

IN THE SUPREME COURT OF BELIZE, A. D. 2010

CONSOLIDATED CLAIMS

CLAIM NO. 288 OF 2010

	(EMMA MUÑOZ PEREZ	CLAIMANT
	(By Personal Representative Eliezer Muñoz)	
BETWEEN	(AND	
	(EMA JAEL BLANCO (aka EMA JAEL PEREZ)	FIRST DEFENDANT
	(VICTOR MUÑOZ	SECOND DEFENDANT
	(THE REGISTRAR OF LANDS	INTERESTED PARTY

IN THE SUPREME COURT OF BELIZE, A. D. 2009

CLAIM NO. 865 of 2009

	(VICTOR MUÑOZ	CLAIMANT
BETWEEN	(AND	
	(ETHEL M. GLADDEN	DEFENDANTS
	(ASSISTANT REGISTRAR OF LANDS	
	(EMMA MUÑOZ PEREZ	

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

**Mrs. Tricia Pitts Anderson for the Emma Muñoz Perez
Mr. Anthony Sylvester of Musa and Balderamos for the Defendant Ema Blanco
Mrs. Magali Marin Young, SC, of Marin Balderamos Arthurs for Victor Muñoz
The Solicitor General for the Registrar of Lands**

J U D G M E N T

1. This is a preliminary objection to the jurisdiction of the Supreme Court to hear a claim for rectification of the land register under Section 143 of the

Registered Land Act Chapter 194 of the Laws of Belize. The Defendant Victor Muñoz challenges the jurisdiction of this court to hear this claim, stating that the court cannot exercise its discretion to rectify the land register in the circumstances of the case at bar, without the appellate process of the Land Adjudication Act Chapter 185 of the Laws of Belize first having been exhausted by the Claimant.

The Facts

2. These are the facts relevant to the determination of this preliminary issue on this consolidated claim.
 - (a) In 2002, the Land Management Program had been initiated by the Lands and Survey Department from the Ministry of Natural Resources for lands situate on or about Sarteneja Village in the Corozal District.
 - (b) The lands in or about the village of Sarteneja were on the 13th May, 2003 declared for the purpose of land adjudication under the Land Adjudication Act (LAA). This process was initiated to enable the area to be declared for mandatory registration pursuant to the Registered Land Act (RLA) to convert titles in the area to registered titles.
 - (c) On the 23rd May, 2003 the Defendant Ema Jael Blanco submitted an application pursuant to the Land Adjudication Act (LAA) claiming freehold interest in Parcel 439, Block 3, Sarteneja Registration Section by virtue of Deed of Conveyance dated 14th June, 1989 between Anastacio Muñoz (father of Ema Jael Blanco) and Ema Muñoz Perez (mother of Ema Jael Blanco) (EG1).
 - (d) After the adjudication was completed and after issuing a certificate that the record was final, the record was handed to the Registrar of Lands for compilation pursuant to section 19 and 20 of the Land Adjudication Act (LAA).
 - (e) Ema Jael Blanco was issued a land certificate on the 1st day of August, 2005 in her favour and her name was entered as the proprietor of the property.

- (f) On the 24th February, 2009 Emma Blanco sold Block 3, Sarteneja Registration Section to Victor Muñoz.
- (g) On the 18th March, 2009 a transfer of title between Ema Jael Blanco and Victor Muñoz was lodged at the Land Registry and the requisite stamp duty was duly paid. Receipts evidencing payment were issued.
- (h) On the 15th September, 2009 Victor Muñoz received a letter addressed to his attorney Magali Marin Young informing her that Ema Jael Blanco's title is deemed null and void, and that the transfer of title lodged by Mrs. Young cannot be entertained by the Land Registry.
- (i) On the 23rd April, 2010 the Assistant Registrar conceded that the purported rectification (removing Ema Jael Blanco's name and replacing same with Ema Muñoz Perez) was unlawful and a nullity.
- (j) Mrs. Young received the transfer of title from the Registry stamped "Rejected" and without the original land certificate of Ema Jael Blanco.
- (k) On 23rd April, 2010 in Claim No. 865 of 2009 the Court declared that the purported rectification recited in the Assistant Registrar of Land's letter was unlawful. The Court also ordered that Claim No. 288 of 2012 and Claim No. 865 of 2009 be consolidated. The matter is now set for trial pending the outcome of this preliminary challenge.

