IN THE SUPREME COURT OF BELIZE, A.D. 2017

CLAIM NO. 476 of 2012

IN THE MATTER OF MAGISTRATE COURT BOOK 1298/11 – POLICE v CALMAN HALL & TIFARRAH TENCH

AND

IN THE MATTER OF CASE STATED FOR DETERMINATION BY THE SUPREME COURT

AND

IN THE MATTER OF SECTION 20(3) OF THE CONSTITUTION OF BELIZE, CAP. 4, R.E. 2000-2003

BETWEEN:

CALMAN HALL **TIFARRAH TENCH**	**Claimants**
AND	
PC 1190 JIMMY PALACIO **ATTORNEY GENERAL OF BELIZE**	**Defendants**

December 14 and 20, 2012.

BEFORE: Hon. Chief Justice Kenneth Benjamin.

Appearances: Mr. Anthony Sylvestre for the Claimants.
Ms. Iliana Swift, Crown Counsel, for the Defendants.

JUDGMENT

[1] The Claimants were charged on June 6, 2011, by Magistrate Court Book 1298/11 upon the complaint by the first-named Defendant, PC 1190 Jimmy Palacio, for the

offence of having kept one live 9 mm round of ammunition for which they did not have a gun licence. The trial commenced before the Chief Magistrate on February 28, 2012.

[2] As part of its case, the prosecution adduced into evidence a Firearms Examiner Certificate Lab Reference: FOR 11-605F signed for by Orlando E. Vera in his capacity as a Firearms Examiner. Objection was taken by Defence Counsel appearing for the Claimants, and such objection having been overruled, the said Certificate was admitted into evidence. At the close of the case for the prosecution, the Claimants' Counsel applied to the presiding Magistrate pursuant to section 20(3) of the Belize Constitution for a question to be referred to the Supreme Court by way of case stated.

[3] The Chief Magistrate acceded to the application made by Counsel on behalf of the Claimants. The case stated is in the following terms:

> "The Question is whether the –
>
> (1) Amendment to the Evidence Act, chapter 95 of the Substantive Laws of Belize, Revised Edition, 2000-2003 to provide for certain public officers in the Belize National Forensic Science Services and Scenes of Crime Unit to be designated government experts for the purpose of admissibility of reports as prima facie evidence and to provide for matters connected therewith or incidental thereto infringes a person's right to a fair trial and has a retroactive effect thus making it unconstitutional."

The factual matters previously stated in this judgment were iterated. The following was further stated:

> "The submission made by Counsel for the defence was that the defendants were charged on 6th June 2011, and the Amendment to the Evidence Act came into force in January 2010, therefore having a retroactive application to the act. Counsel also submitted that the amendment was therefore unconstitutional, infringing the defendants' right to a fair trial as guaranteed by section 6(1)(2) of the Belize Constitution."

Having been served with the case stated by the learned Chief Magistrate, the Claimants commenced the present proceedings by way of a Fixed Date Claim Form in conformity with Rule 61.6(1) and (2) of the Supreme Court (Civil Procedure) Rule, 2005.

JURISDICTION

[4] The Claimants seek the determination of a question as to the contravention of section 6(2) of the Belize Constitution by the retrospective application of the Evidence (Amendment) Act No. 1 of 2012 in their trial before the learned Chief Magistrate.

[5] The authority for the referring of such question to be determined by the Supreme Court resides in section 20(3) of the Belize Constitution which prescribes the following:

> "(3) If in any proceedings in any court (other than the Court of Appeal or the Supreme Court or a court-martial) any question arises as to the contravention of any of the provisions of sections 3 to 19 inclusive of this Constitution, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the Supreme Court unless, in his opinion, the raising of this question is merely frivolous and vexatious."

In my view, the question of the admission into evidence of the firearms examiner certificate having come into question in the light of the Evidence (Amendment) Act, the learned Chief Magistrate quite properly responded to the request of the Claimants by stating a case referring the question to the Supreme Court. The mandatory language required that this procedure be adopted subject to the limitation that frivolous and vexatious questions ought to be disallowed.

