the structures on the property including the contents and a motor vehicle. Another motor vehicle was seriously damaged. They had 18 crocodiles on the property and 13 of them perished.

The Claim

[13] By an amended claim form dated 4 August 2011, the respondents claimed the following reliefs :

> "(1) A Declaration that the some 100 persons who assembled on the claimants' property on September 5th 2010, with an aim to trespass upon and burn the claimants' home and proceeded to execute said common purpose, constituted a "Riot" within the meaning of section 245 of the Criminal Code, Chapter 101 of the laws of Belize, Revised Edition 2000 and constituted a "Riotous Assembly" within the meaning of the Riots Compensation Act, Chapter 338 of the Laws of Belize, Revised Edition 2000;

(2) An Order that the Defendants pay the claimants the sum of nine hundred and seven thousand three hundred and eighty dollars and seventy one cents (BZ$907,380.71) … as compensation under the Riots Compensation Act….. in respect of loss sustained by them by reason of the damage, theft or destruction caused by the riot on September 5th 2010.

(3) Interest pursuant to sections 166 and 167 of the Supreme Court of Judicature Act;

(4) Costs; …"

[14] On 24 May 2013, the parties consented to the bifurcation of the trial. As such, the trial proceeded only on the issue of liability. It was agreed between the parties that in the event the court found liability on the part of the appellants, then there would be a hearing on the assessment of damages. The appeal therefore, was only in relation to liability.

The Riot Compensation Act, Chapter 338

[15] Section 2 of the Act provides as follows:

> **"Riotous assembly**" means an assembly of rioters or of persons assembled or together with a purpose of committing a riot as defined by section 241 of the Criminal Code."

Section 3 provides for **compensation to persons for damage by riot.** Section 3(1) states:

> "3 (1) Where a house, shop or building has been damaged or destroyed, or any property therein has been damaged, stolen or destroyed by any persons riotously assembled together, such compensation as mentioned in section 4 shall be paid to any person who has sustained loss by reason of such damage, stealing or destruction."

Criminal Code

[16] Section 245 (previously section 241) of the Criminal Code, Chapter 101 defines **riot** as:

> "245 (1) If five or more persons together in any public or private place commence or attempt to do either of the following things namely -
>
> (a) to execute any common purpose with violence and without lawful authority to use such violence for that purpose;
>
> (b) to execute a common purpose of obstructing or resisting the execution of any legal process or authority; or
>
> (c) to facilitate by force or by show of force or of numbers the commission of any crime, they are guilty of a riot."

The issues as stated by Legall J

[17] The learned trial judge at paragraph 8 of his judgment stated the issues for his determination as: (1) Whether the evidence established that there was an assembly of rioters or persons assembled or together to execute a common purpose or (2) Whether the evidence established such rioters or persons facilitated by force or by show of force or of numbers the commission of any crime. Legall J stated that if any of the these issues were established by the evidence, then a riot or a riotous assembly would have been proven. If so, the respondents would have to prove that their houses or buildings were damaged or destroyed by persons riotously assembled together for that purpose.

Standard of proof

[18] The standard of proof applied by Legall J in this case was proof beyond a reasonable doubt. This was discussed by the learned trial judge at paragraphs 10 and 11 of the judgment. He concluded that in "*civil proceedings based on statutory provisions under which liability depends largely on the commission of some kind of criminal conduct required by the statute, including fraud or sexual conduct, or riot, …I think in such cases higher standard of proof than that of a*

balance of probabilities should be applied, namely the criminal standard of proof beyond a reasonable doubt."

Findings of Legall J

[19] Legall J found that there was circumstantial evidence which showed that an angry armed group of people who believed that the respondents had the missing children, assembled at the Water Hole road leading to the respondent's property and some of those persons entered the property. He found that smoke and fire engulfed the respondent's property while the angry group was in the area of the property. He then considered whether the circumstantial evidence was enough to prove that members of the angry group set fire to the respondents' property. At paragraph 14 of his judgment, Legall J said that he was "*satisfied beyond a reasonable doubt to the extent of feeling sure, that persons, more than five persons from that angry group of persons set fire to the claimants' houses and property because they felt that the claimants had something to do with the missing children.*" He also found beyond a reasonable doubt on the evidence that there was a riot or riotous assembly pursuant to section 2 of the Act and that the respondents' properties were destroyed or damaged by persons riotously assembled and that they were entitled to compensation pursuant to section 3(1) of the Act. As a result of the findings, Legall J granted the declaration as shown in paragraph 4 above.

