IN THE COURT OF APPEAL OF BELIZE AD 2014

CIVIL APPEAL NO 11 OF 2011

HAROLD EILEY Appellant

v

(1) **WILLIAM EILEY**
(2) **REGISTRAR OF LANDS** Respondents

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BEFORE

The Hon Mr Justice Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Mr Justice Samuel Awich	Justice of Appeal

A Sylvestre for the applicant, Harold Eiley.
E H Courtenay SC for the first respondent, William Eiley.
N Hawke, Solicitor General (Acting), for the second respondent, the Registrar of Lands.

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2014: 17 June and 7 November.

SOSA P

[1] This application arose out of an unfortunate dispute between brothers which remains unresolved after the expenditure of considerable time, money and effort in unnecessary, nay, useless litigation in the court below and here. Added reason to lament this waste of resources stems from the facts that both brothers are getting on in years and, as has been brought to the attention of this Court by letter to the Registrar, one has been ailing for some years now.

[2] The application was brought by the appellant Harold Eiley by way of Notice of Motion filed on 28 February 2014 ('the Notice of Motion'). (In this judgment, the applicant and the first respondent shall, for the most part, be referred to by their first names, not out of disrespect but purely for the sake of convenience.) What was sought by the application was an order setting aside the decision which this Court purported orally to give in Civil Appeal No 28 of 2011 on 15 November 2013. On 17 June 2014, the Court, having heard the oral submissions of counsel and accorded due consideration to the written submissions previously filed, granted such application and promised to render in writing, at a later date, its reasons for so doing. I shall now provide my own reasons.

[3] The dispute concerns land situate in that part of the village of Placencia in the Stann Creek District once commonly-known as Punta Placencia. Harold and his eldest brother William Edward Eiley, the first respondent, are adjacent landowners whose respective relevant parcels of land, whatever their true shapes and sizes may be, were previously owned by their now deceased father, Edward Albert Eiley. It is the claim of William, disputed by Harold, that the latter is encroaching on his (William's) land. The dispute resulted, on 24 February 2010, in the purported filing by William (through his then attorneys-at-law, Hubert E Elrington & Co) of Claim No 128 of 2010 in the court below. Pleadings, some of them amended, were thereafter purportedly filed; and on 14 April 2011 the purported claim was heard by Legall J, William being represented by Mrs A Arthurs Martin and Harold by Mr A Sylvestre. (It is worthy of note that the Registrar of Lands took no part in the proceedings in the court below.) Apart from testifying on his own behalf, William called four witnesses; whilst Harold gave evidence of his own but called no witnesses. On 31 May 2011, Legall J purported to give judgment largely in favour of William.

[4] Amongst the reliefs which the judge purportedly refused to grant to William were two which were set out as follows in his Amended Fixed Date Claim Form:

‘(1) A Declaration that [William] is entitled by adverse possession to fee simple title to the portion of the property orally granted to him by his father … in 1954, the dimensions of which were marked by the planting of a sapodilla tree at the north-east corner and a Gumbo Limbo tree at the north west corner of the said property more particularly described as “All that one third part at the south end, of a certain plot of land lying on the sea-coast at Punta Placencia and bounded as follows: North by land the property of William Garbutt Senior, Deceased; East by the sea-coast; South by land the property of Leopold Garbutt; and West by Crown land and Placencia Lagoon (*sic*)

(2) An order that the dimensions of the property orally granted to [William] by [his father] be surveyed.’

The judge further purportedly refused to award to William damages for trespass.

[5] But the order of the judge purported to provide that:

‘2. a Declaration is granted that [William] by virtue of the Deed of Indenture dated 20th April, 1964 recorded in Deeds Book No. 3 of 1964 at folios 703 to 708 is owner in fee simple absolute of the land described in the said Deed of Indenture, which land includes 1,221 square yards of land mistakenly granted to [Harold] by virtue of Land Certificate No. LRS – 200902456 dated 3rd April 2009.

3. a Declaration is granted that [Harold] by mistake caused to be done the survey dated 5th March, 2001 recorded in Register No. 15, entry 6062 registered on 2nd October, 2001 and thereby caused the Registrar of Lands to include a portion of [William’s] land, namely 1,221 square yards, as part of the land described in Land

Certificate No. LRS – 200902456 dated 3rd April 2009 registered in the name of [Harold].

