

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

CLAIM NO. 216 OF 2012

BETWEEN

(CHARLES SELLERS	CLAIMANTS
(CHARLENE SELLERS	
(AND	
(CHIEF FORESTRY OFFICER	DEFENDANTS
(RODOLFO MORALES	
(IBERSO RASH	
(IZBEL RASH	
(AGUSTIN CUS	
(SAMUEL EDWARDS	
(DANIEL EDWARDS	

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Anthony Sylvester of Musa and Balderamos for the Claimants

Ms. Iliana Swift, Crown Counsel for the First Defendant

No appearance on behalf of the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants

D E C I S I O N

1. This is an application for declaratory relief and damages regarding a decision by the Chief Forest Officer granting permission to the 2nd, 3rd, 4th and 5th Defendants to remove rosewood fitches from within the Maya Mountain North Forest Reserve.

2. On July 23rd, 2012, the Claimants sought and were granted leave to apply for judicial review. The Claimant filed its Fixed Date Claim form on August 8th, 2012. Case management orders were made on October 22nd, 2012. Pretrial review was held on December 3rd, 2012.

3. On July 8th, 2013, when the substantive matter was about to proceed to trial, Learned Counsel for the First Defendant raised the preliminary issue whether the claim had been filed contrary to Rule 56(4)(11) of the Civil Procedure Rules which stipulates that: *“Permission must be conditional on the Applicant making a claim for judicial review within 14 days of receipt of the order granting permission.”* The Claim had been filed on the 8th August during the court vacation so the parties were at odds as to whether those days during the vacation could be taken into account in computing the time set under Rule 56.4.11. The Court held, after listening to submissions from both sides on July 25th, 2013 that the claim had not been filed within the time allotted under Rule 56. 4.11. Since judicial review was no longer available the Claimant could not pursue the relief of certiorari. However, he could still seek declaratory relief, as no leave of the court was necessary for such relief. It is in this context that this matter was heard by this court on October 11th, 2013.

Written submissions were filed on behalf of the Claimants on 2nd December, 2013 and by the Defendant on January 3rd, 2014.

Facts

4. The Claimants, Charles Sellers and his wife Charlene Sellers are the licensed holders of a license for Sustained Yield Working of Timber, Forest License No. LTFL-1/08 issued on November 11th, 2008. The said license was for a period of 20 years and applies to the production forests within the Maya Mountain Forest Reserve set out in Statutory Instrument No. 114 of 1997.
5. The Claimants are also the holders of a Forest Permit to exploit Forest Products from Salvage Area in respect of 4000 acres being the Southern portion of the Maya Mountain Forest Reserve.
6. The said permit granted provides for the salvage and removal of secondary hardwoods, mahogany, cedar, pine and rosewood in the designated 4000 acres.
7. The First Defendant is the Chief Forest Officer in the Ministry. His name is Wilbur Sabido and he has held that post since November 18th, 2005.

8. The First Defendant granted permission to the 2nd, 3rd, 4th and 5th Defendants to remove rosewood fitches from the Southern Portion of the Maya Mountain Forest Reserve (within the same area of the salvage permit granted to the Claimants in March 2012). The 6th and 7th Defendants are the employers of the 2nd to 5th Defendants.
9. The 1st Defendant claims that the long term license and the salvage permit of the Claimants are illegal as he did not authorize the issue of either of them.
10. A Moratorium was issued by the Cabinet in March 2012 on the extraction of rosewood in the Southern District. After the Moratorium was issued the 2nd, 3rd, 4th and 5th Defendants sought and were granted permission to transport rosewood that had been logged for the purposes of sustaining their financial stability and that of their families. The 1st Defendant maintains that no permission was granted to the 2nd 3rd 4th and 5th Defendants to log or extract additional rosewood or any licence to so do, but merely to transport materials that had already been fell prior to the issue of the moratorium. The 1st Defendant states that he never granted the 2nd 3rd 4th nor 5th Defendants permission to log, extract or transport materials from the Southern Portion

of the Maya Mountains Forest Reserve which is where the 1st Claimant's salvage concession area is located.

11. The Claimants claim that the 1st Defendant issuing permission to the 2nd to 5th Defendants to remove rosewood within the Claimants' license area has caused the Claimants to suffer financial loss in the sum of \$150,000.