Grounds of appeal (as amended)

[20] On 23 June 2014, the appellants sought and were granted leave to amend their grounds of appeal. The grounds were that:

(1) The learned trial judge erred in law and fact in finding beyond a reasonable doubt that there was a riot or riotous assembly as defined by section 2 of the Act and in so doing:

" a. The trial judge erred in determining that the common purpose was to cause damage to the property of the Respondents on September 5, 2010 at the Water Hole Junction, Forest Home Village, Toledo District.

b. The trial judge erred in fact and law by determining that the villagers assembled at the Respondents' property situate at Water Hole road, …for the purpose of executing a common purpose with violence."

(2) The learned trial judge erred in law and fact in finding beyond a reasonable doubt that the Respondent's property were destroyed or damaged by persons riotously assembled and in finding that the respondents are entitled to compensation under section 3(1) of the Act and in so doing:

"a. The judge erred in law and fact by finding beyond a reasonable doubt that 5 or more of the villagers assembled caused damage to the Respondent's property.

b. The judge erred in law and fact by finding that the respondent's had proven that their houses or buildings were damaged or destroyed by persons riotously assembled together for that purpose."

(3) The decision is against the weight of the evidence.

Relief sought

[21] An order setting aside the orders of Legall J, an order that the respondents pay costs of the appeal and any other relief.

Submissions on the grounds of appeal

Ground 1(a)

[22] The first issue was whether Legall J erred in finding that there was a riot pursuant to section 2 of the Act. This issue had two sub issues as shown by the grounds of appeal. The first being whether the trial judge erred in determining that the common purpose was to cause damage to the respondents property.

[23] Learned Counsel, Ms. Young submitted that the learned trial judge in finding liability against the appellants from circumstantial evidence, failed to consider all inferences which arose from the circumstantial evidence which was before the court. Learned Counsel referred to the evidence of Senior Superintendent Mariano who testified that he did not observe the villagers displaying any violent behaviour and that they had requested assistance from the police in searching the Water Hole area. She also referred to the evidence of Alcalde, Francisco Cuz who testified that the villagers had been searching for the missing children from the 1 through 5 September 2010. Learned counsel submitted that it was evident that when the villagers assembled, the common purpose of that assembly was to search for the missing children. As such, she submitted that the failure of the trial judge to narrowly consider the reasonable inference that could be drawn from the evidence that the villagers were awaiting the arrival of the police and the Belize Defence Force, weakens the inference which the court drew that the villagers went to the area surrounding the respondents' property in order to cause harm to the respondents or to damage their property. She further submitted that the inference drawn by the court does not satisfy the standard of beyond a reasonable doubt.

[24] Mrs. McKoy submitted that Mr. Cuz's evidence established that the villagers assembled with a common purpose to search for the missing children. She further submitted that it was agreed between the parties as shown by the

'Agreed Facts' that the villagers went in search of the missing children. The respondents further submitted that even if the common purpose may have initially been searching ACES for the missing children, it soon escalated into trespassing, looting and destroying the respondents' home and its contents.

The common purpose in this case that had to be proven

[25] One of the reliefs sought was "A Declaration that the some 100 persons who assembled on the claimants' property on September 5th 2010, with an aim to trespass upon and burn the claimants' home and proceeded to execute said common purpose, constituted a "Riot" within the meaning of section 245 of the Criminal Code …. and constituted a "Riotous Assembly" within the meaning of the Riots Compensation Act, …..". The learned trial judge therefore, correctly stated that if it was proven that there was a riotous assembly, the **respondents would have to prove that their houses or buildings were damaged or destroyed by persons riotously assembled together for that purpose.** The searching of the children therefore, for the purposes of the claim was not the 'common purpose' that had to be proven. It was agreed by the parties that the 50 to 100 villagers went to the area to search for the children. But, that purpose escalated into a different situation upon the burning of the respondents property.

