

MAYA LEADERS ALLIANCE V ATTORNEY GENERAL OF BELIZE

Supreme Court of Belize (Conteh CJ)

28 June 2010

Claim No. 366 of 2008

Native title – Indigenous law – customary law – constitutional law – Belize – Maya People – Maya Land Rights – Belize Constitution Act – National Lands Act 1991 – Indigenous rights – customary rights – customary land tenure – continuity of customary rights and interests – extinguishment of rights – constitutional implications of customary rights and interests

Facts:

The case follows the judgment of the Supreme Court of Belize delivered on 18 October 2007, in which the customary land rights of the Maya communities in Southern Belize were held to have subsisted in light of the traditional use and occupation thereof (the '*Maya Land Rights Case*'). The present claim was essentially predicated on the basis that the respondents had breached the constitutional protections afforded to the customary land rights so recognised via their failure to establish appropriate statutory and administrative mechanisms required to identify and protect these customary rights. The relief sought by the claimants included declarations that, firstly, reaffirmed their customary land tenure and, secondly, recorded the failure of the defendants to identify and protect their rights to property and non-discrimination under the Belize Constitution. Accordingly, they also sought orders that the defendants adopt appropriate legislative, administrative and other measures in consultation with the Maya people, while at the same time abstaining from infringing any further on the customary land rights of the Maya people of Toledo. The defendants denied that the ancestors of the claimants representing the villages occupied and used lands in the Toledo District and accordingly, did not have customary rights over those lands. They asserted that the exercise by the defendants of their sovereignty over the land in the Toledo District unequivocally demonstrated their ownership over those lands, with a corresponding extinction of any customary rights so claimed over those lands. At its core, the claim in the instant case manifested a disagreement

between the claimants and the defendants concerning the reach of the judgment in the *Maya Land Rights Case*.

The broad issues for determination by the Court were, firstly, whether customary land tenure existed in the Maya villages in the Toledo District generally, such that constituent members of these villages had rights and interests in the land. The second and third issues concerned whether the claimants were able to demonstrate the continuity of their connection to the original inhabitants of the lands occupied in the Toledo District for purposes of manifesting the requisite continuity of their customary rights and interests and, further, whether there had been an extinguishment of their claim thereto by virtue of the sovereignty asserted by the defendants. Finally, if customary land tenure was held to have subsisted, it was necessary to consider the constitutional ramifications of rights and interests in this regard.

Held, in favour of the claimants, on the issue of customary land tenure:

1. On the basis of the evidence adduced in the *Maya Land Rights Case*, customary land tenure existed in the Maya Villages in the Toledo District as a whole, such that the residents of these villages have rights and interests in the land. Having determined this issue in favour of the specific claimant villages in the *Maya Land Rights Case*, the court considers the matter to be *res judicata* from the perspective of the defendants, but is still prepared to hear the case on the issue since the more numerous claimants in the instant

case gives rise to privity between the specific claimants in the *Maya Land Rights Case* and the defendants; secondly, the relief sought by the claimants in the instant case goes to the heart of the constitutional obligation of the defendants to protect these rights and interests: [73]–[74], [76], [80], [84]–[85].

and Santa Cruz only. Accordingly, the Government of Belize failed to positively act to implement that judgment and is therefore in breach of the constitutional protections afforded to claimants in that case, and which protections extend to the instant claimants too. Accordingly, the declarations and orders sought by the claimants are granted: [124]–[126].

Held, in favour of the claimants, on the issue of continuity of their customary rights and interests:

2. The claimants were able to adduce expert evidence that successfully demonstrated the historical, ancestral and cultural connection between the original inhabitants of the present-day Toledo District and the instant claimants, so as to validate their claim to customary rights and interests in the land in this area: [92], [98]–[99], [101].

Held, in favour of the claimants, on the question of extinguishment of rights and interests in the lands:

3. The defendants were unable to offer fresh evidence validating their assertion that the acquisition of sovereignty – first by Spain and later by Britain – over the land in question, operated to extinguish the pre-existing customary land rights and interests that subsist to the present day. Further, the grant by the defendants of leases in the Toledo District, under authority of legislation, beginning with the *Crown Lands Ordinance of 1872* and culminating with the *National Lands Act 1991*, is not inconsistent with customary title to the lands in question. Based on judicial authority in various common law jurisdictions, the extinguishment of Indigenous land title depends on a plain, clear and express intention to do so; in the present context, however, such intention is not manifested via the relevant legislation: [103], [104], [109]–[110], [113]–[114], [116], [120]; *Mabo v Queensland (No.2)* (1992) 175 CLR 1; *Mitchell v MNR* (2001) 1 SCR 991; *R v Marshall*; *R v Bernard* (2005) 2 SCR 220; *R v Sparrow* (1990) 1 SCR 1075; *Delgamuku v British Columbia* (1997) 3 SCR 1010; *Nireaha Tamaki v Baker* (1901) AC (PC) 561; *Wallis v Solicitor General for New Zealand* (1903) AC 173; *Ngati Apa v Attorney General* (2003) 3 NZLR 643 (C.A.); *Wik Peoples v Queensland* (1996) 187 CLR 1, cited.

Held, in favour of the claimants, on the question of the constitutional implications:

4. While having initially accepted the judgment in the *Maya Land Rights Case*, the Government of Belize thereafter misinterpreted its scope to embrace the villages of Conejo