

**IN THE SUPREME COURT OF BELIZE, A.D. 2019**

**CLAIM NO. 660 OF 2019**

**BETWEEN**

**(NEW GENERATION MINISTRIES OF AMERICA CLAIMANT**

**(**

**( AND**

**(**

**(ELMER MARTINEZ**

**(**

**(ASUCENA ANGELICA MARTINEZ**

**DEFENDANTS**

**BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG**

**Delivery Date:**

9<sup>th</sup> June 2022

**Appearances:**

Mr. Ivan Williams, Counsel for Claimant.

Ms. Velda Flowers, Counsel for Defendants.

**KEYWORDS: Land Law - Overriding Interest - Adverse Possession -  
Limitation - Extinction of Title - Prescription - Rectification of Register -  
Registered Land Act Cap 194 (the RLA) - Limitation Act Cap 170**

## JUDGMENT

1. New Generation Ministries of America (New Generation) are the registered owners of a parcel of land in Santa Elena Town, Belize (the Property) on which it claims the Defendants once resided with its consent but now occupy as trespassers. They seek their removal with an injunction, damages, interests, and costs.
2. The Defendants, on the other hand, say that they have, without anyone's consent, been in exclusive undisturbed possession of the Property since around 1997. The Property had, therefore, been transferred to the Claimant subject to their overriding interest.
3. They counterclaim that they are entitled to be registered as the proprietors as they have been in adverse possession for more than 12 years and the Claimant's title has been extinguished by effluxion of time.
4. They seek a declaration of their right to be registered as proprietor and an order of rectification of the Land Register to reflect this. Alternatively, they claim a declaration of an equitable interest in the Land with a resulting right to compensation and interest.

### **The Issues:**

1. Are the Claimants entitled to an order for possession, a permanent injunction and damages for trespass?
  - A. Are the Defendants in adverse possession of the Property?
  - B. If they are in adverse possession, then for how long have they been in possession?

- C. Were they dispossessed by the Claimant or its predecessor in title?
- D. Has the Claimant's title been extinguished?
- 2. Do the Defendants have an overriding interest in the Property?
- 3. Should an order for rectification of the Register be made?
- 4. Alternatively, should the Defendants be compensated for its development of the Property?
- 5. This matter is primarily evidence based and so it seems best to briefly state the evidence before the Court, prior to discussing the relevant issues.

**The Evidence:**

- 6. **Reverend Dr. Robert Brogdon**, former President of El Shaddai Bible Training Centre of Santa Elena Town (the Training Centre), testified that the Training Centre was incorporated on the 2<sup>nd</sup> December, 1985. It was an authorized arm of his organization, the El Shaddai Church & Theological Seminary Inc. of the United States, which was the beneficial owner of the Property.
- 7. In 2009, the El Shaddai Church & Theological Seminary Inc. of the United States transferred its interest in the Property to New Generation Ministries of America (New Generation). New Generation continued its ministry under the El Shaddai umbrella.
- 8. Prior to this transfer, the El Shaddai Church & Theological Seminary Inc. of the United States had placed Pastor Patrick Usher in charge of the Training Centre. Under his management, the building on the Property was constructed from funds raised from the sale of another church also under Pastor Usher's management (there is no date given for this construction).

9. In 1994, Rev. Dr. Brogdon became ill and returned to the USA. Pastor Usher was left to manage the ministry for several years on behalf of the Training Centre. Pastor Usher eventually migrated to the USA in 1997, leaving Mr. Elmer Martinez as caretaker of the Property. Mr. Martinez had been enrolled in the Training Centre for several years, lived on the Property and was an “*employee or worker*” of El Shaddai Ministries.
10. The Church continued to support the ministry financially. He says his records show that payments were sent each month up until 2008 to both Mr. Martinez and Mr. Usher, as they were in fact employees of El Shaddai Ministries. According to the record, only 10 checks seemed to have been sent to Elmer Martinez. They are all dated 1<sup>st</sup> August 1998 but the amounts can not be deciphered.
11. In 2008, the decision was made to transfer the interest in the Property to the Sapps. By 2009, New Generation had obtained legal title and he received reports of Mr. Martinez’s claim to ownership and refusal to grant access to the Sapps.
12. In 2009, ***Carolyn Sapp*** and her now deceased husband purchased the Property from Constance Miller who had initially been selling it to El Shaddai Church. They had it transferred into the Claimant's name and agreed to continue to work in Belize under the umbrella of the El Shaddai Church. They eventually received the company records from Rev. Brogdon and updated the overdue filing fees to bring it up to date.