[26] I think it would be useful to quote what was agreed between the parties since the learned trial judge would not have been required to determine what was already agreed. The notice dated 1 March 2012, which was signed by Counsel for both parties states:

> TAKE NOTICE that the parties by their Counsel have agreed the following facts for trial, pursuant to Pre-trial Order dated the 20th day of January, 2012, namely -

AGREED FACTS

"1. The Claimants are the registered proprietors of 37.67 acres of land abutting Water Hole road in Forest Home Village, Toledo District (hereinafter "the property").

2. Prior to September 5th 2010, the property housed three structures comprising the Claimants' residence, guest houses, as well as the American Crocodile Education Sanctuary (hereinafter "ACES").

3. On August 30th 2010, Benjamin Rash (age 11) and his sister Onelia Rash (age 9), both from San Marcos Village are reported missing. They were last seen in the vicinity of Cattle Landing Village which is some 12 miles from the Claimants' property.

4. After the children's disappearance, San Marcos Villagers formed search parties, and began combing the area of Cattle Landing, Water Hole road and surrounding villages in search of the children.

5. Police Officers and San Marcos villagers visited ACES to inquire about the missing children.

6. On Sunday September 5th 2010, some 50 or more villagers visited the Punta Gorda Police Station requesting the Police Officers accompany them to search ACES for the missing children.

7. After leaving the Police Station, the busload of villagers head to ACES; some individuals were armed with shot guns and machetes.

8. After the villagers left the Police Station, calls started coming into the station with reports that ACES was on fire.

9. The Police responded to the reports and encountered the same busload of villagers (that had been at the station that

morning) in the area of the dump site some 1.5 miles away from the Claimants' property."

[27] The learned trial judge was quite aware that on the day of the fire, the villagers requested the police to accompany them to search for the children. But, the police did not show up and there was a fire which damaged the respondents property. Legall J found on the evidence that he was *"satisfied beyond a reasonable doubt to the extent of feeling sure, that persons, more than five persons from that angry group of persons set fire to the claimants' houses and property because they felt that the claimants had something to do with the missing children."*

[28] This finding by the learned trial judge was not in relation to all of the villagers. He made a finding on part of the crowd. In my view, he correctly stated that the respondents had to prove that their properties were damaged by persons riotously assembled together for that purpose. The trial judge therefore, did not err in determining that issue and finding that five or more persons riotously assembled and caused damage to the respondents property. This ground was therefore, without merit.

Grounds 1 (b) and 2

[29] Grounds 1(b) and 2 are inextricably linked and would be dealt with together. For there to be a finding that that there was a riotous assembly under section 2 of the Act, the provisions of section 241 (now 245) of the Criminal Code must be satisfied. According to section 2, a riotous assembly is an assembly of rioters or of persons assembled or together with a purpose of committing a riot as defined by section 245 of the Criminal Code. Therefore, the following requirements in pursuant with section 245 had to be proved as stated in the said grounds: (a) F**ive or more of the villagers riotously assembled and caused damage on the Respondents property; (b) At the time the**

villagers executed a common purpose with violence and without lawful authority to use such violence for that purpose. Legall J found on the circumstantial evidence that it was proven beyond a reasonably doubt that there was a riot as defined by section 2. In doing so, he addressed the requirements under section 245 and found that the respondents were entitled to compensation under section 3(1) of the Act. I will firstly state the submissions of the parties under the grounds and thereafter discuss the findings of the trial judge on the issues raised under those grounds.

Submissions

Whether there was a common purpose with violence

[30] Learned Counsel, Ms. Young submitted that at no time was violence used to achieve the common purpose of searching for the children. She referred to the evidence of the first respondent at paragraph 13 of his witness statement, where he stated that four persons went to his gate armed with machetes. Learned Counsel submitted that he gave no evidence that the villagers, whilst armed had been violent. Learned Counsel also referred to the evidence of Mr. Capps who had testified that on 2 September 2010, he had observed busloads and truckloads of men of Mayan decent parked in front of ACES, in the middle of the road and armed with shot guns and rifles. Further, on 4 September 2010, when he passed the ACES he encountered a small pick-up truck with about 8-10 Maya men who were armed with shotguns and rifles. Ms. Young submitted that on both of these occasions, when the villagers were observed by Mr. Capps, there was no evidence to prove that the villagers were violent as defined by section 248 of the Criminal Code.