[6] The procedure to be adopted is set out in Part 61 of the Supreme Court (Civil Procedure) Rules. As previously stated, the proceedings are compliant with Rule 61.6 in that the Fixed Date Claim Form was issued by the parties upon whom the case was served by the Chief Magistrate and the said case stated has been annexed to the claim form in which the Claimants have set out their contentions on the question of law to which the case relates. There is proof by affidavit of the service of the claim form on the virtual complainant in the proceedings in the lower court and, since the proceedings are

brought under the Constitution, there is proof of service on the Attorney General. (see: Rule 61.5(3)).

[7] The relevant provision of the Constitution in respect of which an infringement is alleged is section 6(2), which reads:

> "If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

This provision falls under Part II of the Belize Constitution which is headed "Protection of Fundamental Rights and Freedoms", thus providing the basis for the jurisdiction of the Supreme Court to be invoked pursuant to section 20(3) of the Constitution.

THE CONSTITUTIONALITY OF ACT NO. 1 OF 2012

(a) The case for the Claimants

[8] In the Fixed Date Claim Form, the Claimants seek the following relief:

> "(a) A Declaration that the retrospective application of the Evidence (Amendment) Act 2012 (No. 1 of 2012) by the learned Chief Magistrate in the trial below, in admitting into evidence a firearms examiner certificate prepared prior to the coming into force of the enactment, infringes the Applicant's (sic) constitutional right to a fair trial guaranteed by section 6(2) of the Constitution.
>
> (b) Such further or other relief as may be just."

The relief sought, though stated differently from the question formulated by the learned Chief Magistrate, raises the same two issues: namely, firstly, whether the Evidence (Amendment) Act infringes the right of the Claimant to a fair trial as guaranteed by section 6(2) of the Constitution; and, secondly, whether the said Act is of retrospective effect and therefore rendered not applicable to the Claimants' trial before the court below.

[9] The right of a person charged with a criminal offence to be afforded a fair trial is provided for in section 6(2) of the Constitution (set out in paragraph 7 above). It is preceded by section 6(1) which affords all persons equality before the law and equal treatment of the law without discrimination. There follows section 6(3) which provides for: the presumption of innocence before being proven guilty or a plea of guilty; the right to be informed as soon as reasonably practicable in a language understood as to the nature and particulars of the offence charged; the giving of adequate time and facilities for the preparation of his defence; the right to defend himself before the court in person or by a legal practitioner of his choice; the right to examine in person or by his legal representative the witnesses called by the prosecution and to call witnesses to testify on his behalf; and the right to an interpreter if necessary, without payment. It is submitted by the Claimants that these rights amount to conditions precedent for a fair trial under section 6(2) of the Constitution.

[10] The Claimants seek to impugn the constitutionality of section 36 of the Evidence Act as amended by the Evidence (Amendment) Act No.1 of 2012 and accordingly the burden of proving unconstitutionality falls upon them given the presumption of constitutionality (see **Mootoo v Attorney General for Trinidad & Tobago [1979] 1 WLR 1334**,at pp. 1338-1339).

[11] Prior to the Evidence (Amendment) Act No. 1 of 2012, section 36 of the Evidence Act, Chapter 95 of the Revised Edition 2000 of the Laws of Belize had been amended by Act No. 6 of 1980. In its newly amended form the section enacts:

> "36(1) Any document purporting to be post-mortem report, under the hand of a registered medical practitioner or the Government Pathologist, or any document purporting to be a report under the hand of a government expert, upon any matter or thing duly submitted to him for examination or analysis and report, for the purposes of any trial on indictment, or in any preliminary inquiry before a magistrate in respect of any indictable offence, or in any proceeding in any summary jurisdiction court, or before a coroner, shall be receivable at that trial, inquiry or

proceedings as prima facie evidence of any matter or thing therein contained relating to the examination or analysis:

Provided that whether the report of any of the aforesaid experts is produced in any trial such expert shall if within the country be called if the defence so requires.

(2) If, on any inquiry or proceeding mentioned in subsection (1), any one of those experts is called as a witness to give evidence on the subject matter of his report, the party calling him shall, unless the magistrate, or the summary jurisdiction court, or coroner, otherwise expressly orders, pay all costs occasioned by his having been so called."

(3) ...

(4) ...

