

IN THE SUPREME COURT OF BELIZE, A. D. 2011

CLAIM NO. 279 OF 2011

(DOUGLAS RICHARDSON	CLAIMANT
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BETWEEN	
(
(EFIGENIA GARCIA	FIRST DEFENDANT
(MINISTRY OF NATURAL RESOURCES	SECOND DEFENDANT
(ATTORNEY GENERAL OF BELIZE	THIRD DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Michel Chebat, SC, along with Ms. Tania Moody for the Claimant

Mr. Lionel Welch then Mr. Brandon Usher for the First Defendant

Ms. Iliana Swift then Ms. Samantha Tucker and Ms. Agassi Finnegan for the Second and Third Defendants

J U D G M E N T

Facts

1. Mr. Douglas Richardson, the Claimant, is a retired Engineer who resides in Seine Bight Village, Stann Creek District. He claims to own a parcel of land of approximately 10 acres in size in the village of Seine Bight. He says that this land was purchased by his former wife and him in 1970, and he received title in 1974 through a Conveyance. He also claims that he has been in open undisturbed occupation and possession of this land since 1970. Ms. Efigenia Garcia, the First Defendant, also claims to be the owner of this

same piece of land in Seine Bight, having inherited the property from her father by a Deed of Indenture. The Second and Third Defendants are the Ministry of Natural Resources and the Attorney General respectively.

Issues

2. i) Whether all that piece or parcel of land described as Registration Section: Placencia North Block 36 Parcel 2381 forms part of all that piece or parcel of land being approximately 10 acres as evidenced by Deed of Conveyance in the name of Douglas Richardson and duly recorded in Deed Book Volume 12 of 1979 at Folios 1393 - 1400.
- ii) Whether the Claimant has acquired title to said piece of land by virtue of being in open and undisturbed possession and occupation of the said parcel of land for upwards of 30 years having entered upon the land on or about 1970 and having acquired title thereto in 1979.

Claimant's Evidence

3. At trial, there was only one witness who testified on behalf of the Claimant and that was Mr. Richardson himself. In his witness statement, he had stated that in or about 1974 he purchased the property from one Isabella Ciego and that this Deed of Conveyance was recorded in Deeds Book Volume 2 of 1974. At that time, very few people spoke English and there was no road into Placencia, no phones and no mail. He claims that all the people in the village seemed to know and agree upon where the boundaries of their properties were. Isabella Ciego told him that her land was a rectangle bounded on the East by the sea, on the West by the lagoon, on the South by Hipolito Palacio and Simeon

Garcia and on the North by Nicolas Palacio. Mr. Richardson said that he researched the deeds of each person and he met with Palacio and Garcia for them to confirm what Isabella Ciego told him about the boundaries, and they did. The only problem was the Northern boundary which was previously marked by a cement survey peg in the ground but he had difficulty finding the peg. He got Roque Marin, Licensed Land Surveyor, to conduct a survey on the property and Mr. Richardson says that this was done in the presence of Simeon Garcia and Hipolito Palacio. Pegs were set along the southern and northern boundary lines approximately every 100 feet to ensure that it would always be possible to locate the lines in the event some of the pegs were lost. Mr. Richardson says that he eventually found the peg for the northern boundary and commissioned Mr. Marin to make a new survey to include the adjustment of the boundary of Ciego's property and Nicolas Palacio's property based on the northern peg. He claims that Mr. Marin and the Survey Department then made changes to the map that were not authorized by him, and in spite of his objections, the Survey Department registered the survey on their own. He says that the dimensions of the property as determined by the Marin survey were used by him to describe the property when it was transferred from Karen Richardson, his former wife, to himself in 1974. Since purchasing this land he has paid land tax on 10 acres every year. He has cleared, planted, fenced and improved the property. He has built a 20,000 square foot building worth BZ\$2million designed as a home for himself and to provide tourist accommodation including apartments, restaurant, spa/sundeck and connected pool along with beachside RV and camping facilities. Work had been started on a marina complex with bungalows. This was to

replace the successful tourist Hotel Seine Bight property previously owned and operated by him and later destroyed by Hurricane Iris. Mr. Richardson claims that at no time had anyone made any claim on any portion of the Property from 1970 when he actually took possession until 1994 when Efigenia Garcia Hill, daughter of Simeon Garcia, made a claim to the Government for a portion of the Ciego property. He claims that by virtue of a Deed of Conveyance dated August 22nd, 1979 he became the owner of all that piece or parcel of land as described therein (Exhibit **DWR 2**). He exhibits receipts of rates and taxes paid by him to the Government of Belize for the property for the periods 1988 and 1998 to 2011 are exhibited as **DWR3** and **DWR4**. He says that he and his wife regularly spent their vacations on the land by utilizing a mobile home, before constructing their \$2 million dollar home on the land. He says that the entire 10 acres of the property is cleared and he has always been regarded by the members of the public and the government as the owner since 1979 when he purchased the property. He says that the Defendant has claimed that he is encroaching on a portion of her property and that while he and his wife were away in the United States the Defendant and her agents entered the land and cleared it completely to the ground, placing stakes on part of his land demarcating her ownership. He says that the Defendant's assertions are unfounded and that he has been advised by his attorneys at law that any claim by the Defendant is statute barred by section 12(2) of the Limitation Act Chapter 198. He seeks a declaration that he is the owner of all that piece or parcel of land of approximately 10 acres situate on the sea coast in Seine Bight Village more particularly described in the Deed of Conveyance dated 22nd day of August, 1979 and recorded in Deeds Book

Volume 12 of 1979 at Folios 1393 to 1400. He seeks an additional declaration that he is the owner of this property by virtue of the fact that he has been in sole, undisturbed and absolute possession of the said lands since 1979; and Order of the Court that Certificate of Title No. 10961/2006 dated the 27th day of September, 2006 is void; damages for trespass, an injunction restraining the Defendant, her servants or agents or otherwise howsoever from building upon, improving, selling, leasing or otherwise disposing of any of the 10 acres of land situate in the village of Seine Bight; an injunction restraining the Defendant her servants or agents or otherwise howsoever from entering any of the 10 acres of land situate in the village of Seine Bight; costs and any other relief.

