

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

**CLAIM NO. 365 OF 2017**

**(MOHAMMED MEJU**

**CLAIMANT**

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**BETWEEN (AND**

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**(SONIA AUGUSTINE**

**DEFENDANT**

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

**Mr. Brandon Usher for the Claimant**

**Mr. Said Musa S.C. for the Defendant**

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**Facts**

[1] The Claimant, Mohammed Meju, is a businessman who purchased a parcel of land from one Mr. Roberto Gilharry; parcel No. 322, Registration Section, St. Martins De Porres West, Block No. 45. When he visited his new property, Mr. Meju found the Defendant, Ms. Augustine, living on this land. Ms. Augustine has no land certificate for this property. Mr. Meju gave Ms. Augustine oral and written warnings to vacate his property, on which Ms. Augustine still resides to date. Ms. Augustine admits that her cousin granted her permission to reside on this property 17 years ago. She also admits that her Area Representative, Hon. Cordel Hyde assisted her by

providing her with a house in January 2008, which was installed on the foundation of the same property where she and her children have lived thereon in peaceful and undisturbed possession since the year 2000. The Defendant admits that she still lives on the property and has no title for such property.

[2] The Claimant contends that the Defendant does not have the necessary elements to qualify for adverse possession over the parcel of land. The Claimant asserts that he qualifies as a bona fide purchaser for valuable consideration and that his rights as to ownership of the said property should be upheld. The Defendant asserts that she has acquired possessory title and ownership of said property having occupied the property by open, peaceful and uninterrupted possession for a period exceeding 12 years.

### [3] Issues

- i. Does the Defendant possess the necessary elements to qualify for adverse possession of Parcel No. 322, Registration Section, St. Martin's De Porres, West Block No. 45?
- ii. Does the Claimant qualify as a bona fide purchaser for value without notice overriding any interest of the Defendant?
- iii. Who is the rightful owner of all that property being Parcel No 322, Registration Section, St. Martin's De Porres West, Block No. 45?

### **Evidence of the Claimant**

[4] At trial, Mr. Meju was the only witness for the Claimant. He testified that he is a businessman who acquired this land from the previous owner Mr. Roberto Gilharry. Mr. Meju paid off a loan of BZ\$2,500 at a pawnshop on behalf of Mr. Gilharry; in exchange he received the title to this land. The agreement that Mr. Meju had with Mr. Gilharry was that he would hold the land certificate to this property until Mr. Gilharry could repay the loan to the Claimant. As Mr. Gilharry was never able to repay the loan, Mr. Meju offered to purchase the land for \$9,000.00. The property was transferred to Mr. Meju a few weeks later as shown by land certificate (Exhibit “MM1”). After receiving his land certificate, Mr. Meju visited the land and saw that someone had been living on this land in an old plycem house and that the rest of the lot was bushy. He testified that he never knew that anyone was on the land as he had believed that the land was unoccupied. Through discussions with Mr. Gilharry, Mr. Meju said that he learnt that the current occupant of the property was the Defendant, Ms. Sonia Augustine. After contacting Ms. Augustine, Mr. Meju learnt that Mr. Gilharry had already commenced proceedings in the Magistrate’s Court to evict Ms. Augustine, as evidenced by (Exhibit “MM2”), a receipt of the claim brought against Ms. Augustine, prior to transfer of the land to the Claimant. Mr. Meju said that he paid Mr. Gilharry an additional BZ\$1,000.00 to help him to evict Ms. Augustine from the property. He asked Mr. Meju for an

additional \$500.00 but Mr. Meju refused. After this Mr. Gilharry did not show up for any case against Ms. Augustine. Mr. Meju then went to his lawyer, Mr. Brandon Usher who prepared a letter of notice asking Ms. Augustine to vacate the property. The letter was dated February 8<sup>th</sup>, 2017 and it gave Ms. Augustine 2 months within which she was to vacate the property Exhibit “MM3”. To date, Ms. Augustine is still on the property and refuses to move. Mr. Meju states that he has plans to build a 2 or 3 storey building on the property, where he plans to utilize the bottom floor as a grocery store and the upper floors as his residence. He claims that the Defendant’s refusal to move is delaying his plans. The Claimant says that he has paid the land taxes at the city council for the 2 years he has been the owner of the property, as shown by receipt (Exhibit “MM4”).

