

**IN THE SUPREME COURT OF BELIZE, A.D. 2021**

**CLAIM NO. 269 OF 2021**

**BETWEEN**

<b>(STAKE BANK ENTERPRISE LIMITED</b>	<b>CLAIMANT</b>
<b>(</b>	
<b>(AND</b>	
<b>(</b>	
<b>(THE ATTORNEY GENERAL</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>(</b>	
<b>(NATIONAL ENVIRONMENTAL APPRAISAL COMMITTEE</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>(</b>	
<b>(DEPARTMENT OF ENVIRONMENT</b>	<b>3<sup>RD</sup> DEFENDANT</b>
<b>(</b>	
<b>(PORTICO ENTERPRISES LIMITED</b>	<b>1<sup>ST</sup> INTERESTED PARTY</b>
<b>(</b>	
<b>(WATERLOO INVESTMENT HOLDINGS LTD</b>	<b>2<sup>ND</sup> INTERESTED PARTY</b>
<b>(</b>	
<b>(BELIZE CRUISE DEVELOPMENT LTD</b>	<b>3<sup>RD</sup> INTERESTED PARTY</b>
<b>(</b>	
<b>(BELIZE LOGISTICS TERMINAL LTD</b>	<b>4<sup>TH</sup> INTERESTED PARTY</b>

**BEFORE THE HONOURABLE MADAM JUSTICE LISA SHOMAN**

**HEARING: March 02, 2022**

**WRITTEN SUBMISSIONS:**  
**Defendants/Applicants January 21, 2022**

**APPEARANCES**

**Glenn D. Godfrey SC and William Lindo for the Claimant/Respondent**

**Samantha Matute-Tucker and Jorge Matus for the Defendants/Applicants**

**Andrew Bennett and David Morales for the 1<sup>st</sup> Interested Party**

**Godfrey Smith SC and Hector Guerra for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Party**

## RULING ON STRIKE OUT APPLICATION

### **BACKGROUND**

1. The matter before this Court for resolution is an application by the Defendants via Notice of Application to Strike Out dated January 13, 2022 (“the Strike Application”) seeking an Order to strike out the Fixed Date Claim on the basis that the Claimant failed to comply with the order of this Court made on July 26, 2021, granting the Claimant leave to apply for Judicial Review and ordering that the Claimant shall file its Application for Judicial Review within 14 days of the date of the decision.
2. All parties agree that the date by which the Claimant should have filed the Fixed Date Claim Form is August 10, 2021. The Defendants/Applicants say that the Claimant did not file the Fixed Date Claim until August 13, 2021; and that consequently, the Claimant has failed to file a Fixed Date Claim Form within 14 days of the date of the Order of the Court and is in breach of the July 26, 2021 Order.
3. The Defendants apply pursuant to Rules 26.3(1)9(a) and (b), 26.8, 32.6 and Rule 56.4(11) of the Supreme Court (Civil Procedure) Rules and the inherent jurisdiction of the Court.
4. The grounds of the Application are as set out in the Strike Application of the Defendants, but at the hearing, the learned Assistant Solicitor General condensed the grounds to focus on the specific rule contained at 56.4(11) of the Supreme Court (Civil Procedure) Rules and the specialized nature of the rules in judicial review proceedings in particular at the leave/permission stage.
5. In responding to the Application, counsel for the Claimant chose to ground his answer to the application by stating that on August 9, 2021, the Fixed Date Claim

Form, together with 4 Affidavits in support were successfully uploaded and successfully submitted for this claim and that there were email responses from Curia Support to prove the same. The Claimant relies on Rule 3.7 of the Supreme Court (Civil Procedure) Rules and in particular Rules 3.7(2) and 3.7(3) which set out in clear terms when a document is filed with the Court Office. The Claimant insists that the Fixed Date Claim was in fact filed on August 9, 2021, and within the 14 day time limit as set out by the Order of the Court dated July 26, 2021.

