IN THE SUPREME COURT OF BELIZE, A.D. 2009

CLAIM NO. 831

	JITENDRA CHAWLA **LEENA CHAWLA**	**Claimants**
BETWEEN	**AND**	
	THE ATTORNEY GENERAL **MINISTER OF NATURAL RESOURCES**	**Defendants**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Fred Lumor SC for the claimants.
Ms. Magali Perdomo for the defendants.

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JUDGMENT

The present proceedings were brought pursuant to leave granted by the court to the claimants, Jitendra Chawla and Leena Chawla, to seek judicial review of the decision contained in identical letters dated 30th July 2009, addressed to them whereby the defendants, through the Commissioner of Lands decided to revoke the sale of Parcels No. 1286 and 1287 to the claimants.

The Background and Evidence

2. It is essential as a background to this case to note that the former Minister of Natural Resources and the Environment responsible for the administration of National Lands in the country, in October 2007, in a Notice published in the *Gazette* pursuant to section 6(1) of the National Lands Act, Chapter 191 of the Laws of Belize, declared the Krooman Reserve, Belize District. The area of the reserve comprises approximately 57.8 acres situated off the Western Highway near Mile 2, Belize City, Belize District and is in the Queen Square West Registration Section of Belize City. Sometime later on the 6th January, 2009 the claimants made separate applications to lease portions of the area comprising respectively, 5.003 and 4.333 acres, in total 9.336 acres. This was out of a total of 57.8 acres in the said Krooman Reserve area. On the same day, 6th January 2009, the Commissioner of Lands recommended to the current Minister, who is the second defendant in this case, that the leases be granted to the claimants. Further, on the 16th June 2009 the claimants made further applications, this time to purchase the parcels of the lease land; and these were subsequently approved by the Minister and Approval letters were sent to the claimants each on the standard form headed **"National Lands Act Land Purchase Approval Form"**, which stated the consideration for which each piece of land was being sold to the claimants. The claimants duly completed payment for the two parcels of land for which they received Revenue Collector's Receipts. The Claimants then went into possession of the land and commenced development thereon. They paid as well for their Land Certificates to be issued to them as the registered proprietors of the land.

<u>The Evidence concerning the acquisition of the two parcels of land by the claimants</u>

3. The relevant paragraphs of Mr. Manuel Rodriguez, the Commissioner of Lands and Surveys in the 2nd defendant's ministry, and filed on behalf of the defendants in opposition to the claimants' case, speak more fully to this rather brief summary as to how the claimants came into possession of the parcels of land in issue in this case. (See paras. 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Mr. Rodriguez's affidavit):

<u>Declaration of Reserve</u>

> 3. *In October 2007, pursuant to Section 6 of the National Lands Act Chapter 191 of the Laws of Belize, the Minister of Natural Resources and the Environment reserved to the Government of Belize certain area in the Queen Square Registration Section, Belize City. The Minister declared the public reserve under the name Krooman Reserve, comprising approximately 57.8 acres situate off the Western Highway near mile two Belize City.*
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> 4. *Declaration of the said Reserve was published in three consecutive issues of the Gazette and one issue of a local newspaper. Copies of the relevant Gazette and newspaper notices are now shown to me, exhibited hereto and marked* ***"MR-1", "MR-2", "MR-3", "MR-4"*** *respectively.*
>
> 5. *The said public reserve includes parcels #1286 and #1287 of Block 108 in the Queen Square West Registration Section in Belize City.*
>
> 6. *I have made diligent searches in the successive issues of the Government Gazette but could find no notification of de-reserving the said reserve, with the result that the said area continues to be a public reserve after this day.*

*"**Claimants Application for Lease/Purchase***

7. *On March 23rd 2009 the First Claimant wrote to me indicating his intended application for lease/purchase of the 9 acres of land at Mile 2 on the Western Highway, Belize City. While he indicated that the "the land falls behind his residence, present distribution center, and upcoming Potato Chips Industry', he did not specifically state that he required the land to accommodate and build his factory.*

8. *On the basis of the First Claimant's said letter, I got the clear impression that the Claimant was applying for lease of the extra land to clean up his environment so that he and his neighbours could live in an "odorless and mosquito free atmosphere". The letter is now shown to me, exhibited hereto marked **"MR-5"**.*

9. *On or about the 6th of January 2009 the Claimants made separate formal applications to rent the National Lands being 5.003 and 4.333 acres on the Western Highway. Copies of the applications are now shown to me ands are exhibited hereto and marked, **"MR-6" and "MR-7"**. Nowhere in the applications did the Claimants mention that they required the lands to put up a factory or any other business undertaking.*

10. *On the same day I recommended to the Minister of Natural Resources and the Environment ("the Minister") the grant of lease to the Claimants of the parcels requested.*

11. *On 16th June 2009, the Claimants made further applications to purchase said properties. The applications are now shown to me and exhibited hereto marked **"MR-8" and "MR-9"**. The Minister approved both applications. The approval letters were sent to the Claimants. Copies of these letters are now shown, exhibited hereto and marked **"MR-10" and "MR-11"**. Each of the letters required the Claimants to complete the endorsement at the bottom accepting the offer made by the Government".*

4. In this connection, see as well paras. 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the joint affidavit of the claimants and paras. 47

"***The Facts***

5. The First Claimant is the lawful purchaser of ALL THAT Parcel 1286 situate in Block 108 in Queen Square West Registration Section in Belize City from the Government of Belize ("GOB") under and by virtue of a Lease/Purchase Agreement dated 22nd June, 2009 Reference No. Bz-C-79/2009.

