IN THE COURT OF APPEAL OF BELIZE AD 2017

CIVIL APPEAL NO 29 OF 2013

DOUGLAS RICHARDSON Appellant

v

(1) **ATTORNEY GENERAL OF BELIZE**
(2) **MINISTRY OF WORKS**
(3) **LENNOX BRADLEY** (Chief Engineer of the Ministry of Works) Respondents

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Christopher Blackman	Justice of Appeal
The Hon Mr Justice Murrio Ducille	Justice of Appeal

R R A Williams, SC, for the appellant.
N Hawke, Deputy Solicitor General, S Matute, Crown Counsel, and A Finnegan, Crown Counsel, for the respondents.

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23 June 2016 and 28 February 2018.

SIR MANUEL SOSA P

Introduction

[1] The genesis of the present litigation may fairly be said to lie in the receipt by the appellant ('Mr Richardson') on a date unknown of a letter dated 19 April 2010 from the Chief Engineer in the Ministry of Works ('the Chief Engineer') (a) claiming that a portion of the structure comprising the former's house in or near the village of Seine Bight, Stann Creek District was situated on the Seine Bight-Placencia road reserve and (b) giving him 30 days to remove it therefrom. There ensued an exchange of letters, in one of which,

dated 20 September 2010, the Chief Engineer described the extent of the alleged encroachment as being 'exactly 10.5 feet'; but, on 20 December 2010, Mr Richardson was driven to file a fixed date claim ('the claim') against the Attorney General ('the AG'), the Ministry of Works ('the Ministry') and the Chief Engineer for constitutional redress by way of declaratory and other reliefs. On 28 February 2012, Awich CJ (Acting), as he then was ('the judge'), heard the claim and reserved his judgment. (I shall refer to the AG, the Ministry and the Chief Engineer, collectively, as 'the respondents' in the remainder of this judgment.) On 15 May 2012, the judge delivered his judgment and the following remarkable order was entered:

> '1. the Claim is dismissed and Judgment is entered for [the respondents]
>
> 2. the Chief Engineer may proceed to utilize up to 50 (fifty) or even 60 (sixty) feet of [Mr Richardson's] land, and may remove any structure within.
>
> 3. [Mr Richardson] will pay costs to [the AG] in the sum of $8,000.00 (eight thousand). Payment is to be made within 30 (thirty) days of the judgment.'

Mr Richardson having appealed from those orders, oral argument was heard by this Court on 23 June 2016 and, at the close thereof, (a) the appeal was allowed; (b) the orders of the judge were set aside; (c) a declaration was granted to the effect that the taking of Mr Richardson's land for the road and reserve was not in accordance with the provisions of the Public Roads Act ('the PRA') and in breach of sections 3 and 17 of the Belize Constitution; (d) a permanent injunction was issued in terms of an order restraining the AG and the Ministry, their servants and agents, from demolishing or causing to be demolished any portion of the building of Mr Richardson being part of his premises and located on his freehold property ('the property'), as described in the annexe to the present judgment ('the Annexe'); (e) the matter was remitted to the court below in order that a judge thereof should assess such damages as may be payable by the respondents to Mr Richardson for the violation of his constitutional right and/or by way of compensation for the wrongful taking of his land; and (f) costs were awarded to Mr Richardson, here as well as in the court below, to be agreed or taxed.

Background facts

[2] Before describing the background facts, it is of importance to observe that the trial was conducted on the basis of (a) affidavit evidence and (b) the submissions of counsel, with no cross-examination of any deponent taking place. Moreover, Mr Richardson was not amongst the deponents, a matter which, if one can go by the content of the record, was never explored with counsel by the judge, but was nevertheless, as shall be seen in due course (at para **[39]**, below), effectively held against Mr Richardson by him (the judge).

[3] That said, the following was not in dispute.

[4] Mr Richardson's document of title to the property is the Deed of Conveyance referred to in the description thereof set out in the claim form and made between a Karen Richardson and himself ('the Conveyance'). As is noted in such description, the Conveyance was made in 1979 and speaks of the parties thereto as being of separate addresses in the United States of America. Commencing in 1998, Mr Richardson constructed on the property a two-storey building with 20,000 square feet of floor space at a cost of some two million dollars. This building houses not only the home of Mr Richardson, in which he lives with Madalon Witter, who describes herself as his wife, but also two 'tourist apartments', a courtyard, garages and a 'ramp/apron'. This ramp/apron is used for, *inter alia*, short-duration parking of motor vehicles, such as cars in which tourists arrive and delivery trucks, whilst they are being loaded or unloaded.

[5] The Chief Engineer's letter of 19 April 2010 already mentioned above was replied to by a letter dated 10 May 2010 from Mr Richardson containing the following salient assertions:

i) 'There is no legal Public Road Reserve across my property.'

ii) 'At no time did I or my successor (*sic*) in interest grant a right of way or reserve across the property to anyone for any reason.'

iii) 'The Placencia Road alignment was established without regard to any one's property rights and without any consultation or input from those affected property owners.'

iv) ‘Choosing to route the road through my house instead of around it even though there is 200' of open land before reaching my house from either direction which could easily have accommodated a 10' offset in front of the house shows a callous disregard of me or my property.’

v) ‘[The Ministry] also violated [the Belize Constitution] Part II, Section 17 (1), in the taking of my property.’

[6] There is no indication of an unwritten response to this letter. There is, however, evidence of a written one which was anything but prompt. Dated 20 September 2010, it asserted, for its part, that the ‘legal road reserve’ in question was of a width ranging from 50 feet in the Bahia Laguna area to 66 feet on the peninsula and that its existence went back many years, even beyond the Feeder Road Upgrading Project of the 1980s. And, reiterating the claim of an encroachment to the extent of 10.5 feet, it directed Mr Richardson to a plan identified as Entry No 3113, Reg No 3 dated 13 November 1996 and kept at the Ministry of Natural Resources and the Environment. Moreover, it gave Mr Richardson another 30 days to remove the supposedly encroaching part of his building from the road reserve.

[7] This letter does not appear to have been received by Mr Richardson anytime soon after the date of its writing. By a reply to it dated 23 November 2010, the law firm of Chebat & Co (‘Chebat’) informed the Ministry that it was not in fact received until on or about 19 October 2010. Chebat did not deny the allegation of an encroachment. Rather, they asked the Ministry for –

> ‘1. The surveys and or statute establishing the road reserve of 50 ft in the Bahia Laguna area;
>
> 2. Detailed description of the steps you have taken to establish the alleged encroachment as well as the maps and surveys showing the said encroachment.’

