IN THE COURT OF APPEAL OF BELIZE, A.D. 2008

CIVIL APPEAL NO. 12 OF 2007

BETWEEN:

ATILIANO ALVAREZ	**Appellant**
AND	
AUDINO MOLINA	**Respondent**

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Lionel Welch for the appellant.
Mr. Nicholas Dujon for the respondent.

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19 October 2007, 13 March 2008.

MORRISON JA

1. At the conclusion of the hearing of this matter on 19 October 2007, the appeal was dismissed and the judgment of the court below affirmed, with costs to the respondent, to be taxed, if not sooner agreed. These are my reasons for concurring in that decision.

2. Actions Nos. 429 of 2003 and 615 of 2004 are consolidated actions. In action no. 429 of 2003, the respondent claimed for an injunction to restrain

the appellant from trespassing or otherwise entering upon land claimed by the respondent, damages for trespass and costs. In action no. 615 of 2004, the appellant claimed against the respondent for virtually identical reliefs in respect of the same land. A statement of claim, a defence and a reply and defence to counterclaim filed in action no. 429 of 2003 stood as the only pleadings in the consolidated actions and were sufficient to identify the issues in contention between the parties.

3. By his statement of claim dated 20 October 2005, the respondent averred that he was the owner entitled to possession of a parcel of land in the Duck Run Agricultural Area of the Cayo District ("the disputed land") held by him under and by virtue of Minister's Fiat Grant 977 of 2002 ("Grant 977"). The appellant was in occupation of land immediately adjoining the disputed land. The respondent alleged that (from about November 2002) the appellant had on several dates wrongfully entered upon portions of the disputed land, constructed a fence and a pond, removed several surveyor's pegs and committed other types of waste on other portions of the disputed land. As a result, the respondent claimed special damages of $1,730.00, a declaration that the appellant was not entitled to enter or use the disputed land, an injunction and costs.

4. By his defence and counterclaim, the appellant admitted that the disputed land was held by the respondent under and by virtue of Grant 977, but stated that that grant and the plan attached to it were issued in error and/ or by the respondent's misrepresentation that he had possession of and had developed the disputed land. In fact, the appellant averred, he was and had, to the respondent's knowledge, been in possession of the disputed land for a period in excess of 14 years with the permission of the Lands Department and during that time he had constructed a well for irrigation purposes, cleared and cultivated the land. The appellant counterclaimed for damages for $41,360.00 caused by the respondent's

destruction of his fencing and covering up of his irrigation pond, a declaration that he was entitled to possession of the disputed land and an order that the title in the name of respondent under Grant 977 be set aside and a new title issued in the name of the appellant to the disputed land.

5. The respondent's reply and defence to counterclaim added nothing of substance and the issue which Awich J had to resolve was thus starkly shown: which of the parties was the true owner of the disputed land? Having heard the parties and their witnesses, the facts as found by the learned trial judge, in an account which I gratefully adopt, are as follows:

> **"The facts**
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> 5. The 40 (forty) acres of land in dispute is part of land stretching between Molina's home and Alvarez's home. It was originally national land. Alvarez said he entered it in 1990. The background is that on 16th January, 1990, Alvarez obtained a lease No. 1289/87, for 30 acres of national land in Duck Run II Area, Cayo District, from the Government. He said he had already entered the land in 1987. His home is on that land. He used the land for rearing cattle and for a little cultivation. Those 30 acres of land are not in anyway part of the two cases, they have been mentioned as part of the background of the two claims.
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> 6. Three years after he entered the 30 acres, Alvarez said, he applied to the Government for a lease of another 40 acres of land adjoining the 30 acres of land he had lease over and that the Lands Department verbally authorized him to enter and use the 40 acres of land. Later, he said, he was told that his application and the whole file was lost. Mr. Owen

Gentle, the second witness for Alvarez, confirmed what Alvarez said. Mr. Gentle was an assistant lands officer at the time. He was the officer, he said, who "allocated" the 40 acres to Alvarez. He did not give the permission or the allocation in writing nor did he have any written record of it. Mr. Alvarez said that he cleared and maintained the entire 40 acres and worked part of it, he developed pastures and dug a water well for irrigation of the land. He spent about $40,000 in all. He discovered in the year 2000, that Molina had entered the 40 acres and claimed to own them. Alvarez then complained to the Lands Department. Molina also made a complaint to the Department. Several land officers went to the land and inspected it. Finally the Minister responsible for Lands decided that Alvarez was to retain 19.3 acres of the 40 acres. Molina has refused to comply with the decision of the Minister. The Court notes that 19.3 acres is about one-half of the 40 acres in dispute.