12. The Claimants seek the following relief:

- a. A declaration that the decision of the Chief Forest Officer on the 23rd March 2012 granting permission to the 2nd, 3rd, 4th and 5th Defendants to remove rosewood fitches from within the Maya Mountain North Reserve is unlawful and illegal.
- b. A declaration that the decision of the Chief Forest Officer on the 23rd March 2012 granting permission to the 2nd, 3rd, 4th and 5th Defendants to remove rosewood fitches from within the Maya Mountain Reserve is unreasonable and unfair.
- c. A declaration that the decision on the 23rd March 2012 granting permission to the 2nd, 3rd, 4th and 5th Defendants to remove rosewood fitches from within the Maya Mountain Reserve is in breach of the Claimants' legitimate expectation.
- d. An order for damages as against the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants for the consequent loss to the removal of fitches or any specie of primary hardwood, secondary hardwood or pine trees from within the Maya Mountain North Forest Reserve.

Issues

13. There are six issues agreed between the parties that are for the determination of this court:

- i) Whether a long term forest license and a salvage permit issued pursuant to the Forest Rules must be signed by the Chief Forest Officer?
- ii) Whether a long term forest license and a salvage permit issued pursuant to Forest Rules is void *ab initio* if the officer issuing the license and permit did not have the expressed authority of the Chief Forest Officer?
- iii) Whether the principle of ostensible authority applies to the exercise of a public discretion such as obtained in the Forest Rules in respect of the issuance of forest license and salvage permit?
- iv) Whether a licensee can rely on the equitable principle of estoppel by conduct in circumstances when the Chief Forest Officer denies authorizing the license and the salvage permit?
- v) Whether when a licensee has defaulted on conditions of his long term license and salvage permit, if this is a bar from obtaining reliefs claimed in an action before the court?
- vi) What reliefs, if any, should be granted?

14. Claimant's Arguments on Issues One and Two

- 1) **Whether a long term forest license and a salvage permit issued pursuant to the Forest Rules must be signed by the Chief Forest Officer?**
- 2) **Whether a long term forest license and a salvage permit issued pursuant to the Forest Rules is void *ab initio* if the officer issuing the license and permit did not have the express authority of the Chief Forest Officer?**

Mr. Sylvester argues on behalf of the Claimants that both the long term forest license and the salvage permit issued to Mr. and Mrs. Sellers on November 11th, 2008 were signed by the Honorable Minister Gaspar Vega as the Minister responsible for forestry and also by Marcello Windsor, Deputy Chief Forest Officer. The forest license granted to the Claimants is a license for Sustained Yield Working of Timber Forest License number LTFL 1/08 (Exhibit CS1). The long term forest license was for a period of 20 years from November 3rd 2008 to November 2nd 2028. The Long Term Forest License was *"to cut and remove any species of primary hardwood, secondary hardwood or pine trees and to carry out such activities as are necessary for the maximum protection, optimum regeneration, general improvement and sustainable management of the timber and other forest resources..."* The area of land to be affected by this license is described in the license as *"the production forests within the Maya Mountain Forest Reserve as defined from*

time to time by regulations, the current area (only) of which is more particularly described in Statutory Instrument No. 114 of 1997. The salvage permit granted to the Claimants is a permit to Exploit Forest Products from Salvage Areas. This was a one year permit from 21st February, 2012 to 15th June, 2013 to salvage and remove timber (secondary hardwoods, mahogany, cedar and pine and rosewood) from the area comprising approximately 4000 acres being the Southern Portion of the Maya Mountains Forest Reserve (Exhibit CS4).

Mr. Sylvester points out that under sections 5, 8 and 37 of the Forest Act, Chapter 213 of the Laws of Belize, the Minister responsible for forestry is empowered to make forest rules for the protection of forest produce, transport of forest produce and forest roads. He argues that under Rule 7(1) of the Forest Rules, the Minister can authorize the issuance of a license where the prospective licensee has bid at a public auction for the license, but the bid is below the statutory rate:

“Rule 7(1) The Chief Forest Officer shall issue licenses to the party bidding the highest rates of royalty in a public auction, except when the highest bid is below the rate laid down in the Fifth Schedule hereto in which case the issue of a license must be authorized by the Minister.”

He submits that it is clear from this provision that the Minister can on his own grant a license.

Mr. Sylvester also argues that Rule 7(2) provides for licenses to be issued at the direction or instance of the Minister. He submits that a license and salvage permit issued under Rule 5 of the Forest Rules do not have to be signed by the Chief Forest Officer personally, nor is it incumbent for him to authorize another to sign on his behalf, nor is it required that he has to delegate his authority. He argues that Rule 7(2) emphasizes that the signature of the Minister as a competent authority is sufficient:

“Rule 7(2) The Chief Forest Officer shall submit all tenders for licences to the Minister, who may direct the Chief Forest Officer to whom the licence shall be issued and the conditions subject to which it shall be issued. The Minister shall not be obliged to direct the issue of a licence to a person submitting the best or any tender.”

