

IN THE SUPREME COURT OF BELIZE A.D. 2007

CLAIM No. 124 OF 2007

BETWEEN

**VILMA VASQUEZ, SHENI VASQUEZ, BOBBY VASQUEZ and STANLY
VASQUEZ (Intended Administrators and Beneficiaries of the Estate of
Moises Vasquez, deceased) CLAIMANTS**

AND

BARTOLO VASQUEZ XISH and ROBERT VASQUEZ DEFENDANTS

Coram: Hon. Justice Sir John Muria

21 December 2007

Ms Deshawn-Arzu for Claimants

Mr. Leo Bradley for Defendants

JUDGMENT

Muria J: This is a fixed date claim brought by the claimants against the defendants seeking a number of declaratory orders, namely:

- 1. A Declaration that the Defendants are not entitled under the Administration of Estates Act who have priority to make an application to be named as Administrators or beneficiaries in the estate of the late Moises Vasqueze.**
- 2. A Declaration that the Defendants have no beneficial interest in the estate of the late Moises Vasquez.**
- 3. A Declaration that the only persons having a beneficial interest in the estate of the late Moises Vasquez are the Claimants, being Vilma Vasquez, Sheni Vasquez, Bobby Vasquez and Stanley Vasquez.**
- 4. A declaration that the caveat entered is hereby removed.**
- 5. An order that the First Claimant and being the Intended Administrator apply for Grant of Letters of Administration in the estate of Moises Vasquez.**

In addition, the claimants also seek orders for costs and other relief.

Brief background facts

The first claimant is the wife of the deceased, Moises Vasquez who died on 4th November 2002 in San Ignacio Town, Cayo District, Belize, and the second, third and fourth claimants are children of the deceased. Following the death of the deceased, the first claimant applied for a grant of Letters of Administration in Probate Action No. 53 of 2003 on 14th March 2003 to administer the estate of the deceased. The first claimant, however, was not able to proceed with the application because on 1st April 2003, the defendants entered a caveat against the administration of the deceased's estate.

The estate of the deceased is said to consist of both real and personal properties. That part of the estate which concerns us in these proceedings is *that piece of land situate on the Western Branch of Belize River being Block No. 246A and a portion of Block No. 242A comprising 61.598 acres as delineated on Plan Nos. 1768 and 1225 at the Office of the Commissioner of Lands and Surveys, Belmopan, TOGETHER with all buildings and erections thereon and so described in the Deed of Gift dated 12th February 1996.*

Claimant's Case

The case for the claimants is that in February 1996, the first defendant granted the land in question to his son Moises Vasquez (deceased) by a Deed of Gift dated 12th February 1996. That Deed was prepared by one Arthur Smith who is also the third witness for the claimants in this case.

It is the claimants' case that the said land was conveyed to the deceased by the 1st defendant in consideration for the love and care which the deceased shown to the first defendant. The total land owned by the first defendant was 71 acres of which he conveyed 9.402 acres to his son David Shish on 23rd November 1992 and 61.598 acres to Moises Vasquez (deceased) also one of his sons on 12th February 1996.

The deceased had farmed the land since it was conveyed to him, planting crops, rearing cattle and carrying out other farming activities on the land. The deceased had raised 77 heads of cattle on the land but the first defendant removed the 77 heads of cattle from the land. (There is no dispute on the evidence before the court that the deceased used the land, farmed it, raised 77 heads of cattle on it and that those heads of cattle had been removed from the land after his death.)

Importantly also to note that, throughout the years since 1996 until the death of the deceased on 4th November 1996, no evidence has been shown of any attempt to dispossess the deceased of his claim or rights in the 61.598 acres of land by the first defendant or any other person. There is evidence (Bobby Vasquez's evidence) that it was after the death of the deceased that attempts had been made by the defendants to dispossess the claimants of their claim, rights and interest in the said land as well in No. 17 Joseph Andrews Drive, San Ignacio.

At the hearing, Arthur Smith, a real estate agent confirmed in evidence that in January 1996 asked to prepare the Deed of Gift upon request by the first defendant and his son, Moises Vasquez (deceased). For the conveyance of the land in question to the deceased. Among other things he deposed to the following in his witness statement:

“2. That in or about January, 1996 and at the request of Bartolo Vasquez Xish and his son Moises Vasquez, I was asked to prepare a deed of gift transferring approximately 61.038 acres property.

3. That I was duly informed that Moises Vasquez, the son, was being given 61.038 acres of land as he was to take care of his father until his death. That I recall another 10 acres was being given to one David Shish, the First Defendant’s son. I was duly informed that Mr. Bartolo Vasquez Shish could not read and write.

4. That at the time of the preparation of the deed of gift, I was a real estate agent and from time to time prepared agreements, land transfer documents etc.

5. That I duly conducted a title search on the property and after ensuring that the title was free and clear, I prepared the deed of gift. I exhibit hereto a copy of the deed of gift marked “AS1”.