7. There are many common grounds in the facts. Molina said the following, acting through his nominee, Elma Molina his nephew, he bought leasehold interest in lease No. CY1539/83 from Jose A. Fuentes. The transfer of the lease was duly authorized by the Minister on behalf of Government, the lessor, on 21st November, 1996, and as a requirement of s:8 of the National Lands Act. The land stretches from where Molina's home in Duck Run I is to the boundary with the 30 acres leasehold belonging to Alvarez in Duck Run II, and includes the 40 acres in question. It was said to be 100 acres, but on survey it was found to be 94.395 acres. The survey plan was filed by a surveyor instructed by Molina, and the plan was approved and

authenticated by the Lands Department on 20th July, 2000. The survey was made on the advice of the Lands Department when in 2000, Molina made a complaint to the Department that he had discovered that Alvarez had been working part of the land, the subject of the lease to Fuentes, which lease had been transferred to Molina. Despite the survey, Molina refused to remove his fence, fill the water pond and vacate the land. On 11th November, 2002, Molina obtained Minister's fiat No. 977/2002, for freehold title, and the land was sold to him, by the Lands Department. The dispute with Alvarez was considered by the Minister who decided that Alvarez should vacate the land and Molina should pay $2,620.00 to Alvarez as compensation for the development he had carried out on the land. Molina has paid the money to the Department, despite that, Alvarez still refused to vacate the land. Later the Minister decided that Molina should give up 19.3 acres of the 40 acres of land to Alvarez. Molina resisted the surrender of the 19.3 acres, he wanted the entire 94.395 acres granted by the Minister's fiat. He has brought the claim in trespass. The usual claims to enforce title are for ejectment and delivery up of possession."

6. Grant 977 was made by the Minister pursuant to section 17 of the National Lands Act ("the Act") and is in the form of a direction to the Registrar General in the following terms:

> "ENTER in The Crown Lands Book (Grants) AUDINO MOLINA of DUCK RUN I, SPANISH LOOKOUT, CAYO DISTRICT as the Grantee of A PARCEL OF LAND, 94.395 acres of lands situate IN THE DUCK RUN AGRICULTURAL AREA, CAYO DISTRICT

bounded and described as shown by plan No. 977 of 2002 herewith for the sum of TEN THOUSAND THREE HUNDRED EIGHTY THREE DOLLARS & 45/00 and this shall be your sufficient authority for so doing.

Date 11/11/02"

7. Section 17 of the Act provides that all grants of national lands "shall be effected by a fiat of the Minister to the Registrar" in the prescribed form, and the Registrar is mandated to enter the grant in the book named in the fiat, the date of which is deemed to be the date of the grant.

8. The judge's reference to a decision by the Minister "that Molina shall give up 19.3 acres of the 40 acres of land" is to a letter dated 30 December 2004, which was tendered in evidence at the trial, in the following terms:

Ministry of Natural Resources, the Environment and Industry
Belmopan, Belize, C.A. – Tel: 501-822-2037 – Fax: 501-822-2037/1526

Please Quote:

Ref: No. CYO 204/2004 (16)

December 30, 2004

Mr. Audino Molino
Duck Run Village
Cayo District

Dear Mr. Molino,

Re: Land dispute with Atiliano Alvarez over 19.3 acres of land in the Duck Run Area

I have been directed to inform you of the decision of the Honourable Minister of Natural Resources regarding the above-mentioned matter. Mr.

Atiliano Alvarez will retain the 19.3 acres of land. Since Mr. Alvarez has been working portion of land for the past five years in all fairness, he should retain it.

You are invited to visit the Commissioner of Lands and Surveys' Office to negotiate.

