

IN THE SUPREME COURT OF BELIZE, A. D. 2017

CLAIM NO. 96 OF 2017

(MARIO LANZE

CLAIMANT

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BETWEEN (AND

(

(ELOISA RAMONA KUYLEN

DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Michel Chebat, S.C., for the Claimant

Mr. Jose Cardona for the Defendant

J U D G M E N T

Facts

1. The Claimant Mario Lanze is the nephew of the Defendant Eloisa Ramona Kuylen and the grandson of the late Asteria de Betancourt. He was born in Corozal. Ms. Asteria Betancourt was always in possession and occupation of all that piece or parcel of land being more particularly described as

Registration Section Benque Viejo Del Carmen, Block 23, Parcel 848 from 1964 up until the time of her death in 2005. The Claimant constructed a wooden house on the said land as a dwelling house for himself. Ms. Betancourt died in or about the year 2005 and on or about 16th, February 2006 the Government of Belize issued a lease to the said land in the name of Salvador Betancourt, the Claimant's uncle. In 2011, Salvador Betancourt transferred his lease of the said land to the Defendant, Eloisa Kuylen. In or around 2008, the Claimant constructed his dwelling house measuring 20' by 20' on the said land. Salvador Betancourt died on or about the 19th May, 2014. On or about September 30th 2014, title to the said land was issued in the name of the Defendant, Eloisa Kuylen.

Issues

2. These are the following issues for the determination of this court:
 - 1) Whether the Claimant has an equitable interest in a portion of that parcel of land being Registration Section Benque Viejo del Carmen, Block 23, Parcel 848? Or whether he is unlawfully occupying?
 - 2) Whether the Defendant is estopped from denying the interest of the Claimant?

3) Whether the Defendant's title is subject to the Claimant's alleged interest?

Evidence on behalf of the Claimant

3. At trial of this matter, there were two witnesses for the Claimant, Mario Lanze himself and one Aparicio Moro. Mr. Lanze in his witness statement testified that he is the nephew of the Defendant Eloisa Kuylen and that he has been living on the disputed piece of land for the past 41 years. He was born in Corozal and he went to live with his grandmother Asteria Betancourt before he completed the age of 1 year old. He was raised by his grandmother as her son. He attended Mount Carmel Primary School in Benque Viejo Del Carmen and he attached a letter from the school attesting to this (**Exhibit "M.L. 1"**). His grandmother was always in possession and occupation of the said land from the time he was born up until the time of her death. Mr. Lanze claims that his grandmother gave him permission to build his house on the said land sometime in the year 2001 as she promised him that the land would be for him and for his uncle Salvador Betancourt. Based on that promise, the Claimant says that he built a wooden house on the said land on or about the year 2001.

4. Later, in the year 2008, the Claimant said that he reconstructed the house, by building a structure measuring 20 feet by 20 feet at a cost of approximately \$35,000. Mr. Lanze says that his grandmother died in or about 2005, and on or about the 16th February 2006, the Government of Belize issued a lease of the said land to Salvador Betancourt, his uncle. He exhibits a copy of his grandmother's death certificate and his uncle's approval of lease as **Exhibits "M.L. 2" and "M.L. 3"** respectively. Mr. Lanze says that he went to the Lands Department in Belmopan along with his uncle Salvador Betancourt to apply to transfer the lease from Mr. Betancourt's name to his name since his uncle was aware of representations made by his grandmother to Lanze. The Lands Department refused to accept the application as the Department had concerns as to whether Mr. Betancourt had the mental ability to understand what he was doing. Mr. Betancourt died on or about May 16th, 2014 as shown by his death certificate (**Exhibit "M.L. 3"**).

5. On or about the 30th September, 2014, title to the said land was issued in the name of Ms. Kuylen as shown by **Exhibit "M.L. 4"**. Mr. Lanze claims that his aunt Eloisa Kuylen was fixed with notice of his possession and occupation of the said parcel of land at the time that she obtained title to the land. He did not become aware that she had obtained title to the land until he was

summoned to attend Benque Viejo Magistrate Court on the basis of a summons by which Ms. Kuylen sought to evict him from the said land (**Exhibit "M. L. 5"**). At no time since 2001 did Asteria Betancourt, Salvador Betancourt or Eloisa Kuylen attempt to stop or prohibit him for constructing his home on the said land. He has spent money to construct on the land, believing that the land would be transferred to him by his uncle.