(5) For the purpose of section (1), a government expert includes the following public officers:

(a) Pathologist;

(b) Analytical Chemist;

(c) Bacteriologist;

(d) Armourer;

(e) Forensic Document examiner;

(f) Forensic Analyst;

(g) Scientific Examiner (Motor Vehicles);

(h) Finger-Print Technician;

(i) Technician (Scenes of Crime Investigation);

(j) Firearm and Tool Mark Examiner;

(k) Holder of any other public office declared by the Minister by Order published in the Gazette to be a public officer to which this section applies."

In essence, the amendment purported to list the government experts whose reports are receivable as prima facie evidence at trial on indictment, at preliminary inquiry, in a proceeding in a summary jurisdiction court and before a coroner. Further, the proviso was extended to allow for the expert to be called if he is within the country and if the defence requires his attendance at any such trial, preliminary inquiry, summary court proceeding or coroner's inquest.

[12] The Claimants contend that prior to the amendment the firearms examiner would have been required to attend and give viva voce evidence as to his report thus affording the defendants an opportunity to cross-examine him, a facility that is provided for in section 6(3) of the Constitution of Belize. Section 6(3)(e) provides:

"6. Every person who is charged with a criminal offence:

(a) ...

(b) ...

(c) ...

(d) ...

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; ...

(f) ...

It was conceded by the Claimants that the right conferred by section 6(3)(e) is not an absolute one and is subject to restriction or limitation as envisaged by section 3 of the

Constitution which declares that the fundamental rights and freedoms in Part II of the Constitution (which includes section 6) are proscribed by such "limitation designed to ensure the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest".

[13] In his oral submissions, learned Counsel for the Claimants argued that the vested rights of the Claimants have been affected in that they have been deprived of the right to cross-examine the firearms examiner, who hitherto, was required to give viva voce evidence. Such right has been alluded to by Mottley, P in the case of **Micka Lee Williams v R – Criminal Appeal No. 16 of 2006** in the following dictum relative to section 6(1) and (3)(e) of the Constitution:

> "In our opinion, these provisions give a defendant the equal protection of the law and affords him the opportunity to cross-examine those persons who gives (sic) evidence against him and to call witnesses in support of his case should he so desire."

The argument went on to assert that the safeguards afforded by section 36 are not adequate and impair the right of a defendant to a fair trial. In this regard, the sole safeguard identified was the entitlement of the defendant to call the government expert who is the maker of the report as witness if such person is within the country of Belize. This is the purport of the proviso to section 36(1) of the Evidence Act as amended by Act No. 1 of 2012.

[14] As authority for the foregoing arguments, the Claimants relied upon the dicta of Lord Bingham in the Privy Council Appeal from, Jamaica in the case of **Steven Grant v The Queen – Privy Council Appeal No. 30 of 2005 [2006] UKPC 2)**. That case was concerned with the constitutionality of section 31D of the Evidence (Amendment) Act, 1995 of Jamaica which provided for a statement made by a person in a document to be "admissible in criminal proceedings as evidence of any fact of which direct evidence by him would be admissible" in certain circumstances proved to the satisfaction of the Court. In essence, it was put thus by Lord Bingham (at para. 11):

> "The plain purpose of section 31D is to permit the admission of an unsworn statement made out of court, where the statutory conditions are met and subject to the exercise of any relevant discretion, when, but for the section, the statement would have been inadmissible as hearsay."

This dictum, in my humble view, can be adopted, *mutatis mutandis*, in relation to the amended section 36 of the Evidence Act under consideration in this reference.

[15] The provisions of section 20(6) of the Jamaican Constitution are essentially identical to section 6(3) of the Belize Constitution. In the **Grant** case, the starting point of the arguments was the common law principle applicable in England and Wales as in Jamaica and Belize that the best evidence against an accused person at a criminal trial should be that of witnesses giving *viva voce* testimony in court upon oath, available to be cross-examined by or on behalf of the accused, enabling their demeanour to be assessed under questioning for evaluation by the tribunal of fact. This principle was generally accepted as being valid by the Privy Council. However, it was recognised that there may be exceptions to the rule against the admission of hearsay evidence at common law or by statute provided that "it is of course clear that any new exception must not compromise the fairness of the proceedings which section 20 of the Jamaica Constitution is designed to protect".