6. The 5.003 acres of land was national land when the Minister of Natural Resources sold the same to the First Claimant.

7. The First Claimant on the said 22nd June, 2009 paid to GOB a total sum of BZ$33,175.48 for which the Ministry of Natural Resources and the Environment issued to the First Claimant Official Revenue Collector's Receipts.

8. The sum of BZ$44,175.48 paid to GOB is made up of the following, namely -

a) The purchase price of Parcel 1286 – BZ$32,519.50. The First Claimant received Revenue Collector's Receipt no. LSD-BMP00186393 in respect of the payment.

b) Stamp Duty assessed upon the Purchase Price – BZ$625.98. The First Claimant received Revenue Collector's Receipt No. LSD-BMP00186394 in respect of this payment.

c) Registration Fee paid by the First Claimant to be registered as proprietor of Parcel 1286 – BZ$15.00. The First Claimant received Revenue Collector's Receipt No. LSD-BMP00186396 in respect of this payment.

d) Payment for Land Certificate to be issued to the First

Claimant as registered proprietor of Parcel 1286. The First Claimant received Revenue Collector's Receipt No. LSD-BMP00186395 in respect of this payment.

Copies of the Lease/Purchase Agreement dated 22nd June, 2009 and the Revenue Collector's Receipts issued to the First Claimant in respect of the total payment of the sum of BZ$33,175.48 are now produced and shown to us marked ***'JC-1"*** *and* ***'"JC-2"*** *respectively.*

9. a) *The First Claimant therefore says that he is lawfully entitled to be registered in the relevant Land Register as the Registered Proprietor of Parcel 1286 situate in Block 108 in the Queen Square West Registration Section in Belize City.*

   b) *The First Claimant is also entitled to be issued with the Land Certificate due as his title to Parcel 1286.*

10. *The Second Claimant is also the lawful purchaser of ALL THAT Parcel 1287 situate in Block 108 in Queen Square West Registration Section in Belize City from GOB under and by virtue of a Lease/Purchase Agreement dated 22nd June, 2009, Reference No. BZ-C-78/2009.*

11. *The 4.333 acres of land was national lands when the Minister of Natural Resources sold the said Parcel 1287 to the Second Claimant.*

12. *The Second Claimant paid GOB on the 22nd of June, 2009 a total sum of BZ$28,602.73 due under the Lease/Purchase Agreement for which the Ministry of Natural Resources and the Environment issued to the Second Claimant Official Revenue Collector's Receipts.*

13. *The sum of BZ$28,602.73 paid to GOB is made up of the following, namely -*

    a) *The purchase price of Parcel 1287 – BZ$28,164.50. The Second Claimant received Revenue Collector's*

Receipt No. LSD-BMP00186397 in respect of this payment.

b) Stamp Duty assessed upon the purchase price – BZ$408.23. The Second Claimant received Revenue Collector's Receipt No. LSD-BMP00186398 in respect of this payment.

c) Registration Fee paid by the Second Claimant to be registered as proprietor of Parcel 1287 – BZ$15.00. The Second Claimant received Revenue Collector's Receipt No. LSD-BMP00186400 in respect of this payment.

d) Payment for Land Certificate to be issued to the Second Claimant as registered proprietor of Parcel 1287. The Second Claimant received Revenue Collector's Receipt No. LSD-BMP00118699 in receipt of this payment.

Copies of the Lease/Purchase Agreement dated 222nd June, 2009 and the Revenue Collector's Receipts issued to the Second Claimant in respect of the total payment of the sum of BZ$28,602.73 are now produced and shown to us marked ***"JC-3"*** *and* ***"JC-4"*** *respectively.*

14. (a) The Second Claimant therefore says that she is lawfully entitled to be registered in the relevant Land Register as the Registered Proprietor of Parcel 1287 situate in Block 108 in the Queen square West Registration Section in Belize City.

47. The Claimants are the proprietors of Parcel Nos. 1286 and 1287 situate in Block 108 in the Queen Square West registration Section in Belize City. The Claimants, to the knowledge of the defendants, have been in lawful and continuous occupation and possession of the two parcels of land since June, 2009 after the Claimants purchased the lands."

5. In my view, from the evidence, all seems to be progressing well; but the fly in the ointment, as it were, from the evidence in this case, was that on the 23rd July 2009, two major television stations in Belize City aired news items about land fill developments on the parcels for the projects the claimants proposed to undertake on the lands they had purchased, namely, the construction of a potato chip factory and a peanut butter factory, with warehouse and distribution center. The news item further went on to disclosed some remonstrations by the Honourable Minister of Education who stated that the Minister of Natural Resources did not consult him as Area Representative for the area where the lands and the project are located before the land was sold to the claimants. It is evident that it was this ruckus that has agitated this case. (See paragraphs 59, 60, 61 and 62 of the joint first affidavit of the claimants and the exhibits attached to the said paragraphs.)