13. They advised Mr. Martinez that he was to vacate the Property if he refused to work with them. Between 2008 and 2010 they issued numerous letters of demand for him to vacate. They disconnected the water and electricity and were assisted in their efforts by Mr. Ismael Garcia.
14. Notwithstanding, the First Defendant did not leave, insisting he was authorized to be there by Mr. Patrick Usher. When Mr. Sapp attempted to discuss the matter with him, Mr. Martinez called the police who detained Mr Sapp. They visited the Property more than ten (10) times between 2008 and 2010. A police officer from Cayo also went once or twice, on their behalf, without success. Her husband became ill, and they returned to the USA in 2010.
15. They delivered notices of eviction to Mr. Martinez in 2010 and again, in 2019. Her inquiries reveal that he did not reside at the Property but returned there after the 2019 demand letter was served.
16. **Ismael Garcia**, a businessman of Belmopan, says he was hired by Dr. Bernard and Rev. Sapp to procure the land certificate for the Property. He visited the Property with Rev. Sapp but was met with hostility from the Defendants who refused to vacate the Property. He prepared a power of attorney which appointed him and one Carlos August as Rev. Sapp's lawful attorneys generally and in relation to the Property.
17. Shortly thereafter, Rev. Sapp was detained by the police on a report made by the Defendant. Rev. Sapp became ill and eventually left Belize. Before he left, he tried to peacefully remove the Defendants from the Property. He made repeated demands and attempted to access the Property on numerous occasions.

The Defendants expressed a desire for compensation for their removal, but it was never agreed.

18. On Rev. Sapp's instructions, he offered the Property for sale by placing a sign on the perimeter fence. That fence was subsequently broken down. He received no further instructions after Rev. Sapp left Belize. He has travelled frequently pass the Property but has never seen the Defendants there. Under cross-examination, he admitted seeing persons on the Property and clothes hanging in the porch which seems to be clear evidence that the place was occupied up until November 2021.
19. **Cesar Popper** says that in 2015, he worked as a Security Guard at a gas station next to the Property. When he was first hired, he was at his workplace both day and night. He saw the Defendants on the Property in the daytime, but they left at night. There was no water or electricity at the Property, and sometimes he left a line from his workplace so they could source electricity.
20. **Elmer Martinez** admits that the Claimant is the registered owner. However, he says he went to live on the Property as a student of the El Shaddai Bible Training Centre. There was only one house on the Property at that time. He agreed with Pastor Usher to do the yard maintenance, and in exchange attend school for free. He graduated in 1988 but continued to reside there.
21. He and Pastor Usher then started their own church in 1988, El Shaddai Church, and he became the Assistant Pastor. The Property was then owned by the Training Centre which allowed them to live there and promised to give the Land to their church.

22. In 1989, he married the Second Defendant who came to live on the Property with him. They lived downstairs and raised their entire family there. The eldest child now being 28, the youngest 8.
23. Around 1997, Pastor Usher moved to the USA and he, Mr. Martinez, became pastor. With the assistance of his congregation, they built a church building with a thatch roof and improved that building by adding a bathroom.
24. Over the years, the building became dilapidated, so they built the current building in which they now meet for church. It has a nice ceiling with fans, tiled floors, and a landscaped yard; all paid for by church collections and donations.
25. Since they had been promised the Property, they treated it as their own and from 1997 he decided to take possession without acknowledging El Shaddai Training Centre or paying any rent. He and Pastor Usher incorporated The Father's Inheritance Church and Ministries in 2003.
26. The Claimant never built anything on the Property nor operated a church there. He was never employed by the Millers.
27. He had been approached by Bernard and Carolyn Sapp at his home on the Property. They informed him that he and his family would have to move unless he agreed to work with them. He refused and told them he was the owner of the Property. They had the water and electricity disconnected in an effort to force them to leave. They refused to do so.