[31] Learned Counsel, Ms. Young submitted that the evidence of the first respondent and Mr. Capps allowed for an inference to be drawn in favour of the villagers that the mere presence of guns and machetes did not show an intention

to harm or damage the respondents or their property. Further, that the inference that had to be drawn was that the villagers had the rifles and machetes for protection from the animals and crocodiles which existed in the surrounding jungle. Learned Counsel submitted that this inference was reasonable as on previous occasions the villagers were so armed when they searched for the children. Ms. Young also relied on the evidence that the villagers went to the police and requested that they accompany them in the search at the ACES property. As such, she submitted that it was unreasonable for Legall J to determine that the mere presence of machetes and guns meant that the villagers intended to cause harm to the respondents.

[32] Learned Counsel, Mrs. McKoy in response submitted that the appellants took into consideration "too little of the evidence in order for the appellants to reasonably conclude that the trial judge erred in his determination of this issue." Learned Counsel submitted that the evidence of Mr. Capps referred to by the appellants showed that he was driving at the time and had no encounters with the villagers. Further, that the appellants omitted the evidence of September 3 2010, which showed that on that day, Mr. Capps stopped and spoke to the villagers but they failed to respond to him. He testified that "they just glared at him without a response. They looked very mean and hateful." He testified that he reasonably apprehended damage to the property and he notified the police as to what he had observed. Learned Counsel further submitted that the appellants also disregarded the evidence of Mr. Cuz, one of the Alcaldes, that the villagers wanted to "show the white man that we mean business." Mrs. McKoy submitted that this statement showed the mindset of the villagers as they had been searching for days, felt they had a lead, and would not be deterred from searching the respondents' property.

[33] Mrs. McKoy further submitted that the respondents led evidence as to the crimes committed or facilitated by force or show of force by the riotous assembly and with violence which occurred on the 5 September 2010, namely trespass,

looting, damage to property, killing of crocodiles and arson. As such, the learned trial judge had enough evidence before him to find that the requirement of common purpose with violence had been proven.

Whether there were 5 or more of the villagers assembled who caused damage to the property

[34] Learned Counsel, Ms. Young submitted that in order to satisfy section 3(1) of the Act, the respondents had to prove that they suffered damage as a direct result of a 'riotous assembly'. Further, that the respondents' had to prove that at least five or more persons were assembled. Learned Counsel relied on the case of **Atlantic Insurance Company & Others v Minister of Finance & Attorney General,** in which Conteh CJ stated that "*It is the duty of the person or the court deciding a claim for compensation, to determine whether the loss in respect of which it is made arises out of any of the elements or situations I have mentioned above."*

[35] Learned Counsel, Ms. Young further submitted that the circumstantial evidence before the court gave rise to an inference that the person(s) who caused damage to the respondents' property were (a) not parties of the villagers assembled there; and (b) that the person(s) who committed this act were not of a number greater than five. Ms Young referred to the evidence of Linston McKenzie who testified that he saw a group of five men come out of the bushes and went back towards the respondents' property. He then heard gunshot and what sounded to him like a blow torch. He also testified that the five persons left in their own private vehicle. Learned Counsel submitted that as a result of this evidence, an inference can be drawn that the persons seen by Mr. Mc Kenzie were not part of the assembly of villagers. She further submitted that it would have been reasonable for the court to draw an inference that the men who went back to the property prior to Mr. Mc Kenzie hearing the blow torch did not amount to five persons.

[36] Learned Counsel, Mrs. McKoy, in response submitted that in order to satisfy section 245(1) (a) there is no requirement that 5 or more persons must have directly caused the damage to the respondents' property. As such, the appellants submissions on this ground was misconceived. She submitted that in the **Atlantic Insurance** case relied on by the Appellants, the learned CJ Conteh (as he was then) did not identify five or more persons committing any specific act of looting or rioting. Mrs. McKoy further submitted that the 50 – 100 of villagers were united in purpose and members in their group engaged in trespass, breaking and entering, looting, killing of crocodiles and arson, all of which caused damage to the respondents' property.

Whether the respondents had proven that their property were damaged or destroyed by persons riotously assembled for that purpose.