4. **Cross examination of the Claimant Douglas Richardson**

At trial, Mr. Richardson was cross-examined extensively on his witness statement by Mr. Lionel Welch (now deceased) then attorney for the Defendant. He was questioned as to the time and date that he built his 2 million dollar house on the property. Mr. Richardson said building his house started in 1980, and that his house was under construction at the time that Hurricane Iris hit. He said he moved into the house during the hurricane because even though it was unfinished, it was the only safe place and the Hotel Seine Bight was totally destroyed. He agreed with learned Counsel's suggestion that when he bought the property it was covered with high bush. He also agreed that very few people at that time could speak English, but he said that Isabella Ciego who sold him the property could speak English. He said that in 1970, he and his former wife Karen Richardson bought the property, in 1974 the property was conveyed into the

name of Karen Richardson and in 1979 it was conveyed into his name. When asked if he had read the conveyance when the property was transferred to him in 1979, the Claimant said yes he did. He recalled that the number of acres that he bought was 10 acres more or less; no plan of that acreage was given to him by Ms. Ciego. He said Ms. Ciego told him she had inherited the land from her parents; her mother's name was Stevens and her father was Ciego. He agreed with counsel's suggestion that when he was negotiating the sale of the property with Ms. Ciego, it was his understanding that she was selling him a portion of land that was in her family. Mr. Welch asked the Claimant how he got to know the land that he was buying. He replied that when he was asking about in the village for a piece of property for his friend to buy, he was told about several parcels being available and about Isabella Ciego's property. He spoke with the neighbors who told him where the land was and where the boundaries of the land were located. Isabella gave him a proper description of where the land was located. The Claimant said he went to the Registry and obtained free deeds of the neighboring property owners, then went to visit each owner to find out what they knew; one Nicholas Palacio had already died so he was only able to speak with Simeon Garcia and Hipolito Palacio, who took him to the boundary line and all three of them walked the entire boundary line as much as possible because the Western portion was swamp. He said that in that area most of the lots went from the sea to the lagoon; he did not understand how Hipolito Palacio and Simeon Garcia could both be on the Southern boundary. When he asked why Simeon Garcia's land did not go from the sea to the lagoon, he was told that was as a result of a friendly family arrangement. Mr. Welch

asked if these landowners could speak English; the witness said that Hipolito Palacio was a schoolteacher and spoke excellent English, while Simeon Garcia could speak English but he did have difficulty understanding him. He said that he got an attorney one Avilez to assist him in the purchase of the property. It was suggested by Counsel that when the document transferred property to him in 1979, it was Karen Richardson who prepared and drew up that document; he disagreed and said it was drawn up by a lawyer. The witness said that at the time the lawyer told them that the document would not be ready for several days and since time was of the essence he told the lawyer that Karen was an excellent typist and Karen sat down in the lawyer's office and typed the deed in accordance with the attorney's guidance. He and Karen did most of the work of processing the deed because the lawyer did not have the office staff to do it. He said that after he purchased the land from Ms. Ciego he hired Mr. Roque Marin to survey and properly mark the property; the Claimant, Mr. Roque Marin and Mr. Hipolito Palacio and Mr. Simeon Garcia went to the land and Mr. Marin surveyed the boundary lines. The surveyor put pegs at every 100 feet of the boundary line at his request because boundary lines tend to become lost after the surveys are completed. The witness was asked whether in conducting his research, he came across Grant No. 23 of 1893 in the name of John Stevens; he said yes he did. He said that the land described in that Grant "*included*" a portion of the land that Ms. Ciego was selling him. The witness then said that he was aware that Grant No. 23 of 1893 only referred to 5 acres of land. He was asked by Learned Counsel Welch how could Ms. Ciego sell him 10 acres of land when she only owned 5 acres; he answered that he did not think that she only owned 5

acres because her family had occupied the land for one hundred years and all her neighbours all around had told him that she owned the land. He said that before Karen purchased the land it was never surveyed; he found surveys of land to the North and South but none of Ms. Ciego's land. It was suggested to him that it was only after he purchased the land that he had Mr. Marin survey the property; he said the survey was all part of the same transaction at the time when he purchased the land. It was also suggested that when he did his research he realized it was only 5 acres; the witness disagreed. It was put to him that having found out that Ms. Ciego only owned 5 acres, he went further and described the property she sold to him as 10 acres more or less; he disagreed stating that the property was described to him from the beginning as being 10 acres, he paid taxes on 10 acres and the reason that the deed was put in Karen's name was because (as foreigners) they were only allowed to purchase 10 acres. He came to Belize in 1964. It was put to the witness that the lagoon portion of the property was never occupied by him; he said he did not have a house on that portion of the land but he possessed it and used it from the day he bought it. He did so by hiring crews on a regular basis to try to clear the land. He had surveyors down there many times; he planted trees and gardens, and started to develop the area as part of a resort. Learned Counsel put to the witness that the area that he developed was the front portion by the sea; the Claimant said he reserved the whole thing. He said he started clearing the area by the lagoon about 10 years ago; it was put to him that it was only about 5 years ago that he started to go on the back portion of the land; he disagreed. He was asked whether he was aware that the First Defendant had title to the portion of land that he is

claiming; he said he was told about it. He was shown Land Certificate 2381 and asked to look at the plan behind it. After looking at the plan and reading out the description of the title to him, learned counsel asked whether the plan shows the portion of the land he is claiming; the Claimant said yes, that is the land he has owned for 30 years or 40 years. Finally, it was suggested that he did his research and found out that Ms. Ciego only owned 5 acres of land. He replied that is not true, and he would not have bought the land if it was only 5 acres nor would he have spent 2 million dollars on it. He was told that he spent 2 million dollars on the front portion of the land; he said it cost him \$100,000 dollars just to clear the channel for the marina in the back.

Re-examination of the Claimant

5. Under re-examination by Mr. Chebat, SC, the Claimant said that he believes that Mr. Simeon Garcia was the Defendant's father or grandfather. He said Simeon Garcia is the person who showed him where the boundaries of the land were. He said he took possession of the property from the time he bought it in 1970. The survey done by Mr. Marin showed that his property extended from the sea to the lagoon. Prior to purchasing the land, no one tried to interrupt his occupation. The Defendant claimed a portion of his land in 2006. He agrees that the Grant of 1893 only showed 5 acres. He explained that his Deed of Conveyance showed 10 acres while the Grant of 1893 only showed 5 acres: *"... it occurred through possession, occupation, use of the properties...somehow all those people down there knew exactly where there properties were and I don't think it's possible today to go back a hundred years ago and figure out how it actually progressed particularly since so many of the records were lost which was*

one of the problem I had because of Hurricane Hattie destroyed all the records.” The neighbors confirmed the description of the property given to him by Ms. Ciego.

Evidence of the First Defendant Efigenia Garcia

6. Mrs. Garcia in her witness statement said that she is a retiree of Seine Bight Village, Stann Creek District and that she is the owner of three parcels of land in Seine Bight Village. These parcels were originally one parcel of land (Exhibit **A** Deed of Indenture dated October 9th, 1939) that was owned by her father Simeon Garcia and his two brothers and that land was sub-divided into three equal parts between three brothers (Exhibit **B**). The property was devised to her by her father, the late Simeon Garcia and after his death his will was probated and the property was vested in her name. The First Defendant then applied to register her property under the Registered Land Act; her title was duly registered and she was given three titles under the Registered Land Act, Registration Section Placencia North, Block 36: Parcel 2381 (Exhibit **C**), Parcel 2382 (Exhibit **D**) and Parcel 2383 (Exhibit **E**). She says she was born in 1930 and lived on the property from the time of her birth with her parents and family until 1970 when she left the village to go to live in the United States of America. The First Defendant said that at the time she went to the US she was 40 years old and the parcel of land that the Claimant is now claiming was under high mangrove. That portion of land was known to belong to her father and she and her friends used to go and play in those areas, catch crabs and cut firewood. The portion of land that the Claimant is claiming is not his, but is to the back of the land that he bought from his wife Karen Richardson in August 1979 as shown by Deed of Conveyance dated August 24th, 1979 recorded at Deeds Book Volume