[16] Lord Bingham embraced the persuasive relevance of the so-called Strasbourg jurisprudence emanating from the European Court of Human Rights having regard to the undoubted similarity between the text of Article 6(3) of the European Convention on Human Rights and section 20(6) of the Jamaica Constitution. I would add also the similarity to section 6(3) of the Belize Constitution.

[17] There are at least two points that are highlighted by Lord Bingham which, in my view, assume prominence and these are set out in paragraph 17 of the Privy Council's advice to which learned Counsel for the Claimants made reference. The first follows upon the limitations recognised by section 3 of the Belize Constitution, stated in this way by the learned Law Lord:

> "... the Strasbourg court has recognised the need for a fair balance between the general interest of the community and the personal rights of the individual, and has described the search for that balance as inherent in the whole Convention ... Thus the rights of the individual must be safeguarded, but the interest of the community and the victims of crime must also be respected."

The second point is directed specifically to the equivalent of section 6(3)(d) of the Belize Constitution and was put thus (by Lord Bingham at para. 17(3):

> "While, therefore, the Strasbourg jurisprudence very strongly favours the calling of live witnesses, available for cross-examination by the defence, the focus of its inquiry in any given case is not on whether there has been a deviation from the strict letter of article 6(3) but on whether any deviation there may have been has operated unfairly to the defendant in the context of the proceedings as a whole. This calls for consideration of the extent to which the legitimate interests of the defendant have been safeguarded."

[18] The submissions by learned Counsel for the Claimants urged that, unlike the safeguards identified by Lord Bingham in **Steven Grant**, the only safeguard offered by section 36 is that where the report is produced in any trial, the expert shall, if within the country, be called if the defence so requires. It was said that this meant that if the expert is not within the country, the defence has no right to cross-examine the firearms expert. It was submitted that this safeguard was not adequate and that the defendant's right to a fair trial would be impaired.

(b) THE CASE FOR THE DEFENDANT

[19] Learned Crown Counsel argued that the right to a fair trial had not been infringed by section 36 as the integrity of the trial had not been thereby affected. The following points were made:

(1) The Prosecution is still required to prove its case.

(2) The certificate of the firearm examiner only amounted to prima facie evidence and the claimants are at liberty to rebut the report.

(3) The Claimant can apply to the Court for the expert to be called to test his veracity provided that he is in the country.

(4) The certificate was 'receivable' into evidence thus rendering the admission of same within the discretion of the Magistrate or Judge as to whether to receive the evidence.

(5) There is a common law principle that the Court has a discretion to exclude prejudicial evidence (see **Williams v R – Criminal Appeal No 16 of 2006**).

[20] It was further contended that the overall consideration is whether the Claimants would be accorded a fair trial under the amended section 36 and that, having regard to the stated safeguards identified, the fairness of the trial process was guaranteed viewing the entire section as a whole.

CONSTITUTIONALITY OF SECTION 36

[21] The fundamental question to be resolved is: whether the amendment to section 36 of the Evidence Act infringed the Claimants' right to a fair trial as guaranteed by section 6(2) of the Constitution. The second issue is whether the amendment is of retrospective application. The latter issue will be dealt with separately, although, no doubt because of the manner in which the reference was framed, the Defendants' submissions dealt with the second issue as being the primary one.

[22] The starting point is logically the common law rule of longstanding that the accused at a criminal trial is entitled to cross-examine the witnesses who gives sworn testimony in order to commend their demeanour to the court for the purpose of ascertaining their credibility. This principle finds expression in section 6(3)(e) of the Constitution. Lord Bingham endorsed the propriety of the principle in the following dictum in **Steven Grant** (at para. 14):

> "The Board would not wish to question the general validity of the principle for which the appellant argues. The evidence of a witness given orally in person in court, on oath or affirmation, so that he may be cross-examined and his demeanour under interrogation evaluated by the tribunal of fact, has always been regarded as the best evidence, and shall continue to be so regarded. Any departure from that practice must be justified."