[8] This letter was never answered and the request thereby made never acceded to.

[9] About one month after its writing, Mr Richardson issued proceedings.

The affidavits before the judge

[10] There were a total of five affidavits before the judge, viz, in chronological order, one sworn by Ms Witter on 20 December 2010, two sworn by Edgar Puga, Project Coordinator in the Ministry, on 21 February 2011 (the day of the date stated in the claim as that of the first hearing) and 24 February 2011, respectively, one sworn by A Roque Marín, Licensed Land Surveyor, on 17 March 2011 and another sworn by Ms Witter on 5 May 2011.

(i) Ms Witter's first

[11] In her first affidavit, Ms Witter gave evidence of the matters I have dealt with at paras **[4]** to **[8]**, above, exhibiting what purported to be copies of the letters in question. Furthermore, she denied both the creation by Mr Richardson of an easement in favour of the government over the property and the compulsory acquisition by the government, whether under the PRA or otherwise, of any portion of it. The remaining paragraphs of the affidavit were concerned mainly with giving reasons why the stance assumed by the government should be regarded by the judge as unreasonable.

(ii) Mr Puga's two

[12] Mr Puga's two back-to-back affidavits overlapped with one another to a great extent. But there were some differences of form and content.

[13] Looking first at the differences, the first affidavit ('the first', for convenience, in the rest of this paragraph) has only 29 paragraphs, whilst the second affidavit ('the second', for convenience, in the rest of this paragraph) has 34. What appears (erroneously concerned with a 'fence') as para 7 in the first, does not appear at all in the second. What appears as para 9 in the first, re-appears, with a slight difference, as para 8 in the second, the difference being a reference to the year of a map there being referred to. Para 11 of the first is closely similar to para 10 of the second; but only in the latter paragraph is there an assertion that the 'track' there under discussion was an existing one at the material time. Between para 13 of the first and para 12 of the second, the only difference is that the latter states that there was no need to compensate the landowners concerned. The content of para 14 of the second, which relates to an alleged upgrading, in 1989, of the

'track' there under discussion, is not to be found in the first. What appears as para 19 in the first, reappears as two different paras, viz 20 and 21 in the second. Thus, para 20 of the second is made up of the first two sentences of para 19 of the first, whilst para 21 of the second is made up of the remaining two sentences of para 20 of the first, with minor amendments concerning (a) the number of alleged public consultations there under discussion and (b) the alleged prior publicising of the consultation in question. The content of para 19 of the second, which concerns a public consultation allegedly held in 2004, is not to be found in the first. Para 20 of the first is identical to para 22 of the second, except that the latter paragraph states that the extra land there being spoken of was to be provided 'free of cost'. The comparison between para 22 of the first and para 24 of the second is similar: they are identical except that the latter paragraph contains an elaboration as to who conducted the land survey there being discussed. The content of paras 25 to 27 of the second is not to be found in the first. Para 25 of the first and para 28 of the second differ only in that the latter paragraph refers (erroneously as it happens) to a letter supposedly exhibited as MW#6 to the first affidavit of Ms Witter. (Exhibit MW#6 is, in fact, a copy plan of survey.) The final difference is that the content of para 32 of the second is not to be found in the first.

[14] It is, in the light of an examination of these differences, clear to me that the second affidavit was intended by those who prepared and filed it to improve upon and replace the first. Accordingly, I propose to concentrate on it, referring to it as Mr Puga's affidavit, in the remainder of the present judgment. (This will not, however, be possible in cases where, as occurs at para **[30]**, below, I have to deal with a reference by one of the deponents to a specified paragraph of Mr Puga's first affidavit.)

[15] Para 8 of Mr Puga's affidavit, which is lacking in clarity, makes reference, for some unknown reason, to a map ('copyright 1976'), and then goes on to say that –

> 'persons living in the area use (*sic*) to access the [Placencia] [P]eninsula through a narrow track of land that was bordered in (*sic*) the East by the Caribbean Sea and the West by the Placencia Lagoon. This access was provided to the public, specifically the villagers without any objections by the then landowners.'

The source of that decidedly vague historical information is not disclosed.

[16] In paras 10 and 11, there is mention of 'discussions' held, presumably sometime around 1988, with landowners through whose properties a 'feeder road' ran along the length of the peninsula and it is said that 'the landowners present' at this consultation agreed to grant easements over their respective properties for the purpose. (The word 'feeder' means, according to The Concise Oxford Dictionary of Current English, Eighth Edition, 'a branch road … linking outlying districts with a main communication system'.) Mr Puga, however, does not depose to having been present at this consultation. Nor does he suggest that Mr Richardson was one of 'the landowners present'.

[17] Mr Puga deposes in para 12 that, because the landowners present at this consultation were acting 'in good faith', compensation was not required.

[18] In para 13, he asserts that, presumably at about that same time, ie 1988, the road reserve, in the case of the property, was 50 feet wide, whilst, in regard to certain properties of other persons, it was 66 feet wide.

[19] There is, in para 16, allusion to a plan of survey which was prepared at the request of Mr Richardson and which shows 'an easement measuring 50 feet for a public road'; and it is pointed out that '[n]o annotation is found on the survey that the Claimant's (*sic*) objected to the 50 feet easement'.

[20] Para 17 refers to a letter, exhibited to the affidavit, written, as Mr Puga deposes, by Mr Richardson to the then Minister of Works and, in his (Mr Puga's) words –

> 'stating that that he had no objection to the road access (*sic*) passing through his property but that he had agreed that the road would be located closer to the lagoon.'

As Mr Puga puts it, that letter further states 'that the Ministry should proceed with the paving.'

[21] The subject of public consultation is returned to at para 19, where it is deposed that a consultation, bringing together representatives of the Ministry of Health, the Belize Tourism Board and landowners, was held in 2004. Landowners are said to have expressed continued willingness 'to provide the road reserves at 66 feet'. Mr Puga does

not, however, say either that he was present at that consultation or that Mr Richardson was.

[22] Para 21 contains the only reference in the entire affidavit to a consultation at which Mr Puga claims to have been present. This consultation is said to have been conducted by him and others and to have concerned the sharing of an Environmental Impact Assessment Report with members of the general public. There is no indication that the question of the granting of easements and the acceptance of road reserves was a subject of this consultation, which is hardly surprising given that, according to Mr Puga, those matters had already been dealt with at previous consultations. Moreover, there is, again, no suggestion whatever that Mr Richardson was present at this consultation.