28. As early as 1997, he had dispossessed the Training Centre and throughout the years the Church, he and his wife have exclusively and uninterruptedly occupied the Property as owners.
29. Further, the Millers knew they had already sold the Property to the El Shaddai Training Centre. So, their transfer to the Claimant must have been done by fraud or mistake. In any event, he had an overriding interest as he has lived and operated a church on the Property from 1997 until present.
30. **Asucena Susan Martinez** says, she lived with Elmer Martinez on the Property since they were married in 1989. They raised their four (4) children there. With the Father's Inheritance Church & Ministries, they exclusively occupied the Property as owners. They spent significant amounts of money and time to develop the Property.
31. She attests to the Sapps coming to their home in 2010 with their claim of ownership and that their water and electricity were disconnected two (2) weeks later. Nonetheless, they continued to have church meetings on the Property without the utilities for more than 10 years. Living there has been difficult but they have never left because they were certain the Property belonged to them.
32. **Clarence Jones** testified that he knows Mr. Martinez has lived on the Property for over 25 years and has never abandoned it. He lives on the land opposite and has seen him mowing the lawn or making church preparations. He does not know if Mr. Martinez owns it or if he was there with the permission of someone else.



33. **Javier Munoz** added little more than Clarence Jones. He said he attended The Fathers Inheritance Church since 2000 and Pastor Martinez has been his pastor all that time. He made a correction under cross-examination that the El Shaddai Church changed its name in 2003 to The Fathers Inheritance Church so he had simply referred to it by its new name. He did not know if Mr. Martinez was on the Property with or without permission.

**Are the Claimants entitled to an order for possession, a permanent injunction, and damages for trespass?**

**A. Are the Defendants in adverse possession of the Property?**

**B. If the Defendants are in adverse possession then for how long have they been in possession?**

**C. Were they dispossessed by the Claimant or its predecessor in title?**

**D. Has the Claimant's title been extinguished?**

**The Claimant's Submissions:**

32. Counsel for the Claimant referred to Section 138 of the Registered Land Act which deals with Prescriptive Title. He explained that it required open, peaceful, and uninterrupted possession for a period of 12 years without lawful permission.

33. He informed that actual possession alone was insufficient. There must be possession (factual possession) which was inconsistent with and in denial of the true owner's title (the requisite intention to possess). He reminded that the paper title owner could not be in possession at the same time as the squatter.

34. The facts as he found them were that First Defendant was on the Property with permission of the predecessor in title from 1997 to 2009 and thereafter, he was

given notice to quit and became a squatter. The Defendants, therefore, did not have the requisite period of time for prescriptive title since time stopped running at the date of institution of these proceedings on 17<sup>th</sup> October 2019.

35. The Claim could not be statute barred as the Claimant's right to recover the Land began when it obtained title on the 16<sup>th</sup> October 2009. The matter was therefore well within the time limit.

**The Defendants' Submission:**

36. Counsel also referred to Section 138 of the Registered Land Act then went on to discuss what was necessary to prove adverse possession. She relied on *Tiabo v Flowers and Buller Claim No 197 of 2019* that there must be proven both the factual possession or physical control and the intent to exclude the paper owner and the world at large.
37. Counsel submitted that the First Defendant has been in adverse possession since 1997 when the Training Centre ceased to exist. He and Pastor Usher then began to hold church on the Property under the name of the El Shaddai Church. They held no licence and paid no rent. They started treating the Property as their own because it had been promised to them by Rev. Dr. Brogdon.
38. When Mr. Usher left in 1997 the first Defendant continued in possession without the permission or consent of anyone. In June 2003, he and Mr. Usher incorporated The Father's Inheritance Church and Ministries on their own behalf and not under the umbrella of any other organization. At the very least, the First Defendant was in possession since 2003 when the church was incorporated.