[37] Learned Counsel, Ms. Young submitted that there was a reasonable doubt which weakens the inference that because the villagers were armed on 5 September 2010, their common purpose for assembling was to damage the respondents' property. She further submitted that there was no evidence given by any of the witnesses for both parties that accelerants or evidence of accelerants were found or seen on their possession prior to the properties being damaged or immediately thereafter.

[38] Mrs McKoy in response submitted that the appellants were seeking to superimpose the requirements of the Criminal Code as to the proof of elements of offences into the provisions of the Riots Compensation Act, in a manner that was without basis or authority. Further that the Act says that compensation is payable if property is damaged or destroyed by any persons riotously assembled and it does not matter if the riotous assembly were gathered for that purpose or not.

Discussion

[39] Legall J in my view, carefully weighed the evidence before him before making his findings. He focused his attention to the 5 September 2010, the day the respondents' properties were destroyed by fire and not on previous days when there was a search for the missing children. The learned trial judge had agreed facts before him and as such it was not necessary to make a finding on what was already agreed. The evidence as unfolded before the court also proved what was already agreed, such as that there were a busload of 50 or more villagers who visited the Punta Gorda Police Station requesting the Police Officers to accompany them to search the respondents' properties for the missing children. After leaving the Police Station, the busload of villagers headed to the respondents' properties and some of them were armed with shot guns and machetes. The Police Station thereafter received calls that the respondents' properties were on fire.

[40] There was direct evidence as to the fact that there was a fire but, no direct evidence as to who caused the fire. Legall J found on the circumstantial evidence that part of the crowd of the villagers caused the destruction or damage to the respondents' properties.

[41] This would be a convenient point to refer to the case of **Ellis Taibo v The Queen,** Privy Council Appeal No 26 of 1995; (1996) 48 WIR 74, an appeal from Belize, which Sosa P. brought to the attention of learned counsel Ms. Young, during the hearing of the appeal, in relation to the distinction between mere evidence in a trial and facts proven in a trial when using circumstantial evidence. Learned Counsel, Mrs. McKoy thereafter relied on this case to bolster her arguments. Lord Mustill who delivered the judgment for the court, at page 12, said the following:

> "The trial judge correctly explained in accordance with long-established law that a series of facts, none of which in isolation directly connects an accused person with an offence, may

> nevertheless when taken together justify an inference of guilt. Whilst the task of deciding whether to draw such an inference is well within the compass of a jury, and is regularly performed at criminal trials, there can be an element of risk unless the jury has clearly in mind that **the facts relied on must really be facts, and not simply unproved assertions of fact**: **for otherwise the inference will be built on sand.** This is something which a jury might easily overlook, believing that what must be added together when considering whether to draw the inference of guilt is the evidence given, rather than such facts if any as are established by that evidence. In appropriate cases it may be necessary to warn the jury against falling into this trap."

[42] In the case at hand, Legall J was sitting alone but, had to find beyond a reasonable doubt that the fire was caused by a riotous assembly of persons pursuant to section 2 of the Act. He said that there was overwhelming evidence form Linsmore McKenzie and Eldora Chacon that the respondents' houses and items were destroyed and damaged by fire on 5 September 2010. This is the direct evidence. Further, the learned judge said that there was no direct evidence as to who caused the fire, however, he found that there was circumstantial evidence to connect some of the villagers to the destruction. He relied on a series of fact, which when taken together justified the inference that members of the 50 or more villagers set the fire and caused the destruction of the respondents' properties. He examined the evidence at paragraph 12 of his judgment and thereafter at paragraph 13, he found that the circumstantial evidence showed (a) an angry group of people who believed that the respondents had the missing children assembled at the Water Hole road leading to the respondents' property and some of those persons entered the property; (b) smoke and fire engulfed the respondents' property while members of the angry group were in the area of the respondents' property. Legall J then considered whether the above circumstances (listed at (a) and (b) amounted to circumstantial evidence to prove that members of the angry group set the fire and caused the destruction of the properties. He asked himself three questions, namely:

> "Do the above circumstances amount to circumstantial evidence enough to prove that members of the angry group from San Marcos Village, believing that the claimants had something to do with the missing children, set fire to the houses and buildings and property of the claimants?
>
> If the villagers did not go to that areas to execute a common purpose with violence or to facilitate by force or of numbers the commission of any crime, why go there so heavily armed?
>
> If the intention was not to hurt the "white man" why the guns and machetes?"