[23] The rest of the affidavit deals mainly with the alleged encroachment, the failure of Mr Richardson to comply with the demand that he remove the supposedly offending portion of his premises, now described as his fence and driveway, and the reasons why it ought in fact to be removed.

Mr Marín's

[24] As is made clear in this affidavit, it was sworn on behalf of the respondents by one who had been in a relationship of land surveyor and client with Mr Richardson which had ended other than happily in circumstances where a balance of 'fees' for surveying services rendered was left unpaid. (It appears, indeed, that Mr Marín uses the term 'fees' loosely in his affidavit to include disbursements.) Ms Witter in her first affidavit says that Mr Marín was not paid but claims that there was a good reason for that. Plainly, then, Mr Marín was a deponent who might well, given the imperfections of humankind, have an axe to grind in this case.

[25] I will further note, but only in passing, the striking difference between the signature on this affidavit and those purporting to be signatures of Mr Marín on the plans of survey appearing at pages 48 and 81 of the record of appeal. Whereas the affidavit is signed 'Anthony Roque Marin', the plans are signed 'R Marin' or, possibly, 'R A Marin'. Nothing, however, turns on this in the instant appeal, there being no suggestion by Mr Richardson that any of these signatures is other than authentic.

[26] The sum and substance of this affidavit is that there was a 'dirt road' running through the land that now forms the property as long ago as 1970 or thereabouts; that, with the tacit approval of Mr Richardson, this road was shown on a plan of survey prepared for him by Mr Marín in 1974; that this road had been upgraded by 1996 when he prepared another plan of survey for Mr Richardson on which the road was once again shown; and that at the time Mr Marín carried out work for Mr Richardson on this second occasion, to use the former's words, 'I was aware that the road reserve was 50 feet.' What made him so aware, he does not say. Nor, for that matter, does he vouchsafe a denial of Ms Witter's allegation, in her first affidavit, that he was not paid professional charges for his services because '[he], for some reason, added the road and setbacks without our knowledge or approval' and failed to remove them, when required so to do.

[27] There is conflict between this affidavit and Ms Witter's first affidavit on the response of Mr Richardson to the drawing of the second plan of survey to show the road in question, conflict which could hardly have been adequately resolved in the absence of cross-examination of the respective deponents.

Ms Witter's second

[28] It is obvious that the main purpose behind the filing of this affidavit is to controvert evidence contained in the affidavits filed on behalf of the respondents. But, as just observed in para **[27]**, the result is the creation of evidential conflicts incapable of being satisfactorily resolved given the fact that neither side took the necessary steps required to be able to cross-examine the deponent/deponents on the other side.

[29] I propose therefore to spend no time on those parts of this affidavit which serve only to contradict evidence given on behalf of the respondents and thus create, in the regrettable circumstances under which this claim was tried, dispute which is, for all practical purposes, irresolvable.

[30] In keeping with that intention, I go straight to para 6, which, as relevant, essentially says in reply to para 11 of what can only be Mr Puga's first affidavit (regarding discussions allegedly held with landowners) that no landowner of whom she knew had knowledge of the alleged discussions much less participated in them. Similarly, but more pointedly, para

7 is a straight-out assertion that Mr Richardson was not present at the alleged discussions. These two paragraphs of Ms Witter's affidavit do not offend in the manner I have just explained in the two paragraphs immediately preceding: they do not contradict an allegation that Mr Richardson was present at the alleged discussion. As already pointed out above, such an allegation is conspicuous for its absence from Mr Puga's replacement affidavit.

[31] In this affidavit Ms Witter agrees with the assertion of Mr Marín in his that he was not paid a balance of his 'fees' and repeats the allegation made in her first affidavit as to the reason for non-payment, a reason upon which he inexplicably failed to comment in his affidavit.

The judgment of the court below

[32] As already noted above, the judgment under appeal, 14 pages in length, is one which the judge took ample time to consider. At the close of the relatively short hearing held on 12 February 2012, he undertook to deliver it on 1 May 2012; but, in the event, he delivered it on 15 May 2012.

[33] Having set out in full the claim for relief of Mr Richardson within the first three pages of the judgment, the judge quickly turned, at page 4, to criticism of the affidavits of Ms Witter on the ground that they were made on behalf of Mr Richardson in circumstances where she did not disclose 'why [he] could not swear an affidavit himself'. This, unquestionably, is valid criticism. On the other hand, it is equally valid, in my respectful view, to wonder why the judge himself did not enquire as to the reason for that seeming anomaly. A judge, after all, is by virtue of his training and professional discipline expected to be able to deal with non-evidentiary material differently from, say, a jury in a criminal trial. This Court in fact had no hesitation in exploring with counsel on both sides the subject of Mr Richardson's strange failure to swear an affidavit for himself and was informed that, for one thing, his vision is, and was, in the run-up to the trial, very severely impaired. I shall revert to this matter later in this judgment.

[34] The judge went on in the same breath to issue a blanket condemnation of Ms Witter's affidavits as pure hearsay. He made no allowance for the fact that, as the *de facto*

spouse (at a minimum) of Mr Richardson, she could be expected to have direct knowledge of at least some of the matters to which she deposed in those affidavits. Instead he quoted the letter of the law, so to speak, as found in r 30.3, Supreme Court (Civil Procedure) Rules 2005. In the end, he struck, at para 4, a seemingly Solomonic note thus:

> 'I have decided that I shall not strike out the affidavits of [Ms] Witter in entirety, but where they conflict with statements in the good affidavits for the defendants, I shall be inclined to accept the statements in the affidavits for the defendants, unless the statements in the affidavits were improbable.'

It is not easy to avoid seeing this, after due analysis in the light of the observations already made at paras **[27**]-**[29]**, above, as in effect giving with one hand and taking back with the other. And this in a case in which the two affidavits of Ms Witter contained the entirety of the evidence adduced on behalf of Mr Richardson.

[35] At page 5, under the heading *The claimant's case*, the judge turned to set out the case of Mr Richardson. Omitting words here immaterial, he did so as follows:

> 'The ground of claim pleaded was really only one, namely: that the defendants acquired the land of the claimant without complying with the provisions of the [PRA] ... and therefore the acquisition was unconstitutional.'

