

IN THE SUPREME COURT OF BELIZE, A. D. 2016

CLAIM NO. 278 OF 2016

<b>BETWEEN:</b>	<b>(RAFAEL HUMES SR.</b>	<b>CLAIMANT</b>
	<b>(</b>	
	<b>(AND</b>	
	<b>(</b>	
	<b>(NANCY ROMERO</b>	<b>FIRST DEFENDANT</b>
	<b>(ROLANDO CAN</b>	<b>SECOND DEFENDANT</b>
	<b>(JOSE UCK</b>	<b>THIRD DEFENDANT</b>

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Anthony Sylvestre of Musa & Balderamos for the Claimant**

**Mr. Brandon Usher of Williams Law Office for the Defendants**

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**D E C I S I O N**

1. This is an Application by the Defendants to Strike out a Claim filed on 16<sup>th</sup> May, 2016. In the substantive claim, the Claimant seeks a declaration that he is entitled to fee simple title to a 65 acre portion of the Defendants' properties by adverse possession. The property is located in the Duck Run Area, Cayo District. The Claimant is a cattle rancher and he claims to have been in peaceful and open possession of approximately 250 acres in the Duck Run, Cadenas Area since the early 1980s. A portion of this 250 acres, namely 50 acres, was leased to him by the Ministry of Natural Resources in 1982. The

Defendants hold Minister's Fiat Grants approximately 27 acres of land each issued to them by the Ministry of Natural Resources on September 24<sup>th</sup>, 2013. There appears to be an overlap between the 250 acres of land the Claimant claims to be in possession of and the portion of land that the Defendants hold title to through their Fiat Grants. The Claimant says that he has 517 villagers from Santa Familia Village who can testify that he has developed and been in possession of the 250 plus acres of national land. He also claims to have applied to the Ministry of Natural Resources to purchase 165.79 acres of this land and he has been granted permission to survey the land in 2003. The Defendants have applied to strike out the Claimant's claim on the basis that the Statement of Claim does not disclose any reasonable grounds to bring a claim in that the property belongs to the Defendants, and the Claimant is not able to meet the 30 year requirement to establish continuous and undisturbed possession.

**Legal Submissions on behalf of the Applicants/Defendants**

2. Mr. Brandon Usher argues on behalf of the Applicants that the Claimant cannot meet the requirement of 30 years of continuous and undisturbed possession of government land, as it was previously owned by or privately owned land as stipulated by the Law of Property Act of Belize. He says that the Statement of Claim discloses absolutely no grounds for bringing a claim to the Supreme Court for a Declaration of fee simple title; the Claim should be struck out. Learned Counsel relies on Action No. 695 of 2008 ***Belize Telemedia v. Magistrate Ed Usher and the AG*** where Conteh CJ stated at paragraph 19:

*“The provision of the Rules in Part 26.3(1)(c) which enables the Court to strike out a claim because it discloses no reasonable grounds for bringing or defending a claim is undoubtedly a salutary weapon in the Court’s armory, particularly at the case management stage. It is intended to save time and resources of both the court itself and the parties: why devote the panoply of the court’s time and resources on a claim such as to go through case management, pretrial review and scheduling a trial with all the time and expense that this might entail only to discover at the end of the line that there was no reasonable ground for bringing or defending a claim that should not have been brought or resisted in the first place? The provisions in the rules address two situations:*

*(1) When the content of a statement of case is defective in that even if every factual allegation contained in it were proved, the party whose statement of case it is cannot succeed; or*

*(2) Where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.”*

Mr. Usher submits that even if this case goes through an entire trial, the Law of Property Act section 42 will prevail as the Claimant does not meet that requirement. The Claimant is relying on an unregistered survey. He has admitted that after 2003 he had more cattle and therefore he demanded further use of land and that was when he started to utilize further national lands; 2003 to the present does not satisfy the 30 year requirement. The claim should be struck out as it is bound to fail as a matter of law.

### **Legal Submissions on behalf of the Respondents/Claimants**

3. Mr. Sylvestre urges the court to dismiss this application to strike out this claim. He says that the question whether the Respondents/Claimants have been in open, peaceful and continuous possession of a parcel of land is a question of fact to be determined upon consideration of all the evidence. He draws the court's attention to paragraph 12 of the Statement of Case:

*"The Claimant had a survey done in November 2014 delineating the boundaries and the extent of the land he has developed and has been in continuous possession herding is cattle since 1982 and which shows two parcels of land, being parcel 1 (165.79 acres) and parcel 2 (65 acres)."*

He says that the fact that the survey upon which the Respondents/Claimants are relying is not registered goes to the issue of credibility which the court has to determine at trial. He submits that the Rules provide that the Claimant can apply to the Court and have the Court deem the Surveyor as an expert witness for the purposes of proving the Claim. The fact that the survey was not registered goes to the weight that the court will attach to the survey. He says that the application to strike out is misconceived because the court has to determine questions of fact which must be determined at a full trial.