As a result, the second defendant's Ministry in a letter dated 30th July 2009 issued an Order to the claimants **"to stop, cease and desist from further development works with immediate effect."** The said letter proceeded to invite the claimants to a meeting with the Commissioner of Lands and Survey who gave an affidavit in this matter for the Defendants and the Chief Executive Officer to "***discuss the issue of compensation",*** presumably for the revocation of the land sold to the claimants.

The Claim and Relief sought in these proceedings

6. As a result, the claimants have brought these proceedings, as I have stated earlier, to review the decision of Cabinet to revoke the sale to them of the two parcels of land and they seek the following relief:

(a) an order that the decision of the government or cabinet is ultra vires, a nullity and void;

(b) *an order that the decision of the government was arbitrary and irrational and made in breach of natural justice;*

(c) *an order of certiorari to quash the decision of the Government of Belize or Cabinet;*

(d) *an order of mandamus directed at the Minister of Natural Resources to cause the claimants to be registered as proprietors and the land certificates due to them in respect of their titles, the said 1286 and 1287, be issued to them;*

(e) *damages; and*

(f) *costs.*

The issues in this case

7. The issues agitated by this case could be put in a short compass: It is contended for the defendants that the Minister had no authority to approve the purchase of reserved land and that in any event, there was no acceptance of the offer to sell creating a binding contract between the Government of Belize and the claimants. Central to a determination of the principal issue in this case concerning the authority of the Minister to approve purchase or sale of reserved land is the interpretation and interplay of the several provisions of the National Lands Act, Chapter 191 of the Laws of Belize. (Referred to in this judgment as the "Act"). It is contended for the defendants that the Minister had no authority to approve the purchase of the parcels of land by the claimants in this case for the simple reason that they were part of a reserve which had been declared

and that in order to effect a sale the Minister must first have to de-reserve the land and that this was not done in this case.

8. For the claimants, on the other hand, their contention is straightforward; and that is, that the sale to them by the Minister was within the scheme of the Act and its provisions and they are in possession of the said parcels of land.

The Statutory Provisions of the Act on Reserves and Sale of National Land

First, section 5 of the National Lands Act provides that:

> *"5. (1) National lands shall not, save as is excepted by section 6, be dealt with or disposed of, except in the manner hereinafter provided."*

Secondly, section 6 which is at the heart of this case at least from the defendant's point of view, provides as follows:

> *"6. (1) Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings, or as places for the interment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of streams, or for the construction of tram or railways or railway stations, or canals, or for the purpose of sinking shafts and digging for*

minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement and settlement of Belize, or for special purposes.

(2) The Minister shall also have power to alter, vary or add to the ordinary terms and stipulations upon which any grant, lease or license is made, should it be considered expedient to do so in any special instance.

(3) All reserves shall be notified in three successive issues of the Gazette and in one issue of a local newspaper and set forth on plans in the office of the Commissioner.

(4) All dereservations of reserves shall be notified in three consecutive issues of the Gazette and in one issue of a local newspaper."

Thirdly, section 13 of the Act provides as follows:

"13. (1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.

(2) An application to purchase national lands shall be made in the form of the Second Schedule."

The Second Schedule is annexed to the Act and it is an elaborate form headed ***"Form of Application for a Grant of National Land."*** I shall say more on this Schedule later.

<u>Was there an offer and acceptance for the purchase and sale of the parcels of lands</u>?

9. On the issue of offer and acceptance to create a binding contract between the government and the claimants, this, in my view, can be briefly disposed of. I have referred to the Land Purchase Approval Form attached as **<u>Exhibit MR10</u>** to the affidavit of Manuel Rodriguez, the Commissioner of Lands. It is clear from **<u>Exhibits JC 1, 2, 3 and 4</u>** attached to the joint first affidavit of the claimants that the Minister for lands clearly approved the sale of the two parcels to the claimants and the receipt of the money for the sale of the parcels of lands to the claimants is not denied nor is the approval by the defendant denied.

10. I therefore conclude that there was in fact an acceptance of the offer to sell the land to the claimants and an approval by the defendants to sell the parcels of land to the claimants. The facts of this case are in my view different from the case of **<u>Emy Gilharry Ramirez v The Attorney General and others</u>** (Action No. 5 of 2004, unreported).

    In that case, the court concluded on the special facts that there was no acceptance by the claimant of the offer to sell to her a part of national land by the Minister. This was so, the court found, because there was no signed copy of the acceptance letter returned to the Lands Officer. In the instant case, the several exhibits make it clear that the claimants accepted the offer to sell the lands to them and that in fact they paid for them. In my view, it cannot therefore lie in the defendants' mouth to now contend that the claimants did not accept the offer to sell them the lands: see in particular, **<u>Exhibits MR 8 and 9</u>** (the applications of the claimants for a grant (purchase) of the lands in question. But more particular, **<u>Exhibits MR 10 and 11</u>** clearly headed **<u>National Lands Act 1992 – Land Purchase Approval Form</u>**.