39. She urged that the evidence of Rev. Dr. Brogdon supports this fact since he said he had received property and ministry documents from Pastor Usher in 2009 but had been asking for them without success since 2003. Pastor Usher's refusal from 2003 is significant.
40. Counsel continued that the possession was peaceful and undisturbed. There was no evidence of acknowledgement of ownership by the Claimant's or their predecessor in title. They were not dispossessed and by the time these proceedings were brought, they had been in possession for more than 12 years so that the limitation period had expired.
41. She asked the Court to appreciate that Section 139 (1) creates a presumption in favor of the Defendants. The Claimant must show that the Defendants were not in possession as the law presumes and they have failed to rebut the presumption.
42. At this juncture, Counsel assured that the Claimant's title had been extinguished by the Defendants' adverse possession and the effluxion of time barred any possibility of bringing an action. She referred to Sections 12 (2) and 22 of the Limitation Act.

### **Court's Consideration:**

#### **The Relevant Legislation:**

43. The Limitation Act Section 12 *“(2) No action shall be brought by any other person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person:  
Provided that, .....*”

Section 22: “Subject to the provisions of section 15 and of any law relating to the registration of land titles, at the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person to the land shall be extinguished.”

The Registered Land Act Sections 138 - 139:

“138. -(1) Subject to subsection (2), the ownership of land may be acquired by open, peaceful and uninterrupted possession for a period of twelve years and without the permission of any person lawfully entitled to such possession.

(2) ...

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

139.-(1) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof, at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date been in uninterrupted possession of the land or in uninterrupted receipt of the rents or profits until the contrary be shown.

(2) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his possession shall be deemed to have the possession or receipt of the rents or profits by the claimant.

(3) ...

(6) Possession shall be interrupted-

(a) by dispossession by a person claiming the land in opposition to the person in possession;

(b) by the institution of legal proceedings by the proprietor of the land to assert his right thereto; or

(c) by any acknowledgement made by the person in possession of the land to any person claiming to be the proprietor thereof that such claim is admitted.”

44. The Court must begin by again stating that there is a difference between prescription and limitation. The parties in these proceedings seem often and to varying degrees to conflate the two.

45. As explained in *Taibo (ibid)* at paragraph 15:

“As *Megarry & Wade* explains in *The Law of Real Property (6th ed)* at paragraph 21-002, prescription and limitation must be distinguished. Prescription is a common law doctrine which has now been put into statute form. It deals with a ‘presumption of a grant from the owner of the land and title is derived through him.’ The Registrar, once she is satisfied, is empowered by section 142 (1) (b) of the RLA to rectify the register to reflect the right of ownership acquired. Limitation is different. There is no possibility of acquisition of registered title through operation of the Limitation Act. Title of the dispossessed owner is merely extinguished and any action by him to recover land is barred. Title to registered land

*can only then be derived by the adverse possessor through registration on the basis of prescription. The very use of the word 'may' in section 138 (3) of the RLA indicates that there is nothing mandatory about the application for registration. Your existing right to ownership is not lost simply because you fail to register."*

46. So, limitation deals with ousting rights by the passage of time while prescription deals with the acquiring of rights by the passage of time. For registration as proprietor through prescription, the applicant must, therefore, prove to the registrar's satisfaction that they have been in open, peaceful, and uninterrupted possession for a period of twelve years, without the permission of any person who is lawfully entitled to possession. A declaration of adverse possession and the extinction of title ought to be sufficient for that purpose.
  
47. The Court agrees with both parties that to prove adverse possession there must be the factual possession and the intent to possess to the exclusion of the paper title holder. Because there is a presumption that the paper title holder is in possession the adverse possession must be "*inconsistent with and in denial of the title of the true owner*" **Megarry and Wade (ibid) 21-016**.
  