That is, with respect, a fundamental misstatement of the case, which in fact was, at the end of the day, that the acquisition was unconstitutional, with, however, a rider that the relevant provisions of the PRA were not complied with but that such provisions were, in any event, themselves contrary to the Belize Constitution: for counsel's making of the last point, see pages 114-115, record. (Indeed, the unconstitutionality of certain provisions of the PRA had been foreshadowed as early as 20 December 2010: see para 16 of Ms Witter's first affidavit, at p 18, record.) In short, non-compliance with the requirements of the PRA was a matter of little more than academic interest.

[36] The judge, against that misstatement of the case, thereafter set out, at pages 6-8, his findings of fact, amongst which were the following. As regards the case for the respondents, Mr Richardson acquired title to the property by virtue of the Conveyance, ie in 1979, at which time his address was in the United States of America. It was within the knowledge of Mr Marín that 'the road' (an unhelpfully vague expression taking no account of the distinction carefully drawn by Mr Marín between the original dirt road and the

subsequently upgraded road) was there, passing through the property, as far back as 1960. In 1974, Mr Richardson, although he had yet to acquire title to the land, hired Mr Marín to conduct a survey of the property. The former had no complaint about the plan of survey although it showed the road, some 20 to 25 feet wide, running through the property. In 1994, the road, having been upgraded and thus ceased to be a mere dirt road, was shown on a further plan of survey prepared by Mr Marín at the instance of Mr Richardson. Once again the latter made no complaint about that fact. Such disagreement as arose between the two had to do with payment of a balance of the former's fees. This last-mentioned finding (viewing the non-payment as the cause of the disagreement rather than as the result of Mr Marín's intransigence) was necessarily reached by accepting the relevant evidence of Mr Marín and rejecting that of Ms Witter.

[37] Dealing still with the case for the respondents, the judge found that the Ministry had twice held consultations with landowners, including Mr Richardson, at which they, including again Mr Richardson, had, in his words, 'welcomed and agreed to give their land up to 60 feet wide for the enlargement of the road which existed there before 1970'. Clearly, then, the judge formed a favourable view as to Mr Puga's credibility as a deponent.

[38] At the same time, however, the judge did not find it proved that Mr Richardson had authored an undated letter adduced in evidence as exhibit EP2 to the affidavit of the selfsame Mr Puga ('the undated letter'). He expressly stated at para 10 of his judgment that he had 'much doubt' on the matter. That was a letter in which, undeniably, its author had informed the Minister of Works that, '[i]f there is going to be a road, I certainly want it to be paved.' Mr Puga had deposed, however, that Mr Richardson had therein made the crucial statement 'that he had no objection to the road access passing through [the] property ...' The judge's finding as to non-authorship ought to have had some negative impact on the assessment of Mr Puga's overall credibility.

[39] In that same paragraph, the judge stated:

> 'Given that deponents (*sic*) for the [respondents] deposed that [Mr] Richardson and all the other land-owners agreed to give 60 feet of their land free of charge, [he]

would have recognised the importance of swearing a first-hand affidavit himself in answer, rather than relying on yet another hearsay affidavit of [Ms] Witter.'

This amounted to holding it against Mr Richardson that he did not personally swear an affidavit. I have previously referred to another comment made by the judge on this matter: see para **[33]**, above.

[40] The judge thereafter proceeded to identify the submissions for the respondents under the heading *The defendant's case*. The submissions were (i) that the road was a public way and arose from an easement of necessity; (ii) that Mr Richardson should be denied constitutional relief on the ground of excessive delay in seeking it; and (iii) that an order to quash, such as was being sought, was not available on a constitutional motion.

[41] Importantly, in my view, the judge gave only two reasons for his decision, viz (i) that Mr Richardson had agreed with the respondents that up to 60 feet of his land would be available for, as he (the judge) put it, 'enlargement of the road' and (ii) that, by virtue of prescription or custom, there had arisen a right of way in favour of the public entitling one and all to pass and repass over the property.

[42] Regarding the first of these grounds, the judge referred back to his related finding which I have already noted at para **[37]**, above. He said that a 'free grant' had been made by Mr Richardson but that either the latter or someone else exercising authority over the property had subsequently had a change of heart. Mr Richardson was, however, the judge continued, estopped 'because by his consent he caused the Chief Engineer to construct a tar-sealed road with the necessary road reserve on that part of [the property]'.The fact of Mr Richardson's consent was an end of the matter. It meant not only that the Chief Engineer had no need to follow the procedure laid down in the PRA but also that the question of the constitutionality or otherwise of that Act did not arise. The proof of such consent further meant that no question of constitutional relief could arise.

[43] Turning to the second ground, the judge said that there was evidence to support the conclusion that a public right of way had been created. Such right of way was, he stated –

'a common law right established by prescription or custom',

immediately adding, '– see *Suffolk C C v Mason* [1979] AC 705'. He was, however, unspecific as to both the relevant evidence and the relevant common law principle or principles. And he rejected a part of the first of the three submissions of the respondents which he had earlier identified, viz the part which asserted the existence of an easement of necessity.

[44] The judge went on to hold that the public right of way in question covered a strip of the road no more than 20 to 25 feet wide. No question of appropriation, he said, could arise in respect of such strip. As to the remainder of the road's total width, some 25 feet, he considered that it was the subject of the previously mentioned consent given by Mr Richardson.

[45] He pronounced judgment in the terms already set out at para **[1]**, above.

The grounds of appeal

[46] The following assertions were filed as grounds of appeal on behalf of Mr Richardson:

> '1. The [judge] misdirected himself and erred in holding that [Mr Richardson] and all land owners (*sic*) through whose land the road ran agreed that up to 60 feet of their land would be available for enlargement of the road in the absence of any such evidence before him from any such land owners (*sic*) or at all.
>
> 2. The [judge] misdirected himself in holding that [Mr Richardson] was estopped from bringing the claim because by his consent, [Mr Richardson] caused the Chief Engineer to construct a road and a reserve on the [property], without the [respondents] having specifically pleaded, proved and or particularized the facts of such estoppel.
>
> 3. The [judge] misdirected himself and erred in holding that [Mr Richardson's] consent to the road and a reserve through [the property] amounted to a gratuitous grant of land by [Mr Richardson] to the Crown which made it unnecessary for the Chief Engineer to follow the procedure under the [PRA] in the absence of any evidence of such consent and or gratuitous grant of land by [Mr Richardson].
>
> 4. The action of the [Ministry] in taking a portion of the [property] for the road and the reserve ought to have proceeded in accordance with the provisions of the [PRA] and not otherwise.
>
> 5. The [judge] having held correctly that the road over the [property] does not fulfil the requirements for an easement, erred in law and or misdirected himself in

holding that the public established a common law right over the road by prescription or custom, in failing to appreciate the clear provisions of the Prescription Act and the common law principle that a land owner's permission or consent to use his land vitiates a claim based on prescription or custom.