6. Mr. Lanze was cross-examined by Mr. Cardona on behalf of the Defendant. He was asked his age and said he is 43 years old. He was shown the letter from the school and asked whether he was older than ten years old when attending the school; the witness said he knows his grandmother enrolled him in the school when he was 5 or 6. He did not attend school in Corozal and dropped out of school in Benque when he was around 14 or 15. Mr. Lanze said that after dropping out of school he started working at the Town Board. He left Benque for San Pedro when he was around age 22 and went to work at the Hydro. He lived in San Pedro for a number of years, but he would come in every two weeks. He said his grandmother promised him this land by telling him about it; he agreed that she never put anything in writing. Mr. Lanze was shown a document in which Ms. Betancourt states she would give Lot No 848 to her son Salvador Betancourt and to her

daughter Ramona Kuylen. The witness was asked whether the declaration mentions his name at all and he replied “No”. When asked about whether he would know his grandmother was sick if he had been the one taking care of her, Mr. Lanze said “*I gave my mother money to look after my grandmother*”.

7. Further under cross-examination, Mr. Lanze stated that it was true that he first built a house on the said land in 2001. First the house was made of pine, then it became part plywood. The flooring was plywood and the siding was only pieces of wood. It was suggested to Mr. Lanze that he never *reconstructed* the house in 2008, but that he *built* the house for the first time in 2008. The witness said that he reconstructed it by moving old parts and putting new. He was asked about his witness Luis; he said he was 13 years old when he got to know Luis. He said that Luis would have been a mature person when Lanze was a young boy going to school. He says he has all his files and receipts. Then he said the first time he bought materials he did not get receipts as he bought second hand materials. He has receipts for the rebuild. He has his own water source for his house. He says that it is not true that it was only in 2016 after he got his water hooked up that he started to live in the house. Mr. Lanze said he did attend his grandmother’s funeral, but while he was there his aunt chased him and warned that he would be taken

out with police. It was suggested to the witness that the reason he was chased away from the funeral was that he hit his grandmother across her face with firewood, causing her to get blind. He disagreed, and said that his aunt invents things. He agreed with counsel's suggestion that he knew at the time of building on the land that the land was in the name of his uncle, but he said that his uncle spoke to him and gave him permission to build the house because that was the desire of his grandmother. He agrees that there are other buildings on the lot besides his building.

There was no re-examination of the witness.

8. The next witness for the Claimant was Aparicio Moro. He said that he lived in Benque Viejo Del Carmen. He is a Labourer who has known Mario Lanze since he was a child since they both grew up in Benque Viejo. Mr. Moro said in his witness statement that he was also a friend of the family and whenever he would go hunting, he would take groceries to Mr. Lanze's grandmother, Mrs. Asteria Betancourt. The witness said that from the time Mario Lanze was a child he lived with his grandmother and he was somewhat of a child of his grandmother. As far as Mr. Moro knows, Mr. Lanze lived with and took very good care of his grandmother until the day she passed away. Shortly

after the passing of his grandmother, Mr. Lanze started working in San Pedro and commenced building his home on the same land that his grandmother had lived on before passing away. The house was built by the Claimant along with one Luis Iglesias. When the house was finished the Claimant would travel from San Pedro to his home every two weeks when he got days off from work. Mr. Lanze presently lives with his wife and children on the same land.

9. Mr. Cardona briefly cross-examined Mr. Moro on behalf of the Defendant. Mr. Moro explained that he has known Mr. Lanze from Lanze was a boy of seven years old. He agreed Lanze could actually have been around 10 years of age when he started school in Benque. The witness said that he knew the lot on Providence Street where Lanze lived. He also knows that Lanze left to go to live in San Pedro and that Lanze used to be away from Benque for years. The witness also agreed with learned counsel's suggestion that it was only a couple of years ago that Lanze came back and went to live where he was living presently. That was the end of cross-examination. There was no re-examination.