[43] Legall J, after asking himself these questions, put together a series of proven facts and arrived at the conclusion shown below:

> "Couple **the arming,** with **their anger**, and the aforesaid **belief that the claimants had something to do with the children been missing**, I think that the answer is irresistible that members of that group committed destruction to the claimants property. The circumstantial evidence points to the conclusion that **members of the angry group, more than five persons according to the photographs and the evidence were at the area of the claimants' property, and set fire to the claimants' property**."

[44] The learned judge had not used any of the proven facts in isolation to determine who were the persons that set fire to the respondents properties. He put them together, and he specifically stated that the photographs and evidence proved that there were more than five persons (members of the group) who were at the area of the respondents' property.

[45] Learned counsel, Ms Young failed to consider the material aspects of the evidence and concentrated on peripheral matters. The learned trial judge had

carefully weighed the evidence and found that certain aspects of the evidence were not credible. It is evident from the judgment that the judge did not find the following evidence credible: (a) the evidence from the appellants that they had no intention to harm the respondents; (b) the evidence of Senior Superintendent Mariano that he had not observed the villagers displaying any riotous behaviour; that the investigations conducted by the police did not result in any findings that there was a riot; nor that the group of villagers had not attended the area to cause destruction to the property (c) the evidence of the alcaldes who testified that "the group of people in the bus went to the Water Hole road, and not having seen the arrival of the police, turned around the bus and returned home."

[46] Legall J said that the evidence from the alcaldes was wholly outweighed by the relevance and nature of the circumstantial evidence. As such, the learned trial judge could not have drawn an inference that the villagers were awaiting the arrival of the police and the Belize Defence Force as submitted by Ms. Young under ground 1 (a) in relation to inferences to be drawn.

[47] Legall J had advised himself that before he could find liability, he must be satisfied beyond a reasonable doubt that members of the angry group set the respondents' house on fire. He also advised himself on the circumstantial evidence. He referred to the case of **Daniel (Marlon) et al v The State** (2007) 70 WIR 267 per Lord Carswell and stated that before finding liability on the circumstantial evidence, all possible inferences other than liability must be eliminated. It is therefore, clear that the learned trial judge in arriving at his conclusion on liability, eliminated all possible inferences by weighing of the evidence that was before him. At paragraph 14 of his judgment, he dealt with the core of the issue, that is, the learned trial judge showed how he arrived at the conclusion that more than five persons from the angry group riotously assembled and set fire to the respondents' property. He stated:

> "Was the said destruction caused by persons riotously assembled together under section 3(1) of the Riots Compensation Act above? It is clear from the above evidence that the villagers were together in a public place, the road; and some were also in the claimants' property. A drawing exhibit V.R. 10 was admitted in evidence showing the claimants' property and showing where the villagers were. The villagers had guns and machetes. They were angry and vociferous. They believed that the claimants' had something to do with the disappearance of the children. They wanted to teach the white man a lesson. I do not accept the evidence that they did not intend harm to the claimants. If this was so why all those machetes and guns? Certainly all those weapons were not needed for protection from wild animals or crocodiles. Considering the circumstantial evidence in this case, I am satisfied beyond a reasonable doubt to the extent of feeling sure, that persons, more than five persons from that angry group of persons set fire to the claimants' houses and property because they felt that the claimants had something to do with the missing of the children. "

Disposal of ground 1(b)

[48] Under ground 1 (b), learned counsel Ms. Young submitted that an inference that had to be drawn was that the villagers had the rifles and machetes for protection from the animals and crocodiles which existed in the surrounding jungle. The learned trial judge did not find this evidence from the appellants credible as he stated that all those weapons were not needed for protection from wild animals or crocodiles. As such, coupled with the other circumstantial evidence, (the villagers were angry and vociferous; they believed that the respondents' had something to do with the disappearance of the children; they wanted to teach the white man a lesson) he did not find the evidence of the appellants credible that they did not intend to harm the respondents. I saw no

reason to interfere with the finding of the learned trial judge. Ground 1(b) was therefore, without merit.