11. In my considered view, the fact that the claimants' signatures do not appear at the foot of the Forms, does not, on the evidence, vitiate their purchase of the parcels of land or their sale to them. On the evidence, I find there was an **offer by the claimants to buy** the parcels of land **which offer was formally approved** by the second defendant. The terms of the sale were set out in the June 22nd 2009 letters from the defendants to the claimants. The only conditions to effect the sale as stated in the **Land Purchase Approval Form**, in particular, payments as required, were complied with. The defendants do not deny this. They only now cavil at the absence of the claimants' signatures on the **Land Purchase Approval Form**, even though this clearly states that the **claimants' application to purchase the parcels were submitted to the second defendant and had been approved in accordance with section 13(1) of the Act**. The defendants have not denied receiving the application and the Approval Forms. In fact, they put them in evidence.

It is on this Form that the Minister minutes his approval or non-approval of the application and dates and signs on. There is also a section for the Receipt for Purchase Money, indicating receipt from the applicant the sum for the above described price or parcel of land which shall be dated and signed by the Accountant General.

There is a section as well in the **Second Schedule** for the certificate of the Commissioner of Lands and Surveys that the plan is in strict accordance with the provisions of the National Lands Act or another certificate, again, by the Commissioner of Lands and Surveys, certifying if the plan is **not** in accordance with the provisions of the Act and that it requires the **special approval** of the Minister which the Commissioner however recommends. Again, this section is to be dated and signed by the Commissioner of Lands and Surveys. There is a section as well for **the endorsement of the Minister whether he approves the application**

or whether he specially approves it on the recommendation of the Commissioner of Lands and Surveys.

I must however, observe that the documents put in evidence in this case relating to the application by the claimants to purchase the two parcels in question, and the Minister's approval thereof, seem to have been an adaptation of the **Second Schedule** of the Act, which is clearly referable to section 13 (which I have reproduced earlier in this judgment). This section allows the Minister to sell national land and provides that an application to purchase national land shall be made in the form of the **Second Schedule**.

12. As Mr. Fred Lumor SC for the claimants correctly pointed out, this schedule is a composite form. But it requires a rough plan, if possible, showing boundaries of the land which is the subject of the application, to be signed by the Commissioner of Lands and Surveys with a report in which he is to furnish all information with respect to the application and dated and signed by the Commissioner,

    There is a section for the costs of the surveys, in special cases, also to be certified by the Commissioner of Lands and Surveys stating the amount, with a section to be signed by the Accountant General attesting the receipt of the costs of the special survey.

13. It is not disputed that all the requirements of the **Second Schedule** were complied with in this case. Hence the issue to the claimants of their land purchase approvals **(Exhibits JC 3 and 4** and **MR 10 and 11)**. And I do not understand the defendants to argue the contrary.

14. This is all the more reason that the argument on behalf of the defendants that the claimants did not accept the offer to sell the parcels of lands to them is wholly untenable.

15. I find, as I have indicated earlier, that it is difficult to accept, in the face of all the elaborate provisions of the **Second Schedule**, that the defendants, through the officials in the Lands Department and the second defendant (as the responsible Minister) did not know that the two parcels of land were part of the **Krooman Reserve**.

16. The principal argument advanced for the defendants however, is that the Minister did not have the authority to sell the land to the claimants in this case because he sold it outside the provisions of section 6 of the Act.

17. In relation to this principal argument, I must first, record the candour of Ms. Perdomo, the attorney for the defendants. She candidly admitted in answer to a question from me during the hearing as to whether there was in fact a sale of the parcels of land to the claimants. She answered that yes there was a sale; but that it was in error, because the Commissioner of Lands and hence the Minister, did not realize that the parcels were reserved land. This, as I have indicated, is almost incredulous. Ms. Perdomo however, was unable to answer the consequential question: who is to bear the loss for the alleged error: the claimants or the Government of Belize, considering the amount of money the claimants claim to have expended on developing the parcels after they purchased them and for the purpose they had purchased them?

18. However, on the evidence, I must confess that it beggars belief that there was an "error" in the Lands Department (under the administration of the Commissioner of Lands and the political direction and control of the Minister responsible for lands, the second defendant). In the first place,

the original decision to reserve the area was taken in 1997 by a former Minister of Lands, with input, no doubt, from a former Commissioner of Lands, following the statutory procedure required for reservation of national lands provided for in section 6(3) of the Act. This is not a cloak and dagger exercise. It involves public notification in three successive issues of the **Gazette** and in one issue of a local newspaper and set forth on plans in the office of the Commissioner of Lands. Sub-section (4) also provides for the same level of public notification of all de-reservation of reserve lands. Secondly, what is crystal clear is that from the statutory provisions, both the Minister of Lands and the Lands Department under the Commissioner of Lands, are in control of both the processes of creating reserves of national lands and the de-reserving of such lands. They keep the relevant instruments and should and ought to know which parts of national lands are reserved or have been de-reserved.