Evidence on behalf of the Defendant

10. The Defence called one witness, the Defendant herself, Ms. Eloisa Kuylen.

Ms. Kuylen said that she is the registered freehold owner with title absolute of Parcel 848, Block 23 Benque Viejo Del Carmen Registration Section (**Exhibit "EK 1"**). Before this lot was transferred to her, it was held as a lease by her mother the late Asteria Betancourt. Her mother was leasing the property from the Government from 1964. Ms. Asteria Betancourt passed away in 2005 and then in 2006, the Government issued a lease of the Lot to her brother Salvador Betancourt. In 2011, her brother transferred the lot to her as evidenced by copy of "*Approval to Transfer Lease Form*" dated 2nd June, 2011 (**Exhibit "EK2"**). Ms. Kuylen says that when Mario Lanze found out that Salvador was the lessee of the lot, he started to pressure and intimidate Salvador to transfer the lot to him. Ms. Kuylen says that her brother was afraid of Mr. Lanze as Lanze had been physically abusive to him but her brother had been reluctant to take the matter to the police or to court. Not long after the Claimant put his house on the lot, her brother transferred the lot to her.

11. Mrs. Kuylen applied to purchase the lot from the Government of Belize as evidenced by Land Purchase Approval Form dated February 13th, 2013

(**Exhibit "EK3"**). She paid the purchase price for the Lot and on 30th September, 2014 a Land Certificate was issued to her (**Exhibit "EK 4"**). Mrs. Kuylen explains that there are three houses on the Lot: One belongs to her mother, her sister lives in one and the other was placed on the south west corner of the Lot by Mario Lanze about 6 years ago. Before the Claimant placed his house on the lot way back in 2001, he started to build a platform or a floor on the lot at the same spot where he now has his house. When the witness saw what he was doing, she brought it to the attention of her mother. For years, Mr. Lanze did not do anything on the lot and it was not until after her mother died that he placed a chattel house on the lot. The witness recounts an incident where she says that her mother was severely beaten by the Claimant to the point where her mother was blinded in her right eye. The incident left her mother terrified of the Claimant and wanting nothing to do with him. In April 2002, Ms. Kuylen said that her mother signed a Statutory Declaration (**Exhibit "E.K. 5"**) making it clear that it was her will that the lot be transferred to her son Salvador Betancourt and her daughter Ramona Kuylen the Defendant. The witness said that the Claimant was born in Corozal but he was brought to Benque as a young boy by his mother so that her mother Asteria Betancourt could help take care of him. But

according to this witness Mario Kuylen was an unruly child who hardly ever attended school and was always aggressive and rebellious. The Claimant left Benque several years ago and used to work in different places such as Placencia and San Pedro. Months and even years would go by before Mario Lanze would show up once again in Benque. It was not until two years ago that the Claimant returned and has been living in Benque. The witness attaches a copy of the water bill history from Belize Water Services showing that it was not until October 2016 that Mario Lanze connected the water to his house (**Exhibit "E. K. 6"**). Mrs. Kuylen also exhibits a "*Notice to Quit*" which she sent to Mario Lanze in August 2015, which required Mr. Lanze to vacate the premises by September 7th, 2015(**Exhibit "E.K.7"**). Mr. Lanze has refused to vacate the said lot. In June 2016, Mrs. Kuylen started a civil suit against the Claimant and another person Amelio Barahona in the Benque Viejo Magistrate Court. Mr. Barahona had moved into her mother's house without permission. On the date of the hearing only Mr. Barahona showed up, and the Magistrate informed the parties that the matter had to be brought to the Supreme Court. Two weeks later Mr. Barahona moved out of her mother's house, while Mr. Lanze remains on the lot to date. As Mrs. Kuylen did not have money to afford a lawyer, she says that she could not

take the matter to the Supreme Court. When Mr. Lanze filed this suit against her, Ms. Kuylen's daughter assisted her in hiring a lawyer to defend her in this matter. Mrs. Kuylen says that she has tried to get the Claimant off the lot, but he refuses to move. He was never given permission by anyone to build on the lot. He has not been on the lot since 2001 as he allege, as he only placed his chattel house on the lot since 2008, and has only lived on the lot for a couple years now.