## THE LAW

6. Practice Direction No.1 of 2021 “**Supreme Court (Electronic Filing And Service) Rules, 2021**”<sup>1</sup> was promulgated to “*make provision for the filing of documents in civil proceedings by electronic means utilizing a portal managed by the Supreme Court of Belize. This objective of which is to (a) Promote technology in the Court process (b) Further the overriding objective of civil proceedings to deal with matters justly and fairly; (b) Enable a cost effective and expeditious means of dealing with cases and sound management of the Court’s resources (c) Enhance access to justice.*”<sup>2</sup>
7. This Practice Direction, which was promulgated during the beginning of the current pandemic, makes directions for the electronic filing of documents via a portal which is the online based platform used by the Supreme Court to facilitate the electronic filing (e-filing) of documents in the registry. In short, it sets out how documents are to be filed in the Supreme Court Registry in Belize.
8. The Practice Direction came into effect on April 26, 2021<sup>3</sup>. The section on Filing<sup>4</sup> explains in detail how the filing of documents in the Registry is to be done in order

---

<sup>1</sup> Gazette Extraordinary No. 15 April 21, 2021 at Page 61

<sup>2</sup> Practice Direction 1(2)

<sup>3</sup> Direction 3(1)

<sup>4</sup> Direction 5

to commence proceedings, or to conduct ongoing proceedings<sup>5</sup> and requires users to be familiar with the “*Apex Folio User Guide*”<sup>6</sup>.

9. There is an entire section set out in Practice Direction 7 entitled “Time of Filing”, which states: “*(1) A document filed by electronic means shall be deemed to be filed within the meaning of the CPR at the date and time when the following requirements are satisfied: (a) The document is submitted by electronic means and received by the Court office; (b) The filing fee (where applicable) is received by the Court office; and (c) A copy of the submitted document bearing the stamp (and where applicable the seal) of the Court is transmitted to the filing party.*”
10. Counsel for the Claimant, Mr. Lindo, valiantly argued that this Practice Direction was not promulgated by a Statutory Instrument, as the Supreme Court (Civil Procedure) Rules were, and urged the Court to look only at the provisions of Section 3.7 of those Rules.
11. In response, the Assistant Solicitor General, Mrs. Matute-Tucker referred to Part 4 of the Supreme Court (Civil Procedure) Rules which deals with the issuance of Practice Directions and states that a Practice Direction must be issued only by the Chief Justice and published in the Gazette, and that once published it takes effect on the specified date, or date of publication. Rule 4 of the Supreme Court (Civil Procedure) Rules also provides that “*A party must comply with any relevant practice directions unless there are good reasons for not doing so*”<sup>7</sup>
12. In my view, Part 4 of the Rules clearly provides the basis for promulgation and issuance of Practice Directions by the Chief Justice such as Practice Direction No.1 of 2021. And it also provides the requirement that parties must comply with Practice Directions. There were no reasons advocated in these circumstances for

---

<sup>5</sup> Ibid 5(2)

<sup>6</sup> Ibid 5(3)

<sup>7</sup> Supreme Court Civil Procedure Rule 4.5

any non-compliance. The Claimant/Respondent says that it has complied fully with Rule 3.7, and that its Fixed Date Claim Form is validly filed. Indeed, the entire basis of the Claimant's response to the Strike Application is that the Fixed Date Claim Form was filed on time.

13. The heart of the argument for the Defendants/Applicants for this Strike Application is that Judicial Review proceedings are in a different category from ordinary civil proceedings, and that this can be gleaned from the explicit rules which are specifically applicable to administrative actions, as provided for in Part 56 of the Supreme Court Civil Procedure Rules.
14. The Defendants hone in on Rule 56.4 which deals with the hearing of an application for permission for judicial review and in particular Rule 56.4(11) which states that *"Permission must be conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting permission."*
15. The Defendants rely on the Jamaican Court of Appeal case of **Orrett Bruce Golding and the Attorney General of Jamaica v Portia Simpson Miller**<sup>8</sup> which had to consider whether the trial judge had erred in enlarging the time within which an applicant (who had permission) may make a claim for judicial review.
16. In that case, the Trial Judge had granted, after the 14 day conditional leave period had lapsed, an application for an order for extension of time within which to file a claim for Judicial Review. In arriving a decision, Mr. Justice of Appeal Smith first examined the legislative scheme of Part 56 of the Jamaican Civil Procedure rules and stated: *"It is a cardinal rule of construction that words must be given their ordinary and natural meaning. The words of the rules are plain. There can be no doubt that the grant of leave to proceed to judicial review under rule 56.4 (12) is provisional. It is not absolute. It imposes a condition on an applicant to present*

---

<sup>8</sup> SCCA No. 3 of 2008

*his or her claim within 14 days of the grant of the leave. To satisfy this condition a Fixed Date Claim Form with an affidavit in support thereof must be filed, in obedience to rule 56.9 (1) (a) and 56.9 (2). It follows therefore that it would be obligatory on the part of the applicant to present the requisite documents within the time specified.”<sup>9</sup>*