6. The [judge] erred in law in failing to appreciate that there was no delay in bringing the claim since the time to do so commenced April 19th, 2012, when the Chief Engineer notified [Mr Richardson] that his home encroached on the road reserve and required it be removed and the claim was filed on December 20th, 2010.

7. The [judge], having dismissed [Mr Richardson's] claim, erred in law by ordering that the Chief Engineer or the [Ministry] may utilize up to 50 or even 60 feet of the [property] and remove any structure therein, when no such claim was before him or any such order sought or at all (*sic*).

8. The decision of the [judge] was unreasonable and against the weight of the evidence.'

Unlike the rest of these assertions, that numbered 4 complains of nothing either said or done by the judge. In my view, therefore, it does not amount to a ground of appeal but can properly be treated as a submission in support of ground 3. For the sake of simplicity, however, I shall refer to the grounds which follow it in the list above by the numbers assigned to them by counsel for the appellant.

The submissions of the parties

[47] It is as well to note at the very outset that, as has been pointed out above, the judge held that no easement of necessity exists in respect of the property. The respondents having filed no respondents' notice in the present appeal, the submissions of Mr Williams SC, for Mr Richardson, in support of the judge's conclusion in this connection were unnecessary and can properly be disregarded.

(i) On ground 1- Agreement or consent

[48] Mr Williams contended that there was no evidence before the judge indicating that Mr Richardson had agreed or consented to the use by the Ministry of a portion of the property for the purposes of a road and road reserve. In essence, Ms Matute's submission in response was that the judge's finding of agreement or consent was correct.

(ii) On ground 2 – Estoppel

[49] In arguing this ground, Mr Williams placed reliance, again, on what to him was an absence of evidence of agreement or consent on the part of Mr Richardson. As in the case of ground 1, the answer on behalf of the respondents was that the judge's 'finding' was correct.

(iii) On ground 3 – Gratuitous grant

[50] Here, too, it was submitted by Mr Williams that there simply was not any evidence of an agreement or consent such as was found by the judge. And, the reply of counsel for the respondents was that the finding of the judge was correct.

(iv) On ground 4 – PRA

[51] In the event, counsel for Mr Richardson did not pursue this assertion, which as pointed out at para **[46]**, above, cannot constitute a ground. It fell by the wayside when counsel constructed his argument around five issues (p 9, Written Submissions), none of which focussed on the necessity for compliance with the PRA. There is, in the circumstances, no need to advert to the contentions of the respondents regarding this assertion.

(v) On ground 5 – Common law right of way

[52] The primary argument of Mr Williams in support of this ground, prefaced by the criticism that 'neither prescription nor custom was pleaded', was that 'at common law [a] prescriptive right is established only if the right was exercised "*nec vi, nec clam, nec precario*" – without force, without secrecy, without permission – from time immemorial'. As I understood counsel, he was contending that no prescriptive rights could have been acquired by the respondents at common law in the light of the evidence adduced by the respondents themselves, which showed that, beginning in 1988, government had repeatedly 'sought the permission of the landowners to provide an easement through their property'. The natural inference from such evidence, in counsel's submission, was that the respondents, at the times when they allegedly sought such permission, believed Mr Richardson to be 'in absolute possession and control' of the property. Yet, continued

counsel, the judge, having found the case to be one of landowner consent, went on to hold that prescriptive rights, in the form of a common law right of way, had been acquired by the government. This argument, although not expressly identified as such by counsel, must necessarily be treated as an alternative one, given the dominant theme of the appeal, viz that the judge wrongly found that Mr Richardson's consent to the widening of the path was ever sought by the respondents, let alone granted to them.

[53] The respondents countered that the judge rightly found that they 'acquired the said portion of land by prescription or custom'. The evidence, they said, showed that a public right of way came into existence even before Mr Richardson acquired title to the property.

(vi) On ground 6 – Delay

[54] Counsel for Mr Richardson quoted the provisions of sections 12(2), 13 and 18(1) and (2) of the Limitation Act, in deploying a submission appearing to proceed on an underlying acceptance (perhaps only for the sake of argument) that the 'right of action to recover land', with which these sections are concerned, was being invoked by Mr Richardson. He submitted on the basis of those sections that that particular right of action presupposed dispossession by a squatter, ie an absence of consent to his acts on the part of a landowner. But, so the argument ran, the evidence accepted by the judge was to the effect that consent of the relevant landowners to upgrading of the road had in fact been sought and obtained in 1988. As, under section 13, time only begins to run on the date of dispossession, it could not have started running as early as 1988.

[55] With respect to the evidence of the survey of 1996, the plan of which shows a road 50 feet wide, the contention on behalf of Mr Richardson was that a mere survey is not sufficient evidence of occupation. Moreover, his counsel pointed out, the respondents themselves said that the road itself was only 24 feet wide, the remaining 26 feet still being mere road reserve. He urged therefore that no right of action had accrued to Mr Richardson in 1996.

[56] In the further submission of Mr Williams, the right of action pursued by Mr Richardson in his claim was one which had only accrued in 2010, the very year in which such claim was filed.

[57] It was the contention of the respondents in reply that the judge's holding of excessive delay was correct. The time in which to bring a claim commenced to run, they said, from the moment Mr Richardson first became aware 'of the road through his property'. Ms Matute cited *Edwards v Attorney General & Anor* [2008] CCJ 10 (AJ) in support of the respondents' position that it made no difference that the claim was for constitutional relief. She submitted that the respondents' case was strengthened by the provisions of sections 12(2) and 13(1) of the Limitation Act, to which Mr Williams had previously referred.

(vii) On ground 7 – Order for utilisation

[58] This ground was not the subject of submissions by Mr Williams. The circumstances are the same as those already described at para **[51]**, above. As in the case of ground 4, no need arises for consideration of the sole related submission of the respondents.

(viii) On ground 8 – Reasonableness of decision

[59] The remarks just made in regard to ground 7 also apply in respect of this ground.