12 of 1979 Folios 1393 to 1400 (Exhibit "F"). The witness says that that Deed mistakenly and/or negligently described the land as 10 acres and attached a back portion to it that goes to the lagoon. From the time that the Claimant bought the land from Karen Richardson he continued to occupy only that front portion of land that was described as Grant No 23 of 1893. The Claimant must have noticed the mistake in the 1979 conveyance when he went unto the land in 1987 and cut the mangroves and cleared the lagoon. On one of her return visits to Belize in 1987, the witness noticed the Claimant cleaning the back lagoon and cutting mangrove from the back portion of land he was claiming. She returned to the US and then to Seine Bight Village in 1988 to finalize construction of her home on the property and to make arrangements for her parents who were both ill. She claims to have made frequent visits to Seine Bight until her father died in 1992 and her mother died in 2000. During her visits to the property the witness says that the portion of the land now being claimed by the Claimant remain unoccupied by him and continued to be used by her family as it was well known to be theirs. She says that the Claimant lives by the sea in front of the property that he is claiming. He has a residential home but it is not used as a restaurant, tourist apartment or any other kind of business. The back portion that the Claimant is now claiming has never had any fruit trees as it was always swampy and covered in mangroves. The First Defendant says that the Claimant has never been in sole, absolute and undisturbed possession for 12 years or for any period of time of the back portion of land that he is claiming. She is asking that the Claim be dismissed.

Cross-examination of the First Defendant

7. Mr. Chebat, SC, cross-examined Mrs. Garcia on her evidence. It was put to her that in her witness statement she said she left Belize in 1969. The witness said that she was lying and then she had forgotten the date, but that she left Belize in 1969 after nursing. She was asked how many years she was away from Belize; she said 30 to 40 years. It was put to her that 30 or 40 years after she left Belize, when she came back Mr. Richardson was on the property which she claims to be hers. The witness said no. She was then shown her witness statement where she described coming back to Belize and seeing the Claimant cleaning the back lagoon and cutting mangrove from the back portion of the land he was claiming. This was in 1987. She agreed that statement was true; she also agreed that this occurred around 28 or 29 years after she had left Belize in 1969. Ms. Garcia agreed with Learned Counsel's suggestion that neither she nor her parents built any structure on this property. She said that she saw Mr. Richardson on the land in 1987 but didn't do anything to stop him because she was waiting for her father to stop him but he was sick at the time. She agreed that the house that she built was not constructed on that piece of property. It was put to the witness that since the land was swampy she could not have played on it as a child. She said not all the land was swampy, just about 4 feet of the land to the mangrove. Her grandmother had her cassava. They cut firewood. To the lagoon side that's where he was cutting. She denied that Mr. Richardson ever complained to her about garbage being dumped on his property. She denied that when he told her about the garbage she apologized and promised to clean it up; she said the Claimant was lying. She agreed that her father

Simeon Garcia never had a dispute with the Claimant over that property. She agreed that she saw Mr. Richardson occupying the property but her father was sick at that time. She conceded that she was involved in 2 other disputes with other litigants over land. She agrees that she saw Mr. Richardson cleaning the mangrove and she did not try to stop him at anytime. It was put to the witness that in the 30 years that she was not in Belize Mr. Richardson took ownership of the land, took possession and occupation of the land. She said that before her father died in 1992, he gave her a paper and she took the paper to lands office. The lands office did her papers. She was asked whether the land was left like that for about 30 years until she came back from the United States; she agreed.

Re-examination of the First Defendant

7. Under re-examination by Mr. Welch, the First Defendant clarified that the first land dispute is with Mr. Richardson and the second is with the Palacio family over land. She said that she left Belize in 1969 and returned in 1987. She said that Mr. Richardson was cleaning Parcel 2381 that she has land papers for.

Evidence of the Assistant Registrar at the Ministry of Natural Resources Ethel Gladden

8. Mrs. Gladden testified on behalf of the Second and Third Defendants. She said that she was the Deputy Registrar at the Ministry of Natural Resources in Belmopan, Cayo District. She is currently the Assistant Registrar in the same Ministry. She has searched and reviewed the relevant files at the Ministry of Natural Resources in order to trace the claims made by the Claimant. Her research shows that Crown Grant No. 23 of 1893

dated April 18th, 1893 to John Stephens was for the sum of 5 acres located in Seine Bight Village.

On the 24th day of August, 1979 a Deed of Conveyance was registered in the General Registry by Karen Richardson. This deed was between Karen Richardson and Douglas Richardson for approximately 10 acres for Crown Grant No. 23 of 1893.

On the 27th day of September, 2006 three Certificates of Title were issued to Efigenia Garcia. A Certificate of Title was issued for 1.46 acres situate at Placentia North Registration Section Block 36 Parcel 2381, a Certificate of Title was issued for 0.76 acre situate at Placentia North Registration Section Block 2382, and a Certificate of Title was issued for 0.29 acres situate at Placentia North Registration Section Block 36 Parcel 2383.

Cross-examination of the Assistant Registrar

9. Mr. Chebat, SC, on behalf of the Claimant asked a few questions of Ms. Gladden in cross-examination. He asked whether Ms. Gladden reviewed a survey done in relation to the property in dispute; she said she did not. He also asked whether she conducted a physical inspection of the property; she said she did not.

Mr. Usher on behalf of the First Defendant asked a few questions. He asked her to explain the process of getting a certificate of title. She said that *"a first registration application is submitted to the Registry. Along with that application, you have a root of title, an abstract, tax statement and other relevant documents to the parcel of land. That application is then vetted and then publication follows, one month publication"*.

She said this is published in the Gazette, Print Belize and in the Guardian Newspaper. The purpose of such publication is to let the public know, for Mr. Garcia's neighbors to be notified that the Registry intends to issue title to Ms. Garcia. If the public had any objections to the Registry giving title to Ms. Garcia, then that is the time they would make representation to the Registry. Since the land certificates were issued to Ms. Garcia that means there was no objection. Ms. Gladden was not re-examined.