17. The Supreme Court of Jamaica Civil Procedure Rule 56.4(12) is similar to Belize’s Rule 56.4(11) and states that “*Leave is conditional on the Applicant making a claim for judicial review within 14 days of receipt of the order granting leave*”. In Jamaica, however, unlike Belize, there is an additional power conferred on the court under Rules 56.5 (1) and 56.5 (3) to renew an Application for Judicial Review. We have no such rule.
18. Smith JA went on to say “*If the framers of rule 56.4 (12) had intended to confer on the court the power to renew an application for the grant of leave for judicial review after a hearing, specific provisions for so doing would have been made by Part 56. No such provision had been made.*”<sup>10</sup> Smith JA’s reasoning with regards to leave is that “*Leave is not absolute. It is conditional. The condition is precedent, that is to say, the vesting of the right is delayed until the claim for judicial review is filed. Only when the Claim for Judicial Review is made does the leave become absolute.*”<sup>11</sup>. Both statements are persuasive.
19. I also find very helpful and persuasive, the reasoning of Smith JA on the construction of the rule, which is encapsulated as follows: “*On a true construction of rule 56.4 (12) the grant of leave is dependent upon the respondent filing a Fixed Date Claim Form and supporting affidavit within 14 days of the grant of*

---

<sup>9</sup> Ibid at pages 34-35.

<sup>10</sup> Ibid at page 35

<sup>11</sup> Ibid at page 30

*leave. The pleading having not been filed within the prescribed time, the condition remained unfulfilled and the leave thereby lapsed.”<sup>12</sup>*

20. This case is also of great assistance in dealing with the question of when the case management powers of a Court under more general rules of the Civil Procedure Rules can be invoked - and Smith JA addressed this as follows: *“the provisions of rules 25 - 27 can only be invoked in circumstances where a claim is in existence. Case management powers cannot be exercised in a vacuum. There must be proper foundation giving a right for these powers to become operative. There is nothing showing that rule 56.13 (1) is applicable. The rule must be construed to mean that the court may only apply the provisions of rules 25 - 27 where a Fixed Date Claim Form has been filed.”<sup>13</sup>*
21. In similar vein are the Jamaican cases of Dwight Reid v Greg Christie (Contractor General of Jamaica) and the Attorney General of Jamaica<sup>14</sup> and Donnette Spence v Greg Christie (Contractor General of Jamaica) and the Attorney General of Jamaica<sup>15</sup>
22. In those claims, it was held that grant of leave to make a claim for Judicial Review was conditional on the Applicant presenting her claim within 14 days of the said grant. Failure to do so within the time frame caused the condition to remain unfulfilled and the leave thereby lapsed. The Court, (relying on the dicta of Harris JA) per Rattray J said: *“I am of the opinion that Judicial Review proceedings are in a different category from ordinary civil proceedings and this is perhaps exemplified by the explicit rules applicable to administrative actions, as provided for in Part 56 of the Civil Procedure Rules. It is therefore of importance that Applicants adhere to specific procedure delineated in Part 56.”*

---

<sup>12</sup> Ibid at page 35

<sup>13</sup> Ibid at Page 35

<sup>14</sup> Claim No HCV-02877 of 2009

<sup>15</sup> Claim No HCV-02878 of 2009.

23. I think both these decisions are seminal in assisting this Court to determine what the position in Belize is. Permission to file Judicial Review is not absolute. It is conditional permission given to an Applicant; and a judge may only grant such permission if the Applicant qualifies under the Rules in Part 56 and in particular Rule 56.2 and 56.3. Such grant of permission is governed by Rule 56.4. Rule 56.4(11) is not a discretionary rule. A judge **must** grant permission to an Applicant **only if** such permission is made conditional on the Applicant making the Claim for Judicial Review within 14 days.
24. The Parties and this Court were able to locate only one Order in which a Court in Belize was obliged to order the Strike of a Fixed Date Claim for Judicial Review – **Audrey Marie Bradley et al v. The Chief Elections Officer and the Governor General of Belize**<sup>16</sup>. In this case, Madam Justice Arana ordered that the Claimant's claim be struck out for failure to comply with the order of the Court made on June 20, 2012 by failing to make a claim for judicial review within 14 days of receipt of the Order granting permission. This was an order made when the Claimant was late in filing the Fixed Date Claim by one day.
25. The authorities are clear. Part 56 proceedings are to be governed by those rules, and by the clear and unambiguous words of the rules. If a Fixed Date Claim is not filed within the 14 day window, the permission granted by the Court to file the Claim lapses. In essence, there is in such a circumstance, no Claim over which the Court may exercise its jurisdiction. The provisions of Rule 56.11 having to do with First Hearing, only apply when there is a validly filed Fixed Date Claim Form,
26. This means that if the 14 day period has lapsed, the Court may not exercise any case management powers it has under the rules, simply because there is no case to manage.