Disposal of ground 2(a)

[49] Ms. Young submitted that an inference can be drawn that the persons seen by Mr. Mc Kenzie were not part of the assembly of villagers. Further, she submitted that it would have been reasonable for the court to draw an inference that the men who went back to the property prior to Mr. Mc Kenzie hearing the blow torch did not amount to five persons. In my view, there was no evidence to support these inferences as submitted by Ms. Young. On the other hand, the learned trial judge found that the "circumstantial evidence points to the conclusion that members of the angry group, more than five persons according to the photographs and the evidence were at the area of the claimants' property, and set fire to the claimants' property." The learned trial judge also had a drawing exhibit V.R. 10 which was admitted into evidence which showed the respondents' property and also showed the position where the villagers gathered. The learned trial judge had also considered Mr. McKenzie's evidence as shown at paragraph 5 where he stated that: "The witness McKenzie swore that he saw approximately fifty angry people, men, women and children armed with shotguns, machetes and sticks. He said he heard gunshots from the direction of the claimants property and heard a blowtorch sound. Soon after he saw smoke over the tree tops and realized that the claimants' property was on fire." Then at paragraph 12 of his judgment the learned trail judge examined the evidence, without referring specifically to Mr. McKenzie, whose evidence was that he had observed the angry group of 50 persons, with shotguns, machetes and sticks who went with a green bus and parked opposite the driveway leading to the respondents' property. Mr. McKenzie was one of the witnesses who heard gunshots from the direction of the respondents' property and saw a group of five men come out of the bushes and then later went back into the bushes. He continued to hear gunshots and he also heard two 'blow

torch' sound. Mr. McKenzie video taped the incident and also freeze-framed various images from the footage which he printed as photographs and these were tendered into evidence. The judge considered the photographs as shown in his conclusion, though he did not mention Mr. McKenzie's name. The photographs before the trial judge clearly showed ("LM 2", "LM 3", "LM 4", "LM5" and "LM 7") the parked green bus and in front of that bus, the group of persons amounting to far more than five persons. The learned trial judge also considered exhibit "VR 10" which was admitted into evidence from the first respondent, showing the respondents' property and showing where the villagers were gathered. Legall J found on the evidence that some of those villagers were on the respondents' property. The learned trial judge considered the circumstantial evidence before drawing his conclusion at paragraph 13. Based on all this evidence before the learned trial judge, he could not have drawn an inference that the persons who caused damage were not parties of the villagers assembled there and further, that they were not of a number greater than five. Based on the evidence, the learned trial judge was justified in his finding. As such, ground 2(a) was also without merit.

Disposal of ground 2(b)

[50] Learned Counsel, Ms. Young submitted that there was a reasonable doubt which weakens the inference that 'because the villagers were armed on 5 September 2010, their common purpose for assembling was to damage the respondents' property'. Legall J did not look at this proven fact (that the five or more persons set fire to the respondents' property) in isolation. The evidence as unfolded proved that part of that crowd of villagers who were very angry set fire to the respondents' property because they thought they had something to do with the missing children. It was therefore proper for Legall J to say that, "*I do not accept the evidence that they did not intend harm to the claimants. If this was so why all those machetes and guns? Certainly all those weapons were not needed for protection from wild animals or crocodiles..*"

[51] Learned counsel, Ms Young further submitted that there was no evidence given by any of the witnesses for both parties that accelerants or evidence of accelerants were found or seen on their possession prior to the properties being damaged or immediately thereafter. As shown above, this was a case built on circumstantial evidence. Though there was direct evidence that there was a fire, there was no direct evidence as to the identity of the person or persons who lit the fire and what accelerant was used to start the fire. The learned trial judge was satisfied on the circumstantial evidence that the respondents' property was damaged by some of the villagers, more than five persons, who were riotously assembled. The requirement under the Act is that compensation is payable if property is damaged or destroyed by any persons riotously assembled. As such this ground was also without merit.

[52] Accordingly the learned trial judge had not erred in finding beyond a reasonable doubt that (a) there was a riot or riotous assembly as defined by section 2 of the Act and (b) that the Respondent's property were destroyed or damaged by persons riotously assembled and that the respondents are entitled to compensation under section 3(1) of the Act.

Ground 3 - The decision is against the weight of the evidence.