19. Therefore, in my view, if the sale to the claimants of the two parcels in question here was a mistake or an error, it is one for which the second defendant and the Department of Lands in his ministry must accept full responsibility.

20. Indeed, from the evidence there is some acceptance of this responsibility albeit, grudgingly, by the defendant: see, **Exhibit JC 20**, a copy of an identical letter dated 30th July 2009 informing the claimants of the Cabinet's decision to retain the two parcels of land as an integral part of the Krooman Reserve and ordering the claimants **"to stop, cease and desist from further development works with immediate effect."** Importantly, the letters invited the claimants to meet with the Commissioner of Lands and the Chief Executive Officer of the second defendant's Ministry to a meeting in Belmopan **to discuss the issue of compensation**.

21. Evidently, this invitation bore no fruits: see **Exhibit JC 21**, a letter dated 18th August 2009, from the former attorney for the claimants to the commissioner of Lands. This letter, like the defendants' letter of July 30th 2009, explicitly recognised that the claimants, since their purchase of the parcels of land had done some development work thereon. The defendants' letter however, ordered the claimants *"to stop, cease and desist from **further** development works with immediate effect."* (Emphasis mine). The claimants' attorney's letter stated, among other things, *"After purchasing the said parcels of land, my clients went into possession and have already spent over $2,858,360.33 on their development project for which they needed and bought the said parcels. Details of the said expenditure were handed to you and the Chief Executive Officer."*

22. It is clear therefore, from the evidence that since their purchase of the parcels of lands, they had expended a considerable outlay in developing the land.

23. It is also difficult to accept, at least readily, that the sale of the parcels of land to the claimants was in "error". The documentary evidence concerning these lands culminating in the eventual sale to the claimants clearly shows that someone down or up the chain of transaction in the second defendant's department relating to the parcels, from their initial lease to their eventual sale to the claimants, should or **ought** to have realized that the parcels formed part and parcel of the Krooman Reserve.

24. Therefore, in my view, the Ministry of Lands cannot avoid or escape liability for the so-called "error" for the sale of the two parcels of land to the claimants. In fact, I feel constrained to observe that from the evidence, either someone blithely or deliberately shut his/her eye to the fact that the parcels sold to the claimants were part of the Krooman Reserve. The

parcels sold to the claimants totaled 9.336 acres and the area of the reserve itself measures 58.7 acres in total. But nobody bothered to check the status of the two parcels.

25. I do not think it is the role of the court to attribute blame or fault in this case. But this case starkly demonstrates that all is not well in the Department of Lands. This may well account for the spate of complaints and litigation flowing from the administration and distribution of national land in the country.

26. Someone should bear responsibility for the claimed expenses so far, of the claimants in developing the lands. This would be a matter of assessment, if they were to lose the parcels sold them.

Does section 6 of the Act permit sale of national lands?

27. Ms. Magalie Perdomo for the defendants valiantly argued and submitted that the Minister sold the parcels of land to the claimants pursuant to section 6 of the Act. I have set out at para. 6 of this judgment the provisions of this section.

28. In my view, a close study of section 6 does not yield or disclose any authority to enable or empower sale of national lands. I find that from the scheme, provisions and intendment of the Act, this power to sell national lands is expressly conferred on the minister, the second defendant in this case, **not by section 6** but only by **section 13** which I have already reproduced earlier. This section states:

> *"13. (1) National lands* ***may*** *be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.*

(2) An application to purchase national lands shall be made in the form of the Second Schedule." (Emphasis mine)

29. This statutory power to sell national lands is, as can be readily seen, **discretionary**.

30. "National Lands" is itself defined in **section 2** (the interpretation section of the Act) to mean *"… all lands and seabed, other than reserved forest within the meaning of the Forests Act, including cayes and parts thereof not already located or granted and includes any land which has been or may hereafter become escheated to otherwise acquired by the Government of Belize."*

31. In my view, the proper interpretation and **sole** purpose of section 6 is to enable the Minister to **exclude from sale** in the ordinary manner any national land or parts thereof and reserving the right of disposal of such lands in the Government of Belize in the public interest as may seem best.

32. One of the public interest (or purposes) for which section 6(1) empowers the Minister to exclude any national land from sale ordinarily, is when such land is required as a **reserve**. The section however, enumerates twenty-one purposes in addition to "special purposes" for which the Minister may reserve and thereby exclude from sale ordinarily any national land. Some of the other purposes for which the Minister may reserve (which in the context of the section means simply to exclude from sale ordinarily) any national land include, for example, for building public burial ground, or places for the education, recreation and amusement of the inhabitants of any town or village, etc etc … as enumerated in subsection (1) of section 6.

33. Apart from enumerating the purposes for which the Minister may except from sale any national land, there is provided for in subsections (3) and (4) the mechanics, if you will, of how such reservation may be effected and revoked ("dereservation" in the words of subsection (4)).