Evidence of Mr. Orlando Augustine

10. Mr. Augustine was the second witness called on behalf of the First Defendant. He testified that he is a retired Teacher of Hopkins Village in the Stann Creek District and he has known the First Defendant for the past forty plus years. She is his wife's aunt. The witness said that during the past 40 years he used to and he still visits her at her property in Seine Bight Village where he and his family would spend summer holidays, other public and bank holidays, and many weekends with her. They have been visiting this property since the mid to late seventies. As Ms. Garcia was living in the United States, she gave him authority to assist her with the property and gave him a power of attorney to be able to deal with the property legally on her behalf in a transaction with her attorney. In the seventies, when Mr. Augustine visited the First Defendant's property, her father, Simeon Garcia, would take them on tours of his property and he would also take them to cut firewood for the family within the same parcel of land. He used to point out the portion that belongs to him and which is now in dispute in this matter. The portion of the First Defendant's property in dispute in this claim to his knowledge is 1.46 acres being parcel 2381. The witness says that from the time he has

been visiting this property, his recollection is that this portion belongs to Mr. Simeon Garcia and now to the First Defendant. He also knows that the property has been cleared by the First Defendant; the land is cleared frequently as it is mostly mangrove. No one was living on it and no one lives there now. During the time that Mr. Augustine held the Power of Attorney to deal with the First Defendant's property, Mr. Philip Zuniga, SC, applied for and got Certificates of Title for 3 parcels of land (**Exhibits A, B and C**). At no time did Mr. Zuniga, SC, inform them that there were any problems with the property. It was not until 2010 that the witness learned from the First Defendant that the Claimant's attorney had written to her to inform her that she must cease dealing with the property as he was claiming the property as his. Mr. Augustine said he was surprised because when he used to visit the First Defendant in Seine Bight, he would see the Claimant working on his own property on a portion adjacent to the parcel now in dispute, but he never saw him working on the portion in dispute for which the First Defendant has a valid title.

Cross-examination of Mr. Orlando Augustine

11. Mr. Augustine was questioned by Mr. Chebat, SC, on behalf of the Claimant. He was asked whether it was true that Ms. Garcia left Belize in 1969, and he agreed. When asked if Ms. Garcia did not return until some 30 years later, he said he didn't know about that, but he remembers that she came in 2003 and gave him a Power of Attorney. It was put to the witness that he could not have been visiting Ms. Garcia on the property for 40 years. He disagreed and said that he did visit during the 40 years with her on the property and with her not on the property. Her father was on the property. It was

further put to Mr. Augustine that when Ms. Garcia returned to Belize some 30 years later, Mr. Richardson was already in possession and occupation of the land. The witness disagreed with this suggestion. The witness was challenged by counsel that he could not have known exactly where the parcel of land was; he said that he knows where the land was because he recalls as a young man visiting the area regularly. He was asked whether Mr. Simeon Garcia knew and accepted that Mr. Richardson was in possession of that land. Mr. Augustine said he had no knowledge of that. Upon being asked whether Ms. Efigenia herself was aware that Mr. Richardson was in possession of that land and did nothing to stop him, the witness said that is not true. He agreed that he knew that the Palacio family has also sued Ms. Garcia over land. He was asked if he saw an abstract of title attached to the application for first registration of the land. He said yes he saw one. He is aware that Mr. Zuniga applied for registration of title of the land. He later corrected himself and said he never saw an abstract of title of the property. He does not know whether a survey was done when the application for first registration was made. He was asked whether there was one application for the three parcels together or separate applications for each of the three parcels; he said he did not know. It was put to him that no survey was done when the First Defendant applied for first registration of her property; he explained that it was the lawyer who applied on Ms. Garcia's behalf. He recalls that there was a survey made already and he recalls seeing a sketch of the 2 and 2/3 acres of land when Mr. Simeon Garcia showed him all those documents when he used to visit in the early 70s. He agrees that he had Power of Attorney when the

application for First Registration was done but he does not know whether a survey was submitted along with the application for First Registration.

Re-examination of Orlando Augustine

12. Under re-examination by Mr. Usher on behalf of the First Defendant, Mr. Augustine clarified that he knew the property well because during his visits to Seine Bight in the 70s, he used to live in Mr. Garcia's house. During that time, Mr. Garcia and the family discussed about the land and on several occasions he would take them there to collect firewood because they have no butane at that time for his wife to cook for the family. They also accessed the same land to go to the lagoon to the back to do some fishing. In childhood days, they also caught crab on that same land. He said there was craboo on the land along with the mangrove. He also recalls that when Mr. Garcia did his fishing when the seas were rough, he used that same area to park his dorey for safety. He said he would visit when Mrs. Efigenia Garcia was there and sometimes when she was not; he used to visit Mr. Simeon Garcia because of his relationship with his granddaughter. The witness is married to Simeon Garcia's granddaughter. He said he knows the area like the palm of his hand.

Evidence of the Expert Witness Land Surveyor Kenneth Gillett

13. The parties agreed to get an expert to assist the court in determining the main issues in this case. They agreed on Kenneth Gillett who was given the following Terms of Reference:

1. What is the precise number of acres in Crown Grant No. 23 of 1893 and the boundaries of the determined acreage?
2. How many acres of land were acquired by Douglas Richardson by virtue of Deed of Conveyance dated 22nd August, 1979?
3. What is the precise number of acres and boundaries of land originally owned by Simeon Frank Garcia?
4. What portion of the lands of Simeon Frank Garcia was transferred to Efigenia Garcia?
5. Is there an overlap of the lands belonging to Douglas Richardson and Efigenia Garcia and if so please provide a survey evidencing the same?

Mr. Gillett carried out his instructions and arrived at the following conclusions in his report dated November 18th, 2015:

1. The precise number of acres of land contained in Crown Grant #23 of 1893 and the boundaries of the determined acreage is 5 acres. The boundaries are shown on Exhibit KG 4 attached to the report.
2. The amount of land acquired by Douglas Richardson by virtue of Deed of Conveyance dated the 22nd August, 1979 is 10 acres.
3. The precise number of acres and boundary of land originally owned by Simeon Frank Garcia is 2 2/3 acres as shown on attachment KG 6 to this report.

4. All the lands owned by Simeon Frank Garcia was transferred in total to Efigenia Garcia by Deed of Assent Volume 8 of 2003 folios 239-244 dated 12th day of February, 2003.
5. There is an overlap of the lands belonging to Douglas Richardson and Efigenia Garcia. Attachment KG 5 shows the total overlap between Douglas Richardson and Crown Grant #14 of 1899. Attachment KG 6 shows the actual overlap of 1.13 acres of land for Simeon Garcia, being the Western Parcel of land for 2 2/3 acres of land owned. Legality of this overlap needs to be determined by the Court.

Legal Submissions on behalf of the Claimant

14. Mr. Chebat, SC, says it is the Claimant's case that he is the legal owner of all that piece or parcel of land of approximately 10 acres situate on the sea coast approximately ¼ mile North of the Village of Seine Bight comprised of that parcel of land known as Crown Grant No.23 of 1893 to John Stephens and delineated by a Plan attached to said Crown Grant No. 23 of 1893 and that area westward from said Crown Grant No. 23 of 1893 to Placentia Lagoon bounded on the North and South by straight lines continuous with the northern and southern boundaries of the said Crown Grant No. 23 of 1893; which is more particularly described as follows: commencing at the edge of the Caribbean Sea 1019.7 feet due north of the northern boundary of the village of Seine Bight; thence due west along the southern boundary of the parcel of land to the edge of Placentia Lagoon to a point which is 445.5 feet due north of the southern boundary of the parcel; thence due east to the edge of the Caribbean Sea; thence southerly along the edge of the

Caribbean Sea to the point of commencing by virtue of Deed of Conveyance dated the 22nd day of August, 1979 and recorded in the Deeds Book Volume 12 of 1979 at Folios 1393 - 1400.

