

IN THE SUPREME COURT OF BELIZE A.D. 2004

ACTION NO. 21 OF 2004.

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE REGISTRAR OF LANDS UNDER SECTION 145 OF THE REGISTERED LAND ACT, CHAPTER 194, LAWS OF BELIZE, BY A PERSON AGGRIEVED:

OLGA IDOLLY HALL

APPELLANT

AND

THE REGISTRAR OF LANDS
VIOLET KIRKWOOD

RESPONDENT
PERSON AFFECTED

Mr. L. Welch for appellant.
Mr. D. Waithe for respondent
Ms. N. Cho

AWICH J

5.2005.

JUDGMENT

1. *Notes: Appeal under S: 145 of the Registered Land Act, from the decision of the Registrar of Lands to register a person a proprietor of land based on a court order directing the Registrar of the Supreme Court to sign the conveyance, S: 123 of the Act; a rival application by a person claiming ownership by open, peaceful, uninterrupted possession for over 12 years, under S: 138 - see SS: 13 and 40 of the Registered land Act, also SS: 41 and 42 of the Law of Property Act, and S: 12 of Limitation Act.*

2. The saga and expenses in this case could have been avoided if on

14.12.1993, M/S Staine and Barrow Attorneys formulated properly the claim of Mrs Violet Kirkwood, the plaintiff then in Supreme Court Action No. 440

of 1993, and now the joint respondent (the person aggrieved or affected) in this appeal against a decision of the Registrar of Lands, Supreme Court Action No. 2 of 2004. Mrs Kirkwood's claim in Action No. 440 of 1993 was for sale of a certain land property on Cemetery Road, Belize City, known as Lot No. 32 on Surveyor's Plan 59 of 1899, recorded in Surveyors' Plans Book No 3 at Folio 207, also described as Parcel 524, Block 45, Queen Square Registration Section, and for apportionment of the proceeds of the sale. The basis of the claim was that she was a joint legal proprietor of the land . The other joint proprietor was Mr. Frederick Hall, her former husband. Their ownership was by a deed of conveyance, dated 28.1.1981, recorded in Deeds Book, Volume 2 of 1981, at Folios 547-554. It was a common fact that on 14.12.1993, when the writ of summons issued against Mr. Hall, he had left Belize for the USA earlier in 1990, and remained away since. It was also a common fact that Mrs. Olga Idolly Hall, the appellant in this case, occupied the property together with Mr. Hall before he left for the USA, and she remained on the property up to 14.12.1993, when action was taken in the Supreme Court by Violet Kirkwood. It was a further common fact that Mrs Olga Hall remains on the property to date.

3. The writ of summons in Action No. 440 of 1993, cited Mrs Kirkwood as the plaintiff and Mr. Hall alone, as the defendant. That was the root of this saga. A properly formulated writ should have cited as defendants, Mr. Hall, the joint holder of the title, and Mrs. Olga Hall, the joint occupier with him, and who remained the sole occupier after Mr. Hall had left for the USA. A claim for possession and eviction against Mrs Olga Hall would have been included together with the claim for sale and apportionment of the proceeds, in the

statement of claim. The issue would have been title to the land and the beneficial interest thereto, the right to possession and how Mrs. Olga Hall as occupier, would be affected.

4. If the reason for leaving out Mrs Olga Hall from the case was to secure a quick default judgment against Mr. Hall who was unlikely to return to Belize, and the plaintiff would save costs, that was an expensive evasive short cut. The case has since 1993, wandered in court from Gonzalez. Ag. C.J. to Singh. J, back to Gonzalez. Ag C.J., then to Blackman. J, and to the Court of Appeal, then took a detour to a magistrate's court and to the Registrar of Lands, and now back to the Supreme Court before me. It is an understatement to say that costs have not been saved. Time lost has been extraordinary; eleven years and over four months.
5. At the start of the long journey of the case, an opportunity presented itself on 11.1.1994, to the learned Ag. C.J. Gonzalez, to order, even without an application made to the Court, that Mrs. Olga Hall, the occupier, be joined so that all questions would be, "*effectually and completely adjudicated upon and settled*" - see *O. 17 r 12 of the Rules of the Supreme Court* , applicable then. Alternatively, the learned Ag C.J. could have ordered that case papers be served on the occupier or occupiers of the land since it was known that Olga Hall was in occupation. Any occupiers who claimed any right might have reacted. The occasion was when the plaintiff applied for and obtained an order for substituted service of the writ of summons on the sole defendant, Mr. Hall. The substituted service granted was to be on his son in Belize. By that the plaintiff conveniently then, and now it may be