34. Section 6(1) itself of the Act is not, admittedly, the most felicitous example of draftsmanship. This may be explicable by the fact that the National Lands Act itself is a carry-over from the **Crown Lands Act**, which was chapter 147 of the 1980-1990 Revised Edition of the Laws of Belize. The National Lands Act came into force on 23rd April 1992. The Crown Lands Act was however introduced in Belize on 1st July 1886, during the reign of Her Majesty Queen Victoria who was then the sovereign of the then colony of British Honduras. The present section 6 of the National Lands Act I find, still retains the Victorian mold of its predecessor, but only substituting "the Government of Belize" for "Her Majesty". It however gives no indication and omits any reference to the purpose or purposes for which the Minister may exclude from sale in the ordinary manner of national lands which "may be required as **reserves**". This is to be distinguished from the other purposes, twenty-one in all, enumerated in the subsection (1) of section 6 for which the Minister may except or exclude from sale in the ordinary manner any national land.

35. In so far as excluding national lands from sale in the ordinary manner which may be required as **reserves** and reserving to the Government of Belize the right of disposing of such lands in the public interest as may seem best, there is no indication as to what these **reserves** are for or what may constitute one such **reserve**. But it cannot be disputed that the Minister is clothed with the statutory authority pursuant to subsection (1) of section 6 to exempt or except from sale any national land which may be required as a **reserve**.

36. This however, is to be contrasted with the precursor of the present section 6 under the Crown Lands Act. That Act was, in its section 6, more explicit in terms of why national lands (the Crown Lands),, would be excepted from ordinary sale and it provides *"… such lands as may be required as Indian or Carib reserves or for the benefit of Indian and Carib inhabitants."* That section like its successor (section 6 of the National Lands Act) also contained the other purposes for which Crown Lands may be excepted from sale. The present National Lands Act in subsection (1) of section 6, although giving the Minister power to except from sale in the ordinary manner of national land which "may be required as reserves", does not state what are the purposes of these **reserves**. It simply provides for reserves of national lands.

37. But the Minister, as I have stated, undoubtedly has the statutory power to except from ordinary sale of national lands which may be required as **reserves**. The Act provides the procedure for doing this. Importantly, unlike the Crown Lands Act, the National Lands Act provides in subsection (4) that reserve national lands may be **de-reserved**: by a procedure similar to creating the reserve in the first place.

38. I am therefore satisfied that the **Krooman Reserve** was, from the evidence and the law, (section 6(1) and (3) of the Act) validly declared in October 2007.

39. The inevitable question that flows from this conclusion in the context of this case is: Does section 6 of the Act authorize or validates the sale of parts of the **Krooman Reserve** to the claimants? Or put in another way, does the fact that the two parcels of lands sold to the claimants form part of the **Krooman Reserve** invalidate or preclude their sale?

This is the heart of the defendants' case, although they concede grudgingly the right to compensation for the claimants should their purchase be found invalid. From the evidence, the claimants, after purchasing the two parcels took possession of them and were in the process of executing development works on them, when they were halted in their tracks.

40. Two exhibits in particular in this case put this issue in stark relief: one is the letter dated 30th July 2009, from the Commissioner of Lands and Surveys in the second defendant's Ministry; and the other is a Cabinet Release for Tuesday 28th July 2009. This contained a portion headed "Krooman Lagoon", no doubt, meaning Krooman Reserve. The Cabinet Release issued by the Belize Press Office, was put in evidence as **Exhibit MR 12** and annexed to Mr. Rodriquez's affidavit in this case. The relevant portion reads:

> *"Krooman Lagoon*
>
> *Cabinet agreed not to award title to Mr. Jitendra Chawla for the two parcels of lands in the Krooman Lagoon Reserve. Any assurances given by the Ministry of Natural Resources and the Environment to Mr. Chawla was done in ignorance of the details of the Southside Poverty Alleviation Project. The project recommended the Krooman Lagoon area be reserved and used as a drainage route for all the proposed drainage canals under the project. In keeping with the spirit of the recommendation, every effort will now be made to preserve the land for the environmentally sensitive use by the people of the Collet constituency. In the meantime, further environmental studies and damage assessments will be conducted to inform future decisions*

especially relating to remedial action regarding the filling already done by Mr. Chawla.

The Ministry of Natural Resources and the Environment will meet with Mr. Chawla to discuss the question of compensation for his investment in filling of the land." (Emphasis mine)

The letter of 30th July 2009 was put in evidence by both the claimants and Mr. Rodriguez for the defendants as **Exhibit JC 20** and **Exhibit MR 13** respectively. It is an identical letter to both claimants. It reads:

> *Please Quote:*
>
> *Ref No. BZ-R 79/2009*
>
> *July 30, 2009*
>
> *Jitendra Chawla*
> *2 Miles Western Highway*
> *Belize City*
> *Belize District*
>
> *Dear Sir:*
>
> *Re: Pcl N 1286 (5.03 acres of land)/Queen Square West Registration Section, Belize City, Belize District*
>
> *You have been verbally communicated to discontinue the physical development of the captioned land. At its recent sitting, Cabinet decided that said land will be retained as an integral part of the Reserve.*
>
> *Recent inspection suggests that you are still carrying out improvements on the land. This correspondence serves as an order to stop, cease and desist from further development works with immediate effect.*

You are invited to visit our office in Belmopan to meet myself and our Chief Executive Officer to discuss the issue of compensation. (Emphasis added)

41. First, although **section 23** of the Act authorizes the Minister to make rules and regulations with respect to reserves created under section 6, the defendants say that no such regulations have been made for the Krooman Reserve. Secondly, **subsection (4) of section 6** expressly contemplates the **dereservation** or reserves. This, no doubt, would mean unlocking the reserve status of any reserve land through the procedure outlined in **subsection (4)**. This, in practical terms, would mean that the fact that any part of national land has been declared a reserve, does not grant that status forevermore to that piece of land: it can be **dereserved**.