Mr. Sylvester goes on to contend that the maxim *“omne tnajus continent in se minus”* **Bennion on Statute Law Chapter 9 Guides to Legislative Intention- Rule of Construction p. 118-119** applies to Rule 8(1) (a) of the Forest Rules which stipulates that the Chief Forest Officer can grant permits without reference to the Minister where the royalty value of the produce does *not* exceed \$1000. He argues that, far from precluding the Minister

from granting such permit, the rule in fact presumes that the Minister's authority is necessary in the issuance of a salvage permit where the royalty value of the produce exceeds \$1,000. It follows that the Minister would necessarily have authority to issue salvage permits where the royalty value of the produce is less than \$1,000. Mr. Sylvester submits that in the case at bar, the Minister responsible for Forestry at the time, Hon. Gaspar Vega signed both the long term license and the salvage permit. Thus, even if the court accepts that the Deputy Chief Forest Officer Marcello Windsor was not authorized to sign the forest license and salvage permit, the license and permit would still be valid because they were signed by the Minister responsible for forestry in 2008, Hon Gaspar Vega.

Defendants' Arguments on Issue One and Issue Two

15. Ms. Swift argues on behalf of the First Defendant that the Claimants' contention on these issues is contrary to the literal interpretation of the Forest Rules. It is clear that the 1st Defendant is to grant forest licenses generally. Where the highest bid is below the rate set out in the Fifth Schedule of the Rules, the license must be authorized by the Minister. Ms. Swift submits that even though it is the Minister who gives approval to the Chief Forest Officer for the issuance of a license, it is still the Chief Forest

Officer who issues the license. Ms. Swift further cites the linguistic canon of construction that a legislative provision must be read within its context (**Bennion on Statutory Interpretation** 6th Edition p1030)

as follows:

“It is firmly established that an Act or other instrument must be read as a whole. Lord Walker of Gestingthorpe said ‘a holistic approach would seem to accord with the universally acknowledged need to construe a statute as a whole’. Holmes J said ‘you let whatever galvanic current may come from the rest of the instrument run through the particular sentence...”

Applying this canon of construction to Rules 7 and 8, Ms. Swift argues that the Chief Forest Officer grants the license and permit. If a person is aggrieved by the Chief Forest Officer’s decision, that person may appeal to the Minister to review the Chief Forest Officer’s decision. Interpreting these provisions in the manner sought by the Claimants would lead to absurdity, Ms. Swift argues, as an aggrieved person would not have anyone to appeal to(under the Claimants’ interpretation) as it would be improper for the Minister to consider an appeal of his own decision.

Ms. Swift further submits that the maxim *omne majus continent in se minus* is not applicable to the argument proposed by the Claimants. She states that where a statute expressly provides that a specific officer is empowered to

conduct an act, that act must be exercised by that officer unless the statute provides that he may delegate that power. She cites **Wade and Forsyth Administrative Law** (10th Edition) at page 259 as follows:

“An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorized by the authority endowed with the power.”

Ruling on Issue One and Two

16. I agree with the submissions made by Ms. Swift on behalf of the First Defendant on this issue. The statute clearly states that it is the Chief Forest Officer who **shall** issue licenses generally. Under Rule 6(1) the Chief Forest Officer is empowered to publish notices in the Gazette advertising for sale by public auction forest licenses to cut and remove forest produce where only one type of produce is to be extracted under the licence; in 6(1) (b) the Chief Forest Officer may by notice in the Gazette invite tenders for forest licences to cut and remove forest produce. In section 7(1) this section enables the Chief Forest Officer to issue the license to the highest bidder at a public

auction. In section 7(2) where the highest bid is lower than the statutory rate, that is when the discretion as to who will get the license will be exercised by the Minister, who will then instruct the Chief Forest Officer as to the persons to whom license will be issued. I have looked at the interpretation section of the Forest Rules which defines “Chief Forest Officer” as including any officer **authorized** to act for the Chief Forest Officer or to carry out his duties during his absence from headquarters. I have found that the only law which allows the Chief Forest Officer to delegate his duties is the Forest Licenses (Delegation of Powers) Order:

2. The Chief Forest Officer is hereby authorized to approve or disapprove applications for forest licences and to issue such licences or forest permits in respect of such application subject to the conditions set out in the Schedule hereto.