said inconveniently, avoided to apply for leave to serve the writ outside this jurisdiction - see *Order 12*. Of course the learned Ag. C.J. was not obliged to make the corrective orders I have suggested, he chose to leave the matter to the plaintiff.

6. *The Facts.*

A brief background to Action No. 440 of 1993 and this appeal case is as follows. On 28.1.1981, Mr. Federick Hall and Mrs Violet Hall, husband and wife, acquired by a deed of conveyance, the land in question from one Diogenes Perez. The deed was recorded on the same day in Deeds Book Volume 2 of 1981. Accordingly their title was joint legal title, and they had joint beneficial interest. Then Mr. Hall was imprisoned. They subsequently divorced on 24.8.1987. Mrs Violet Hall has since remarried and is now Mrs Violet Kirkwood, “the person affected” in this appeal.

7. On his release from prison Mr. Hall lived with Ms. Olga Idolly McKoy on the property. On 9.9.1988, they married, she became Mrs Olga Idolly Hall. They and their children continued to live on the property. She said that when he was in prison the property was abandoned, she took possession of it as an abandoned property in 1985, without permission from anybody, and that when Mr. Hall showed up and claimed the property, they lived together and married on 9.9.1988, and continued to live on the property until Mr. Hall left for USA in 1990. Mrs Violet Kirkwood denied that the property was abandoned.

8. The story proceeds further. Mr. Hall has not returned to Mrs Olga Hall. On 14.12.1993, Mrs Violet Kirkwood issued a writ of summons in Action No. 440 of 1993, against Mr. Hall alone, claiming sale of the property and apportionment of the proceeds. On 11.1.1994, she obtained court order for substituted service of the writ. On 25.4.1994, she obtained leave to enter default judgment for sale of the property. Subsequently several orders were obtained as to the manner and conditions of the sale. On 2.9.1999, Violet Kirkwood obtained orders that she may purchase the property herself and that the Registrar of the Supreme Court may execute the conveyance in place of Mr. Hall. It was at this point that Olga Hall tried to join in the case. She tried to stop the sale and transfer of the property by applying to the Supreme Court for an order setting aside the default judgment and all subsequent related orders and steps taken. On 5.7.2002, Blackman. J. dismissed the application. Then by notice of appeal dated, 15.7.2002, Olga Hall appealed against the decision of Blackman. J, to the Court of Appeal. The appeal was dismissed on 11.10.2002.
9. The next effort of Olga Hall was on 28.10.2002, when she applied to the Registrar of Lands under S: 138(3) of the Registered Land Act, Cap 194, Laws of Belize, to have her registered as the owner of the land on the ground of “adverse possession” under S: 138 (1)of the Act. The subsection provides that: “*ownership of land may be acquired by open, peaceful and uninterrupted possession for over 12 years without the permission of any other person lawfully entitled to such possession*”. On the basis of the provision, Olga Hall claimed that she was entitled to ownership of the land

originally owned by Mr. Hall and Mrs Violet Hall, now Violet Kirkwood, and that she was entitled to be registered the owner. Olga Hall stated in her application that she had been in open, peaceful and uninterrupted possession since 16.12.1984, without permission of any other person. On 10.12.2002, one month and 12 days after the application of Olga Hall, Violet Kirkwood applied to the Registrar of Lands to have her registered as the sole title holder. She forwarded with her application, a deed of conveyance signed by the Registrar of the Supreme Court.

