

**IN THE SUPREME COURT OF BELIZE, A.D. 2012**

**CLAIM NO. 124 OF 2012**

**IN RE: APPLICATION BY THE REGISTRAR OF LANDS UNDER SECTIONS 143 AND 144 OF THE REGISTERED LAND ACT, CHAPTER 194 OF THE LAWS OF BELIZE**

**AND**

**IN RE: APPLICATION BY THE REGISTRAR OF LANDS UNDER PART 61 OF THE SUPREME COURT (CIVIL PROCEDURE) RULES, 2005**

**In Court.**

**BEFORE: Chief Justice Kenneth Benjamin.**

June 20 & 29, 2012.

Appearances: Mr. Nigel Hawke, Deputy Solicitor General, for the Applicant, the Registrar of Lands.  
Mrs. Sharon Pitts-Robateau for the Interested Parties, Verla Kerr-Bidos and Berthier Bidos.  
Mr. B. Simeon Sampson SC, for the Interested Party, Leopolda Judith Lino.

**JUDGMENT**

[1] These proceedings are brought by the Registrar of Lands by way of case stated seeking an order of the Court rectifying the Register pursuant to section 143(1) of the Registered Land Act, Chapter 194 of the 2000 Revised Edition of the Laws of Belize. The subject-matter of the Fixed Date Claim Form is the adjoining properties described as Parcels 773 and 776 in the Progresso Registration Section, Progresso Village Area, Corozal District of Belize ("Parcel 773" and "Parcel 776"). The registered proprietors of each parcel claim ownership of a disputed portion of land comprised of 0.71 acres.

[2] The Fixed Date Claim is supported by an affidavit sworn to by the Registrar of Lands: The Interested Parties, Verla Kerr Bidos and Berthier Bidos, (“the Bidos”) filed a Defence and Counterclaim seeking registration of the disputed land in their favour and seeking damages and an order for the removal of the structure thereon. The Bidos also filed an affidavit setting out the facts relied upon in their Defence and Counterclaim. The Interested Party, Leopolda Judith Lino (“Ms. Lino”) caused to be filed an affidavit sworn to by her husband, Daniel Beck.

[3] The Court recognised the importance of having a current survey report reflecting and putting into context the various surveys relied upon by the parties and setting out the location of the structure alleged to have been erected by Ms. Lino on the disputed portion of land. In furtherance of this objective, the Deputy Solicitor General and both Counsel agreed and consented to the appointment of Kenneth Gillett, licensed land surveyor, as an expert for the purpose of carrying out a survey of both Parcels 773 and 776. The survey report of Mr. Gillett has been received and relied upon by the Court.

[4] Supplementary to its inherent jurisdiction to hear and determine disputes as to possession of land, the Supreme Court enjoys a special jurisdiction under the Registered Land Act, Chapter 194 to make orders for the rectification of the Register where a mistake has been made. In this regard, section 143 of the said Act provides:

“143(1) Subject to subsection (2), the Court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or

cause such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.”

The Applicant elected to bring proceedings by Fixed Date Claim by way of a case stated under Part 61 of the Supreme Court (Civil Procedure) Rules, 2005. None of the parties took issue with the procedure and this Court is content to follow the procedure that resides in the said Part 61 as the mode of invoking the jurisdiction of the Court.

[5] Based on the evidence laid before the Court, a determination must be made as to whether an order ought to be made for the rectification of the register by amending same to reflect that the disputed 0.71 acres of land be assigned to Parcel 773 on the ground that it was mistakenly assigned to Parcel 776. Interested Parties, being the registered proprietors of Parcel 773 and 776 respectively, each claim ownership of the disputed 0.71 acres of land.

[6] The affidavit of the Registrar of Lands, Mr. Baroni Hernandez was accepted as examination-in-chief and he was cross-examined by Counsel for the Interested Parties. Viva voce evidence was received from Wilford Williams, the Principal Surveyor of the Lands and Surveys Department. The affidavits of Berthier Bidos and Daniel Beck on behalf of the Interested Parties were accepted as evidence without cross-examination.

[7] The chronology of events revealed by the documents and the affidavits is without dispute. The events can be summarized as follows:

1. Parcel No. 776 comprised of 3.147 acres was surveyed by Government Surveyor, Gilberto Perez, as reflected on Plan No. 1985 dated July 1, 1991.
2. The said Parcel 776 was held by one Roberty Westby by way of Lease No. 1348/88.
3. On August 20, 1999, an application to transfer the lease to Verla Kerr Bidos was approved by the Commissioner of Lands and Surveys under the National Lands Act, 1992

4. Receipts reflect payment of the transfer fee by Verla Kerr Bidos on August 23, 1999 and payment of the purchase price on December 23, 1999.
5. Minister's Fiat Grant No. 231 of 2000 was issued to Verla Kerr Bidos in respect of 3.147 acres along Progresso Lagoon, in the Progresso Village Area. Attached to the said Grant was a plan on which reference was made to Plan No. 1985 by G. A. Perez.
6. Parcel No. 773 was surveyed in 2004 at the request of Eustolio Ken pursuant to Permission No. CZL 96/2004 granted by the Commissioner of Lands and Surveys. The Plan by C. B. Samuels, Licenced Land Surveyor, is dated November 3, 2004 and shows a survey of 4.84 acres.
7. Minister's Fiat Grant No. 250 of 2005 grants 4.84 acres of land along the Hill Bank Road, West of Progresso Lagoon, Corozal District to Eustolio Ken and is dated June 1, 2005. The Plan attached also reflects 4.84 acres of land.
8. Progresso became a declared area under section 3 of the Land Adjudication Act, Chapter 185.
9. Eustolio Ken made Claim No. 212 on August 6, 2003 for four (4) acres of land at the north of Progresso.
10. By a Deed of Gift dated the 13<sup>th</sup> day of June, 2006, between Verla Kerr Bidos and Berthier Bidos property comprised 3.147 acres in the Progresso Village as reflected on Minister's Fiat Grant No. 231 of 2000 was conveyed to them. The Deed was recorded on July 4, 2006 at the General Registry.
11. Land Certificate No. 9150/2006 dated the 16<sup>th</sup> day of August, 2006 was issued to Leopolda Judith Lino in respect of Parcel 773 of Block 1 of the Progresso Registration Section comprised of an area of 1.674 hectares.

