

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

**Claim No. 679 of 2016**

**BETWEEN:**

<b>(Hector Victor Ventura</b>	<b>Applicants</b>
<b>(Joseph Martin Ventura</b>	
<b>(</b>	
<b>(And</b>	
<b>(</b>	
<b>(Attorney General of Belize</b>	<b>First Interested Party</b>
<b>(The Commissioner of Lands &amp; Surveys</b>	<b>Second Interested Party</b>

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

**Mr. Philip Zuniga, S.C., for the Applicants**

**Ms. Leonia Duncan, Crown Counsel for the First Interested Party**

**Mrs. Shae-Ann Keddo-Ebanks for the Objector Georgiana Mariano**

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

**Facts**

1. Stephen Ventura, father of Georgiana Mariano, the Objector, held the leasehold interest in *“ALL THAT piece or parcel of land being Lot No. 84*

*situate in Hopkins Village, Stann Creek District, Belize*” also known as “The Property” by way of lease dated 12<sup>th</sup> June, 1997. The Property is a residential lot and comprises an area of approximately 800 square yards and is located in Hopkins Village in the Stann Creek District. Agapito Ventura, Stephen Ventura’s father, previously resided on the property. Agapito Ventura died on October 31<sup>st</sup>, 1962. The Applicants say that upon the death of Agapito Ventura, his son Justo John Ventura took possession of the land and resided there until his death on September 17<sup>th</sup>, 2009. The Applicants also say that while Justo Ventura was residing on the property, Enoch Ventura’s (Hector Ventura’s son) resided there with him on the instructions of Hector Ventura. The Objector Georgiana Mariano says that Stephen Ventura was her father, and upon the death of Agapito Ventura, Stephen Ventura gave his brother Justo Ventura permission to reside on the property because Justo Ventura was of unsound mind and was unable to take care of himself. Stephen Ventura died on June 2<sup>nd</sup>, 2008, and on July 26<sup>th</sup>, 2010, Grant of Administration in the estate of Stephen Ventura was obtained by his daughter Georgiana Ventura Mariano. The Applicants say that Inventory to the said estate of Stephen Ventura did not include Lot No. 84. In 2012, Georgiana Mariano applied to the Lands and Survey Department Ministry of

Natural Resources to have her father's leasehold interest transferred to her as lawful Administratrix of his estate. By way of Minister's Fiat Grant No. 566 of 2013, the Commissioner of Lands approved this survey and Georgiana Mariano was granted title to this property. Ms. Mariano has commenced an action in the Dangriga Magistrate's Court seeking to evict the Applicants from the property. That action has been stayed pending the outcome of these proceedings. The Applicants seek a Declaration from this court that they are the owners of Lot 84 on the basis of continuous and undisturbed possession for thirty years. Georgiana Mariano objects to the Application, stating that her title to the property is absolute and the Applicants have no right to the property.

### **The Issues**

2. The parties have stated the following issues for the consideration of the Court:

1. Whether the Applicants , Hector Victor Ventura and Joseph Martin Ventura, have been in continuous and undisturbed possession of the Property for thirty years?
2. Whether the Applicants have continuously exercised exclusive rights of ownership and possession of the Property?

3. Whether the Applicants ' grandfather, Agapito Ventura, was ever in possession of the Property?
4. If the Applicants' grandfather, Agapito Ventura, was in possession of the Property, whether the Applicants can lawfully derive their possession from the possession of their grandfather, in computing the period of thirty year possession?
5. Whether the Applicants' father, Justo Ventura, was ever in possession of the Property?
6. If the Applicants' father, Justo Ventura, was in possession of the Property, whether the Applicants can lawfully derive their possession from the possession of their father, in computing the period of thirty years possession?
7. Whether the Applicants reside on or have ever resided on the Property?
8. Whether the Applicants were aware that Georgiana Mariano holds legal title to the Property?
9. Whether the Applicants are entitled to a Declaration of Title in respect of the Property?

10. Whether Georgiana Mariano, the Objector, has ever been in possession of the Property?

11. Whether Georgiana Mariano, the Objector, was properly granted the Minister's Fiat to the property in her personal capacity?