The Issues

3. i) Has Victor Muñoz (not having challenged jurisdiction of the Court under rule 9.7 of the CPR) waived his right to challenge the Court's jurisdiction, or can the constitutive jurisdiction of the Court (as opposed to the administrative jurisdiction) be challenged at any time?

ii) Can this Court sitting in its original jurisdiction in Claim No. 288 of 2010 exercise its discretion to rectify the register in the circumstances of the case at bar, without the appellate process of the Land Adjudication Act having been exhausted?

Applicant's Submissions

4. Mrs. Magali Marin Young, SC, on behalf of the Applicant/Second Defendant Victor Muñoz and Mr. Anthony Sylvestre on behalf of the First Defendant Ema Jael Blanco argue that this Court has to consider the provisions of the later enacted Land Adjudication Act and whether that Act impliedly amended s143 of the Registered Land Act of Belize. In particular, the court must consider whether s22 of the Land Adjudication Act (which declares the finality of the adjudication record) overrides s143 of the Registered Land Act so that rectification may only be exercised in relation to properties that have not gone through adjudication under the Land Adjudication Act.

Section 143 of the Registered Land Act reads as follows:

“143 (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

5. Mrs. Marin Young, SC, submits that the constitutive jurisdiction of the Supreme Court under the Land Adjudication Act is to hear appeals of decisions made by the Land Adjudication Tribunal in regards to claims made in opposition to a claim by a proprietor. The Supreme Court’s constitutive jurisdiction can then only be invoked after the proper appellate procedure has been followed under the legislative scheme under s23 of the Land Adjudication Act.

“23 (1) Any person (including the Minister), who is aggrieved by any act or decision of the Tribunal and desires to question it or any part of it may appeal to the Court within thirty days from the date of the certificate of the Adjudicator given under section 22 or within such extended time as the Court may, on good cause being shown, allow.

(2) On such appeal, the Court may make such order or substitute for the decision of the Tribunal such decision as it may consider just and shall order as may be necessary and in such manner as it may think fit, rectification of the Register kept under the Registered Land Act.

(3) Any person (including the Minister), who is aggrieved by an order or decision of the Court made under subsection (2) above may appeal to the Court of Appeal in accordance with the provisions of the Court of Appeal Act governing appeals in civil proceedings and the Court of Appeal may

upon such appeal affirm or reverse or amend the order or decision of the Court and shall order as may be necessary and in such manner as the Court of Appeal may think fit rectification of the Register kept under the Registered Land Act, and may also make such order as to costs in the Court, and as to costs of the appeal, as the Court of Appeal thinks proper.

(4) A decision of the Court on appeal under subsection (1) or of the Court of Appeal under subsection (3) shall be in writing and copies of it shall be furnished by the court in question to the Registrar, to the appellant and to all other parties to the appeal and by the Registrar to all other parties who, in his opinion, may be affected by the appeal.

(5) Any person (including the Minister), appealing under subsection (1) shall give notice to the Registrar of his intention to appeal and the Registrar shall forthwith make an order under subsection (1) of section 135 of the Registered Land Act prohibiting or restricting dealings with any land entered in the Register and affected by the appeal.

(6) An appeal under subsection (1) shall be in such form and the parties thereto shall be liable to the payment of such fees as may be prescribed."

6. She also argues that challenge to the constitutive jurisdiction of the Court can be made at any time, and that Rule 9.7 of the Civil Procedure Rules speaks to administrative jurisdiction and not constitutive jurisdiction. Learned Counsel cites ***Carter v Ahsan*** [2005] ICR 1817 and ***Belize Electricity Ltd v Public Utilities Commission*** CA No. 8 of 2009 as authority for the point that constitutive jurisdiction cannot in any scenario be waived or consented to.