The distinguished Law Lord went on to caution that the constitutional guarantees as to the protection of the law and to be afforded facilities to examine witnesses called by the prosecution cannot be construed as guaranteeing that without a constitutional amendment there would be no further statutory exception to the hearsay rule applicable in criminal proceedings. However, he continued by stating that any new exception must not compromise the fairness of the trial which the Constitution seeks to protect (see: **Steven Grant**, para. 16).

[23] The overarching consideration is whether the safeguards for the rights of the accused person are adequate to protect the fairness of the proceedings. Put another way, the admission of the firearm expert's report pursuant to the amended section 36 must not have placed the Claimants at an unfair disadvantage at their trial.

[24] As I see it, adequate safeguards are provided by the law for the protection of the rights of a defendant confronted with the prosecution seeking to tender a report by a firearms examiner pursuant to section 36 as amended. In the first place, the Magistrate has a discretion as to whether the report will be received in evidence. The language of section 36, even in its original form, speaks of the report being 'receivable' in evidence. This contemplates the report being eligible or capable of being admitted into evidence. There is no mandatory requirement that the report be so admitted. The discretion must be judicially exercised and it is governed by the court's power to exclude evidence if the prejudicial effect or which outweighs the probative value.

[25] In the second place, the evidence is stated to be admitted as prima facie which allows for the defendant to call evidence in rebuttal to challenge the contents of the report. Indeed, it would be open to the defendant to call his own expert witness or lead

evidence of whatever nature to impugn the sub-stratum of fact upon which the report is based or to challenge the findings of conclusions of the expert.

[26] In the third place, upon receiving the report into evidence, the Magistrate will be required to remind himself or herself, as the tribunal of fact, that the author of the report has not been made available for cross-examination (see: **Scott v R [1989] A C 1242** at p. 1259).

[27] Finally, there is the partial safeguard of the defendant being afforded the opportunity to require that the expert be called provided that the expert is at the time within the jurisdiction.

[28] Having regard to these stated safeguards, section 36 does not offend the right to a fair hearing guaranteed by section 6(2) of the Constitution.

IS THE AMENDMENT RETROSPECTIVE IN ITS APPLICATION?

[29] The Claimants argued that the Evidence (Amendment) Act affects a vested right of a defendant and hence the Claimants. In this regard, it was said that it was not procedural in nature but rather it affected and altered a substantive right of the Claimants, namely, the right to cross-examine the expert which is specifically provided for in section 6(3)(e) of the Constitution.

[30] The argument was supported by the principle of the presumption against retrospectively of a statute. The authority cited was **Yew Bon Tew v Kenderaan Bas Mara – Privy Council Appeal No. 36 of 1980**. The following dictum of Lord Brightman was relied upon in the first instance (at p. 2):

> "Apart from the provisions of the Interpretation Statutes, there is at common law a prima facie rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result is unavoidable on the language used. A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty or attaches a new disability, in regard to events already past. There is

however said to be an exception in the case of a statute which is purely procedural, because no person has a vested right in any particular course of procedure, but only a right to prosecute or defend a suit according to the rules for the conduct of an action for the time being prescribed."

His Lordship offered the following guidance as to how to resolve the matter (at p. 6):

> "... the proper approach to the construction of the 1974 Act is not to decide what label to apply to it, procedural or otherwise but to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations."

[31] Learned Crown Counsel's written submissions were substantially devoted to supporting her contention that the Evidence (Amendment) Act is merely procedural and therefore it applies prospectively in that it is applicable at the time of trial but retrospective since it takes into account past facts. It was said that the amendment operates prospectively as it takes effect at the time the report is tendered in court at trial, although the report would have been in existence prior to the passing of the amendment. That being so, since the change to the law was merely procedural then the report is admissible being regulated by the state of the law as at the date of trial.

[32] In the Court of Appeal of Trinidad and Tobago, in the case of **Braithwaite and Taitt v The State** (unreported – TT2009 CA 42), the trial judge had admitted a Certificate of Analysis by a firearm and toolmark examiner, which predated the publication of a legal notice including such expert in the definition of 'Government Expert' under the Evidence Act, cap. 7:02. On appeal, it was submitted that the certificate was inadmissible because at the time the ammunition was analysed, there was no provision in the law for the admission of the certificate into evidence. The submission was rejected by Bereaux, JA with these words at paragraph 29):

> "[29.] We say that the certificate of analysis is admissible. The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. In this case, the legal notice effected only a procedural change in the law;

that is to say, the legal notice allowed for a change in the procedure by which the expert's evidence was admitted. In the absence of the legal notice the expert himself would have had to be called. It is sufficient that at the time of the trial the law permitted the admission of the certificate of analysis."