Mr. Chebat, SC, argues that the Claimant, Douglas Richardson, acquired 10 acres of land in 1979. He derived title from Karen Richardson who was seized of the property by virtue of a Deed of Conveyance dated the 14th day of March, 1974. The said land was acquired from Isabella Stephens Ciego who inherited the land from her father John Stephens Ciego also known as John Stephens or Stephen Ciego. At the time of purchase in 1970, Isabella Ciego had been in open and undisturbed possession of the said property for upwards of 30 years. The Claimant testifies that at the time of purchase of the property from Isabelle Ciego he had met with both Hipolito Palacio and Simeon Garcia on the property in order for them to confirm that the boundaries described to him by Ms. Ciego were true.

The Claimant obtained the services of Roque Marin, Licensed Surveyor, to conduct a survey of the property. That survey was registered in Surveyor's Plan Book #6 Folio 294. He says that survey was conducted in the presence of both Simeon Garcia and Hipolito Garcia who concurred with Marin that the south boundary was correct. The Claimant testified that since the property was bounded on the Sea on the East and by the Lagoon on the West, it was not possible to put corner pegs. Also at that time, there was no road, only a sandy track. Pegs were set along the southern and northern boundary approximately every 100 feet. He testified that although initially he could not

find the original peg on the northern side of the property, he with the help of Bernard Palacio eventually found it and a subsequent survey was then conducted by Roque Marin and was duly registered at the Surveys Department at Entry 3113 Register No. 3.

In addition the Claimant has since acquiring title to the said land been regarded by members of the public as the owner of the said 10 acres and has been paying the relevant taxes thereon.

Mr. Chebat, SC, makes the following submissions on behalf of the Claimant on the first issue:

i.) The Defendant has not produced any survey that supersedes the Survey Plan of Douglas Richardson registered at Entry No. 3113 Register No. 3.

ii.) The First Defendant has never challenged Survey Plan registered at Entry No. 3113 No. 3 or at all.

iii.) The said Plan of Survey shows the extent of the boundaries of Douglas Richardson land extending from the Sea on the East to the Placencia Lagoon on the West.

iv.) The Deed of Assent dated the 26th July, 2006 in favour of the First Defendant is unclear as to exactly what property was transferred to her.

v.) The Second Defendant issued Land Certificates and particularly Land Certificate 10961/2006 in relation to Parcel 2381 although they were fixed with notice of Survey Plan registered at Entry No 3113 Register No. 3.

On the second issue, Mr. Chebat, SC, contends that by virtue of a Deed of Conveyance dated August 22nd, 1979, the Claimant became seized of all that piece or parcel of land or approximately 10 acres in Seine Bight Village. The Claimant's predecessor in title had acquired title to the said land in 1974 from Isabella Stephens who had been in peaceful, quiet and undisturbed possession of the said land for more than 30 years prior to selling the said land to Karen Richardson. The Claimant's unchallenged evidence is that since 1974 when the land was purchased from Ciego, he cleared, planted, fenced and improved the Property. A 20,000 square foot, \$2 million building designed as a home for Richardson and to provide tourist accommodations included apartments, restaurant, spa/sundeck and connected pool along with beach side RV and camping facilities. Work had started on a marina complex with bungalows. This was to replace the successful tourist Hotel Seine Bight hotel/restaurant previously operated by Richardson on Ciego property and destroyed by Hurricane Iris. He further testifies that at no time had anyone made a claim on any portion of the property from 1970 when he actually took possession until 1994 when Ms. Garcia, daughter of Simeon Garcia made a claim to the Government for a portion of Ciego property. Since 1979, he has been in sole, absolute and undisturbed possession of the entire parcel of land. The land is one entire portion of land which has been cleared of trees in its entirety.

The Claimant says he hired crews from time to time to clear the land and had surveyors there many times. He also claims to have planted trees, gardens and developed the area as a part of a resort. He says he later hired crews periodically to cut the bush and then later hired people to fill in the swamp and create a marina.

The fact that no one interfered or objected to the Claimant's possession and occupation of the 10 acres of land is borne out by the testimony of the First Defendant herself who testified that in 1987, she saw the Claimant clearing the land and did nothing to stop him. The First Defendant left Belize in 1969 to reside in the United States and remained there until 1987 when she returned to Belize for a brief visit. At the time of her return in 1987, the Claimant was in open possession and occupation of the land. She knew it, her father knew it and none of them did anything to prevent the Claimant from possessing and occupying the said land. Mr. Chebat, SC, cites *JA Pye (Oxford) Ltd. v. Graham* [2003] 1 AC 419 where the House of Lords held that adverse possession requires that there be a sufficient degree of physical custody and control and that there must be an intention to exercise such custody and control on one's own behalf and for one's own benefit (*animus possidendi*).

Mr. Chebat, SC, makes the following submissions on behalf of the Claimant on the second issue:

- i.) The Claimant entered upon and possessed and occupied the entire 10 acres of land described in Deed of Conveyance dated the 22nd day of August 1979.
- ii.) Prior to him the said parcel of land was possessed and occupied by Karen Richardson and before her by Isabella Stephenson for more than 30 years.
- iii.) The First Defendant and her father knew that the Claimant had possession and control of the entire parcel of land and did nothing to prevent or stop his possession and occupation.

iv.) The Second Defendant, mistakenly and without conducting an investigation into the property, wrongfully issued title to the First Defendant to Parcel 2381 which forms part of the property of the Claimant.

v.) In all the circumstances, the Court ought to rectify the title to Parcel 2381 and enter the Claimant's name on the register as the proprietor of that Parcel.

Legal Submissions on behalf of the First Defendant

15. Mr. Brandon Usher on behalf of the First Defendant submits that the first issue that arises is to determine how much land is comprised in Crown Grant No. 23 of 1893. The Claimant contends that the grant in question was originally owned by John Stephens and Isabella Ciego. That land was purchased from Isabella Ciego in 1970 and put into his ex-wife's name (Karen Richardson) in 1974. He further states that from the time he bought the property, he did all the necessary research (discussing with locals whom he stated only few knew English), comparing their testimonies with that of Isabella Ciego, and locating property deeds belonging to neighbors, namely Simeon Garcia and Hipolito Palacio, and ascertained that the property was ten (10) acres as particularly described in the Schedule within the Deed of Conveyance to Karen Richardson and the Deed of Conveyance from Karen to himself.