[53] Learned Counsel Ms. Young submitted that the facts and evidence provided by this case fell below what the court found in cases where it was satisfied that the elements of a riot existed to order compensation for destruction of property. She relied on the **Atlantic Insurance** case and referred to the evidence in that case where there was television footage which showed that the police chased and apprehended persons who were looters. Learned Counsel submitted that this is in direct contrast to the footage produced in the case at hand as there is no video evidence to show persons assembled causing destruction to the respondents' property. Learned counsel, in my respectful view had failed to consider that the facts of the **Atlantic Insurance** case is not

similar to the case at hand. While there was direct evidence that there was a fire in the instant case, there was no direct evidence in relation to the setting of the fire. The case as to persons who set fire to the respondents' property was proven by circumstantial evidence.

[54] Learned Counsel Ms. Young, further relied on the **Atlantic Insurance** case and submitted that the individuals were demonstrating in defiance of police authority, but, in the case at hand, the villagers sought the assistance of the police. The evidence proved that assistance was sought at the police station earlier in the morning but, the police did not accompany them to the area to search for the missing children. The villagers who were armed with machetes and guns went without the police and parked in front of the respondents' property. The police did not show up and part of the crowd went unto the respondents' property and set the fire destroying the property for they thought that the respondents had something to do with the missing children. The police showed up when the respondents' properties were already on fire and the villagers had left the area. The police had a duty to prevent the crowd from becoming a riot but they showed up after the damage was already done.

[55] The facts of **Mitsui Sumitomo Insurance Co. (Europe) Ltd and another v Mayor's Office for Policing and Crime** [2014] 1 All ER 422, further relied upon by learned counsel, is different from this case at hand. In **Mitsui** the gang set out with the 'means' for burning the warehouse and they did so. In the case at hand, the 50 or more villagers, initially set out to search for the missing children and they had requested the assistance of the police to do so. But, it was proven as shown above, that the police did not go with the villagers to the respondents' property and part of the crowd which was riotously assembled, destroyed the respondents' properties by setting them on fire.

[56] Learned counsel, Ms. Young further submitted that there was no evidence before Legall J that the village facilitated or attempted to facilitate by force or

show of force, the commission of any crime. She contended that the learned trial judge would have had to first determine that there was an intention to commit a crime. Further, that the mere presence of guns and machetes was insufficient to establish an intention to cause damage to the property or the respondents. The learned trial judge as shown by his judgment considered the intention to commit the crime as he found that five or more of the villagers intentionally set fire and destroyed three houses , furniture, household utensils and other property owned by the respondents. This can be seen by the declaration granted and also at paragraph 13 of his judgment. Further, the learned trial judge had not established intention by "the mere presence of guns and machetes". Legall J at paragraph 13, (I am compelled to mention this evidence again), said that "*Couple the arming, with their anger, and the aforesaid belief that the claimants had something to do with the children being missing, I think the answer is irresistible that members of that group committed destruction to the claimants property."* He then concluded by finding on the circumstantial evidence that the five or more persons from the group set fire to the claimants property. Further, Legall J's finding was not on the entire village but, part of the crowd. As such, this ground that the decision was against the evidence was also baseless.

[57] I mean no disrespect to learned counsel on the other side for not addressing their well argued submissions, on this ground. The learned trial judge, however, had adequately addressed the relevant evidence which established that there was a riotous assembly of persons, as defined by section 2 of the Act. He also addressed the reason why the Crown should be liable for the acts of persons who were so riotously assembled and caused the loss or damage to the property. See paragraph 15 of his judgment where he relied on **JW Dwyer Ltd. V Receivers For the Metropolitan Police District** [1967] 2 All ER 1061 at page 1055 where Lyell J said:

> "If a crowd of people collect in angry and threatening fashion this should become obvious to local forces of order, and it would then become their

> duty to prevent the crowd from becoming a riot. This is a duty which has been recognised for centuries, and which until the nineteenth century was put on the local administrative area, the hundred or wapentake, or whatever name it might be called; and there was duty on them to compensate for damage which was done by persons riotously and tumultuously."

[58] Legall J did not find the evidence of Senior Superintendent Mariano credible that he had not observed the villagers displaying any riotous behaviour. He found that these villagers were armed with machetes and sticks and were very angry and vociferous.

[59] It is for all these reasons that I agreed that the appeal should be dismissed and the orders of Legall J affirmed. Further, that the respondents are to have their costs to be taxed if not agreed.

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HAFIZ-BERTRAM JA