3. The Chief Forest Officer may authorize in writing any Divisional Forest Officer or other officer of a standing not under the status of Forest Officer to approve or disapprove applications for forest licences or forest permits subject to the conditions in the said Schedule, **save that the royalty value of such licences or permits shall not exceed five hundred dollars.**

SCHEDULE

- (1) The royalty value of such applications **shall not exceed one thousand dollars.**
- (2) The licence shall not be for a period of more than twelve months from the date of issue.

(3) The licence may be in respect of all classes of forest produce save rosewood, chicle, Crown gum, or minor forest produce in respect of the timber “salvage” areas delineated on a map lodged in the office of the Chief Forest Officer.

17. Examining the facts in this case, Mr. Sabido has given evidence in his affidavit dated 1st July, 2012 that he has held the post of Chief Forest Officer in the Ministry of Natural Resources since 2005. At no time did he sign the permit or the licence that was issued to the Claimants in 2008. He also testified that the post of Deputy Chief Forest Officer no longer exists in the Ministry and even when it did exist, he did not authorize Mr. Marcello Windsor as Deputy Chief Forest Officer to sign or to issue any permit or licence to the Claimants. There has been no evidence that Mr. Marcelo Windsor was authorized to issue the license or the permit in question. In addition, the parent Act is silent on delegation of powers and the Forest Rules only allows the Chief Forest Officer to delegate his powers in the specific instance set out in The Forest Licence (Delegation of Power) Order cited above. The Forest Rules 7 places the power to issue licences and permits squarely in the hands of the Chief Forest Officer and on no other. The licence issued to the Claimants clearly exceeded the amount that the Chief Forest Officer could have delegated as it was a twenty year licence

valued at far in excess of \$1000. As Ms. Swift rightly pointed out the courts are very strict in upholding the principle that statutory powers should be exercised only by the party who is stated in the statute.

18. The rationale for this principle was underscored by the Privy Council in **CO Williams Construction Ltd v Blackman and Another** (1994) WIR 94 where the Appellant instituted proceedings for judicial review against Mr. Donald George Blackman Minister of Transport of Barbados and against the Attorney General as representing the Cabinet in respect of actions taken by the Minister in connection with the award of a highway contract to another company (Rayside). The process of placing Government contracts in Barbados is regulated by a precise and detailed statutory code contained in Part XII of the Financial Administration and Audit (Financial) Rules 1971 ('the 1971 Rules') made by the Cabinet in exercise of the power conferred by section 39 of the Financial Administration and Audit Act. After tenders had been invited, the contract was awarded to Rayside whose bid was more than \$10 million dollars, approximately \$1million higher than that of the Appellant company, whose bid was less than \$9 million for the same work. Both the Minister and the Attorney General applied to have the proceedings for judicial review struck out as disclosing no cause of action. The Chief Justice ordered that the

proceedings be struck out in relation to Minister Blackman, but declined to strike out proceedings against the Attorney General representing the Cabinet. Upon appeal, the Court of Appeal affirmed the decision of the Chief Justice with regard to striking out against Minister Blackman, but reversed the Chief Justice by striking out the proceedings against the Attorney General as well.

19. In upholding the decision of the Court of Appeal with regard to the striking out of proceedings against Minister Blackman, Lord Bridge of Harwich of the Judicial Committee of the Privy Council stated as follows:

*“Part XII of the 1971 Rules is headed ‘Government Contracts’. The code it enacts is elaborate. It is unnecessary to set it out in details. Its main features presently relevant are as follows. Whenever a Government contract will involve expenditure in excess of \$25,000, tenders are to be invited. The tenders are to be examined in the first instance by a Tenders Committee...**Throughout the procedural provisions there are carefully devised safeguards designed to eliminate the possibility of corruption, to protect the public purse from exploitation and to ensure fairness to tenderers.** The culmination of the procedure is that the relevant committee reaches its conclusion as to which tender to recommend and then proceeds in accordance with rule 148 which provides:*

‘The committee shall send the tenders and its recommendation thereon to the head of department who shall submit the recommendation to the Minister for acceptance. If the Minister does not accept the

recommendation of the committee, the matter shall be submitted to the Cabinet for final decision.'