At trial, the witness statement of Efigenia Garcia had attached Exhibit G, a copy of the Government Fiat Grant No. 23 of 1893 along with a plan of the property, both evidencing that Grant No. 23 of 1893 only contained a mere five (5) acres of land and no more. The Claimant admitted in cross-examination that his research yielded the deeds

of Palacio and Garcia and that he did see Grant No. 23 of 1893 and acknowledged that the Grant was only for 5 acres. He went on to explain that he doesn't think that it was only 5 acres of land based on hearsay from neighbors that told him Isabella Ciego owned more than the 5 acres. Mr. Usher argues that the Claimant, through his own testimony, after his research, fully knowing that the actual Grant No. 23 of 1893 only comprised of 5 acres of land, completely disregarded this grant given by the Crown, and chose to rely solely on these non-English speaking people's hearsay evidence that the property was from certain points to certain points. He then willfully and knowingly added on a further 5 acres on to Grant No. 23 of 1893 and tried to encapsulate and pass this off as Grant No. 23 of 1893. Mr. Usher argues that if the Claimant had in fact done his research, he would have seen that the Deed of Indenture dated October 9th, 1939 which gave Hipolito Palacio, Balbino Palacio and Simeon Garcia title to their land showed that this property at that time was jointly owned by all three men, until their eventual agreement to subdivide the property in a later Deed of Indenture dated January 20th, 1964. He would also have noticed that the Northern portion of these same lands, owned by Simeon Garcia, were comprised in his prospective 10 acres of land. Mr. Usher submits that the Claimant, through greed, chose to look past those Deeds of Indenture and attempt to convey those additional 5 acres to himself. He also contends that there are no surveys or inspections done to verify the hearsay evidence of Isabella Ciego and the locals. He argues strenuously that it is truly a matter of common sense that Isabella Ciego could not transfer an entire 10 acres of land since her Crown Grant No. 23 of 1893 only comprised 5 acres. While it may be argued that she and her family

had been in possession for 100 years, there is absolutely no evidence to substantiate their claim to possession, except for inadmissible hearsay.

The Deeds of Indenture dated 9th October, 1939 and 20th January, 1964 vested these properties in both Palacio and Garcia names, where more particularly, two and two-thirds acres (2 2/3) of land was vested into the name of Simeon Garcia, the First Defendant's father, 2 2/3 acres of land was vested into the name of Hipolito Palacio, and 2 2/3 acres was vested into the name of Balbino Palacio. The recent survey of registered surveyor Kenneth Gillett, the expert witness, would show that Simeon Garcia's property situated to the West and South of the 5 acres of Grant No. 23 of 1983, and that such property is now captured within the 10 acres being claimed by the Claimant, being an overlap. Mr. Usher submits that by virtue of a Deed of Conveyance, the Claimant is only entitled to 5 acres as comprised in Grant No. 23 of 1893, and that such Deed of Conveyance be corrected to reflect transfer of only 5 acres of land.

Adverse Possession

16. Additionally, Mr. Usher argues that the Claimant fails to meet the requirements of adverse possession as set out in Section 42 of the Law of Property Act Chapter 190 of the Laws of Belize RE 2000.

"42. (1) Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired by continuous and undisturbed possession of that land for thirty years if such possession is established to the satisfaction of the Supreme Court which may

issue a declaration of title in respect of the said land, easement, right or privilege in favor of the person who has had such possession.”

Mr. Usher contends that the Claimant argues that he came into possession of the property from 1970 when he purchased the land, even though the property was first transferred to his ex-wife's name and eventually to his name in 1979. Since 1979 the 30 year requirement was met in 2009. But counting from 1970, the year he allegedly bought the property, his 30 year requirement would have to be met in 2000. While the Claimant in his evidence stated that since his possession in 1970 nobody made any claim on any portion of the property from 1970 until 1994 when the First Defendant made a claim to the Government for her portion of the Ciego property. This, according to the Claimant caused Government representatives to investigate the properties. Mr. Usher argues that the Claimant then contradicts himself in saying nobody has tried to dispossess him of the property since he bought it in 1979 until January 2010 when the First Defendant through her attorney claimed that he and his wife were encroaching on a portion of her property.

Learned Counsel cites Gilbert Kodilinye's ***Commonwealth Caribbean Property Law, Second Edition*** where the learned author states that a person claiming title through adverse possession must show either:

- (a) Discontinuance of possession by the paper owner followed by possession or his predecessor; or*
- (b) Dispossession, that is, ouster of the paper owner.*

Mr. Usher argues that mere possession is not enough. In order to succeed in a claim of adverse possession, the Claimant must show that the true owner has gone out of possession of the land, that he has left it vacant with the intention of abandoning it. The mere fact that the paper owner is shown to have made no use of the land during the period does not necessarily amount to discontinuance of possession. In ***Archer ET UX v. Georgiana Holdings Ltd.*** (1974) 21 WIR 431 it was held that mere non-action of asserting rights by a landowner was not enough to prove dispossession. The Plaintiffs had built a house and a garage near a gully, which ran through the Defendant's property. Over the years due to erosion, the house and garage became endangered causing the Plaintiffs to fill the gully and erect a fence in the Defendant's premises. The trial judge had ruled that the Plaintiffs had not established a possessory title. The Plaintiffs appealed on the contention that there was no evidence over the limitation period that the Defendants did any proprietary or possessory acts. The appeal was dismissed and it was held that: (i) the owner of lands did not necessarily discontinue possession of it merely by not using it, but that each case depended upon the nature of the land in question and the circumstances under which it was held; (ii) that a finding of adverse possession required some affirmative unequivocal evidence going beyond the mere evidence of discontinuance and consistent with an attempt to exclude the true owner's possession, the nature of the property being again relevant; and (iii) that the matters relied on by the plaintiff were all equivocal in that they provided an equal balance between an intent to exclude the true owner from possession, and an intent merely to derive some enjoyment from the land wholly consistent with such use as the

true owner might wish to make of it, and the trial judge had rightly rejected the plaintiff's claim.

Mr. Usher contends that in light of the evidence of the First Defendant as well as her cross-examination it was clear that there was no evidence as to discontinuance of possession. He cites paragraph 6 of the Defendant's witness statement where she explained that she knew the land was her father's from the time she was a child, as she and her friends would go and play, catch crabs and cut firewood on the land. She further mentions that when she left the country in 1969 she continuously made visits to Belize. During cross-examination she was asked a series of questions about her not being in Belize when the Claimant began utilizing the land; however such questions are wholly irrelevant as the land was always in the possession of Simeon Garcia until his passing in 1994. Evidence in cross-examination revealed that she never did anything to stop the Claimant from coming unto her land but Mr. Usher argues that the land was not hers at that point and evidence was brought out that her father was sick at that time, and sickness does not amount to evidence of discontinuance of possession.

Evidence of possession of the land was also brought out by Orlando Augustine who said that even though he knew that the First Defendant was living in the United States, he personally visited the property and the Garcia family on frequent holidays. Mr. Simeon Garcia would take him on tours of the land where they would cut firewood and even park their canoes in the lagoon when storms were coming. It is also evident that there was a continuous presence on the land throughout the years that the First Defendant

lived in the United States from the fact that her father gave her the papers to the properties just before his passing. She later took those papers to the Lands Department to have those properties transferred into her name as by the terms of his last Will and Testament. Mr. Usher submits that this shows possession was not broken but was transferred to her by her predecessor in title; the witness also mentioned that while she constantly travelled back and forth between the United States and Belize, she kept returning to build her own house on the land, further evidencing her intent not to abandon her property.