Mr. Sylvestre emphasizes the point that paragraph 12 and 13 of the Statement of Case are not denied by the Applicants/Defendants in their Defence. He argues that the Defence contains no denial of the facts and the averments made by the Respondents/Claimants. Learned Counsel contends that it is of great importance to

note that the Defendants neither admit nor deny the averments, and when the court looks at the Defence filed it appears to be lacking in information. Mr. Sylvestre refers the court to Rule 10(5) of the Civil Procedure Rules which says, *“The Defendant’s duty to set out its case. The Defendant must set out all the facts on which the Defendant relies to dispute the Claim”*. The Defence in the case at bar does not even contain a bare denial and merely states that it neither admits nor denies. He further argues that the Statement of Claim in paragraph 12, 13 and 14 set out the basis of the Claimant’s claim based on adverse possession. The question of the amount of acreage that the Claimant can prove to be owner of through adverse possession is a question of fact which cannot be determined without a full trial. Mr. Sylvestre also contends that the fact that the Applicants/Defendants may have obtained title does not extinguish the right of the Respondent/Claimant to title by adverse possession. Section 42 of the Law of Property Act is very clear, and title is acquired irrespective if title has changed. The question of possession is a question of fact. The Applicants/Defendants merely say they have title since 2013; they do not claim to have dispossessed the Respondent/Claimant of the land in question. The Applicants/Defendants cannot come and ask that the court to strike out this claim when they have not even filed a proper defence. The Claimant has attached to its Statement of Claim a document signed by over 300 villagers who live in a neighbouring village and who are willing to come to court and testify to the fact that the Claimant has been in adverse possession of this property. The Claimant also intends to call persons who have assisted the Claimant in clearing the land as well as the Surveyor who can speak to the portions of the Applicants/Defendants’ land that have been in

open, peaceful and continuous possession of the Claimant. Mr. Sylvestre submits that the quality of the Defence is poor in that it does not even address the core of the Claimants' claim. It is deficient and fails to provide a basis for an application to strike out since this type of application is predicated upon the strength of the Defence. He cites the two prong test in Rule 26.3(c) as discussed in Caribbean Civil Procedure Practice at page 231:

*"Discloses no reasonable ground for lodging or defending the claim"*

*This provision addresses two situations:*

*(1) Where the content of the statement of case is defective in that, even if every factual allegation contained in it were proved, the party whose statement of case it is cannot succeed; or*

*(2) Where the statement of case, no matter how complete and apparently correct it may be, will fail as a matter of law.*

Mr. Sylvestre says that the Claimant has disclosed that he has made certain applications to the Lands Department for permission to purchase but this does not mean that he has not been in possession of the land. Title was issued to the Applicants/Defendants in 2013, some 31 years after the Respondent/Claimant has been in possession of the land. The question of fact as to how many acres the Respondent/Claimant is entitled to is one of fact which must be determined at trial. The two scenarios contemplated by Rule 26(3)(c) do not arise in this case therefore the application to strike out must fail.

**Submissions in Reply on behalf of the Applicants/Defendants**

4. Mr. Usher in reply states that the Respondent/Claimant in paragraph 10 of his Statement of Claim clearly states that there was a demand for further use of land and he started at that point, after permission to survey had been granted to him, to survey the land in 2003, which was actually in 2013. He started to utilize additional land as his cattle stock increased and expanded his initial 50 acres over the years. He says that he started working and using over 200 acres of Crown Land in the 1990s; but he says he started with 50 acres and gradually expanded his acreage over the years as his cattle needed more land. The Applicants/Defendants have gone through the purchase procedures. Research has been done. They have been granted their Minister's Fiat Grants. They know that they applied to the Ministry of Natural Resources to purchase national land, they paid for their land and were issued title. Some of the names on the Petition attached to the Claim show that some of the villagers are 20 years old; therefore, those persons of that age cannot attest as to whether or not the Respondent/Claimant has been in possession for over 30 years. It is unnecessary to go through a trial of some 20 plus witnesses, only to determine that the Law of Property Act says that the Claimant needed to prove 30 years to establish adverse possession, when the Claimant has already admitted that he started using the land either in 2003 or 2013. Mr. Usher reiterates his request that the application to strike out the claim be granted.

## **Decision**

5. I am grateful to both Counsel for the submissions made on this application to strike out claim. Having considered both submissions, I am of the view that this is not a case that is suitable for striking out at this stage under Section 26 of the Civil Procedure Rules. What are the boundaries of the property that the Respondent/Claimant is entitled to through adverse possession? Is there an overlap between the Applicants/Defendants property and the property claimed by the Respondent/Claimant? Can the Respondent/Claimant prove that he has in fact occupied this property since 1982? What is the weight to be attached to the unregistered survey conducted on behalf of the Respondent/Claimant in 2014? What role, if any, does the Ministry of Natural Resources play in this matter, having first issued permission to survey to the Claimant and later granted title to the Defendants over a portion of the same property? I agree with the submissions made by Mr. Sylvestre that there are too many unanswered questions of fact which arise in this case which can only be answered at a full trial. The application to strike out is refused. Case management date is set for October 13<sup>th</sup>, 2017 at 9:00 a.m. Costs awarded to the Respondents/Claimants to be paid by the Applicants/Defendants to be agreed or assessed.

***Dated this Wednesday, 26<sup>th</sup> day of July, 2017***

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**Michelle Arana  
Supreme Court Judge**