42. Admittedly, section 6(1) of the Act is not without its difficulties regarding its construction, interpretation and application. One thing however, is clear from its convoluted language and it is this: **it does not authorize a sale or gift of national lands**. Its true purport, in my view, is to enable the Minister to except from sale, in the ordinary manner, any national land and **reserving the right of disposal of such excepted national land in the Government of Belize for the public interest** as may seem best for any of the purposes stated in the subsection or for "special purposes". One common denomination in all the purposes stated is that they contain a **public interest element**: See Civil Appeal No. 15 of 2001 – **The Attorney General v The Trustees of the United Democratic Party** (the UDP land case, unreported, which the Court brought to the attention of the attorneys for the parties). In that case, the Court of Appeal unanimously held that a disposal of national land by the then Minister of Lands without any consideration to his political party for the construction of the party's headquarters was a gift, and therefore not a disposal for any of the

purposes enumerated in section 6(1) and not even a disposition for "a special purpose."

43. It is therefore manifest that the section is not one that can authorise or validate a disposal of national lands outside of the **public interest purposes** stated in it.

44. I therefore cannot accept, as advanced for the defendants, that the sale of the parcels of land to the claimants was pursuant to **section 6**.

45. The claimants are business persons who purchased the parcels for their potato chip and peanut butter factories. They live smack next to the **Krooman Reserve**. The factories when completed would, they aver, employ a minimum of fifty persons. The claimants are however, **private persons** and the contemplated factories would be **private** businesses. I do not therefore think that the claimants and their factories, would fall within the **public interest** purpose which anchors **section 6(1)**. Mr. Fred Lumor SC, the attorney for the claimants, has not, properly, advanced their case under this section. He pitched their case as one of sale to them by the defendants. This power of sale of national lands is provided for, as I have tried to show, by **section 13** of the Act.

46. It is however the case that **Krooman Reserve** was validly created by the former Minister of Lands pursuant to **section 6**. This section clearly enables a Minister to declare parts of national lands a reserve.

Can a Reserve of National Lands or parts of it be sold?

47. This is at the heart of this case. From a close study of the provisions of **section 6**, I am persuaded that a **reserve** of national lands takes the land in the reserve from out of the stock of lands available for sale by the

Minister. The lands in the **reserve** are set aside to be disposed of by the Government of Belize for the **public interest** for any one or more of the purposes stated in **section 6(1)**, including for "special purposes."

48. However, national lands declared a **reserve**, may be **dereserved**. This would then bring such **dereserved lands** into the stock of lands which the Minister may, pursuant to **sections 5, 7 and 13** dispose of by way of a lease or sale. The process of **dereserving national lands** is simply and clearly stated in **subsection (4) of section 6**.

49. Therefore, absent the **dereservation of national lands** constituting a **reserve**, there can be no warrant for the Minister to sell.

50. On the evidence, however, I am satisfied that the two parcels in question were sold by the Minister pursuant to **section 13** of the Act. But a monumental slip, as I would charitably characterize what happened in this case, was made. The two parcels were part of the **Krooman Reserve**. No fault has been alleged or found on the part of the claimants. Indeed, it is common ground that they **purchased** the two parcels of land, albeit, forming part of a reserve.

51. One of the purposes stated in section 6(1) for which the Minister may reserve national land is *"for any purposes of public defence, safety, utility, convenience or enjoyment."* And another is *"for otherwise facilitating the improvement and settlement of Belize."*

It may well be that the **Krooman Reserve** may meet one or the other of these purposes. However, on it being declared a reserve by the then Minister responsible for national lands in 2007, no purpose was stated. During the hearing there was reference to "the Southside Poverty Alleviation Project". In fact, the Cabinet Release of 28 July 2009, stated

that any assurances given by the (second defendant) to Mr. Chawla (the first claimant) was done in ignorance of the details of the Southside Poverty Alleviation Project. The project recommended the Krooman Lagoon area be reserved and used as a drainage route for all the proposed drainage canals under the project. (See para. 40 of this judgment for the text of the Cabinet Release on Krooman Reserve).

52. However, the Court did not have the benefit of the details of this project as nothing was put in evidence regarding it. Nothing in this judgment however, turns on this project.

53. But the primary objective or purpose of section 6(1) of the Act, in my view, is to enable the Minister responsible for lands to exclude (except) from sale in the ordinary manner, such national lands, reserving to the Government of Belize the right to dispose of such excluded lands as it may deem best in the public interest for any of the twenty-odd purposes stated in the subsection.