4. [William] is authorized to cause a survey of the land granted to him by virtue of Deed of Indenture dated 20th April 1964 to be registered under the Registered Land Act.

5. The Registrar of Lands is ordered and directed to rectify or amend the Land Register and amend Land Certificate No. LRS – 200902456 dated 3rd April 2009 issued in respect of Parcel 2061, Block 36 in the Placencia North Registration section registered in the name of [Harold], in accordance with the registered survey mentioned at 4 above.

6. The Registrar of Lands is authorized to do or cause to be done all that is required or necessary under the Registered Land Act Chapter 194 to rectify or amend the Land Register to show that [William] is owner of the land described in the Deed of Indenture 1964 (*sic*) dated 20th April, 1964 including the 1,221 square yards mentioned in the report of licensed land surveyor Kenneth Gillett.'

The judge also purportedly ordered that Harold pay the costs of William, to be agreed or taxed.

[6] By Notice of Appeal filed on 29 June 2011, Harold purported to appeal to this Court against 'the whole decision' of Legall J, seeking that such purported decision be quashed and that he be granted costs here and in the court below.

[7] The 'appeal' was purportedly heard by this Court on 12 July 2012 and, at the conclusion of the hearing, the decision was reserved. On 15 November 2013, the Court announced that the 'appeal' was being dismissed and that the 'decision' of the court

below was thus being affirmed. The Court went on to state that it was deferring the making of its 'order' as to costs until it gave written reasons for judgment at a later date.

[8] Enter the provisions of sections 20, 21, 144 and 145 of the Registered Land Act ('the Act'). These caught the attention of a member of the Court in the course of a subsequent review of the Act carried out by him as he prepared to embark upon the writing of reasons for judgment. The provisions were brought in due course to the attention of counsel for Harold and William, as well as to that of the Registrar of Lands, by the Registrar of this Court by way of a letter dated 3 January 2014.

[9] These provisions, as germane for present purposes, may quickly be summarised before proceeding with the narrative.

[10] Section 20 of the Act, comprising five subsections, deals with the subject of boundaries of parcels of land. Subsection (2) imposes on the Registrar of Lands the duty to determine and indicate the position of a boundary thus:

> '(2) Where any uncertainty or dispute arises as to the positions of any boundary, the Registrar, on the application of any interested party, shall on such evidence as the Registrar considers relevant, determine and indicate the position of the boundary.'

[11] Subsection (4) bars the courts from entertaining relevant actions and proceedings in the following terms.

> '(4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.'

[12] The remaining provisions of section 20 and those of section 21 of the Act have to do mainly with the procedure on an application to the Registrar of Lands and therefore need not concern the Court in the present judgment.

[13] Section 144(1) of the Act confers on the Registrar of Lands power to state a case for the opinion of the Supreme Court and also imposes on him or her a duty to exercise such power. The subsection reads:

> '(1) Whenever any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on him by this Act, the Registrar may and shall, if required to do so by an aggrieved party, state a case for the opinion of the court; and thereupon the court shall give its opinion, which shall be binding upon the Registrar.'

[14] Section 2 of the Act provides that, unless the context otherwise requires, the word 'court', as used in the Act shall, 'except as is otherwise expressly provided', mean the Supreme Court.

[15] Section 145 permits certain persons to give notice to the Registrar of Lands of their intention to appeal to the Supreme Court against, *inter alia*, a decision made by him or her. It grants the relevant permission as follows:

> '(1) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Registrar, may, within thirty days of the decision, direction, order, determination or award give notice to the Registrar in the prescribed form of his intention to appeal to the court against the decision, direction, order, determination or award.'

[16] Subsection (6) of this same section permits an appeal by certain persons to this Court from an order of the court below. It does so in the terms which follow:

> '(6) The Minister or any person aggrieved by an order of the court, may appeal to the Court of Appeal within such time and in such manner as may be regulated by the laws and rules of the court for the time being in force relating to appeals to that Court in civil cases.'