12. Mrs. Kuylen was cross-examined by Mr. Chebat, SC, on behalf of the Defendant. She agreed that she did not live on the lot in question. In relation to the Statutory Declaration, "**Exhibit EK 5**", she says that she doesn't remember how old her mother was when she signed the document. Her mother was 86 years old when she died. The witness said that her mother made this document long before she died. She was asked whether she was the one who made that document and she denied making the document. It was put to Mrs. Kuylen that Salvador Betancourt did not know about the declaration and that is why when he got the lease in 2006, he put the title in his name alone and not in the names of Mrs. Kuylen and himself. She insisted that her brother Salvador Betancourt knew about this declaration before he died. She says he got the lease in his own name first and later he put the

lease in her name. Mrs. Kuylen denied counsel's suggestion that when she got the lease in her name in 2011, Mr. Lanze had already been living on the land and had constructed a house on it. She agreed that Mr. Lanze came to live on the land as a child, but she says that he was not stable, and used to stay there on and off. She agrees that Mr. Lanze is the son of her sister and that her sister also lives on this same property. Learned counsel put to the witness that at the time Mario Lanze put the first structure on the lot in 2001, her mother never tried to stop him. Mrs. Kuylen disagreed. It was put to her that she has brought no proof that her mother Ms. Asteria Betancourt stopped Mario Lanze from building on the property. Mrs. Kuylen said that after her mother died, she personally stopped him. She does not recall if it was 3 years after Mario Lanze reconstructed his house on the land that she got her lease for the land. She was asked whether Mario Lanze had a house on the land and had been living in that house and that she knew this by the time she got title to the land in 2014. The witness refused to answer. She was asked whether she provided any medical statement or police report to substantiate that Mario Lanze hit her mother and caused her to become blind. The witness said no because her mother never wanted to go to the police. She was asked whether she disliked her nephew she said no.

Mr. Chebat, S.C., asked Mrs. Kuylen whether it is true that in 2016 she made BWS disconnect the water from the premises so that Lanze had to get a water meter in his name. The witness refused to answer. It was put to Mrs. Kuylen that she never sought an injunction to prevent Mr. Lanze from building on the land. She said she took him to Magistrate Court. It was put to Mrs. Kuylen that she took Mr. Lanze to Magistrate Court because she was seeking possession of the land. She said yes because it was already her land and Mr. Lanze wanted to hit her so she had to do something. Finally, Mr. Chebat, S.C., challenged Mrs. Kuylen that neither her mother, her brother nor Mrs. Kuylen herself took any action to stop Mario Lanze from building on Parcel 848. She agreed and explained that was because her mother was afraid of him.

13. In brief re-examination by Mr. Cardona, the witness was asked why it is that only Salvador applied for a lease of the land. Mrs. Kuylen replied that it was because it was only given to him by her mother. She was asked whether she went to Area Representative Contreras to give her an approval to apply for the lease. She said yes. Mr. Cardona tried to clarify whether Mrs. Kuylen went to BWS and disconnected water. The witness remained silent and refused to answer her attorney.

Legal Submissions on behalf of the Claimant

14. Mr. Chebat, S.C., argued on behalf of the Claimant that under Section 31(1) of the Registered Land Act, the Claimant has an equitable interest in Parcel 848. Section 31(1) reads as follows:

“Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register:

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where such inquiry is made of such person and the rights are not disclosed

(2) The Registrar may direct registration of any or the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.”