**Evidence of the Applicants**

3. There were two witnesses called on behalf of the Applicants. Hector Ventura said that he is one of the Applicants in these proceedings and he seeks a Declaration of Title in favour of his brother Joseph Martin Ventura and himself. He states that he and his brother and the persons through whom they lawfully derive possession have been in continuous and undisturbed possession of the said property for upward of 30 years and have continuously exercised exclusive rights of ownership and possession of the said property.
- Hector Ventura said in his witness statement that originally the said Lot 84 was occupied by their grandfather Agapito Ventura who occupied and resided in the said lot until he died therein on the 31<sup>st</sup> day of October, 1962. Immediately after the death of Agapito Ventura his son Justo Ventura took possession of the property and resided therein until he died on the 17<sup>th</sup> day of September, 2009. Justo was the father of Hector Ventura and his brother

Joseph Ventura. Hector Ventura said that as he wanted to make his father Justo Ventura comfortable on the property, he arranged with his son Enoch Ventura to reside with Justo Ventura; all three of them Hector, Enoch and Joseph repaired the house so that Justo would be comfortable. Justo died on 17<sup>th</sup> September, 2009 while residing on the said lot, and Hector and his brother Joseph took possession of the lot and resided in the house from that date. Hector claims that he and his brother Joseph Ventura have had uninterrupted possession and control of the said house and lot and whenever they cannot be there due to the nature of their employment, they have left Hector's son Enoch in charge on their behalf. Enoch resides on the said lot with the permission of Hector and Joseph. The Objector Ms. Mariano served the Applicants with a summons to appear in the Dangriga Magistrate's Court for an eviction hearing. It is the first time the Applicants became aware of the title of Ms. Mariano. Notwithstanding the Minister's Fiat Grant of Ms. Mariano, the Applicants claim that they have been in continuous and undisturbed possession of the property for a period of over thirty years, and that Ms. Mariano has never occupied the said lot.

Under cross-examination by Mrs. Ebanks for the Objector, Mr. Hector Ventura said that he did not know that his uncle Stephen Ventura (Ms.

Mariano's father) had a lease over the property. He said he was not aware that his father Justo Ventura did not have legal title to the property, or that Stephen Ventura had given Justo Ventura permission to live on the property. He disagreed with learned counsel's suggestion that the reason Justo was given permission by Stephen to live on the property was because Justo was of unsound mind and unable to take care of himself. He agreed that he had never been given permission to live on the property, but he said that Enoch Ventura did get permission to live on Lot 84. He said he was not aware of Ms. Mariano's suit in the Dangriga Magistrate Court seeking to evict him from the property. Hector Ventura agreed that he never paid any property taxes on Lot 84. He also agreed that he has never resided at Lot 84, nor has he ever been in possession of that property. He agreed that his uncle Stephen Ventura had a lease of the property, but disagree that Stephen Ventura gave his father permission to live there.

Joseph Ventura, brother of Hector Ventura, states that he and his brother lawfully derive title through their joint uninterrupted possession and control of Lot 84 for over 30 years. He said that the original lot was occupied by their grandfather Agapito Ventura who resided on the lot until he died on October 31<sup>st</sup>, 1962. Immediately after the death of Agapito his son Justo Ventura took

possession of the said lot and resided there until his death on September 17<sup>th</sup>, 2009. He asked his nephew Enoch Ventura to live on the lot with Agapito in order to make it comfortable, and he, Enoch and Hector repaired the house so that Justo could be comfortable. After Justo's death, Joseph Ventura took possession of Lot 84 and he and his brother Hector went to live there. Whenever they cannot be present on the lot due to their work, they leave Enoch in charge on their behalf. Enoch now lives on the lot with the Applicants' permission.

Mrs. Ebanks cross-examined Joseph Ventura on behalf of The Objector. He agreed that Stephen Ventura was his uncle and he knows that he is the father of The Objector. He agrees that Ms. Mariano has the legal title to the property. He was not aware that Stephen Ventura had a lease over the property. He agrees that his father Justo did not have legal title or a lease to the property. Joseph said he was not aware that his uncle Stephen Ventura had given his father Justo Ventura permission to live on Lot No. 84. He disagreed that Justo was of unsound mind and unable to care for himself. He agreed that none of his family members were given permission to live on the property after his father died. He was aware that Ms. Mariano had commenced a lawsuit against his brother Hector and him in the Magistrates



Court in Dangriga, and that it was only after this suit that they filed this present action in the Supreme Court.

The final witness for the Applicants was Enoch Ventura, son of Hector Ventura and nephew of Joseph Ventura. He said that he was given permission by the Applicants to move into the house on Lot 8 on or about 17<sup>th</sup> September, 2009, the day that Justo Ventura died and he continues to reside there to this day. He further states that Ms. Mariano, the Objector, has never occupied the said lot.

Under cross-examination by Mrs. Ebanks, the witness said that he was not aware that Ms. Mariano holds legal title to the property. Justo Ventura, his grandfather, died in 2009. He said that he knew that Justo did not have a legal title to Lot. No 84. He was not aware that Stephen had given Justo permission to live on the property. He said he wasn't aware that Ms. Mariano had legal title to the property.