48. In ***Toolsie Persaud Ltd V Andrew James Investment Ltd and others 2008 CCJ 5 (AJ)*** a case presented by the Claimant the court endorsed ***JA Pye (Oxford) Ltd v Graham [2002] UKHL 30*** and stated quite precisely what the required proof is:  
  

[28] "*Thus, the position is that a claimant to land by adverse possession needs to show that for the requisite period he (and any necessary predecessor) had*  
*(i) a sufficient degree of physical custody and control of the claimed land in the light of the land's circumstances ("factual possession"), and*  
*(ii) an intention to exercise such custody and control on his own behalf and for his own benefit, independently of anyone else except someone engaged with him in a joint enterprise on the land ("intention to possess").*

*[29] This latter requirement serves to make it clear that the factual possessor is not merely the landowner's licensee or tenant or trustee or co-owner but is independently in possession, so that it is obvious to any dispossessed true owner (or any true owner who has discontinued possession of his land) that he needs to assert his ownership rights in good time if he is not to lose them. Intention to possess thus extends to a person intending to make full use of the land in the way in which an owner would, whether he knows he is not the owner or mistakenly believes himself to be the owner...."*

49. With that in mind, we consider the evidence before us. There is no issue that the Claimant was the paper holder or that they had received title through the Millers. The Millers seemed to have been holding it on trust for the El Shaddai Bible Training Centre or some affiliate. In any event, the Millers transferred title on the directive of Rev. Dr. Brogdon and that transfer was never impugned.
50. There is no doubt that the First Defendant was in occupation. From the moment Pastor Usher left in 1997, the First Defendant appeared to be the only one there in physical control of the Property. The Training Centre was no longer operational and there was just the Ministry which Mr. Martinez said he (as assistant pastor) and Pastor Usher had started in 1988. However, occupation alone does not create or confer rights.
51. Mr. Martinez said he became the pastor when Pastor Usher left in 1997. There is no proof of this, save his bald statement. Further, the very name of the church, the El Shaddai Church, leads me to believe that they conducted that ministry under the umbrella of the El Shaddai Church & Theological Seminary Inc. of the United States. Their need for affiliation appears clear and strong.
52. The church was also sited on land which the Training Centre also occupied. Rev. Dr. Brogdon testified that Pastor Usher had also been tasked to promote the work of the ministry. This is feasible as he was a pastor after all.

53. Rev. Dr. Brogdon never left until 1994 and this was not contested. Surely, he would have noticed if Pastor Usher had started his own independent church with Mr. Martinez as his assistant Pastor. His financial statement for what it is worth (and I shall discuss that in more detail shortly) also showed sums being disbursed to the First Defendant up to August 1998.
54. More importantly though, Mr. Martinez, himself, stated that in 1988 the Property was owned by the Training Centre (paragraph 9 of his witness statement). This is a clear acknowledgment that he did not see himself or Pastor Usher as the owners of the Property.
55. He went on to say that the Training Centre allowed him and Pastor Usher to live there and promised to give the Property to their church, but he did not say when this promise was made, by whom or to whom it was made. This omission speaks volumes.
56. It was only under cross-examination that he revealed that the promise was made by Rev. Dr. Brogdon. This is a recognition that Rev. Dr. Brogdon somehow controlled the ownership of the Property.
57. In fact, even as Mr. Martinez says he constructing the church building in 1997 he labored under the belief that the Property would eventually be given to them as promised (paragraphs 14 - 16 of his witness statement). This too indicates that he continued to acknowledge that there was some other owner which goes counter to a true intention to possess.