[5] At trial, Mr. Meju was cross-examined by Mr. Musa SC on behalf of the Defendant. He was asked whether he paid \$9,000.00 to Mr. Gilharry for this property, he said, “Yes.” Mr. Meju agreed that he went with Mr. Gilharry to the Lands Department after he paid him this money to get the title transferred to his name. Some weeks later he received the title for the land. It was only at that point that he went to look at the land and he saw that there was a wooden structure there. He said he did not meet the Defendant at that time. Mr. Mejia went back to Mr. Gilharry who told him that he has to move the people as it is his property now. He agreed that up to that point he knew nothing about anyone living on the land. At no

point in time did Mr. Gilharry tell Mr. Meju that there were people living on this property. He was asked whether he thought it was wise for him to go and check the land before paying money for it. Mr. Meju said that it was his first time buying land, and he thought that getting the title to the land was everything. He said that he was never told by Mr. Gilharry that there was a case pending in the Magistrate's Court whereby Mr. Gilharry was trying to evict Ms. Augustine.

### **Evidence of the Defendant**

[6] Ms. Sonia Augustine testified on behalf of the Defendant. She said that she lives at 7677 Park Street in Lake Independence, Belize City. Seventeen years ago she was looking for a place to stay and her cousin, Mr. Roy Miguel gave her permission to stay at a certain house in Park Street. That house is where she is presently living. At that time, she was living in a plywood board house where she needed to go through water to get upstairs in the house. She says that she developed the land, filled it and took care of the property. From that time she has been living continuously at that address. Her cousin, Roy Miguel left for the USA and told her that she could live there with her children as long as she wanted. He is still in the USA and has not returned to Belize. In January 2008, her Area Representative, Hon. Cordel Hyde assisted her in getting a plycem house which was installed on the same foundation as the old wooden house. Ms. Augustine said she was able to use some of the siding and zinc from the old house and she elevated the house about 5 steps

off the ground. She and her children have been living peacefully and undisturbed at this address since the year 2000. In October 2017, Mr. Roberto Gilharry claiming to be the owner of the property at No.76, Cor. Jennifer Smith Street and Marva Theus Street (Parcel 322) alleged that she was illegally squatting on the property as shown by copy of Plaintiff form attached (Exhibit "A"). Upon retaining her attorney, Mr. Musa SC, the claim was struck out by the court for non-appearance of Mr. Gilharry. In January 2016, Mr. Gilharry sued Ms. Augustine again for ejectment, and after several adjournments and non-appearance of Mr. Gilharry, the claim was once again struck out by the Magistrate's Court for non-appearance of Mr. Gilharry. Judgment of the Court striking out the matter is attached as (Exhibit "B"). Ms. Augustine also attached a copy of a water bill dated, June 15<sup>th</sup>, 2016 showing her name as the householder of No. 7677 Park Street, Belize City (Exhibit "C"). In February 2017, she received a letter from Williams' Law Office informing her that one Mr. Mohammed Meju had bought this property and was asking her to vacate the premises. Ms. Augustine spoke to her Area Representative, Hon. Cordel Hyde after she was served with the present claim. Hon. Cordel Hyde wrote a letter certifying that to his knowledge she had been living at No. 7677 Park Street for at least 17 years and he confirmed that he did secure a better house for her and her children in early 2008. The letter is attached and marked (Exhibit "D").

Ms. Augustine says that she verily believes that she has acquired ownership of the property as she has been occupying the land by open, peaceful and uninterrupted possession for a period exceeding 12 years.

[7] Ms. Augustine was cross-examined by Mr. Usher for the Claimant. She agreed that the only reason that she continues to live on the property is because she got permission from her cousin, Mr. Roy Miguel. She says that she has seen documents that say the land is for Mr. Roy Miguel. Ms. Augustine does not agree with the suggestion that perhaps her cousin sold this land while she was on it. She believes that Mr. Miguel still owns the land; and because he owns it and gave her permission that is why she still lives there.

[8] Under re-examination by Mr. Musa S.C., Ms. Augustine said that after Mr. Miguel gave her permission to live on the property in the year 2000, she moved on to the land with her children, Mr. Miguel left for the US, and she never heard from him again.