7. Mrs. Marin Young, SC, further states that the constitutive jurisdiction of the Court could only have been invoked if the Claimant had followed proper procedure of the Land Adjudication Act to challenge a claim since the property in dispute has now been registered under the Registered Land Act **after** adjudication under the Land Adjudication Act. She seeks to distinguish the Privy Council decision of *Santiago Castillo v Quinto et al* [2009] UKPC 15 from the case at bar by saying that the *Quinto* matter involved land which had not been subject to the process of adjudication under the Land Adjudication Act. In the case at bar, the Court does not have the jurisdiction to rectify the register as a result of mistake or fraud because the land in dispute has already gone through the process of adjudication under the Land Adjudication Act; since the Defendant failed to implement the statutory regime under the Land Adjudication Act to appeal to the Supreme Court in its appellate jurisdiction, the Supreme Court in its original jurisdiction cannot now preside over this matter and seek to rectify the register under section 143 of Registered Land Act.

8. In additional submissions filed in response to those of the Claimant/Respondent, Mrs. Marin Young, SC, further states that the case at bar does not involve an error on the face of the record. She argues that this

is a case where the Claimants aver mistaken identity and that is the same mistake which was claimed in *Skelton v Skelton* (1986) 36 WIR 177. In that case, the trial judge did not find any mistake on the land register itself, but the recording of the expression of findings based on the mistaken identity and it was on that basis that she ordered rectification. On appeal the Court of Appeal reversed the trial judge and said that the respondent not having exercised his right to petition the adjudication officer, and not having exercised the right of appeal, not having sought an extension of time within which to appeal, a trial judge cannot, sitting in its original jurisdiction, rectify the register because the adjudication officer's error was a mistake as to identity in that case, as that was not the type of mistake contemplated by section 140.

She also submits that the pleadings of the Claimant are "*woefully lacking*" and that what the Claimant is averring is not fraud but deceit i.e. that the First Defendant Ema Jael Blanco presented the conveyance pretending to be Emma Muñoz Perez. As such the Claimant failed to plead in its claim form the requisite fraudulent intention, or recklessness as to truth or falsity of the statement in breach of Rule 8.7 of the Civil Procedure Rules 2005.

She cites Madam Justice Creque in *St Lucia Motor and General Insurance Co Ltd v Peterson Modeste Civil Appeal HCVAP2009/008 (unreported)*:

“... In my view it would be grossly unfair and embarrassing to a party to learn of the factual basis on which a mere allegation of fraud or dishonesty is made on a pleading, only at a time when a witness statement is exchanged. I do not consider that the statement of Lord Woolf in McPhilemy and referred to by Lord Hope in Three Rivers and adopted in East Caribbean Flour Mills is to be understood in any other way than to make clear that the factual basis underpinning the allegation of fraud or dishonesty and the like, must be set out in the pleading; even if the details of those averments may properly be left to be fleshed out in the witness statements. The instant case is simply devoid of any factual basis for making the averment and cannot in the circumstances be entertained.”

Mrs. Marin Young, SC, therefore urges the court to strike out the claim.

The Defendant’s Submissions

9. Mrs. Tricia Pitts Anderson on behalf of the Claimant/Respondent submits that section 143 of the Registered Land Act gives the court power *“to order rectification of the Register by directing that any registration be made, cancelled or amended where it is satisfied that any registration including first registration has been obtained, made or omitted by fraud or mistake”*. She argues that the Land Adjudication Act and the Registered Land Act, while separate in their enactment, were intended to operate as two interlocking elements of the process of first registration of title. The

Registered Land Act was enacted in 1977 and the Land Adjudication Act was enacted in 1992. The purpose of land adjudication is to bring property under the registered land system such that first registration invariably involves land adjudicated upon. Mrs. Pitts Anderson contends that it is only when title is registered that a proprietor's title is clothed with indefeasibility, provided it is not challenged on an application for rectification. Any suggestion that in the absence of an appeal of the land tribunal's decision (under the Land Adjudication Act) a proprietor would obtain an indefeasible title is inconsistent with the view expressed in *Quinto v Castillo* by Conteh CJ (as he then was). His Lordship reasoned that if registered titles were immutable and sacrosanct "*part 10, in particular section 143 of the Registered Land Act is redundant, for as long as a person is registered as the proprietor of registered land, that would be the end of the story. It matters not how that registration was procured, there could be no rectification. This would clearly set naught the power right of rectification expressly granted to the court by section 143*".