Learned Counsel then cites the reasoning of this court in **Gayburn Martinez v. Ernest Martinez** Claim 149 of 2011 (as upheld by the Court of Appeal in Civil Appeal No. 21 of 2013 **Ernest Martinez v. Gayburn Martinez**) as follows:

“In relation to the issue of an overriding interest, I find that this is the strongest argument in favour of the Defendant’s claim. It is clear from

Section 31 of the Registered Land Act cited above that the law states that the title to registered land is subject to the overriding interests as set out in that section, even though such interests are not recorded on the register. In his written submissions, Learned Counsel for the Defendants sets out an excerpt on overriding interests from Gibson's Conveyancing Twenty First Edition page 48 and 49, which I find particularly instructive:

'The First point to observe is that the overriding interest is the right of the person in actual occupation, not the occupation itself. Second, the right must be a right of property, not a mere personal right (such as, for example, a right to sue for damages for breach of covenant). Third, the rights are overriding interests even though the occupation is not such as to put any purchaser upon notice; hence it seems that a purchaser should enquire of everyone living in the property (even though quite clearly members of the vendor's family or licensees) whether they claim any proprietary interest.'

15. Mr. Chebat, S.C., cites Legall J. in ***Michelle Card v. Gerald Alexander Rhaburn*** where the court had to determine whether the Claimant was

entitled to a share or life interest in property owned by the Defendant on the ground of equitable relief based on proprietary interest. His Lordship reasoned thus:

*“The issue now is what is the legal effect of such a promise. The parties on both sides submitted a plethora of authorities of the legal effect of such a promise. I do not intend to detract from the scholarship and industry of learned counsel in both sides by not considering all the authorities. This is because I find the legal principle wonderfully captured in *Inwards v. Baker* 1963 2 QB 20, the facts of which are to some extent similar to this case. In that case, a Mr. Baker was the owner of a little over six acres of land. His son, Jack Baker, was thinking of building a bungalow. He had his eye on a piece of land but the price was rather too much for him; so his father said to him “Why not put the bungalow on my land and make the bungalow a little bigger”. That is what the son did. He did put the bungalow on his father’s land. He built it with his own labour with the help of one or two men and he got the materials. He bore a good deal of the expenses himself but his father helped him with it, and he paid his father back some of it. Roughly he spent the sum of 150 pounds out of a total of 300 pounds*

expended. When it was finished, he went into the bungalow; and he has lived there ever since. In 1951, Mr. Baker died and in 1963 his executrix took proceedings to get the son out of the property; see Denning MR at p35.

14. The first instance judge held against the son. His appeal was allowed on the main ground that if an owner of land requests another or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord or owner that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay because he has a licence coupled with an equity. Lord Denning states the principle this way:

'Even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that

expectation to be defeated where it would be inequitable so to do.'

Inwards v. Baker was followed in Gillett v. Holt 2001 Ch 210, where on a discussion on proprietary estoppel, the court said that 'the fundamental principle that equity is concerned to prevent unconscionable conduct, permeates all the elements of the doctrine. In the end, the court must look at the matter in the round': see page 225, per Report Walker LJ. Where a person (A) has acted to his detriment on the faith of a belief, which was known to and encouraged by another person (B) that he either has or is going to be given a right in or over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief: see Re Basham (Deceased) 1987 1 AER 405, at p 409 per Edward Nugee QC.

15. To establish proprietary estoppel it is necessary to prove that the applicant or claimant, at the request or with the encouragement of the landowner or defendant has spent money in improving the property in the expectation created by the defendant that the claimant would be allowed to occupy it. If that is established, the court would not allow

that expectation to be defeated where it would be inequitable to do so. Where a person under an expectation, created or encouraged by a landlord or owner of land or property, that he shall have a certain interest in that land or property, takes possession of the land or property with the consent of the owner or landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without objection by him, expends money upon the land or property, a court of equity will compel the landlord or owner to give effect to such promise or expectation: see Ramsden v. Dyson (1866) LR1 HL 129.”

16. Mr. Chebat, S.C., submits that the Claimant’s evidence is that Parcel 848 was occupied and possessed by his grandmother from 1964 up until the time of her death in 2005. The Claimant’s evidence is that he was raised by his grandmother as her son and that she gave him permission to construct his house on a portion of her land. He says that in reliance of this promise, he initially constructed the house in or about 2001 and that later in 2008 he reconstructed his house with a structure measuring 20’ x 20’ at a cost of approximately \$35,000.00. Neither the Defendant, her brother Salvador Betancourt nor their mother Asteria Betancourt prevented the Claimant from building on the said land. It would be unjust for the Claimant who,