By definitions elsewhere in the legislation the reference in this rule to the 'head of department' is to the Permanent Secretary of the department concerned with the proposed contract and the 'Minister' means the Minister of Finance who, at the material time, was the Prime Minister." (emphasis mine)

20. In addressing the issue of whether the Minister of Transport had statutory power to award contracts under the Financial Administration and Finance Audit Rules, Lord Bridge of Harwich upheld the decision of Sir Denys Williams CJ as follows:

*"By virtue of the Financial Administration and Audit Financial Rules the Special Tenders Committee (the funds of an international financial institution were involved) had the statutory power of making the recommendation, the Minister of Finance the statutory power of accepting or rejecting it, and where the Minister of Finance did not accept the recommendation, the Cabinet had the statutory power of making the final decision. **The Minister of Transport and Works, as such, had no statutory power with respect to the award of the contract.** In these circumstances, there being no act or decision of his within the meaning of the Act that is reviewable, there seems to be no justification for allowing the proceedings against him to continue.*

This reasoning was unanimously endorsed by the Court of Appeal and their Lordships agree with it." (emphasis mine)

21. I therefore rule in favor of the Defendant on issues one and two in holding that the permit and the license which were issued to the Claimants were not

valid as they were not signed or authorized by the Chief Forest Officer and not issued in conformity with the Forest Rules. I find that the permit and license were void *ab initio* as the statute specifically empowers the Chief Forest Officer and not the Minister to issue forest permits and licenses.

Claimant's Submissions on Issues 3 and 4

22. iii) Whether the principle of ostensible authority applies to the exercise of a public discretion such as obtained in the Forest Rules in respect of the issuance of forest license and salvage permit?

iv) Whether a licensee can rely on the equitable principle of estoppel by conduct in circumstances when the Chief Forest Officer denies authorizing the license and the salvage permit?

Mr. Sylvester argues on behalf of the Claimants that in the event that the Court does not find favor with the Claimants' submissions on the first two issues, the First Defendant would in any event be estopped from asserting that the long term license and the salvage permit are unlawful based on representation by conduct made by the Chief Forest Officer. He also argues that principles of agency by estoppels would also arise in the instant case.

Mr. Sylvester cites **Halsbury's Laws of England** 4th Ed Reissue Vol 16(2) 2003

as follows:

"The question whether a course of conduct ...amounts to a representation, or is such as a reasonable person would take to be a representation meant to be acted upon in a certain way, must vary with each particular case... A party will not, however, be held to be estopped unless his conduct is unequivocal."

Mr. Sylvester then goes on to point out to the court specific instances which he is saying establishes evidence that the conduct of the First Defendant was such as a reasonable person would take to be a representation meant to be acted upon, thereby accepting the lawfulness of the long term licence of Mr. Sellers. These are set out in the affidavit of Charles Sellers dated as follows:

- (1) Mr. Sabido as Chief Forest Officer writing the Executive Chairman of Beltraide on 17th February 2009 regarding a proposal submitted by the Claimants' company, Maya Mountain Exotic Hardwood and Veneer Limited relating to the long term license;
- (2) Mr. Sabido as Chief Forest Officer writing the Claimants Charles Sellers on 25th February 2009 regarding the long term license;
- (3) Mr. Sabido as Chief Forest Officer writing the Chief Environmental Officer on 15th October 2009 regarding the Claimants long term license;
- (4) Mr. Sabido as Chief Forest Officer granting permission to the Claimants to make improvement to the forest roads in the license area resulting in Claimants improving said road as a cost of \$320,000;

(5) Mr. Sabido as Chief Forest Officer inviting the Claimants to a meeting for all licensees at the George Price Center after the Claimants instituted the instant claim.

23. In addition, Mr. Sylvester submits that the Chief Forest Officer (Mr. Sabido) as the principal, by his conduct, has allowed himself to appear as ratifying the alleged unauthorized act of signing by his agent the Deputy Chief Forest Officer (Mr. Vallejos) thereby giving rise to an agency by estoppel. Mr. Sylvester argues strenuously that at no point in the five years since the license was issued did the Chief Forest Officer inform the Claimants that the license was illegal or unlawful. On the contrary, the Chief Forest Officer by his conduct accepted and acknowledged the license as lawful and valid.

Defendant's Arguments on Issues Three and Four

24. In response to these submissions, Ms. Swift on behalf of the Defendants argues that only the Chief Forest Officer is statutorily empowered to grant a Forest License and Forest Permit. She also argues that no actions taken prior to or subsequent to the illegally granted license and permit can legitimize them.