[9] The second witness for the Defendant was Hon. Cordel Hyde who was unavailable on the date of the trial. As there was no objection from the Claimant to the witness summary of Hon. Cordel Hyde being accepted as evidence on behalf of the Defendant, the court accepted the evidence. The witness summary reads as follows:

“The Defendant intends to call the Honourable Cordel Hyde who is expected to give

evidence to the effect that the Defendant is his constituent in Lake Independence for about 20 years, living at 7677 Park Street, Belize City.

That the Defendant and her children lived at this address for about 17 years.

That early in the year 2008 he was able to assist the Defendant to secure a better house on the said Lot 7677 Park Street, Lake Independence where she still presently resides.

The address of the Hon. Cordel Hyde is Lake Independence, Belize City and he is the elected representative of the Lake Independence Constituency.

The Defendant certifies that the reason why a witness statement could not be obtained in time is because the said Cordel Hyde was not available but did provide a To Whom It May Concern letter to the Defendant dated 27<sup>th</sup> December 2017.”

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

[10] Mr. Usher argues on behalf of the Claimant that the case at bar is one of adverse possession. The Defendant, Ms. Augustine came into possession of a parcel of registered land, specifically Parcel No. 322, Registration Section, St Martin’s De Porres West, Block No: 45 hereinafter referred to as “The Property” due to her receiving permission from her cousin, Mr. Roy Miguel. Ms. Augustine still resides on this property some 17 years later. The Claimant, Mr. Meju, entered into sales agreement with the legal paper owner of the Property, Mr. Robert Gilharry, for the



purchase of the Property. Such transfer from the Seller to the Purchaser was effected and shortly after, Mr. Meju became the legal owner of the Property.

Adverse possession is a legal theory under which someone who is in possession of land owned by another can actually become the owner if certain requirements are met for a period of time defined in the statutes of that particular jurisdiction. In Belize, Section 138 of the Registered Land Act provides the relevant period of time required for adverse possession to be established under the law.

**139. (1) Subject to subsection (2) of this section, the ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.”**

Mr. Usher concedes that the Defendant has met the period of time as is stipulated by section 139. He disputes however, whether all the requirements for adverse possession were met during this prescribed period of time. Learned counsel cites **Gilbert Kodilinye’s Commonwealth Caribbean Property Law, Second Edition p. 260** as follows:

*“The factual possession required must have characteristics similar to those required for a claim to an easement by prescription, viz, the possession must be open (nec clam), peaceful (nec vi) and adverse (nec precario). Furthermore,*

*factual possession must be accompanied by an animus possidendi, that is, an intention to enjoy possession to the exclusion of the paper owner.”*

Mr. Usher emphasizes the point that possession must be adverse to the paper owner and the possessor must have an intention to enjoy possession to the exclusion of the paper owner. The Defendant in her defence, witness statement and in her evidence under cross-examination all revealed that she came into possession due to permission given to her from her cousin, Mr. Roy Miguel. She verified that due to that permission, she continues to live there today. **Kodilinye** stated at **p. 261** that:

*“The requirement that possession must be adverse to that of the paper owner is the most crucial one. In particular, any possession which is concurrent with that of the paper owner will not qualify; nor must possession be founded on a license, or lease granted by the paper owner, nor by way of family arrangement, as, in all such cases, the possession will not be adverse, but by consent.”*

Mr. Usher points out that Ms. Augustine asserts that she has been living at that address all this time because her cousin gave her permission. When asked if she had seen land documents that her cousin owned the land she said, “Yes,” but she has failed to produce such proof to the court. Her claim to the Property is founded on and continues to be founded on permission. Permission does not create adversity; it creates a license. Mr. Usher submits that adversity only began in October 2015 when a claim was brought against Ms. Augustine by Mr. Gilharry, the previous owner of

the Property. As such, Ms. Augustine does not meet the legal requirement of twelve years, as she has only been in **adverse** possession for a period of 2 years. In addition, the intention to enjoy possession to the exclusion of the paper owner has similarly not been met. Ms. Augustine's interest in the Property only goes as far as a license. It is only until October 2015 that she perhaps began living with the intention to exclude Mr. Gilharry from the Property, and now Mr. Meju. However, she admitted under cross-examination that she still resides on the Property based on the permission granted to her, which clearly demonstrates that she still does not possess the necessary adverse intention.