Discussion

[60] For reasons which are either already obvious or shall become obvious as I proceed, there are only five grounds of appeal to consider.

[61] Grounds 1, 2 and 3 may conveniently be dealt with together. As Mr Williams pointed out in his submissions, there was no evidence before the judge that Mr Richardson either agreed or consented to the use by the Ministry of any portion of the property for the purpose of a road or road reserve. Mr Puga, the sole witness for the respondents to deal with the subject of alleged 'discussions' with landowners in the late 1980s, as well as of 'consultations' with them in 2004 and '2006/07', claimed only to have been present at what he called the second consultation, ie that of 2006/2007. There was, however, no suggestion by him that Mr Richardson was present at that or any other consultation and/or discussion. Moreover, as already observed at para **[22]**, above, there is no suggestion that such consultation had anything whatever to do with the granting of easements and the acceptance of road reserves. What is more, as has also been hinted

in para **[22]**, there is no reason for thinking that such topics would have been dealt with in 2006/2007 if, as alleged by Mr Puga, they had previously been the subjects of discussion and/or consultation. I am, in the circumstances, myself completely at a loss as to where the judge found a basis for his finding of agreement or consent on the part of Mr Richardson. Whilst it was the spirited submission of Ms Matute (ignoring the absence of a respondents' notice) that the undated letter constituted some evidence of consent, the fact is that the judge made it abundantly clear that he was not satisfied that Mr Richardson was its author, a finding which could only be challenged under a respondent's notice. If the letter was not Mr Richardson's, how could it evidence consent on his part?

[62] Ms Matute's valiant contention that the judge's finding was correct in the case of each of these three grounds must therefore categorically be rejected. In the glaring absence of evidence of agreement or consent on the part of Mr Richardson, the finding that he agreed or consented to the use by the Ministry of a portion of the property was wrong and cannot stand. In my opinion, therefore, ground 1 succeeds. The same evidential gap is decisive in the case of ground 2 for the reason that the absence of agreement or consent undermines the judge's holding on estoppel. How could it be held that Mr Richardson was estopped because he had by his consent (or agreement) caused the Chief Engineer to construct a road and a reserve on the property, when, in truth, there was neither consent nor agreement on Mr Richardson's part? Ground 2, therefore, must also, in my view, succeed. As regards ground 3, a holding of gratuitous grant cannot but presuppose evidence of agreement or consent on the part of Mr Richardson. There being no such evidence here, the holding is shown to have no foundation and cannot be left to stand. As I see it, the fate of ground 3 can be no different from the fates of grounds 1 and 2.

[63] As already pointed out at para **[46]**, above, what purports to be ground 4, does not, in fact, amount to a ground. It is, nonetheless, an assertion which would ordinarily have required due consideration by the Court. But, given that it was not pursued by the appellant in his written submissions or otherwise, a fact already elaborated upon at para **[51]**, above, there is, to my mind, no need for it to be accorded such consideration.

[64] Under ground 5, the attack was, as already indicated at para **[52]**, above, against the conclusion of the judge that the public had established a right of way over the property by 'prescription or custom' (the words of the judge at para 16 of his judgment).

[65] The prefatory criticism of Mr Williams to the effect that the respondents never pleaded either prescription or custom, is without validity, given that the claim was one in which there were, quite properly, no pleadings, only affidavits.

[66] As to the primary contention of Mr Williams (an alternative argument, as already indicated above), I find myself unable to follow the reasoning propounded in its support before this Court. I take no issue with counsel's statement of the law. Prescription at common law does presuppose user as of right, ie without force, without secrecy and without permission: see the decision of the House of Lords in *Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229. What is difficult is to see how the beliefs of the respondents as to whether Mr Richardson was in possession and control of the property in 1988, and thereafter, can have had any effect on prescriptive rights dating back to the 1970s. Assuming without accepting, strictly for purposes of argument, that such prescriptive rights were then in existence, one fails to see how a mere request on the part of the respondents for the permission or consent of Mr Richardson to the widening of an existing track (the subject of those rights) could have, in the words of counsel at para 28 of his skeleton argument, 'destroyed their claim to prescriptive rights'. I do not find it surprising that counsel cited no authority to support this assertion. The alleged prescriptive rights had to do with the relatively narrow track in question: the permission or consent allegedly sought was said to be for widening. That could only relate to strips of land on either side of the track, not to the track itself. As will appear, the holding of the judge as to prescriptive rights is, to be sure, vulnerable; but, in my opinion, its vulnerability is not to an attack on the lines set out under ground 5.

[67] Mr Williams, at para 29 of his skeleton argument, referred in the same vein to the judge's seeming finding that Mr Richardson, in Mr Williams' paraphrase, 'gave his permission to the paving of the narrow track'. Seeking, not without ingenuity, to turn this 'finding' to the advantage of Mr Richardson, counsel urged that, since 'actual permission defeats a claim for prescriptive rights' Mr Richardson's grant of permission causes the

collapse of the prescription-based defence of the respondents. The inherent and fundamental defect in this further submission lies in its (convenient) acceptance of the judge's seeming finding in question. I insist on calling it a seeming finding for the reason that, to my mind, it is completely untenable for the judge to have first confessed 'much doubt' as to Mr Richardson's authorship of the pertinent letter and then, later in his judgment, blithely and without a word of explanation, to have turned completely around and made a 'finding' which, absurdly, predicates such authorship. The 'finding', in my view, is more apparent than real, the illusory product of hopeless confusion. As adumbrated at para **[61]**, above, the judge's antecedent expression of doubt as to this authorship amounts, from my vantage point, to a finding that Mr Richardson did not write the letter; and such finding, not being under challenge in this appeal, must stand.

[68] A contrastingly formidable consideration, in favour of Mr Richardson, arises, however, upon one pausing to examine the judge's cornerstone point that 'prescription or custom' lies at the root of the supposed 'right of way' in favour of the public: see para 16 of his judgment. (Given this reference to 'custom', the judge must be taken to have there predicated that local customary rights are a commercial interest recognised by the property law of Belize.) Assimilation of this cornerstone point is not free of difficulty. As the judge himself emphatically held at para 18, given the absence of a dominant tenement, no easement can have been created in this case. I have already noted at para **[47]**, above that the respondents, by refraining from filing a respondent's notice, have signified their own acceptance of that holding. A right of way, however, is a form of easement. If, then, there is, and can be, no easement, how can there be a right of way? It is, in the result, unnecessary to say anything more in respect of this cornerstone point than that it is axiomatically unsound.