Mrs. Pitts Anderson argues that the reasoning of Conteh CJ was accepted as the right view by the Privy Council on appeal of the *Quinto* decision [2009] UKPC 15. She submits that in that case the strictures of the Torrens system

have been qualified in Belize so that the conclusiveness of the Register is subject to the power of rectification granted to the Court. Once property is brought under the Registered Land Act, **any registration**, including those obtained by means of the Land Adjudication Act, may be subject to rectification. Mrs. Pitts Anderson contends that absent from the statute is a restriction that the court cannot entertain an application for rectification of a title registered as a result of the adjudication process. If that was the intendment the legislators could have easily included words limiting the court's jurisdiction *in strictu sensu*. She further submits that the only limitation on the court's jurisdiction to rectify the register as provided by s143(2) of the Registered Land Act is where a person is in possession or in receipt of rents or profits provided that proprietor himself is not culpable in the incidents that led to the application. The finality of s22 of the Land Adjudication Act must be construed subject to this important qualification.

Learned Counsel also seeks to distinguish the case of ***Skelton v Skelton*** (1986) 36 WIR 177 relied on by the Applicant/Second Defendant. She argues that the gravamen of the appeal in that case focused on the nature of the mistake that would attract the court's jurisdiction to rectify; that is, a mistake that occurs in the registration process as opposed to a mistake that

occurs in the land adjudication process. She urges that the strict approach has been softened by the Privy Council's reasoning in *Louisien v Jacobs* PC 93 of 2007, where the court was mindful of the fact that a mistake in the process of registration is a useful phrase but it is judge made and not statutory language, and its scope must depend on a careful evaluation of the facts of a particular case. In addition, the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

Mrs. Pitts Anderson contends that the facts at bar show that there was an inconsistency on the face of the record that placed the land registry on enquiry of the correctness of the record. That is, the conveyance of June 14th, 1989 indicates that the owner of parcel 439 is Emma Muñoz Perez; whereas the person who presented it for registration was the First Defendant Ema Jael Blanco. This much was admitted to by the Interested Party in the affidavit of Ethel Gladden, Registrar of Lands. She further argues that the Skelton case can be further distinguished on the basis that there was no discussion in that case of the court's power to rectify for fraud, while in the instant case, rectification of the register is sought on the

basis of fraud as well. The Skelton case did not lay down any principle precluding the court from rectifying the land register on the basis of fraud where land adjudication had been completed. She further submits that **Thomas v Stoutt** cited by the Applicant/Second Defendant established that an adjudication order can be set aside on the basis of fraud, and that the court found that fraud was not made out on the pleadings, in the absence of which that claim amounted to an appeal of the land adjudication record.

Finally, Mrs. Pitts Anderson submits that the Claimant/Respondent has set out sufficient facts and evidential background to enable the court and all parties concerned to know what case is being made to enable the parties to answer it. She cites Lord Woolf in **McPhilemy v Times Newspapers Ltd** [1999] 3 ALL ER 775 in addressing the purpose of pleadings in marking out the parameters of a case identifying the issues and extent of dispute between the parties. She also states that the application to strike out is severely out of time, and that Rule 9.7 of the Civil Procedure Rules requires such an application to be made within the time period for filing the defence i.e. within 28 days from service of the Claim Form. The defendants had up to May 21st, 2010 to file such an application and failed to do so. The Applicant having failed to make his application within the timeframe

stipulated by the Civil Procedure Rules, he is deemed to have accepted the jurisdiction of this court.

She therefore asks the Court to dismiss this application to strike out claim.

Ruling

10. Having reviewed the authorities and submissions on the issue of whether the objection to the constitutive jurisdiction of this court can be taken at this time, I am in agreement with the submission of Mrs. Marin Young, SC, that an objection to the constitutive jurisdiction of this court can be taken at any time. When the question arises as to the ambit of a court's jurisdiction in the context of the statute from which it derives its powers, then the challenge to that jurisdiction can be made at any time and is not confined to the time limit set out under Rule 9.7 of the Civil Procedure Rules. In addition, where the court acts in a manner which is inconsistent with or outside the scope of the jurisdiction that has been granted by statute, then the court's decision will be struck down for lack of jurisdiction as in *BEL v PUC* (cited above). It is also important to note that as correctly stated by Mrs. Marin Young, SC, constitutive jurisdiction (e.g. the court's power to act in an appellate context under section 23 of the Land

Adjudication Act) cannot be consented to by the parties. The court cannot arrogate unto itself powers which the statute does not provide.