She cites Lord Denning in **Howell v. Flamouth Boat Construction Ltd [1951]**

AC 837 at 845 as follows:

“Whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which he is concerned, the subject is entitled to rely on their having the authority which they assume. He does not know and cannot be expected to know the limits of their authority, and he ought not to suffer if they exceed it. That was the principle which I applied in Robertson v Minister of Pensions, and it is applicable in this case also.”

Upon appeal of this matter to the House of Lords, Lord Simmonds strongly disagreed with Lord Denning’s reasoning on this point and opined:

*“My lords, I know of no such principle in our law nor was any authority for it cited. The illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy. I do not doubt that in criminal proceedings it would be a material factor that the actor had been thus misled if knowledge was a necessary element of the offence, and in any case it would have a bearing on the sentence to be imposed. **But that is not the question; the question is whether the character of an act done in face of a statutory prohibition is affected by the fact that it has been induced by a misleading assumption of authority. In my opinion the answer is clearly No. Such answer may make more difficult the task of anxious citizens to walk in the narrow way, but that does not justify a different answer being given.**” (emphasis mine)*

Ms. Swift cites this case as authority for the point that a court cannot uphold an ultra vires act, even if the Government Officer was of the opinion that he was acting legally, and even if an innocent member of the public believed he was acting legally.

25. On the issue of estoppel, Ms. Swift submits that that principle does not apply where a Government officer has acted ultra vires. She refers to **Wade and Forsyth, Administrative Law** Tenth Edition as follows:

“In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Thus where an electricity authority, by misreading a meter, undercharged its customers for two years, it was held that the accounts it delivered did not estop it from demanding full payment...”

Ms. Swift submits that no steps taken by the Forest Department after the granting of the licence and permit could have validated the fact that the Deputy Chief Forest Officer had no authority to grant the license and permit. She further states that it would be wrong for the court to assume (as the Claimants are arguing) that the Chief Forest Officer did delegate his powers to the Deputy Forest Officer when the Forest Rules specifically state where the such delegation occurs it must be in writing. Rule 3 of the Forest Rules (Delegation of Powers) Order states:

*“The Chief Forest Officer may authorize **in writing** any Divisional Forest Officer or other officer of a standing not under the status of Forest Officer to approve or disapprove applications for forest licenses or permits subject to the conditions in the said Schedule, **save that the royalty value of such licences or permit shall not exceed five hundred dollars.**” (emphasis mine)*

Ms. Swift argues that in light of this provision, even if the first Defendant as Chief Forest Officer did delegate his powers to the Deputy Chief Forest Officer (which is not admitted), the Deputy would not be statutorily empowered to grant the license for one thousand dollars such as that granted to the Claimants. Citing **Wade and Forsyth Administrative Law**, she refers to page 265:

“The delegate must also keep within the bounds of the power actually delegated, which may be narrower than that possessed by the delegating authority; it will be no defence that that authority could, had it wished, have delegated wider power.”

Ruling on Issues Three and Four

26. I agree with the submissions made by Ms. Swift on issues three and four. The court can fully appreciate the difficult position that the Claimants are in, having relied on the licence and permit issued to them by the Deputy Chief Forest Officer Vallejos, and the Chief Forest Officer (Sabido) having written to the Claimants subsequently with respect to this license and permit, treating them as if they were valid on several different occasions as carefully set out

by Mr. Sylvester. It appears that even up to the time this claim was filed, the Chief Forest Officer himself believed that the license and permit issued to Charles and Charlene Sellers were valid and he treated them as valid. Relying on this permit and license, the Claimants have invested considerable time and resources in developing their project. Unfortunately, despite this evidence, the court cannot sanction an *ultra vires* act (as correctly submitted by Ms. Swift), even when hardship has been caused to an innocent third party such as the Sellers. The Deputy Chief Forest Officer did not have the authority under Rule 3 of the Forest Rules to sign permit or license granted to the Claimants in the first place. If the House of Lords had upheld Lord Denning on that point, the situation would have been different. Unfortunately, Lord Denning's approach (which in my respectful view appears to be the more humane and just approach) was specifically overruled, and this court is therefore bound to follow the House of Lords' decision. The Court therefore finds in favour of the Defendant on the third and fourth issues.

27. Having found in favor of the Defendant on the four previous issues, there is no need to examine the remaining issues as to the question of breach by the Claimants and the nature of relief sought by the Claimants. Judgment in favor of the First Defendant.

28. No order made as to costs.

Dated this Friday, 25th July, 2014

Michelle Arana
Supreme Court Judge