relying on representations made to him by his grandmother and repeated to him by his uncle, be deprived of his property upon which he has expended money and built his home. The Defendant has been less than honest with the Court and the evidence bears out all the under handed action she has taken to deprive the Claimant of the said land. The Defendant was fixed with notice of the Claimant's possession and occupation of the land at the time she obtained title. The Defendant had notice of the Claimant's occupation of the said land since 2001 and never took any legal steps to prevent him from constructing either in 2001 or when he re-built in 2008. The Defendant sought to malign the Claimant by alleging that he had been violent against his grandmother without providing any proof of the same except she says so. No evidence was provided by the Defendant to satisfy the court that the signature on the Statutory Declaration was that of the Defendant's mother, or that the mother (83 years old at the time) knew what she was signing. The Claimant remains in possession and occupation of the land upon which his house is built to the exclusion of all others. In the circumstances, the Claimant submits that he is entitled to the reliefs claimed in the captioned action.

Legal Submissions on behalf of the Defendant

17. Mr. Cardona argued on behalf of Mrs. Kuylen that there is no dispute that she is the registered owner of Parcel 848. The contention is that the Defendant's title is subject to the Claimant's overriding interest which is an equitable one based on proprietary estoppel. Learned Counsel cited ***Megarry & Wade The Law of Real Property (Sixth Edition)*** at pages 727 and 728 as follows:

“Without attempting to provide a precise or comprehensive definition, it is possible to summarize the essential elements of proprietary estoppel as follows:

(i) An equity arises where:

(a) The owner of land (O) induces, encourages or allows the Claimant (C) to believe that he has or will enjoy some right or benefit over O's property;

(b) In reliance upon this belief, C acts to his detriment to the knowledge of O; and

(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.

(ii) This equity gives C the right to go to court to seek relief. C's claim is an equitable one and subject and subject to the normal principles governing equitable remedies.

(iii) The court has a wide discretion as to the manner in which it will give effect to the equity, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties.

(iv) The relief which the court may give may either be negative, in the form of an order restraining O from asserting his legal rights, or positive, by ordering O either to grant or convey to C some estate, or interest in or over his land, to pay C appropriate compensation, or to act in some other way."

At page 736 of the same text, the authors state:

"The one element that is clearly essential is that O's conduct should have encouraged C to act as he did. Mere inaction by O in the face of an infringement of his rights cannot therefore amount to acquiescence because it does not induce C to act. (Emphasis added)".

Mr. Cardona also cited **Walsh v. Ward** [2015] CCJ 14 at para. 41 the learned President Sir Denys Byron in dealing with the issue of proprietary estoppel

said: ***“In order to succeed, the Claimant must satisfy the elements of***

Proprietary Estoppel which are:

- (i) The representation must be clear and unequivocal;***
- (ii) Made by the party against who the estoppel is asserted;***
and
- (iii) Assuring the other of a certain interest in the property claimed.”***

At paragraph 43, Sir Denys Byron said, ***“The party seeking to assert the estoppel should show he relied on or was encouraged to act by representations made by the party against who the estoppel is asserted.”***

(Emphasis added)

Mr. Cardona casts doubt on the Claimant’s evidence that his grandmother gave him permission to build on her land sometime in the year 2001 as she promised him that the land would be for him and for his uncle Salvador Betancourt, and that he spent money to construct on the land believing that the land would be transferred to him by his uncle. Mr. Cardona contended that this is not true since three years prior, Mrs. Asteria Betancourt signed a Statutory Declaration in which she made it clear that ***“This said lot is my will***

to transfer it to my son Salvador Betancourt and my daughter Ramona Kuylen". Learned Counsel submits that if only a year earlier Mrs. Asteria Betancourt had promised the land to Mr. Lanze and his uncle, then it is likely that she would have said that the lot would be transferred to the Claimant and Salvador, rather than to the Defendant and Salvador. If the Claimant was relying on a promise made to him by his grandmother, or in the belief that the land would be transferred to him by his uncle, then clearly this cannot amount to encouragement, representation or acquiescence coming from the Defendant. The evidence shows that in 2001, the lot was held by lease by Mrs. Betancourt the Claimant's grandmother, and after she died a new lease was issued by the government of Belize to Salvador Betancourt in 2006. In cross-examination, the Claimant said that he built after his grandmother died, and that when he built, it was his uncle who gave him "*authorization to construct the house*". Salvador had only a lease approval letter from the Lands and Survey Department.