11. On the substantive issue as to whether section 143 of the Registered Land Act is impliedly subject to section 22 of the Land Adjudication Act, I find myself in agreement with the submissions of Mrs. Pitts Anderson.

Section 22 of the Land Adjudication Act states:

“22. After the expiration of the period declared under section 19, or when all petitions presented to the Tribunal under section 20 have been determined, whichever is later, the Adjudicator shall sign and date a certificate to the effect that the adjudication record is final, and shall deliver to the Registrar for compilation of the Register in accordance with the provisions of the Registered Land Act, the adjudication record, Registry Map and all other documents received by him in the process of adjudication.”

I agree with the submission that these two statutes (though separately enacted) are intended to operate as Mrs. Pitts Anderson aptly described them as *“interlocking elements of the whole process of first registration of title.”*

12. She is correct in stating that the decision in ***Skelton v Skelton*** (1986) 36 WIR 177 did not address the issue of the court's powers to rectify for fraud. It certainly does not lay down any principle precluding the court from rectifying the land register on the basis of fraud where land adjudication process had been completed.

13. I agree with Mrs. Pitts Anderson that the matter of ***Quinto v. Castillo*** Claim No. 112 of 2005 and at [2009] UKPC 15 squarely addressed the issue of the court's jurisdiction to rectify under section 143 of the Registered Land Act. I repeat the relevant portion of Conteh CJ's (as he then was) judgment as cited by Mrs. Pitts Anderson in her submissions:

*"Part 10, in particular section 143 of the Registered Land Act is redundant for as long as a person is registered as the proprietor of registered land, that would be the end of the story. It matters not how that registration was procured, there could be no rectification. This would clearly set naught the powers of rectification **expressly** granted to the court by section 143."*

As Learned Counsel for the Claimant rightly points out, this reasoning was accepted by the Privy Council on appeal of the same decision Privy Council Appeal No. 27 of 2008 ***Quinto v Castillo*** [2009] UKPC 15 as follows:

"The Board differs from the conclusion of the Court of Appeal in relation to the construction of section 143(1) of the Act. It would have been easy and natural for the draftsman to use the phrase "such registration" in

*place of the second “any registration” if that is what he had intended the phrase to mean. He did not, and the addition of the words “including a first registration” after the second any registration is a further indication that the registration in respect of which there has been a mistake or error need not necessarily be the registration in respect of which rectification is sought. **We accept that this significantly diminishes the element of indefeasibility of registered title that is a feature of the Torrens system, but this is the manner in which the legislation of Belize has decided to balance the desirability of a simple system of land registration with the interest of justice. The remedy of rectification lies within the discretion of the court and is subject to the protection given to a bona fide purchaser in possession by section 143(2).** The Board does not consider it irrational to strike a balance in this way, particularly having regard to the fact that the Act, despite the title of the relevant part, makes no provision for indemnification of a person unfairly prejudiced by the operation of the system.” (emphasis mine)*

While it is true that as Mrs. Marin Young, SC, argues the *Quinto v. Castillo* case did not specifically address the issue of rectification of title for land that has gone through adjudication under the Land Adjudication Act, the Privy Council addressed the general issue of the discretion of the court to rectify under section 143. Mrs. Pitts Anderson is correct in saying that “*any registration*” including those obtained by means of Land Adjudication Act may be subject to rectification. I do not agree with the submission made by Mrs. Marin Young, SC, that section 22 of the Land Adjudication Act impliedly amends section 143 of the Registered Land Act to extinguish the power of the court to rectify title which has gone through the land

adjudication process without appeal. To my mind, if that was the intention of Parliament, then that intention would be reflected in the clear and unambiguous language of these statutes. It is not.

14. Application to strike out is refused.

15. Costs awarded to the Claimant/Respondent to be agreed or assessed.

Dated this 30th day of October, 2014

**Michelle Arana
Supreme Court Judge**