Yours truly,

Sgd/ W Vallejos

(W. VALLEJOS) (MR.)
for Commissioner of Lands and Survey

The respondent did not respond to the invitation extended by the final paragraph of this letter.

9. After full and careful consideration in his written judgment delivered 23 March 2007 of the rival contentions of and the authorities cited by the parties, Awich J concluded that "The Minister's fiat of 11th November 2002 [Grant 977] granted a freehold title to (the respondent) … The Minister deliberately decided to issue a fiat of freehold title to [the respondent]. In the event, the Minister decided to ask [the respondent] to pay compensation under s: 31(4) of the National Lands Act. That was the correct decision." Judgment was accordingly entered for the respondent against the appellant in both actions, the perpetual injunction in the respondent's favour was granted and damages in the sum of $2,200.00, (special damages of $1,700.00 and general damages of $500.00 for trespass) awarded to him in action no. 429 of 2003. The respondent was also awarded the costs of both actions.

10. From this judgment the appellant appealed to this court, on the following grounds:

(i) The learned trial judge failed to apply the equitable principle of "Equity of Possession" notwithstanding the overwhelming evidence in proof of undisturbed possession for approximately 14 years;

(ii) The learned trial judge failed to apply the provisions of the Limitation Act, sections 12(8), 18(1), (2) and 20 in this case resulting in a decision that is erroneous in point of law;

(iii) The learned trial judge fell into judicial error by failing to apply the applicable law to the facts to arrive at a decision that is true and just;

(iv) In so far as the award of compensation to the respondent is concerned the learned trial judge, although recognizing that from the proven facts the appellant was entitled to compensation for the development of the land, failed to fully consider the adequacy of the dispute although the pleadings and affidavit evidence had set out clearly the basis for the counter-claim by the appellant; and

(v) That the decision was based upon a wrong principle or was such that the court viewing the circumstances reasonably could not properly have so decided.

11. When the appeal came on for hearing, Mr. Lionel Welch, who appeared for the appellant before us, as he had in the court below, abandoned ground (ii) and sought and was given leave to argue grounds (iii) and (v) together.

12. Mr. Welch sought to rely on "the equitable principle of Equity of Possession", as he had done in the court below, for the broad submission that "in equity the land should not be denied to (the appellant)". Awich J's comment on this submission was that Mr. Welch "did not identify the particular principle of equity" and his conclusion was that "The ground of equity cannot be considered because no particular principle in equity has been identified for consideration." Before this court, Mr. Welch nevertheless renewed his submission, on the basis that once equity was "properly raised the nomenclature of the equity is of no significance", and we were referred by him to **Inwards v Baker [1965] 2 QB 29**. By the application of this unnamed and unidentified equity, Mr. Welch contended, the appellant had a superior claim to the disputed land.

13. For grounds (iii) and (v), Mr. Welch relied on the Minister's letter dated 30 December 2004, whereby according to Mr. Welch, he had "directed" that the appellant be given 19.3 acres of the disputed land by the respondent. This, he submitted, was an exercise of the Minister's authority under the Act and was in effect a revocation of Grant 977 and the issue of a new fiat in respect of the 19.3 acres referred to in the letter.

14. And finally in ground (iv), Mr. Welch complained of Awich J's having declined to deal with the question of compensation on the ground that it was not before the court in the consolidated actions. Mr. Welch directed our attention to the appellant's claim for damages, to his having particularized his damages in the defence and counterclaim in action 429 of 2003 in the sum of $41,360 and to his evidence in support. On this basis, Mr. Welch submitted, "the issue of compensation was before the court and the trial judge ought to have dealt with it."

15. Mr. Nicholas Dujon for the respondent, contented himself with a succinct submission in support of the judgment of the learned trial judge. With

regard to ground (i), he pointed out that for any "equity" to arise in favour of the appellant on the basis of the authorities cited by Mr. Welch, there needed to be some outward act of encouragement by the respondent and that the evidence in the case fell far short of this. With regard to grounds (iii) and (v), Mr. Dujon submitted that Awich J had been correct not to place any weight on the Minister's 30 December 2004 letter, which he described as no more than an attempt by the Minister to effect "a Solomonistic balance" which could not revoke Grant 977 in favour of the respondent. Finally on ground (iv), Mr. Dujon submitted that the learned trial judge was correct in treating the issue of compensation as not before the court, pointing out that the issue would in any event only arise if the appellant could establish any right to the disputed land.