His Lordship prayed in aid the case of **Republic of Costa Rica v Erlanger (1874) 3 Ch D 62** in which Mellish, J said that no person has a vested right in any course of procedure but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Lord Blackburn put it thus in **Gardner v Lucas (1818) 3 App Cas 582** at p. 603:

"Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be."

[33] Additional authorities were referred to in the Defendants' written submissions. The cases included: **R v Zuber [2010] 175 ACTR 1**; **Rodway v R [1990] ALR 385**; **Re: Attorney General's Reference No. 1 of 2004 [2005] TASSC 10**; **Tasmania v Thorpe [2011] TASSC 18**; and **R v Howard Smith Paper Mills Ltd [1959] SCJ No. 24**. In **Rodway v R**, the High Court of Australia dealt with retrospectivity in the context of legislation which removed the requirement that a trial judge warn the jury about convicting an accused person upon the uncorroborated evidence of a complainant in sexual offences. The judgment of the Court reads (at p. 387):

"The rule at common law is that a statute ought not to be given a retrospective operation where to do so would affect an existing right or obligation unless the language of the statute expressly or by necessary implication requires such construction. It is said that statutes dealing with procedure are an exception to the rule and that they should be given a retrospective operation. It would, we think, be more accurate to say that there is no presumption against retrospectivity in the case of statutes

> which affect mere matters of procedure. Indeed, strictly speaking, where procedure alone is involved, a statute will invariably operate prospectively and there is not room for the application of such a presumption. It will operate prospectively because it will prescribe the manner in which something may or must be done in the future, even if what is to be done relates to, or is based upon, past events. A statute which prescribes the manner in which the trial of a past offence is to be conducted is one instance."

The judgment continued (at p. 389):

> "But ordinarily an amendment to the practice or procedure of a court, including the admissibility of evidence and the effect to be given to evidence, will not operate retrospectively so as to impair any existing right. It may govern the way in which the right is to be enforced or vindicated, but that does not bring it within the presumption against retrospectively. A person who commits a crime does not have a right to be tried in any particular way; merely a right to be tried according to the practice and procedure prevailing at the time of trial."

[34] The amendment to section 36 operated to include the firearms and toolmark examiner as a 'Government expert'. In practical terms, it meant that at trial, such an expert was no longer required to give *viva voce* evidence but that the report of his examination or analysis is receivable as prima facie evidence of any matter contained in the said report as to the examination or analysis. Upon production of the report, the defence can require that the expert be called, if he or she is within the country. This altered the manner in which such evidence is presented to the court and how the trial of a past offence is to be conducted. No existing right or obligation is affected.

[35] The Claimants say that they have been deprived of the right to cross-examine the firearms and toolmark examiner when he is not within the country. That is a matter of procedure and affects the course of the trial. Upon the authorities cited by the Defendants, the amendment operates prospectively as the trial is to be conducted in accordance with the altered mode of procedure for the time being in existence.

[36] The Defendants submitted, in the alternative, that the amendment to section 36 ought to be applied retrospectively for the reason that it is a mere procedural amendment and does not impair the existing right. The authority of **Rodway v R** (above) was cited in support of the alternative position. On a matter of principle, this cannot be faulted as the procedural nature of the amendment removes the presumption against retrospectively or at common law applicable to situations where an existing right or obligation is affected.

ORDER

[37] In the premises, the Court holds that the Evidence (Amendment) Act No. 1 of 2012 does not infringe the Claimants' right to a fair trial guaranteed by section 6(2) of the Constitution. Further, the amendment is of a procedural nature and in any event, is prospective in its effect though applicable to a prior factual situation. Accordingly the declaration sought by the Claimants is refused.

[38] Having regard to the constitutional significance of this matter, there shall be no order as to costs.

DATED this 13th day of October, 2017.

CHIEF JUSTICE

KENNETH A. BENJAMIN
Chief Justice

BELIZE