#### **Evidence of the Respondent/Objector**

4. There was only one witness called on behalf of the Objector and that was Ms. Georgiana Mariano herself. Ms. Mariano stated in her affidavit that she had seen the Notice of Application for Declaration of Title filed on behalf of

the Applicants dated December 5<sup>th</sup>, 2016 along with the three affidavits filed in support of the application. Ms. Mariano states that she is the legal proprietor of Lot No. 84 located in Hopkins Village, Stann Creek District. She says that her title is absolute and subject to no conditions, restrictions, liens and encumbrances. Her title is exhibited as Exhibit "GM 1." Ms. Mariano stated that her late father Stephen Ventura held the leasehold interest in the property by way of Lease No. 162/97 produced as Exhibit "GM 2". She applied to the Lands and Surveys Department in the Ministry of Natural Resources to have her father's leasehold interest transferred to her as the Lawful Administratrix of his estate. On January 14<sup>th</sup>, 2013, Ms. Mariano received a letter from the Commissioner of Lands and Surveys that the application was approved (Exhibit "GM 3"). Ms. Mariano says that her grandfather Agapito Ventura formerly resided on the property. After his passing, her uncle Justo Ventura resided on the property with the permission of her father Stephen Ventura. Justo Ventura was allowed to reside on the property because he was of unsound mind and was unable to take care of himself. He died in 2009 and since then no family members have been given permission to reside on or to occupy the property. Ms. Mariano states that the Applicants themselves have never been given permission to reside on or

to occupy the property and have never resided on it. She claims that she is the lawful owner of the property and therefore this Application for Declaration of Title based on long possession should be dismissed.

Under cross-examination by Mr. Philip Zuniga, S.C., for the Applicants, Ms. Mariano admitted that she had never been in possession of the property. She had applied for Letters of Administration in the estate of her late father Stephen Ventura. Mr. Zuniga, S.C., then showed her the Grant of Administration in the Estate of Stephen Ventura and asked her to read the Devolution of Real Property section. Ms. Mariano read: *“House and Lot No. 85 located at Hopkins Village, Stann Creek District, Belize, \$88,000.00”*. The witness admitted that she has never presented evidence to prove that Lot. No. 84 is a part of the Stephen Ventura estate. Upon re-examination, Ms. Mariano was asked whether she held title for Lot No. 84 and whether she paid property taxes on Lots 84. She answered yes to both questions.

**Legal Submissions on behalf of the Applicants seeking Declaration of Title**

5. Mr. Zuniga, S.C., argues that the Applicants themselves as well as the persons through whom they have lawfully derived their possession have been in continuous and undisturbed possession for upwards of 30 years of: *ALL THAT*

*piece or parcel of land being the Lot No. 84 situate in Hopkins Village, Stann Creek District, Belize.* The application is made pursuant to Section 42 of the Law of Property Act, Chapter 190 of the Substantive Laws of Belize, and Practice Direction No. 2 of 2011 made on the 14<sup>th</sup> day of August, 2011 issued out of the Supreme Court of Belize. After summarizing the evidence of each Claimant and their witness, as well as the evidence of the Objector, Mr. Zuniga, S.C., submits that the Applicants have been in possession of the property for more than the 30 years required under the Act, as they have been in possession for 53 years. He calculates this figure starting from the period from October 31<sup>st</sup>, 1962 when Justo Ventura as the father of both Applicants took possession of the property to July 26<sup>th</sup>, 2016 when suit was served on the Applicants in the District Court. This means that a suit in the District Court does not amount to a valid claim for the purpose of disturbing or interrupting possession. He also submits that Ms. Mariano bases her claim to be the title holder of Lot No. 84 by virtue of Minister's Fiat Grant No. 566 of 2013, but her title is disputed by the Applicants. An examination of the Inventory and Devolution of the estate of Stephen Ventura shows that Lot No. 84 was never a part of the Estate of Stephen Ventura. The only lot

mentioned in the Grant of Administration is Lot No. 85, so Ms. Mariano has no title over Lot No. 84.

Mr. Zuniga, S.C., further submits that the District Court has no jurisdiction because Section 3 of the District Court Procedure Act Chapter 97 of the Laws of Belize:

*“3(2) The Court shall not have cognizance of any in which any incorporeal right, or the title to any real property, is or any be in question...”*

No effective action was therefore taken against the possession of the Applicants by Ms. Mariano. He relied on the reasoning of Sir Dennis Byron in ***Eugene Leacock v. Lorna Griffith*** [2017] CCJ 1 (AJ) where His Lordship found that the Magistrate in that matter did not have jurisdiction to hear and determine an action which required adjudication of title.