[69] But one could hardly be forgiven for failing further to note and consider that the terms 'prescription' and 'custom' are not, as the judge seems to suggest in para 16, interchangeable. Prescription and custom are not, and have never been, one and the same thing. Looking, then, first at prescription, how could it have possibly suggested itself to the judge as an alternative source of the supposed right of way? It is very trite English real property law that, whereas easements and local customary rights are both among

the more well-known commercial interests in or over land, they must, as such, at all times be distinguished the one from the other. Professor G C Cheshire stressed such distinction in his famous textbook, ***Cheshire's Modern Law of Real Property***, 11th ed, when dealing with the subject *Commercial Interests* in Book II, Part III, Chapter II. (For the sake of argument, I will assume – but not accept – in the remainder of this discussion that the judge was right to take it for granted that local customary rights are also a commercial interest under the law in Belize.) In regard to the broad topic of *Interests Conferring a Right Enforceable Against the Land of Another*, the learned author devoted separate sections to the three sub-topics *Easements*, *Profits à Prendre* and *Rights in the Nature of Easements and Profits Acquired by Fluctuating and Undefined Classes of Persons*. As he stated at p 560 of this work:

> 'There is no doubt that indefinite and fluctuating classes of persons, such as the inhabitants of a village, may acquire rights, analogous in nature to easements, over the land of another ... Such rights are not easements capable of acquisition by prescription, for all forms of prescription pre-suppose the possibility of a grant, and no grant can be made to an indefinite body of persons.'

Putting the point of the last sentence of this quotation a little differently, prescription presupposes the possibility of a grant: custom presupposes its impossibility. If, then, as is clear from this quotation, the so-called public right of way, being a form of easement, could not have come into existence by prescription, could it have come into existence by custom, as the judge, without the benefit of pertinent legal argument, held?

[70] Professor Cheshire, *ibid*, wrote (of English law), immediately following the lines just quoted above -

> 'Nevertheless, the law in its anxiety to protect the long sustained enjoyment of a privilege, has surmounted the technical difficulty incident to prescription by allowing rights of this nature to be established by ***custom***. Hence the name ***customary*** rights.' [original emphasis]

He went on to define custom, with its (strictly speaking) extra-common law origin, and to isolate its characteristics thus:

> ‘Custom is an unwritten rule of law which has applied from time immemorial in a particular locality and which displaces the common law in so far as that particular locality is concerned. To quote the words of Tindal, CJ [in *Lockwood v Wood* (1844) 6 QB 50, at 64]:
>
> “A custom which has existed from time immemorial without interruption within a certain place, and which is certain and reasonable in itself, obtains the force of a law, and is, in effect, the common law within that place to which it extends, though contrary to the general law of the realm.” [emphasis added]
>
> It has been said [the learned author here cited *Mercer v Denne* (1905) 2 Ch 538] that a custom must be
>
> (1) certain,
>
> (2) not unreasonable,
>
> (3) commencing from time immemorial,
>
> (4) continued without interruption, and
>
> (5) applicable to a particular district.’

[71] This is neither the time nor the place for a discussion of the whole of this quotation. My simple purpose is to demonstrate that, even assuming without accepting that custom was properly invoked by the judge, the third characteristic just noted poses an insuperable difficulty on the facts of the present case. In discussing this distinguishing feature of custom, Professor Cheshire wrote, at p 561, *op cit*:

> ‘To quote TINDAL CJ again [this time in *Bastard v Smith* (1837) 2 Mood & R 129 at 136]:
>
> “As to the proof of the custom, you cannot, indeed, reasonably expect to have it proved before you that such a custom did in fact exist before the time of legal memory, that is, before the first year of the reign of Richard I[1189]; for if you did, it would in effect destroy the validity of all customs; but you are to require proof, as far back as living memory goes, of a continuous, peaceable, and uninterrupted user of the custom.” [emphasis added]

In the instant case, there was no suggestion whatever that the evidence of Mr Marín, who was certainly not presented to the court as some sort of present-day Methuselah, went as far back as living memory goes. In my respectful view, therefore, the judge was wrong effectively to treat it as going so far back. It follows from this that I am also of the firm

opinion that custom cannot properly be regarded as an alternative source of the supposed public right of way.

[72] I add, for the sake of completeness, that I have not been able to see, after reading the report of *Suffolk County Council v Mason*, the subject of the somewhat enigmatic citation by the judge noted at para **[43]**, above, how that decision could have assisted him to arrive at the conclusion that a public right of way arose by virtue either of prescription or custom.

[73] As regards ground 6, I have to say that I am wholly unconvinced as to the need for it. The judge, as I have already noted at para **[41]**, above, gave but two reasons for his decision, neither of which was delay on the part of Mr Richardson. Both reasons given were clearly meant to demonstrate not only that he (Mr Richardson) had gone to the court below with no cause of action but also that he had never had one. The remark of the judge, in the middle of his discussion of his first reason for decision, at para 17 of his judgment, that –

> '[t]he question that the defendant [an erroneous use of the singular number] acted unconstitutionally under the Act does not arise ...',

could not have been more telling in this regard. In the circumstances, I respectfully consider that there was no proper place in the judgment for the subsequent comments of the judge, at para 20 thereof, with respect to the bringing of a constitutional claim. Their manifest inconsistency with the two stated reasons for decision suggest, I fear, a momentary loss of concentration. With the greatest respect to counsel, to argue ground 6 is tantamount to tilting at windmills.

[74] The reasons why, in my view, grounds 7 and 8 require no consideration have already been given at paras **[58]** and **[59]** above, respectively.

Grant of Constitutional Relief

[75] As regards the grant by this Court of constitutional redress, one goes back, first, to the undisputed fact of Mr Richardson's acquisition of title to the property by way of the Conveyance in 1979, already adverted to at paras **[3]** and **[4]**, above. Secondly, the fact of the presence of the road reserve on part of the property is equally undisputed. Thirdly,

such presence, when challenged by Mr Richardson, was sought to be justified in court not by proof of compliance with any requirement of the PRA but by a claim of consent or gratuitous grant on the part of Mr Richardson, which, for reasons already given above, falls flat on examination.

[76] The provisions of the PRA cited on behalf of Mr Richardson in his Fixed Date Claim Form were the following.