Mr. Usher further argues that since the Claimant received notice in 1994 that the First Defendant was claiming a portion of his land, this also showed continuance of possession as Bramwell J stated in *Leigh v. Jack* (1879) LR 5 Ex D 264 as further discussed in the later English Court of Appeal case of *Wallis's Cayton Holiday Camp v. Shell-Mex and BP Ltd* [1974] 3 ALL ER 575. In the case of *Wallis*, the Plaintiff utilized the said lands for farming with the future intention of extending their holiday camp. However, such farming for the time being was being partly done on the Defendant's rightful property and the Defendant had the future intention of building a garage and a gas station on the property as it was proposed to be the site of a major roadway. After plans from the local county council fell through for the new roadway, the Defendant eventually wrote letters to the Plaintiff on two occasions offering to sell them the piece of land, but the Plaintiff never responded to the letters. The Defendant eventually caught up to the Plaintiff's plan of action that the Plaintiffs were waiting for the expiration of the 12 year limitation period to claim such part of the property. The

limitation period arrived and the Plaintiff applied for title through adverse possession, or that the Defendant had been dispossessed for the requisite period. It was held that mere non-user did not amount to discontinuance of possession and in order to prove dispossession the Claimant had to establish actual possession on his own part which was of such a nature as to oust the true owner from possession. The mere grazing of cows and farming on the land done by the Plaintiffs were found to be equivocal, as those acts were not wholly inconsistent with the Defendant's use of the property, as the land was not left in such a state as to render the Defendant's intention to build a garage and gas station impossible. It was therefore found not to be of a nature as to oust the Defendant from possession.

Mr. Usher further submits that ***Farrington v Bush*** (1974) 12 JLR 1492 is a case directly on point with the case at bar. The Claimants relied on their actions of (a) monthly visits to the land; (b) clearing the land; (c) putting up a "*no trespassing*" sign; (d) putting down boundary markers; and (e) registering the land under an invalid conveyance in their claim towards the Defendant's land. The court held that these acts were equivocal and insufficient since the Claimant had mistakenly believed that the land had been conveyed to him, his actions were as consistent with an intent to use *qua* owner as with an intention to establish a title by adverse possession.

In the case at bar, the evidence shows that the Claimants, as in ***Farrington***, cleared the land, put down boundary markers, and registered an invalid conveyance of 10 acres when they were only entitled to 5 acres as per Crown Grant No. 23 of 1893. They also

believed that the land was theirs and therefore lacked the necessary *animus possidendi* or intention to dispossess the true owners of the land. The evidence shows that the Claimant developed a part of the land that he bought in a major way by constructing a 2 million dollar home on the 5 acres of the Ciego property that rightfully belonged to him. However the other 5 acres which comprised Parcel 2381 was only left cleared except for a clearing out of the lagoon, and it is important to note that portion is not a part of Parcel 2381. Finally, Mr. Usher submits that the actions of the Claimant were so equivocal and insufficient that it does not evidence any intention to dispossess the First Defendant from her property.

In addressing the issue of the inheritance of the First Defendant, Mr. Usher refers to the expert report of Kenneth A. Gillett. In his findings, it shows that Crown Grant No. 14 of 1899 dated February 24th, 1899 was granted to Simon Bentura for a parcel of land that contains 10 acres(Exhibit KG 3 and KG4). This land was later transferred to George W. Peters and Charlie Peters by way of Deed of Conveyance dated September 14th, 1901 registered in Deeds Book Volume 15 of 1901 at folios 52-55. The property, being eight acres at the time of transfer, was then eventually transferred to Jane Peters, where it was then, by way of Deed of Indenture dated 9th October, 1939 conveyed to Simeon Garcia, Hipolito Palacio, and Balbino Palacio. At this point, another Deed of Indenture was created whereby three schedules therein separated the property in two and two thirds acres for each of the Grantees. The first schedule vested in the name of Simeon Garcia reads as follows:

“ALL THAT the one third portion of eight acres of land situate to the North of the Block of the Village of Seine Bight, consisting of Two and Two Thirds acres of land, and forming the Northern portion of the Block of land conveyed to Simeon Garcia, Hipolito Palacio, and Balbino Palacio.”

This point was also found in the Expert Report evidencing that Simeon Garcia was the owner of the Northern Portion of the property conveyed to all three men. Since this Deed of Indenture, it remained in the sole possession of Simeon Garcia, until his death in 1994, where he died leaving a Will, which bequeathed such property to his daughter, the First Defendant, Efigenia Garcia. Leaving no named executor in his Will and having the preferential claim to administer the estate, the First Defendant appointed Orlando Augustine as her lawful attorney in February 2003 by virtue of a Power of Attorney to Petition for Letters of Administration with Will Annexed. After such appointment, Orlando Augustine indicated in cross-examination that he hired Attorney at law Philip Zuniga, SC, to assist with the administration of the property, and that from time to time he would sign documents that Mr. Zuniga would prepare. After those procedures, the First Defendant called to give notice to Mr. Augustine that such properties had been transferred into her name on the 27th September, 2006, and exhibited such as being Parcel 2381 (Land Certificate 10961/2006), consisting of 1.46 acres, Parcel 2382 (Land Certificate 10962/2006) consisting of 0.76 acres and Parcel 2383 (Land Certificate 10963/2006) consisting of 0.29 acres. These properties have been in sole possession of Ms. Garcia since 1994 to the onset of this claim. The First Defendant has therefore shown good title deriving from the original Crown Grant No. 14 of 1899 to the present.

Mr. Usher therefore urges that the Claim be dismissed and that judgment be granted in favor of the First Defendant on her Counter claim for:

- (a) A Declaration that her title Land Certificate 10961/2006 Registration Section Placencia North Block 36 Parcel 2381 is valid and that she is entitled to continue in possession thereof;
- (b) Damages for trespass;
- (c) An injunction restraining the Claimant, his servants or agents or otherwise from entering her property as described in Land Certificate 10961/2006; and
- (d) Costs.

Legal Submissions on behalf of the Second and Third Defendants

17. Ms. Samantha Tucker and Ms. Agassi Finnegan Crown Counsel on behalf of the Second and Third Defendant submit that the Claimant is the owner of only five (5) acres of land in question and not of the ten (10) acres claimed. Crown Grant 23 of 1893 from which the Claimant derives ownership of his property is only for five (5) acres and not for ten (10) acres. It is apparent on the face of the Deed of Conveyance that the property in question was misdescribed. This position is buttressed by the Expert Report of Kenneth Gillett who has confirmed in the conclusion of his report that *“the precise number of acres of land contained in Crown Grant No. 23 of 1893 and the boundaries of the determined acreage is 5 acres.”*

It is the duty of the expert under Part 32 of the Supreme Court (Civil Procedure) Rules 2005 *“To help the court impartially”* and *“the evidence presented ...must be, and should*

be seen to be the independent product of the expert uninfluenced as to form or content by the demands of the litigation". It is in carrying out this duty that the expert determined that the Claimant is the owner of only five (5) acres of land.