10. The Registrar of Lands rejected the application of Olga Hall, and accepted that of Violet Kirkwood. On 15.2.2002, the Registrar registered Violet Kirkwood as the proprietor of the land, and issued “land certificate” accordingly. On 4.6.2003, Olga Hall, “ *a person aggrieved by the decision... of the Registrar*” notified an appeal to the Supreme Court, against the decision of the Registrar of Lands to register Violet Kirkwood “as the proprietor of the parcel of land”, and she filed grounds of the appeal. The appeal was authorised under *S: 145 (1) of the Registered Land Act*. On 20.8.2003, the Registrar of Lands acting under *S: 145(2)*, filed “*a brief statement of the questions in issue*”. This is the judgment in the appeal.

11. ***Determination.***

When Olga Hall tried to join in Action No. 440 of 1993, by way of the proceeding before Blackman. J, it was too late for the learned judge to effect any procedural improvement to the case. Olga Hall came to the Court

by an application for an order to set aside the leave granted on 25.4.1994, to enter default judgment, and all subsequent orders and steps taken. She had, of course, not been a party to the default judgment. Blackman. J. rightly refused the application. Moreover, the learned judge did not sit as an appeal Court to hear the other complaints by Olga Hall against the earlier orders made by Gonzalez Ag C.J. and Singh. J. No wonder the Court of Appeal dismissed the appeal against the decision of Blackman. J. without even inviting counsel for Violet Kirkwood to address the Court.

12. The decision of the Court of Appeal meant that the default judgment by leave granted on 25.4.1994, which ordered sale of the property, and the subsequent orders including the order authorising purchase by Violet Kirkwood, remained and continued to be operative. That cleared the way for Violet Kirkwood to purchase the share of Mr. Hall in the land, and apply to the Registrar of Lands to have her alone registered as the proprietor of the land. She said she purchased Mr. Hall's share and made the application. I have to emphasize that her application was based on the order for sale in the default judgment and the subsequent order that the sale be to her. Under *S:123 of the Registered Land Act*, the Registrar of Lands had to act on those two court orders. A court order leaves the Registrar of Lands with no discretion in registering the person adjudged entitled therein. The Registrar only satisfies herself that there is evidence that the order had been made.
13. It follows that the appeal by Olga Hall under *S:145 of the Act*, to this Court against, “ the decision of the Registrar”, to register Violet Kirkwood as the

proprietor of the land was totally misconceived so far as the appeal was based on the substantive grounds of breach of natural justice and failing to take into account all relevant information. The Registrar was obliged to take into account only one information, namely, the court order to sell and apportion proceeds and the supplemental direction order that the sale was to be to Violet Kirkwood.

14. So far as the ground that the Registrar of Lands based her decision on a court order which was erroneous is concerned, the short answer is that the Registrar of Lands had no choice in complying with the court order directing registration, whatever her view of it. She was only free to satisfy herself that there was evidence before her that the order had been made by Court.
15. Since under *S: 123 of the Registered Land Act*, the Registrar of Lands is required to register a person as the proprietor of land according to a court order, an appeal against the action of the Registrar can only be made on the ground that she had no evidence of the court order, or that any conditions in the order had not been met, or that she did not accurately comply with the court order. By inviting Olga Hall and Violet Kirkwood, though on different occasions, and interviewing them and occupiers of neighbouring parcels of land, the Registrar of Lands gave Olga Hall the incorrect impression that the Registrar had the authority to consider the application by Olga Hall, despite the court order directing sale and transfer of the land to Violet Kirkwood.
16. It does not arise in this appeal for me to decide whether Olga Hall had acquired title by open, peaceful uninterrupted possession with permission

from a person lawfully entitled. My view on the facts gathered would be that she had not acquired title when Violet Kirkwood filed court action on 14.12. 1993.

17. The appeal of Olga Idolly Hall, dated 4.6.2003, made under *S: 145 of the Registered Land Act*, is dismissed. The registration by the Registrar of Lands of Violet Kirkwood as the proprietor of the parcel of land on Cemetery Road, Belize City, known as Lot. No. 32 on Surveyor's Plan 59 of 1899, recorded in Surveyors' Plans Book No. 3 at Folio 207, also described as Parcel 524, Block 45, Registration Area, Queen Square Belize City, remains a valid registration. Violet Kirkwood is now the owner of the land and is entitled to all the beneficial interest therein and possession.