16. In **Inwards v Baker**, (supra), to which Mr. Welch referred us in support of his first ground of appeal, it was held that where a person expended money on the land of another in the expectation induced or encouraged by the landowner that he would be allowed to remain in occupation, an equity was created such that the court would protect his occupation of the land, and the court had the power to determine in what way the equity so arising could be satisfied. Accordingly in that case, a son's expenditure of money on land belonging to his father, in the expectation, induced by his father, that he would be allowed to remain in occupation for as long as he desired, created such an equity and, having regard to all the circumstances of the case, the court would satisfy the equity by allowing the son to remain in occupation of the land for as long as he desired. The son, in other words, had a licence coupled with an equity, which created an equitable estoppel in his favour and against his father's successors in title.

17. In my view, the instant case bears no resemblance whatsoever to **Inwards v Baker**, there being absolutely no evidence in this case of any

encouragement or acquiescence by the respondent, as landowner, from which the appellant could possibly have formed an expectation that he would be able to enjoy or exercise any rights over the disputed land. Indeed, Mr. Welch himself could put this point no higher than to say that, although there was no evidence of any encouragement, there was no evidence that the appellant was prevented from carrying out his activities on the disputed land and that some form of encouragement could therefore be inferred in the circumstances. I do not think that any such encouragement can be inferred in this case and it follows from this that the learned trial judge was correct in finding that no equity arose on the facts and that this ground of appeal must accordingly fail.

18. Sections 21 and 22 of the Act provides for the rectification of errors in the following terms:

> 21. Whenever it is made to appear to the satisfaction of the Minister on a statutory declaration of the Commissioner or otherwise that any error exists in any entry or plan in any of the National Lands Books, it shall be lawful for the Minister to issue a new fiat cancelling such erroneous entry or plan in Form (3) in the Fourth Schedule and directing a new and proper entry or plan to be made.
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> 22. Every entry in the books of the Registrar relating to any lands comprised in any grant or lease cancelled under this Act, shall be cancelled by writing across the face thereof the words "cancelled by authority", and thereupon such writing shall be signed by the Registrar, and such entry shall thereby be cancelled and thereafter be of no force or effect.

19. The Minister's letter dated 30 December 2004, upon which Mr. Welch placed much reliance in support of grounds (iii) and (v), cannot on any reading be construed as "a new fiat cancelling [an] erroneous entry" and there is no evidence that the Minister cancelled or purported in any way to cancel his fiat in respect of Grant 977 in the manner prescribed by sections 21 and 22. In this regard, I agree with Mr. Dujon's characterization of the 30 December 2004 letter as an attempt by the Minister to strike a "Solomonistic balance" in an effort to settle the dispute between the appellant and the respondent. That it did not purport to have any mandatory force or effect is surely made plain by the final paragraph of the letter, in which the Ministry invited the respondent "to visit the Commissioner of Lands and Surveys' Office to negotiate" (emphasis supplied). Grounds (iii) and (v) have accordingly not, in my view, been made good.

20. Finally, on the question of adequacy of compensation (ground (iv)), I agree with Awich J that this question was not before him. The litigation between the parties in this matter was conducted entirely on the basis of the rival – and mutually exclusive – contentions as to ownership of the disputed land, leaving no room for the consideration of the adequacy or otherwise of compensation as an alternative to a finding in favour of one party or the other. This ground of appeal must therefore fail as well.

21. It is for these reasons that I concurred in the result announced at the conclusion of the hearing of this appeal, that is, that it be dismissed with costs to the respondent, to be taxed, if not agreed.

MORRISON JA

22. I agree.

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MOTTLEY P

23. I agreed with the other members of this Court on 19 October 2007 that the appeal should be dismissed and the judgment of the court below affirmed, with the respondent having his costs, to be taxed if not agreed. I concur in the reasons for judgment given by Morrison JA in his judgment, a draft of which I have read.

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SOSA JA