6. That after preparing the documents, I accompanied Mr. Moises Vasquez, Mr. Bartolo Xish and Mr. Ernesto Vasquez to have Mr. Bartolo’s mark witnesses by a justice of the peace seeing that he could not read and write.

7. That Mr. Bartolo Vasquez was fully aware of the transaction and that the deed of gift was read to him and he understood the contents.

8. That Mr. Bartolo Vasquez was not forced to place his mark on the documents.”

Arthur Smith’s evidence is largely uncontradicted, save for the general assertion by the first defendant that he *“at no time ever conveyed that property to Moises Vasquez.”* In cross examination Arthur Smith confirmed that acknowledging that the first defendant was unable to read and write, he followed the procedure of showing that the first defendant, although could

not read or write, did sign the Deed; and in the presence of a Justice of the Peace. Arthur Smith swore on oath to that fact on 12th February 1996 and shown at page 3 of the Deed of Gift.

Sheni Vasquez's evidence further support the claimants' case by reiterating the claim that as the eldest child of the deceased, she knew that her father (deceased), her brothers and her husband had worked the land. She also stated that her father (deceased) took care of her grandfather (first defendant).

The Defendants Case

The case for the defendants is that the first defendant never conveyed the 61.598 acres of land nor did he entered into a Deed of Gift to convey the same as claimed by the claimants. The first defendant, however, only agreed that he conveyed about 10 acres of the land to his other son, David Shish.

In support of the defendants' case, the defence called one witness, the first defendant himself. In his very brief (two paragraphs) witness statement, the first defendant simply stated that he was given 71 acres by the Government, and gave a portion of it to his son, David Shish. He claimed that at no time did he conveyed 61.598 acres of the land to his son Moises Vasquez (deceased).

As to his signature on the Deed of Gift, the first defendant denied ever signing the said Deed.

Issues

Pursuant to the order of the Court made on 27th March 2007, the parties formulated two issues for the Court to determine in this case. These issues are:

- 1. Whether or not the property which is comprised in Deed of Gift dated 12th February 1996 and recorded in DBV 4 of 1996 at Folios 567-576 forms a part of the Estate of late Moises Vasquez;***
- 2. Whether or not the Deed of Gift dated 12th February 1996 and recorded in DBV 4 of 1996 at Folios 567-576 is valid.”***

I note that the date of the Deed of Gift mentioned in the bodies of the statements of agreed issues and contained in the order of 27th March, 2007 is “February 26, 1996.” The correct date is “12th February 1996.”

The two issues were formulated by the parties following the intended amendments by the claimants of their Statement of Claim and the ascertainment of the defendants’ position following thereto.

The defendants defence was filed on 14th May 2007 in which it became obvious that the determination of the two issues would finalise the dispute between the parties in this case. This is clearly so, since the admissions by the defendants in paragraphs 7 and 8 of the Defence, affirm the claimants' rights, entitlements or interest in the estate of the deceased subject to the determination as to the true status of the Deed of Gift dated 12th February 1996 and the 61.598 acres of land in question.

Answers to the Issues

In their proper order, I shall deal first with the second question as to the validity of the Deed of Gift dated 12th February 1996. The onus is on the claimants to establish the validity of the Deed on the evidence before the Court.

I have outlined the claimants' case above and basis upon which their claim was made. Having done so, and despite the strenuous defensive stand of the first defendant, there is ample evidence before the court to support the claimants' case here. Both the oral testimony and documentary evidence are overwhelmingly against the first defendant's staunch denial of the validity of the Deed of Gift dated 12th February 1996. In this regard, the evidence of Arthur Smith, as to the circumstances prior to and during the making as well as during the signing of the Deed of Gift are so overwhelming against any suggestion that the first defendant had no part in the making of the said Deed

of Gift. The bare denial by first defendant could not stand up to the claimants' evidence on this aspect of the matter.

The court is left in no doubt that the first defendant was indeed the donor in the said Deed of Gift conveying the said 61.598 acres of the land in question to the donee (deceased) on 12th February 1996. The said Deed was signed by the first defendant by affixing his mark on it and the deceased on 12th February 1996. Present at that signing were, the donor, donee, Arthur Smith and Justice of the Peace. There can be no doubt as to the validity of the Deed of Gift in this case.

The next question is whether the property comprised in the Deed of Gift forms part of the deceased's estate. There is no evidence to suggest otherwise in this case. Thus having been validly conveyed to the donee (deceased) under the Deed of Gift, the property comprised therein, including the 61.598 acres, form part of the estate of the deceased. I so hold.

Conclusion

Having thus answered the two issues raised for the Court's determination, the claimants' must succeed in their claim. It follows, that the orders sought in the claimants' fixed dated claim are granted and I so order.

The defendants to pay the costs of this claim to be taxed if not agreed.

Sir John Muria