> '7.-(1) Upon application by the Chief Engineer, the Minister may by Order declare:-
>
> (a) ...
> (b) ...
> (c) that any public road may be widened and enlarged in such manner as he thinks fit.'
>
> '9.-(1) ...
>
> (2) Notice of the terms of the application of the Chief Engineer under section 7 shall be inserted in the *Gazette* at least four weeks previously to the date of the said Order of the Minister.'
>
> '10.-(1) If, in the execution of any Order of the Minister made under section 7, it becomes necessary to take possession for the public use of the land of any person, other than land which is not built upon or cultivated referred to in section 9, the Chief Engineer, subject to the approval of the Minister, may make an agreement on behalf of the Government with the owner for the compensation to be made for that land, and for any building, tree, fence or cultivation thereon.
>
> (2) If the Chief Engineer cannot agree with the owner as to the compensation to be made, or if the owner cannot be found, proceedings may be taken for obtaining possession of the land and for compensating the owner in the manner prescribed by any law or Act in force at the time providing means for taking private lands for public purposes.'

It was the case of Mr Richardson that (a) no order was ever made by the Minister for the expansion in the 1980s of the alleged dirt road; (b) no notice of the terms of the application of the Chief Engineer was ever published in the Gazette; (c) no arrangements were ever made and no agreement ever entered into with Mr Richardson for the acquisition of any portion of the property; (d) no order requiring the demolition of any portion of Mr Richardson's building was ever made; and (e) no proceedings were ever brought by the Chief Engineer to acquire a portion of the property and to compensate Mr Richardson.

[77] The respondents, rather than adducing evidence to show that the requirements contained in the above-cited provisions had in fact been complied with, have been content to contend that, by virtue of alleged consent or gratuitous grant on the part of Mr Richardson, those provisions never came into play.

[78] This Court held that, in the given circumstances, the taking of Mr Richardson's land for a road and road reserve ('the taking') was not in accordance with the relevant provisions of the PRA. The pertinent part of the declaration that this Court went on to make, already set out at (c) in para **[1]**, above, was, in my opinion, an order 'which ought to have been made [below]' within the meaning of section 19(1)(a) of the Court of Appeal Act ('the CAA') and, thus, one which this Court was competent to make.

[79] The provisions of the Belize Constitution invoked in the submissions of counsel for Mr Richardson to this Court are the following:

> '3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -
>
> (a) ...
> (b) ...
> (c) ...
> (d) protection from arbitrary deprivation of property,
>
> the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.'
>
> '17.-(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that-
>
> (a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and
>
> (b) secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of-

(i) establishing his interest or right (if any);
(ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;
(iii) determining the amount of compensation to which he may be entitled; and
(iv) enforcing his right to any such compensation.'

Before this Court, Mr Richardson's entire case in this respect was that the taking, without the payment of compensation to him, constituted breach of his constitutional right to respect for his property. Whereas it had also been part of Mr Richardson's case before the judge that non-compliance by the respondents with the relevant requirements of the PRA constituted breach of his constitutional right to protection of the law, there was in the notice of the present appeal no prayer whatever for relief in respect of such a breach.

[80] Throughout the present litigation, the position of the respondents regarding the claim for constitutional redress has been the same as their position regarding the question of non-compliance with the requirements of the PRA, viz that consent and gratuitous grant on the part of Mr Richardson meant that no claim for such redress could arise.

[81] This Court held that, in those circumstances, the taking was in breach of sections 3 and 17 of the Belize Constitution. The pertinent part of the declaration that it went on to make, already set out at (c) in para **[1]**, above, was thus, in my opinion, an order 'which ought to have been made [below]' within the meaning of section 19(1)(a) of the CAA and which it (this Court) was competent to make.

[82] Such, in my view, is the sufficient basis, factual and legal, for the conclusion of this Court that Mr Richardson succeeds in his claim for the declaration in question. I would add, for completeness, that such basis, so far as factual (as opposed to legal), does not, in my view, depend on any material from either affidavit of Ms Witter which can properly be regarded as hearsay material and hence inadmissible.

[83] It is essential to make one final observation before parting with this appeal. I have, at para **[1**], above described the orders of the judge as 'remarkable'. The use of such adjective needs to be justified. It is, in my view, a most fitting word in the circumstances. The sole claim before the judge was that of Mr Richardson. Yet the judge saw fit to grant

relief to the respondents who had at no stage evinced any desire whatever for relief, whether by making an Ancillary Claim (as defined in Rule 18.1(1) of Part 18 of the Supreme Court (Civil Procedure) Rules 2005), by anything contained in the affidavits filed by them in the Claim or by any of their submissions to him, written or oral. What is more, as pointed out by my learned Brother, Blackman JA, in the course of the oral argument, even if the judge had been entitled to grant relief to the respondents, it would have been totally unsatisfactory, to put it mildly, for the judge to couch his order in language so imprecise as effectively to leave it up to the respondents to decide whether they were going to have 'up to 50 … or even 60 … feet of [Mr Richardson's] land' (emphasis added) and tear down 'any structure within'. The letter dated 20 September 2010 of the Chief Engineer, it must not be forgotten, had spoken of an encroachment of no more than 10.5 feet: see para **[1]**, above.

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SIR MANUEL SOSA P

ANNEXE

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; and 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; thence northerly along the edge of Placentia Lagoon to a point

which is 455.5 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 [commencement].

BLACKMAN JA

[84] I have had the opportunity of reading in draft, the judgment of the learned President. I agree with his reasons for allowing the appeal and the orders proposed. I would however also wish to make the following observation for the guidance of trial courts and counsel.

It is unsatisfactory for contentious issues to be resolved by a trial court on affidavit evidence and Counsel's submissions. This happened in Civil Appeal No. 19 of 2013, The Attorney General of Belize v. The Bar Association of Belize. As noted at paragraph 3 of that decision, the trial judge decided the matter on written submissions, and at paragraph 4, the claim was supported by two affidavits, one from each party, but the deponents were not cross-examined. The practice may be considered efficient in the interest of a speedy resolution of disputes, but as the decisions in Richardson and The Bar Association make clear, fundamental errors occurred which may have been avoided if the respective deponents had been examined and cross examined. The old adage festina lente or "haste makes waste" is clearly applicable.

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BLACKMAN JA

DUCILLE JA

[85] Having read the judgment in draft of the learned President I am in full concurrence with his reasons and cannot add anything further.

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DUCILLE JA