12. Land Certificate No. LR-200807236 dated the 17<sup>th</sup> day of September 2008 was issued to Verla L. Kerr-Bidos and Berthier Bidos (jointly) in respect of Parcel 776 of Block 1 of the Progreso Registration Section comprised of an area of 1.274 hectares.

[8] There is no demur that the properties comprised in Parcels 776 and 773 overlap to the extent of 0.71 acres. The proprietor of Parcel 773 has constructed a building with a thatch roof on a portion of the disputed area. The Registrar has characterized the overlap of land as being the likely “result of fault survey”. In his affidavit, he deposed that a mistake was made when Land Certificate No. 9150 of 2006 was issued in respect of Parcel 773 to Leopolda Judith Lino. However, when cross-examined he admitted that the Minister’s Fiat Grant in respect of Parcel 776 issued in 2000 predated the Minister’s Fiat Grant in 2005 in respect of Parcel 773. There were inevitable admissions based on the documents before the Court that Plan No 1985 done by Gilberto Perez in 1991 was the earlier plan when Parcel 773 was comprised of 3.147 acres or 1.274 hectares.

[9] In his report to the Court, Kenneth Gillett, the licensed land surveyor appointed as the Court’s expert, surmised that the survey of Entry 8419 Register 21 dated November 12, 2004, was done by C. B. Samuels without taking into account the earlier survey plotted on Plan 1985 and dated July 1, 1991. It was observed that the acreage on the Grant Fiat to the Bidos was consistent with the acreage on the Land Certificate LRS-700807236 dated September 7, 2008.

[10] It was pointed out to Counsel by the Court that by virtue of Land Adjudication Act, Cap. 185, when the Progreso Registration Section was declared an adjudication would have been made in respect of Parcels 773 and 776 and an adjudication record completed. Efforts by the Court to have such adjudication record produced by the Principal Surveyor proved unsuccessful. Be that as it may, the Land Certificates stating the respective acreages for Parcels 773 and 776 would be reflective of the adjudication record.

[11] Part V of the Land Adjudication Act, Chapter 185 provides for the making of objections and the finality of the adjudication record. Section 23(1) allows for any person who is aggrieved by an act or decision of the Land Adjudication Tribunal to

appeal to the Supreme Court within thirty days from the date of the certificate of the Adjudicator. There is no evidence that any such appeal has been lodged by any of the proprietors of Parcels 773 and 776. Having regard to the time that has elapsed since the issuance of the Land Certificates, the Court ought not to countenance what would amount to a de facto appeal which is precluded by the time limit set by section 23 aforesaid

[12] This finding ought effectively to dispose of the matter and result in an order by the Court declining to rectify the Land Register as prayed for by the Registrar of Lands. However, since the entire cases of all parties were laid before the Court, the merits of the matter are deserving of some treatment.

[13] It is plain that the application before the Court craves that the overlapping area of 0.71 acres be subtracted from Parcel 776 and added to Parcel 773. Predictably, the proprietors of Parcel 776 are opposed and the proprietor of Parcel 773 is in favour of this course of action being adopted. Although both sides have made extensive references to markers on the land, the dispute can be clearly discerned and indeed resolved on the basis of the documents tendered in evidence.

[14] As earlier iterated, the earliest survey is in respect of what is now Parcel 776 and all the documents of title and supporting plans consistently state the area of the land as 3.147 acres or 1.274 hectares. Indeed, the Progresso Summary List for Parcel No. 776 reflects the name of Roberty Westby with an acreage of 1.274 hectares referable to Plan No 1985.

[15] Parcel 776 emanated from the later survey dated May 16, 2005 referred to as Plan No. 250 of 2005 by C. B. Samuels. This Plan was produced with reference to the earlier plan and gave rise to the overlapping of the newly created Minister's Fiat Grant to Eustolio Ken with the already existing Fiat Grant No. 231 of 2000 to Verla Kerr Bidos. It cannot be gainsaid that the later survey could not purport to re-allocate land already embodied in Plan No. 1985.

[16] The overlap was eliminated during the adjudication process as evidence by the acreage ascribed to Parcel 776 of 1.274 hectares and Parcel 773 of 1.673 hectares on the respective Land certificates.

[17] Accordingly, the Court declines to make the Order sought and the Application to amend the register in respect of Parcels 773 and 776 of Block 1 of the Progresso Registration Section is refused.

[18] Having regard to the nature of these proceedings, the Court is not tasked with resolving issues of trespass and possession of land. Such relief must be sought in separate proceedings brought by the Bidos.

[19] This application was brought at the instance of the Registrar of Lands. The result has been a determination of the entitlement of the Interested Parties. Having received and considered representations from Counsel, it is ordered that each party shall bear his or her own costs.

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KENNETH A. BENJAMIN  
Chief Justice