#### **Legal Submissions on behalf of the Objector**

6. Mrs. Ebanks argues on behalf of the Objector that the Applicants have failed to establish that they have been in possession of the property for 30 years or more. She relies on Section 42 of the Law of Property Act Chapter 190 Revised Edition 2000.

Section 42(1) of the Law of Property Act, Chapter 190, Revised Edition

2000, *“the Act”* states:-

*“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 declaration of title in respect of the said land, easement or privilege in favour of the person who had such possession.”*

Section 42(2) of the Act states:-

*“The possession of some other person through whom the applicant for a declaration of title lawfully derived his possession may be taken into account in computing the period of thirty years possession required by this section.”*

Section 42(3) reads as follows:-

*“The application for a declaration of title shall be made in accordance with rules of Court.”*

Section 42(4) states:

*“The title to any land, easement, right or privilege declared by the court under this section shall not vest in any person until the Registrar has issued to him a certificate of title based upon the said declaration.”*

Learned Counsel for the Objector states that Ms. Mariano has title to the property and that title is absolute and subject to no conditions. She therefore asks that the Application be refused by the court. Joseph said that after the death of Justo Ventura, he and his brother Hector went to live on the property, and when they were not able to stay there Enoch would live there. Yet under cross-examination by Mrs. Ebanks, Hector Ventura admitted that he has never lived on the property.

### **Decision**

7. Having reviewed the evidence and the submissions made, I am not satisfied that the Applicants have fulfilled the requirement under section 42 of the Law of Property Act Chapter 190 R.E. 2000 of proving that they have had possession of this property for 30 years. I accept as proven that their grandfather Agapito Ventura lived on the property until his death. However, I found major inconsistencies in the testimony of both Applicants; these

inconsistencies left me in serious doubt as to their credibility. One example is the evidence of Hector Ventura that all three of them (Hector, Joseph and Enoch) repaired the house and then asked Enoch Ventura to lived there with their father Justo until he died. On the contrary, Enoch Ventura's testimony is that he moved into the house on 17<sup>th</sup> September, 2009, the very day that his grandfather Justo died. In addition, I find no evidence that the Applicants have exercised exclusive rights of ownership and possession over the property. There is an assertion that Hector and Joseph Ventura helped to repair a house that Agapito Ventura lived in on the property; however this bare assertion, without more, is not sufficient to prove affirmatively and on a balance of probabilities that the property has been possessed by them for the past 30 years. The Applicants by their own admission (under cross-examination) do not live on the land; they claim that Enoch Ventura the son of Hector resides there with Hector's permission. I find that this case is similar to Claim No. 71 of 2004 ***Harrison August v. Oswald Patten***, where an application for a Declaration of Title was refused because the court found that the Applicant failed to prove the fact of possession and failed to prove the requisite *animus possidendi*. The material parts of Mr. August's testimony which were contested by Mr. Patten were that Mr. August's parents had built



a house on the land, had exclusive authority and control of it, paid property tax on it, maintained it, rented part of it, and that his parents died leaving him in the house where he has lived since his birth and still lived. Awich J. (as he then was) stated thus:

*“... assuming that the applicant had proved the fact of possession and the intention to have exclusive possession, an obvious obstacle remained; he did not prove that the exclusive possession lasted for 30 years. The possession that he relied on as his possession started with that of his mother, Eva, which possession commenced in 1974, when grandmother Amybell died. Before that, possession belonged to the grandmother Amybell and Mr. O Patten jointly. That is borne out by the testimony of the applicant that his mother got permission to build on the land from the grandmother.”*

I find that Ms. Mariano has proven that she is the rightful owner of this property. Her father Stephen Ventura previously held a lease over Lots 84 and 85 as shown by Exhibit GM2. I accept as true the evidence of Ms. Mariano that her father gave his brother Justo Ventura permission to live on the property until his Justo's death. Ms. Mariano applied for the transfer of lease of Lot 84 from the estate of her father Stephen Ventura to herself and

on January 14<sup>th</sup>, 2013 that application was approved by the Lands and Surveys Department as proven by Exhibit GM3. She was issued a Minister's Fiat Grant over Lot 84 on November 4<sup>th</sup>, 2013 as shown by Exhibit GM 1.

The Application for Declaration of Title is dismissed. Judgment is in favor of the Objector. Costs awarded to the Objector Ms. Mariano to be paid by the Applicants to be assessed or agreed.

***Dated this Friday, 23rd day of November, 2018.***

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**Michelle Arana  
Supreme Court Judge**