18. In ***Nemencio Acosta v Attorney General***, Claim No. 327 of 2005, the Learned Judge at page 9 of his judgment held:

“In my judgment, despite the heading of the letter dated 27 May, 1998 in the words ‘National Lands Act 1992 – Lease Approval’, that document (Lease Approval Letter) cannot amount to a Lease. The claimant would still have to fulfill the conditions under the National Lands Act (Cap.191) and those conditions imposed, that is to say, that the application for a lease was approved ‘subject to the provisions of the National Lands Act, 1992’ and the ‘conditions’ set out in the letter...”

At page 10 he went on to find:

“In any case, in my judgment, what the Claimant obtained in this case, is a permission given by the responsible authority (the Minister), to acquire a lease subject to the conditions stipulated in the Letter of 27 May 1998. That letter cannot be viewed as a lease. For a document to amount to a lease, it must comply with the statutory requirements, constituting a lease, namely, it must be in writing, setting out the obligations of each party, containing words of demise and signed by the parties. It is clear that no legal interest in land is intended to pass until the provisions of the National Lands Act and conditions in the letter are fulfilled.”

And at page 11 he said: *"It has also been said that a contract to lease conveyed, transferred, assigned or vested nothing: I.R.C. v. Angus [1889] 23 Q.B.D. 579"*.

19. Mr. Cardona submits that an examination of Salvador Betancourt's *"Lease Approval"* shows that it is the very type of lease approval that the judge was dealing with in the Nemencio Acosta case. The document reveals that it was not even signed by Salvador Betancourt. All Salvador had at best was a contract to lease which does not transfer or vest anything. Section 17 of the National Lands Act Cap 191 of the Laws of Belize and Section 49 of the Registered Land Act Cap 194 of the Laws of Belize also lend support to the proposition that what Salvador had was not really a *"lease"*. Section 17 of the National Lands Act reads:

"17. All grants or leases of national lands exceeding a term of seven years shall be effected by the issue of a fiat by the Minister to the Registrar in one of the forms of the Fourth Schedule, and the Registrar shall thereupon enter such grant or lease respectively in the book named in such fiat, and every grant or lease shall be deemed to be dated on the day on which the Minister's fiat is dated."

Section 49 of the Registered Land Act reads:

“49. A lease for a specified period of or exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, is or exceeds two years, shall be in the prescribed form and shall be completed by -

(a) opening a register in respect of the lease in the name of the lessee;

(b) filing the lease; and

(c) noting the lease in the encumbrances section of the register of the lessor’s land or lease”.

20. The Lease Approval letter is clearly not a Minister’s Fiat in the prescribed form, nor is it in the Encumbrances section of the register for the parcel in question and there is no notation of any lease. Mr. Cardona says that in 2013, the Government of Belize sold the lot to the Defendant and she received title in 2014. If the Claimant built in 2001 or in 2008 it means that at the time he built, the land was the property of the Government of Belize. It was not the property of Asteria Betancourt, it was not the property of Salvador Betancourt, nor was it the property of Eloisa Kuylen. If he built in 2001 or in

2008, that means he invested in land that belonged to the Government. There is no evidence to show that the relevant government authority made any representations to the Claimant for there to be a basis for proprietary estoppel that could possibly affect a successor in title. At paragraph 38 of *Walsh v Ward* cited above, the learned President of the CCJ said, *“This doctrine, however, does not negate the traditional rule that, in the absence of special circumstances, a person who invests in the land of another has no claim for reimbursement or proprietary interest over the land”*. There were no representations made by the government as the previous landowner to the Claimant that could possibly give rise to proprietary estoppel that would bind a successor in title namely, Eloisa Kuylen. ***Walsh v. Ward*** states that the representation must be clear and unequivocal and made by the party against whom the estoppel is asserted. As there is no evidence to show what was the clear and unequivocal representation and whether it was made by the Defendant, it follows that the Claimant does not have a proprietary interest which he can validly assert against the Defendant Eloisa Kuylen. On the Claimant’s own evidence he is not saying that he built his house on reliance on or encouragement from the Defendant. As he is seeking to assert estoppel against someone who never made any representations to him, his claim

should be dismissed and judgment be given for the Defendant on her Counterclaim.

