



**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

**CCJ Appeal No BZCV2014/002
BZ Civil Appeal No. 27 of 2010**

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BETWEEN

THE MAYA LEADERS ALLIANCE

THE TOLEDO ALCALDES ASSOCIATION on behalf of the Maya village of Toledo District

JUAN POP on behalf of the Maya village of Golden Stream

DOMINGO CAL on his own behalf and on behalf of the Maya village of Aguacate

LUCIANO CAL on his own behalf and on behalf of the Maya village of Bladen

ALBERTO HUN on his own behalf and on behalf of the Maya village of Blue Creek

CANDIDO CHO on his own behalf and on behalf of the Maya village of Crique Jute

LUIS CHO on his own behalf and on behalf of the Maya village of Crique Sarco

PEDRO CUCUL on his own behalf and on behalf of the Maya village of Dolores

MANUEL CHOC on his own behalf and on behalf of the Maya village of Indian Creek

ALFONSO OH on his own behalf and on behalf of the Maya village of Jalacte

MARIANO CHOC on his own behalf and on behalf of the Maya village of Jordan

EDUARDO COY on his own behalf and on behalf of the Maya village of Laguna

PABLO SALAM on his own behalf and on behalf of the Maya village of Medina Bank

ROLANDO AUGUSTINE PAU on his own behalf and on behalf of the Maya village of Midway

LORENZO COC on his own behalf and on behalf of the Maya village of Otoxha

SANTIAGO COC on his own behalf and on behalf of the Maya village of Pueblo Viejo

SILVINO SHO on his own behalf and on behalf of the Maya village of San Antonio

IGNACIO TEC on his own behalf and on behalf of the Maya village of San Benito Poite

GALO MEJANGRE on his own behalf and on behalf of the Maya village of San Felipe

FRANCISCO CUS on his own behalf and on behalf of the Maya village of San Marcos

MARCOS ACK on his own behalf and on behalf of the Maya village of San Miguel

JUAN QUIB on his own behalf and on behalf of the Maya village of San Vincente

LIGORIC COY on his own behalf and on behalf of the Maya village of Santa Anna

ELIGORIC CUS on his own behalf and on behalf of the Maya village of Santa Theresa

APPELLANTS

AND

THE ATTORNEY GENERAL OF BELIZE

RESPONDENT

**Before The Right Honourable
And The Honourables**

**Sir Dennis Byron, President
Mr Justice Nelson
Mr Justice Saunders
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson
Mme Justice Rajnauth-Lee**

JUDGMENT SUMMARY

- [1] This appeal involves a claim by twenty-five Appellants comprised of the Maya Leaders Alliance, the Toledo Alcaldes Association, Juan Pop (the alcalde of Golden Stream) and twenty-two other alcaldes representing villages in the Toledo District against the Government of Belize. It arose out of an incident in 2008 where Mr Francis Johnson, now deceased, who claimed to hold a lease to farm lands in the Golden Stream village, proceeded to enter the lands and clear large portions despite active protestations of the alcalde, Juan Pop and other Maya villagers. This incursion was the catalyst behind the Appellants' constitutional claim alleging that the failure of the Government of Belize to recognise and protect their customary land rights infringed sections 3, 3(a), 3(d), 4, 16 and 17 of the Constitution of Belize and seeking mandatory orders, an injunction and damages by way of relief.
- [2] The Appellants' claim only partially succeeded before the Honourable Conteh CJ, sitting in the High Court of Belize. The Chief Justice affirmed that Maya customary land tenure extended to the entire Toledo District and gave rise to collective and individual property rights within the meaning of sections 3(d) and 17 of the Constitution. The learned Chief Justice issued the requested mandatory order and injunctive relief directing the Government to develop a system to accord legal protection to Maya customary land tenure and refrain from any action which might prejudice the property rights of the Maya. However the learned Chief Justice failed to find any constitutional breach and refused to make an award of damages. His reasoning was predicated on the fact that his earlier decision in the *Aurelio Cal v The Attorney General of Belize and Manuel Coy v the Attorney General of Belize* (the *Maya Land Rights case*)¹ was limited in scope, covering only the Santa Cruz and Conejo villages, and no lease was produced in evidence showing a grant of lands by the Government to Mr Johnson. As such, the learned Chief Justice could find no State action which fell afoul of the constitutional rights of the Appellants.
- [3] This decision was partly upheld by the Court of Appeal (Morrison and Alleyne JJA with Sosa P dissenting). The Court of Appeal agreed that the Appellants' system of customary land tenure was protected under the Constitution but there had been no proof of a breach

¹ (2007) 71 WIR 110.

of these rights at the hands of the State. It varied the decision of the learned Chief Justice in relation to the mandatory order and injunctive relief issued against the Government and awarded the Appellants sixty-five percent (65%) of their costs.