[17] To return now to the narrative, there followed, in the wake of the letter of the Registrar of this Court dated 3 January 2014 to counsel for Harold and William and to the Registrar of Lands, the filing of the Notice of Motion.

[18] There is no doubt that, as was common ground between counsel for Harold and William (the Acting Solicitor General, Mr Hawke, though present in court for the Registrar of Lands, having taken no position one way or another), this Court had jurisdiction to set aside the oral decision it purported to make on 13 November 2013. Of importance in this regard is the fact that, as already indicated above, the Court stopped short on that date of making any order as to costs, expressly stating that such an order was being deferred until such time as written reasons for judgment were given. As is to be gathered from what has been stated above, the Court did not proceed to give such reasons once the provisions of the four sections of the Act earlier referred to came to its attention. Such importance as is here being spoken of comes into focus in the light of the judgment of this Court in *RBTT Limited v Cedric Flowers*, Civil Appeal No 29 of 2008, unreported, 23 March 2012, in which Carey JA, in rejecting a submission that the Court lacked jurisdiction to entertain an application similar to the instant one on the basis of certain remarks of his in *Belize Electricity Limited v Public Utilities Commission*, Civil Appeal No 8 of 2009, unreported, 8 October 2010, said at para [75]:

> "It is trite that a judgment may be recalled before it has been perfected and [*Belize Electricity Limited v Public Utilities Commission*] is essentially, an illustration of that principle.'

The decision which this Court purported orally to pronounce on 15 November 2013 was, quintessentially, one which never came to be perfected.

[19] It was the further conclusion of the Court that counsel for Harold and counsel for William rightly coincided in the opinion that what Claim No 128 of 2010 had placed before Legall J for resolution was in every sense a boundary dispute. The dispute in question revolves around the true location of the southern boundary of Parcel 2061, Block 26, Registration Section Placencia North, which is registered in the name of Harold. He contends in effect that that boundary is correctly shown on the Registry Index Map kept at the Land Registry in Belmopan, whilst William for his part, effectively claims that that is not the case and that, in consequence, such map falsely represents that a substantial portion of his (William's) land forms part of Parcel 2061 and thus belongs to Harold. The dispute, on any view, is a classic boundary dispute.

[20] As such, it is a dispute which, as Mr Sylvestre, unopposed by Mr Courtenay SC, submitted, ought properly to have been placed in the first instance before the Registrar of Lands in accordance with the provisions of section 20(2) of the Act. That section, in imposing on the Registrar of Lands a duty, dischargeable on the application of an interested party, to determine and indicate the position of a boundary, confers on him or her, by necessary implication, jurisdiction to resolve boundary disputes. The Court considers that Mr Courtenay correctly conceded that the Supreme Court did not have jurisdiction to entertain the boundary dispute raised in Claim No 128 of 2010. The concession is correct for the reason that, by the terms of section 20(4) of the Act, a court can only entertain such an action or proceeding in a case (unlike the instant one) where there has been a prior determination of the relevant boundary or boundaries by the Registrar of Lands under the provisions of section 20. But, as already indicated above, it is not in dispute between Harold and William that there has been no such prior determination in the instant case.

[21] The court below having had no jurisdiction to entertain Claim No 128 of 2010, the decision which Legall J purported to give in it cannot have been valid. Therefore, there

was no basis for an appeal from it to this Court. It follows that there was no appeal properly before this Court for hearing on 12 July 2012 and that the decision which it purported orally to give on 15 November 2013 was entirely lacking in validity.

[22] It was for the above reasons that I concluded on 17 June 2014 that this Court should hold that the proceedings in Claim No 128 of 2010 were null and void and should order that its own earlier purported decision of 15 November 2013 be set aside; that Harold should have his costs in the court below, to be agreed or taxed; and that the parties should each bear their respective costs here.

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SOSA P

MORRISON JA

[23] I have had the advantage of reading in draft the judgment prepared by the learned President in this matter. I agree with it and have nothing to add.

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MORRISON JA

AWICH JA

[24] I concur in the judgment of Sir Manuel Sosa P, and the orders he proposed. I agree that, the judgment and orders be adopted as the judgment and orders of this Court in this Appeal.

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AWICH JA