Ruling

21. Having considered all the evidence for and against this Claim, and having considered the legal submissions made on behalf of the Claimant and the Defendant, I must say that I agree with Mr. Cardona that the evidence does not bear out the Claim on the basis of proprietary estoppel. I believe and I do find that there was a promise made to the Claimant by his grandmother Asteria Betancourt that he could live on and build on the lot. I find that is a very likely true, especially since Mr. Lanze's mother (the Defendant's sister) also resides on the lot. However, that promise was not made by the Defendant to Mr. Lanze, as she clearly wanted the Claimant off the property for many years. I also find that apart from the Defendant's allegations of violence by the Claimant against his grandmother, there is absolutely no corroboration of her version of events by way of a police report or eye-witness, and in these circumstances where Mrs. Kuylen is seeking by her counter claim to remove her nephew from the land, these unsubstantiated allegations appear to me to be self-serving. I also question the veracity of the Statutory Declaration and I would have thought that the Justice of the Peace

before whom the Deceased signed the document would have been brought to attest to the fact that this 83 year old woman signed this document which was read over to her and she understood the contents. Mr. Cardona in his submissions does not place much emphasis on this declaration. He is saying that this land was the property of the Government of Belize up to the date when title was issued to the Defendant Eloisa Kuylen in 2014. I agree with that submission. However, I find that while I agree that the evidence does not bear out the principle of proprietary estoppel, as there was no evidence that Mario Lanze spent his money based on a promise made to him by the previous owners (Government of Belize) or the present legal owner (Eloisa Kuylen), I find that when Mrs. Kuylen received freehold title to this property in 2014, she was fixed with notice of her nephew's equitable interest in the lot pursuant to section 31(g) as a person in actual occupation of land. Section 31(g) reads as follows:

“Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register -

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed.” (Emphasis added)

It is clear from the evidence of the Claimant, Mario Lanze, which I accept as true, that he grew up as a child 41 years ago on this property with his grandmother Asteria Betancourt. It is quite possible that he was an erratic and troublesome child/young person as described by the Defendant, but be that as it may, the fact is that Mr. Lanze was clearly tolerated, accepted and allowed to live on the property by his grandmother Asteria Betancourt. It is not known whether that tolerance sprang from love and affection as alleged by the Claimant and his witness, or from fear as alleged by the Defendant, but it is clear that Mr. Lanze was allowed to construct a house of BZ\$35,000 in value on that lot since 2001. He was not prevented from building his house, nor was he removed from the lot by Mrs. Betancourt, by Salvador Betancourt, by Eloisa Kuylen or by the Government of Belize. It is therefore quite clear that Mr. Lanze has an equitable interest in this Lot and that Mrs. Kuylen takes her legal title subject to that equitable interest. The relief sought by the Claimant is therefore granted as follows:

- (1) A declaration of the Court that Mario Kuylen has an equitable interest in all that piece or parcel of land by Registration Section: Benque Viejo Del Carmen, Block 23, Parcel 848.
- (2) A declaration of the Court prohibiting the Defendant Eloisa Kuylen from denying the interest of the Claimant in the said land under section 31 (g) of the Registered Land Act
- (3) An order of the Court requiring the Registrar of Lands to enter upon and note the overriding interest of the Claimant as the right of the aforementioned parcel of land;
- (4) Costs.

The Defendant's Counterclaim is granted in part as follows:

- 1) A declaration of the court that the Defendant Eloisa Kuylen is the legal owner of Parcel 848 Block 23 in Benque Viejo Del Carmen subject to the Claimant Mario Lanze's equitable interest under Section 31(g) of the Registered Land Act.

Each party to bear own costs.

Dated this Friday, 5th day of July, 2019.

**Michelle Arana
Supreme Court Judge**