[11] Mr. Usher also contends that the Defendant failed to establish that the true paper owner Mr. Gilharry at the relevant time, discontinued his possession of the Property. He says that while it is not clear at what point in time Mr. Gilharry came into possession of the Property, the evidence is clear that he used the Property as collateral and sold it to absolve a debt that he owed to the Claimant. Citing the decision of this court in **Douglas Richardson v Efigenia Garcia Claim 279 of 2011**, Mr. Usher argues that in order to effectively prove dispossession of the true paper owner, the person claiming adverse possession must have done unequivocal acts to completely oust the true paper owner of possession. He submits that the filling of the lot, erection of a plycem house and building a fence on the Property are all equivocal acts by the Defendant which may have been done for the purpose of

protecting rights not inconsistent with ownership of the freehold. The plycem house is a chattel house which may be easily removed from the Property.

[12] In conclusion, Mr. Usher submits that the Defendant has failed to meet the requirements of adverse possession. As she claims possession based on permission granted to her by her cousin, Mr. Roy Miguel, she began living on the Property based on this consent. This permission gave her a license to live on the Property. She continued living on the Property with his permission, with no thoughts adverse to the true paper owner until October 2015 when she received notice from Mr. Gilharry. The Claimant submits that this is when the period of adverse possession began and as such she is unable to meet the 12 year requirement under the Registered Land Act. The Defendant has also failed to prove that the true paper owner or his successor had discontinued possession of the Property, or that she had dispossessed the Claimant or his successor by performing unequivocal acts to destroy the Claimant's intended use of the Property. The Claimant has legally acquired title of the Property and is entitled to the relief sought in this claim, namely: (a) Full possession of the premises located at 322 Jennifer Smith Street, Belize City, Belize, specifically Parcel 322, Block 45, Registration Section, St. Martin De Porres West and (b) Costs.

### **Legal Submissions on Behalf of the Defendant**

[13] Mr. Musa S.C. on behalf of the Defendant says that the relevant sections of the law in this case are Section 138 and Section 139 of the Registered Land Act Chapter 194 of the Laws of Belize, Revised Edition 2011.

**“138 (1) Subject to subsection (2) the ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.”**

**“139 (1) Where it is shown that a person has been in possession of land or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.**

**139 (6) Possession shall be interrupted: (a) by dispossession by a person claiming the land in opposition to the person in possession; (b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; (c) or by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.”**

Mr. Musa SC goes on to list facts not in dispute. Some 17 years ago, Ms. Augustine’s cousin, Mr. Roy Miguel granted her permission to occupy a plywood house as 7677 Park Street in Lake Independence, Belize City. According to Ms. Augustine, her

cousin left for the USA and has not returned to Belize after telling her that she could live there with her children for as long as she wanted. Ms. Augustine and her children have lived at this address continuously since the year 2000 (over 17 years) uninterrupted. Sometime in January 2008, her Area Representative, Hon Cordel Hyde was able to secure a plycem house for her which was installed on the same property where she has been living since the year 2000. In October 2015, Ms. Augustine was summoned to the Magistrate's Court at the suit of Mr. Roberto Gilharry who claimed ownership of this property. The case was struck out for non-appearance of the Plaintiff. In January 2016, Mr. Gilharry sued Ms. Augustine again; the case was once again dismissed for non-appearance of the Plaintiff. In the preset claim, Mr. Meju acquired title to this Property on November 2<sup>nd</sup>, 2015 by buying it from the same Mr. Gilharry. He did not visit the property until after he had bought the land from Mr. Gilharry and had the transfer registered. He stumbled upon the Defendant living on the said property.

Mr. Musa SC, submits that Ms. Augustine has acquired ownership of the property by prescription in accordance with Section 138 and 139 of the Registered Land Act. She has been in possession by open, peaceful and uninterrupted possession of the property for the period well in excess of 12 years. She has been in possession "without the permission of any person lawfully entitled to such possession". Neither the Claimant, Mr. Meju, nor his predecessor in title Mr. Gilharry, gave Ms.