- [4] Both the Appellants and the Government filed separate appeals with the Caribbean Court of Justice challenging the decision of the Court of Appeal. The Appellants argued that the court erred in failing to find a breach of their constitutional rights as alleged. The Government challenged the court's finding that the test for indigenous title had been satisfied and asserted that the Appellants could not show the requisite link to the original inhabitants of the Toledo District. However by virtue of a Consent Order dated April 22, 2015 the scope of both appeals narrowed significantly. Both parties conceded that Maya customary land tenure exists in the entire Toledo District and gives rise to collective and individual land rights within sections 3(d) and 17 of the Belize Constitution. The Government committed to developing a mechanism to recognise and protect these rights and to cease and abstain from any acts that might adversely affect the value, use or enjoyment of the lands that are used and occupied by the Maya villagers without the informed consent of the Maya people. Based on the Consent Order, the sole issue remaining for determination by the Court was the issue of damages for breach of the Appellants' constitutional rights.
- [5] The Appellants' claim for breach of their constitutional rights was examined under three separate heads: (1) the protection against arbitrary deprivation of property, (2) the right to equality and non-discrimination and (3) the right to protection of the law. Each of these categories was assessed against the backdrop of the factual history of the dispute between the parties ranging from the Ten-Point Agreement of 2000, the 2004 Recommendations of the Inter-American Commission on Human Rights in the *Maya Indigenous Communities of the Toledo District v Belize* (the *Maya Communities case*),² the decision of the High Court of Belize in the *Maya Land Rights case*,³ the March 2008 'cease and desist' directive issued by the Solicitor General to prevent incursions on Maya lands, the April 2008 directive issued by the Solicitor General limiting the earlier directive to the Santa Cruz and Conejo villages and the May 2008 incident in the Golden Stream village involving Mr Johnson.
- [6] In relation to the protection against arbitrary deprivation of property under sections 3(d) and 17 of the Constitution, the Court emphasised that section 3(d) is separately enforceable and not to be regarded as a mere preamble. Therefore the concept of deprivation is not to be limited to compulsory acquisition as contained in section 17. However the Court failed to find a breach of any right under these sections owing to the fact that the nature of the Appellants' property rights and the entitlement flowing therefrom are yet to be precisely defined. The Court dismissed the equality and non-discrimination claim on the basis that

² Case 12.053, Report No. 40/04, Inter-Am. C.H.R., OEA/Ser.L/V/II.122 Doc. 5 rev. 1 at 727 (2004).

³ *Cal* (n 2).

there was no evidence of discriminatory treatment of the Appellants on the basis of race or ethnicity either in the Golden Stream incident or otherwise.

- [7] The Court held that the Appellants' right to the protection of the law as set out in section 3(a) had been breached. The Court noted that while the notion of the protection of the law has traditionally been understood through the prism of access to courts or quasi-judicial bodies, particularly given the provisions of section 6(7) of the Constitution, it is not to be regarded as coterminous with the same. This is evident from the decisions of the Court in *Attorney General v Boyce*⁴ and *Lucas and Carillo v the Chief Education Officer et al.*⁵ The Court emphasised that the right to protection of the law is "a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law." Therefore the right to protection of the law can be engaged by the failure of the State to secure and ensure the enjoyment of constitutional rights, as demonstrated by the decision of the Constitutional Court of South Africa in *President of South Africa v Modderklip Boerdery (Pty) Ltd.*⁶ The Court stated that the concessions made by the Government since the Ten-Point Agreement in 2000 and more recently in the Consent Order in April 2015, "lead to the unavoidable conclusion that the existing property regime fails to adequately protect Maya interest in the land within Maya villages." As such, the Court was convinced that the failure of the Government of Belize to take action to secure and protect Maya land rights in the Toledo District amounted to a violation of the Appellants' right to protection of the law.
- [8] The Court further reasoned that a breach of the protection of the law could also be found using the rule of law as the fulcrum of analysis. A recognised sub-set of the rule of law is adherence to international commitments, in particular the international obligations of the Government of Belize to protect and recognise the rights of indigenous peoples under the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples. The responsibility of the State to recognise and protect indigenous land rights have been recognised in numerous decisions of the Inter-American Court of Human Rights such as *Saramaka People v Suriname*,⁷ *Mayagna (Sumo) Awas Tingni Community v Nicaragua*,⁸ *Moiwana Community v Suriname*⁹ and *Yakye Axa v Paraguay*.¹⁰ The preamble of the Constitution of Belize recognises the need to ensure that State policies protect the culture and identity of its indigenous peoples and promote respect for international law and

⁴ [2006] CCJ 3 (AJ) [60], (2006) 69 WIR 104 [60].

⁵ [2015] CCJ 6 (AJ).

⁶ [2005] ZACC 5, 2005 (5) SA 3 (CC).

⁷ (2007) Ser. C no 172.

⁸ (2001) Ser. C no. 79.

⁹ (2005) Ser. C no. 124.

¹⁰ (2006) Ser. C no. 142.

treaty obligations; both of which are strong normative values and “cannot be treated as mere surplusage.”

- [9] Having found a breach of the right to protection of the law, the Court then examined the issue of relief. The Court held that the evidential basis of the claims advanced by the Appellants seeking pecuniary damages for the incident at Golden Stream involving Mr Johnson was too imprecise to allow an award of damages under that head, given that special damages have to be specifically pleaded and proven. However the Court noted the wide scope of the redress clause as contained in section 20 of the Constitution and emphasised in the seminal case of *Maharaj v The Attorney General of Trinidad and Tobago (No 2)*.¹¹ The Court emphasised that the “boundaries of redress are not to be viewed as circumscribed by the concept of damages.” The Court noted the plight of the Maya people, the centuries of oppression they have endured and their legitimate concerns about the damage to and marginalisation of their culture; all of which justified an innovative use of the Court’s jurisdiction to grant relief for breach of constitutional rights. As such, the Court ordered that the Government of Belize establish a fund of BZ\$300,000.00 as a first step towards compliance with its undertaking as set out in the Consent Order to develop, in consultation with the Maya people, the legislative, administrative and/or other measures necessary to create an effective mechanism to identify and protect the property and other rights arising from Maya customary land tenure, in accordance with Maya customary laws and land tenure practices.
- [10] The Court therefore concluded that the decision of the Court of Appeal on the issue of damages must be reversed. It further ordered that the Government pay seventy-five percent (75%) of the Appellants’ costs.

This summary is not intended to be a substitute for the reasoning of the Caribbean Court of Justice or to be used in any later consideration of the Court’s reasoning.

¹¹ [1978] UKPC 3, [1979] AC 385.