---

<sup>16</sup> Claim 255 of 2012



27. The **Dwight Reid** cases (supra) put the matter thusly: *“In the circumstances where no claim or Judicial Review has been filed within the time prescribed by the rules, the leave of the Court lapsed, thereby removing any vestige of jurisdiction to which the Applicants had hoped to cling in their desire to continue their legal excursion. I find that this Court has no jurisdiction to proceed further with these matters.”*
28. I am obliged to agree. If there is no Fixed Date Claim filed within the 14 day window as ordered by the Court, then the conditional leave ordered has lapsed, and the Court cannot grant any extension of time under the Civil Procedure Rules, nor can it seek to cure or overlook a technical error under the general Civil Procedure Rules, for example, Rule 26.9.

## THE EVIDENCE

29. In this case, the Claimant says that the Fixed Date Claim was in fact filed on August 9, 2021 and relies on the Affidavit of Ronald Arias dated February 10, 2022, who deposes at paragraph 7 that he “personally uploaded into the Apex System” the Fixed Date Claim form and supporting Affidavits. He exhibits copies of email<sup>17</sup> from “Curia Support” which is the case management office at the Registry – which simply say that the “document” has been successfully uploaded for case AP20210269 Stake Bank Enterprise Limited v. The Attorney General et al. These Notices did not state what document was uploaded.
30. The Defendants rely on the First Affidavit of Giovanni Tillett<sup>18</sup> to which there are 3 exhibits attached – **GT 1 – GT 3**. At paragraphs 6 and 7 of his Affidavit, Mr. Tillett describes his review of the Apex Folio E-Filing Portal to determine when the Fixed Date Claim in this case was filed. He deposes that the Fixed Date Claim Form dated 9<sup>th</sup> day of August 2021 was marked “not accepted” as stated under the status bar of the case file. He then deposes that when he clicked on those words

---

<sup>17</sup> Affidavit of Ronald Arias at **RAS 2 and RAS 3**

<sup>18</sup> First Affidavit of Giovanni Tillett dated March 02, 2022

“not accepted,” it stated that the reason for non-acceptance was that the “file was too large”

31. Exhibit **GT 2** of the First Affidavit of Giovanni Tillett exhibits a letter from the Attorney General’s Ministry to the Registrar of the Supreme Court provided to him which asks the Registrar about the status in relation to the documents filed by the Claimant as follows *“A check of the Apex System has revealed that 2 submissions were made to the Apex System – a Fixed Date Claim Form dated August 9, 2022, and only one was stamped filed and the other marked “Not Accepted” by the system”*.
32. The First Affidavit of Giovanni Tillett at Exhibit **GT 3** exhibits a reply by the Registrar as to the status of a document which is marked “not accepted by the system”. According to the Registrar’s letter in reply, in short, such a document is not filed.
33. In my view, the Registrar is right. A document is filed in the E-Filing Portal of the Registry once it has been uploaded, the undertaking accepted and the Apex System returns a notification on the document, bearing its date stamp.
34. It is worth reminding parties that the Practice Direction No 1 of 2021 is very clear at Direction 7 (2) – *“(2) A filing party is responsible for observing any applicable deadlines and shall endeavour to afford sufficient and/or reasonable time for processing by the Court office, taking into account any circumstances that may exist at a particular time.”*
35. The Fixed Date Claim Form in this case is stamped as having been filed on August 13, 2021, three days past the 14 day window. This Court cannot extend the time. It has no jurisdiction to do so.

36. In the premises, this Claim must be struck out, since the Court no longer has jurisdiction, as time had lapsed when the claim was not filed within the mandatory 14 day time period.
37. The Court is not vested with powers under the Supreme Court (Civil Procedure) Rules to extend the time allotted under Part 56.4 (11) in which an Applicant for Leave must file a Fixed Date claim form if that time has lapsed.
38. This being the case, I need not make any ruling on the other issue listed in the Application of the Defendant, the matter of the Affidavit of Jose Garcia.

## ORDERS

39. It is ordered that:
- (a) The Claimant's Claim is struck out on the ground that the Claimant has failed to comply with the Order of the Court made on July 26, 2021 by failing to make its claim for judicial review within 14 days of receipt of the order granting permission;
  - (b) The Claimant shall pay the Defendants costs in the sum of BZD \$5,000.00.

DATED THE 3<sup>rd</sup> DAY OF MARCH, 2022.



LISA M SHOMAN

JUSTICE OF THE SUPREME COURT