Determination

54. I now turn to a determination of this case in the light of the findings and conclusions I have made in this case from the evidence, and what, in my view, is the applicable law. This I do against the background of the relief the claimants seek from this Court. I have set these out at para. 6 of this judgment.

First, with regard to the relief for an order that the decision of the government or Cabinet (to revoke the sale of the two parcels of Krooman Reserve to the claimants), is *ultra vires*, a nullity and void, I am, in the light of my analysis and conclusions on section 6 of the Act regarding **reserve lands**, unable to grant this relief. This is not, of course, to say that a

decision of the government or Cabinet can never be *ultra vires*. The *vires* of decisions of public authorities can only be lawful or sustained, if they are **within** the law. In this case, I find that the decision to revoke the sale of the parcels of lands to the claimants was taken in Cabinet at its meeting on 28th July 2009 (see **Exhibit MR 12** – the Cabinet Release on the matter). This decision was conveyed to the claimants in the letter of 30th July 2009, from the Commissioner of Lands in the second defendant's ministry (see **Exhibit MR 13**). The decision I find, is **not outside** of the provisions of section 6 of the Act in respect of national lands **in a reserve**, as undoubtedly the parcels of land are in this case.

Secondly, in relation to the relief for an order that the decision of the government was arbitrary and irrational and made in breach of natural justice, I find, again, that I am unable to grant this. I find that the circumstances of the decision were not susceptible to the application of the rules of natural justice and the decision was not in the circumstances arbitrary or irrational. The decision may however, be disappointing to the claimants.

Thirdly, I am accordingly unable to grant relief by way of a *certiorari* to quash the decision of the Government of Belize or Cabinet.

Accordingly, I cannot grant an order of *mandamus* directed at the Minister of Lands to cause the claimants to be registered as proprietors of the two parcels of land and land certificates in respect of title thereto be issued to them.

Conclusion

55. However, though I am unable to grant any of the administrative orders the claimants seek in these proceedings, I am satisfied that in the circumstances of this case, they are entitled to some other relief instead.

The rules of the court in fact empower me to do so: see Supreme Court (Civil Procedure) Rules 2005, Part 56 Rule 1 sub-rule (4). This permits the court in addition to or **instead** of an administrative order, without requiring the issuance of any further proceedings, to grant an injunction, **restitution** or **damages**, or an order for the return of any property, real or personal.

56. In fact one of the specific relief claimed in these proceedings is damages. I am satisfied that the claimants are, in the circumstances of this case, clearly entitled to damages.

57. It has not been disputed or denied that the claimants spent considerable sums of money in developing the parcels of land since their purported sale to them by the second defendant. This is in addition to the purchase price they paid for the parcels of land. The level and extent of development on the parcels of land became evident when the court, in the company of the claimants and their attorney, Mr. Lumor SC and Mr. Brackett the Chief Valuer in the Ministry of Lands and the attorney for the defendants, Ms. Perdomo, paid a visit to the lands in issue during the trial of this case.

58. It was observed that on the left as you approach the location of the two parcels of land, there is a modern structure being constructed said to be owned by the claimants separate and distinct from the two parcels in question and a good portion of the land on the left is owned by the claimants. The claimants' residence immediately abuts the two parcels of lands and immediately after his residence there are two parcels of land in question and there was observed a considerable amount of filling of land to the level where it is almost leveled to the lands owned by the claimants. To the left a good bit of clearing was also observed on the land in question for some distance behind which is said to be the Faber's Road layout in the Collet Division.

59. The claimants in their joint affidavit filed on 4th November 2009 stated in paras. 51 to 57 the sums they have expended on their proposed projects for the parcels of land.

60. The claimants, from the evidence, acquired the parcels of lands from the second defendant and went into possession and commenced their preparation for their projects. As a result of the decision of Cabinet to rescind the sale of the parcels because of their reserve status, the claimants cannot now proceed.

61. I will therefore order that the claimants are to be refunded their costs for **acquiring the two parcels of land** plus interest at 6% per annum from 22nd June 2009 (the date on which the claimants paid the Government of Belize the purchase price for the two parcels of land). I also award **the costs of the developments** (including landfill) **carried on by the claimants since they went into possession** up to the 30th July 2009, when the stop, cease and desist order from further development works was served on them. These costs, to be assessed, are to carry interest at 6% per annum from that date until payment.

62. The sale of the parcels of land to the claimants was entirely done by the second defendant and his ministry who were in a position to know that they were part of the Krooman Reserve. This sale cannot now, for reasons I have outlined in this judgment be sustained. But the claimants are entitled to damages for this. I therefore award the sum of $25,000.00 as damages,

63. I must observe that all these costs or most of them can be avoided if the second defendant **dereserves**, if not the whole, at least, parts of the reserve that were sold to the claimants and on which they have carried out development works. But this is a choice entirely for the second defendant

as he is clearly entitled in law to dereserve a reserve or parts thereof. From the evidence, he or his ministry should have known of the reserve status of Krooman Reserve, but nevertheless proceeded to sell parts of it to the claimants.

64. Finally, I award the costs of these proceedings to the claimants in the sum of $30,000.00.

A. O. CONTEH
Chief Justice

DATED: 30th March 2010.