18. Usually costs follow cause. In this case, I order that each party bears own costs because Violet Kirkwood caused this matter to protract over eleven years, by knowingly omitting to include Olga Hall, the occupier of the land, in Action No. 440 of 1993.

19. *Observation.*

It seems to me that the time has come to review S: 138 of the Registered Land Act, S: 42(2) of the Law of Property Act, Cap. 190, Laws of Belize, and S: 12 of the Limitation Act, Cap. 170, Laws of Belize, regarding acquisition of ownership of land by adverse possession, prescription and the inability of a lawful proprietor to enforce title after 12 years. There seems

to may be a case for harmonisation of the provisions of the three Acts.

20. Many cases regarding land, in which cases one or the other party has been away for a long time in the USA, have been brought to this Court. Usually the person would have gone to look for employment and intended to return. He would have left a wife, a relative or friend on his land or land they own jointly, or while away land might have been left by a deceased to him alone or jointly with another or others. Then he would not return at all or would die or would return after a long time. His personal representative or himself on return would be faced with a challenge to his title to the land. In regard to registered land, the challenge would be under *S: 138 of the Registered Land Act*, which provides:

*“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 permission of any person lawfully entitled to such possession.
...”*

Alternatively someone occupying the land would resist the returnees claim under *S: 12 of the Limitation Act*, which is to similar effect with S: 138 of the Registered Land Act. Section 12 of the Limitation Act provides:

“12.(2). No action shall be brought by any other person to

recover any land after the expiration of 12 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person”.

The only practical difference between the two laws is that S: 12 of the Limitation Act may be used as a defence, whereas S: 138 (3) of the Registered Land Act may actively be used as a ground of an application to be registered as owner of the land with legal title. Subsection (3) provides:

“(3) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar to be registered as the proprietor thereof.”

21. In regard to fee simple interest in any land or to an easement, right or privilege in or over any land, the law is in S: 42(1) of ***Law of Property Act***, It provides:

“42(1). Title to 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 30 years if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had possession.”

22. The irony is that in the case of registered land, for which a land certificate would have issued conferring legal title, a very strong title, (to say, a cross-border employee), the title can be lost under S: 138 of the Registered Land Act by only over 12 years absence or resisted under S: 12 of the Limitation Act after only 12 years. Yet in the case of any land including land not owned before, and where freehold title is desired, the intending applicant for title has to wait for up to 30 years, a much longer waiting than in the case of registered land with a registered owner.

23. Another difference which is hard to justify is that under S: 42(1) of the Law of Property Act, the intending owner applies after 30 years to the Supreme Court for a declaration of title and if he obtains the declaration, he applies to the Registrar of Lands for registration of his title, whereas under S: 138 of the Registered Land, an intending owner applies straight away to the Registrar of Lands for registration as owner, and under S: 12 of the Limitation Act, he need not bother to apply anywhere.

24. Moreover, the reason for acquisition of title after 12 years under S: 138 of the Registered Land Act and S: 12 of Limitation Act, but in 30 years under S: 42(2) of the Law of Property Act, is not so obvious to warrant maintaining the difference in the periods. Similarly the reason for application for ownership to be made to the Court under S: 42(1) of the Law of Property Act, but to the Registrar of Lands under S: 138(3) of the Registered Land Act is not obvious.

25. I also think if there is important difference in the meaning of, “open, peaceful and uninterrupted possession, in S: 138 of the Registered Land Act, and the expression, continuous undisturbed possession in S: 42(1) of the Law of Property Act, it should be set out in a statutory provision.
26. I appreciate that the three statutory provisions were copied from England for good reasons, however, has time not come to review them given the different social circumstances in Belize, especially the fact that 12 years absence may not seem such a long time to many cross-border employees?
27. Pronounced this Wednesday the 5th day of May, 2005
At the Supreme Court
Belize City.

Sam Lungole Awich

Judge

Supreme Court