Further the area in which the disputed land is located is a compulsory registered area. Learned Counsel for the Second and Third Defendant therefore submit that had the Claimant gone in for first registration of his parcel of land, he would have been made to undergo a trace of his root of title and as such, the findings thereof would have confirmed what he should already have known, that Crown Grant No. 23 of 1893 was only for five acres. Also, he would have realized and been notified that the Deed of Conveyance which he possesses could only pass five acres of land and this in turn could only mean the Claimant only owns five acres of land.

Additionally, the Deed of Conveyance which he possesses evidencing the transfer from his wife to himself could not possibly perfect the error/misdescription and therefore cause the Claimant to become the owner of an additional five acres of land. This is so, as it is an accepted legal principle and a golden rule of property law that a person cannot convey a better title than he himself possesses "***nemo plus juris as alium transferre potest quam ipse haberet***".

In light of the afore-mentioned, it is submitted that the Claimant is and can only be regarded as the legal owner of five acres of land, the description of which fits the particulars of Crown Grant No. 23 of 1893.

Learned Counsel also submit that the First Defendant was issued with valid Certificates of Title to the three parcels of land for which she applied. The Expert's report states that Simon Bentura was given Crown Grant 14 of 1899 which contained 10 acres which was south and west of Crown Grant 23 of 1893 from which the Claimant derives title to his property. The expert report further states that eight acres of Crown Grant 14 of 1899 was transferred to Simeon Garcia, Hipolito Palacio and Balbino Palacio by way of a Deed of Conveyance in 1939. This eight acres of land was subdivided among the three men in portions of two and two thirds acres each. Simeon Garcia received his two and two thirds acre by Deed of Conveyance in 1987, and upon his death all lands owned by him were transferred to his daughter the First Defendant by Deed of Assent dated 12th February, 2003. It was based on this set of facts that the First Defendant was registered as the legal owner of those 2 2/3 acres of land for which Certificate of Title were subsequently issued; the titles were therefore validly issued.

On the issue of damages for trespass Learned Counsel for the Second and Third Defendant contend that where it has been established that there has been trespass to land, the general principle is that even if no loss or damage is thereby caused to the land, the Claimant would be entitled to nominal damages only. If he suffered some loss, then the Claimant ought to recover the amount for the loss so sustained. However it is submitted that in the case at bar the evidence shows that the Claimant is the owner of only 5 acres of land; he cannot prove trespass and he is therefore not entitled to any damages.

Finally, it is submitted that the Claim as against the Second and Third Defendants ought to be struck out as it discloses no cause of action against them. The Claimant has failed to prove that the Second and Third Defendants issued title to the First Defendant as a result of a mistake and as such the Court does not have any ground to order the Second and Third Defendants to cancel the title issued to the First Defendant. It is clear that the Claimant does not own anything more than five acres of land; consequently the Second Defendant issued title properly to the First Defendant and within the scope of its authority under the system of land registration in Belize. The Second and Third Defendants ask that the Claim against them be dismissed and also ask for costs.

Decision

18. I am very grateful to Counsel for all parties in this Claim for their extensive submissions which have been invaluable in assisting the court in determining the issues in this case. Having reviewed the evidence in its entirety, and having considered the submissions of all counsel, and taking into account the findings of expert witness Mr. Kenneth Gillett in his report, I find that the Claim should be dismissed. The evidence clearly shows that Mr. Richardson only owns 5 acres of land and not 10 acres. His predecessor in title Isabella Ciego only owned 5 acres as set out in Grant No. 23 of 1893 so that is all that he is legally entitled to. His claim for adverse possession also fails because when I examine the evidence, it clearly shows that at no time did Mr. Simeon Garcia or his daughter Efigenia Garcia abandon this property. In reaching this finding, I am strongly persuaded by the evidence of Mr. Orlando Augustine who gave a vivid personal poignant account of the manner in which this specific area of land in dispute was treated by the family

patriarch Simeon Garcia when Mr. Augustine would walk the land with him on vacation and spend time at the Garcia family home catching crabs, fishing at the lagoon and cutting firewood. I agree with Mr. Usher's submission that the First Defendant never acquiesced in the Claimant's attempts to secure ownership over her land; she built a house on the land and secured registration of her title through Lands Department. I accept as true the evidence of Ms. Garcia that the reason why her ailing father did not do anything to get Mr. Richardson off the property in 1987 was due to the fact that he was very ill. I find it reprehensible that the Claimant who, as the late Mr. Lionel Welch former attorney for the First Defendant pointed out to him in cross-examination, is such a brilliant person, being a trained engineer by profession, retired from NASA, who by his own admission conducted his own extensive research into the history of this title before purchasing his land, admitted that he was fully aware that Grant No. 23 of 1893 showed Ms. Isabella Ciego only owned five acres, yet Mr. Richardson came to this court and insisted in the face of clear evidence to the contrary that he owns ten acres of land when he knows he only owns five acres. I am also particularly struck by Mr. Augustine's vivid recollection of observing the Claimant on the front portion of the land near the sea and the witness' genuine surprise to hear that Mr. Richardson was claiming that additional 5 acres to the back near the lagoon since Mr. Augustine had never seen him before on that portion of the land over the years and he knew the land near the lagoon always belonged to the Garcia's family.

I also agree with the submissions of Mr. Usher that ***Farrington v Bush*** (1974) 12 JLR 1492 is directly on point with the case at bar. I agree that Mr. Richardson's actions in

cleaning the lagoon, putting down markers and conducting surveys were equivocal and insufficient to oust the First Defendant from the ownership of her property.

I declare the conveyance dated 1974 and 1979 to be invalid to the extent that they purported to convey to Karen Richardson and then to Douglas Richardson 10 acres which is more than what Isabella Ciego owned and was legally able to convey. All that Douglas Richardson owns is the 5 acres contained and described in Grant No. 23 of 1893, and no more. As rightly pointed out by Counsel for the Second and Third Defendants, the principle “*nemo plus iuris ad alium transferre potest quam ipse habet*” clearly applies.

The Claimant claims that he was regarded over the years by the community as the owner of that portion of the property, yet he failed to produce a single witness from the village of Seine Bight to support his assertions. I dismiss the Claim. Judgment is in favor of the Defendants.

The First Defendant is granted the following relief on her counterclaim:

- a) A Declaration that her title Land Certificate 10961/2006 Registration Section Placencia North Block 36 Parcel 2381 is valid and that she is entitled to continue in possession thereof;
- b) Damages for trespass;
- c) An injunction restraining the Claimant, his servants or agents or otherwise from entering her property as described in Land Certificate 10961/2006.

The Claim is struck out as against the Second and Third Defendants.

Costs awarded to all the Defendants to be paid by the Claimant, to be agreed or assessed.

Dated this Friday, 21st day of July, 2017.

Michelle Arana
Supreme Court Judge