Augustine permission to stay on the property. According to her testimony, about 17 years ago, she was looking for somewhere to stay when her cousin, Mr. Roy Miguel gave her permission to stay on this lot. Mr. Musa SC argues that there is no evidence that Mr. Roy Miguel was lawfully entitled to possession or ownership of this property, therefore, Ms. Augustine's prescriptive claim is based on her own open, peaceful and uninterrupted possession. Mr. Musa SC relies on **Richard v Lawrence (1966 10 WIR) at p. 124** to buttress his argument. Citing **Wooding C J** as follows: *“So as long as there has been a want of actual possession by the person who might be entitled to it, and an actual possession, whether adverse in the old sense or not, on the part of somebody who would not really be entitled to it, and that actual possession continues for the prescribed period, possessory title is acquired under the statute.”*

Mr. Musa SC also accepts the statement of principle that in order to acquire a prescriptive title under the provisions of the Registered Land Act, a person asserting the same must establish not only that he was in open, peaceful and uninterrupted possession without the permission of any person lawfully entitled to such possession for the prescribed period of twelve years, and the act of possession must be clear and unequivocal. He also submits that the case of **Wills v Wills (2003) 64 WIR 176** put to rest the erroneous supposition that in a claim based on adverse possession it was the owner's state of mind rather than that of the person in possession which was

decisive. He cites the **Board of the Privy Council** at **page 185** of the **Wills** case where the **Board** adopted **Lord Browne-Wilkinson** in **Pye (Oxford) Ltd v Graham (2002) UKHL 30** where he said:

*“The suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong. It reflects an attempt to revive the pre-1833 concept of adverse possession requiring inconsistent user... which heresy was abolished by statute. The highest that it can be put is that if the squatter is aware of a special purpose for which the paper owner uses or intends to use the land, and the use made by the squatter does not conflict with that use, that may provide some support for a finding as a question of fact that the squatter had no intention to possess the land in the ordinary sense, but only an intention until needed by the paper owner. For myself, I think there will be few occasions in which such inference could properly be drawn in cases where the true owner has been physically excluded from the area.”*

Mr. Musa SC submits in conclusion that Ms. Augustine clearly evinced an ‘*animus possidendi*’ when she first occupied the property by spending her limited resources in filling the land. Her actual continuous use and occupation of the property as her home for her and her family reinforced and consolidated with the new plycem house later installed on the property for her by her Area Representative was clear and unequivocal possession of the property for more than 12 years, uninterrupted by



anyone claiming ownership thereto. The Claim should therefore be dismissed, with costs to the Defendant.

### **Ruling**

[14] I wish to thank both counsel for their legal submissions which have been invaluable in assisting me to determine this matter. This is a case of adverse possession, as rightly pointed out by both counsel. The sole issue in this matter is whether Mr. Meju succeeds on his claim and is entitled to the Property, or whether Ms. Augustine's Defence succeeds and she obtains title to the Property based on adverse possession. Having considered all the evidence in this trial, and having weighed the legal submissions made for and on behalf of the parties, I find that the submissions made by Mr. Usher must prevail. The evidence is pellucid that Ms. Augustine, despite her having lived on this land for more than the requisite 12 years under the Registered Land Act, still does not consider herself the owner of the property to the exclusion of all others. She considers, even at this late stage, several years after her cousin went to the US and never returned, that her cousin is the true owner and that she is only allowed to live on the Property because he granted her permission to do so. Taken at its highest, her occupation or possession of the land is therefore as a bare licensee. She lacks the requisite *animus possidendi* to exclude all persons, including her cousin, Mr. Roy Miguel whom she believes to this day to be the true owner, from the Property. As Mr. Musa SC rightly pointed out in his

submissions, it is the state of mind of the squatter that is most relevant. From the evidence, Ms. Augustine's state of mind reveals that she is a mere licensee. If she had said, for example, that she considers herself to be the true owner of this property for the past 17 years since her cousin has never returned to Belize, the court would most likely have found that she possessed the requisite intention to exclude everyone, including Mr. Miguel from the property. But I believe she was being honest, and I commend her for her honesty, when she said under cross-examination that she still considered her cousin, Mr. Roy Miguel at this present moment, 17 years after the first time she went to live on the land, to be the true owner of the property. There is no evidence before this court that Mr. Miguel ever owned this property. On the contrary, the court has seen the documents tendered by the Claimant and finds that the Claimant has established his claim as a bona fide purchaser for value without notice. I therefore grant possession of this Property to the Claimant, Mr. Meju. The Defendant, Ms. Augustine, is to remove her chattel house from the property within the next three months. Each party will bear own costs.

**Dated this                      day of November, 2019.**

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**Michelle Arana**  
**Supreme Court Judge**