58. It seems more likely than not that the ministry to which Mr. Martinez referred was in fact part of the work of the El Shaddai Church & Theological Seminary Inc. of the United States. He and Mrs. Martinez eventually admitted under cross-examination that the ministry was under the umbrella of the Training Centre. He also admitted that Pastor Usher was the manager or dean of the Centre under the authority of Rev. Dr. Brogdon.
59. So, this Court finds that his right to occupy the property came directly through his affiliation with that organization and the permission given by them whether through Pastor Usher or otherwise. By also acknowledging the Training Centre's ownership of the Property, Mr. Martinez has failed to prove the requisite intention of possessing the Property as far back as 1997.
60. This Court is not convinced that there was any intention by the Second Defendant to take full control of the Property in 1997 either. She joined the First Defendant in occupation in 1989 when they were married. Her claim is inextricably linked to his and there is nothing provided which would demonstrate any such intent on her part.
61. So, we move on. It would appear that Mr. Martinez and Pastor Usher remained in contact, as together they incorporated The Father's Inheritance Church and Ministries in 2003. Since Pastor Usher migrated to the USA in 1997, there is no evidence that he ever returned. However, this incorporation signals a significant change. This Court believes it to be precisely when Mr. Martinez decided to take full possession of the Property.



62. The newly registered church carried no trace of any affiliation to the El Shaddai Church & Theological Seminary Inc. of the United States. There seems to be a definite intention to distance this new church from the El Shaddai umbrella.
63. Rev. Dr. Brogdon's testimony supports this shift since it is around that time that he said Pastor Usher refused to hand over church documents. Further, the corporate fees were left unpaid for the Training Centre since Mrs. Sapp testified to having to bring those up to date.
64. The Court also notes Rev. Dr. Brogdon's testimony that the Training Centre helped its students start churches. This would mean that as a graduate, Mr. Martinez was well equipped to start his own church.
65. During all this time, from 2003 up to 2008 or 2009 when the Sapps began to agitate, there seemed to be no communication between the El Shaddai Church & Theological Seminary Inc. of the United States and Mr. Martinez. Rev. Dr. Brogdon had already left in 1994. He did not testify to returning to Belize or to anyone doing so on behalf of this organization.
66. If indeed there was still some ministry existing, why was there no real show of interest? Although he says his organization continued to support the ministry on behalf of the Training Centre, the proof he provided was woefully inadequate.
67. He provided a document which was barely legible and titled New Covenant Fellowship Custom Transaction Detail Report January, 1, 1992 through July 21, 2008. It seemed to be a spreadsheet prepared by an unknown person, for an

unknown organization (which Rev. Dr. Brogdon says is some affiliate) and the source of the information continues to be unknown.

68. The document purports to show money being sent to Elmer Martinez up to 1998. There are line items in Pastor Usher's name and others which make reference to Belize which go up to 2004. But Rev. Dr. Brogdon's evidence was that the church was supported up to 2008. Where then is any proof that any money was disbursed after 2004? And if Mr. Martinez really was an employee, why are there no more entries for direct payments to him?
69. Actually, there is no real proof that the El Shaddai Church & Theological Seminary Inc. of the United States or any of its affiliates sent or continued to send money to Mr. Martinez for either the training school or the Ministry. Mr. Martinez, under cross-examination, says he received money only from Pastor Usher. By this time, he and Pastor Usher had started their own church.
70. There is no evidence that Mr. Martinez was even employed by the El Shaddai Church & Theological Seminary Inc. of the United States or its affiliates in 2003. Rev. Dr. Brogdon offered nothing whatsoever in support of this statement. Why did he find it necessary to send money to an employee in Belize (Mr. Martinez) through Pastor Usher who was by then residing in the USA? He offered no explanation whatsoever for this course of action and it definitely called for explanation.
71. In fact, in a document dated 16<sup>th</sup> November 2010, Rev. Dr. Brogdon spoke only to supporting Pastor Usher financially. There was no mention of supporting or paying Mr. Martinez. He also said that at one point, he tried to speak with Mr.

Martinez about being accountable and he was told by Mr. Martinez that Mr. Usher was his spiritual leader, and any business would be done by Mr. Usher. It is noticeable that there was no date (not even a year) given for this alleged conversation. This Court simply could not believe this version of events.

72. In the ordinary course of things between an employer and an employee in two different countries, one would have expected to see some correspondence between the two. Whether giving progress reports or directives (Rev. Dr. Brogdon did say there were reports of some kind up to 2006 they were not in evidence). Even some seriously worded letters of inquiry could be anticipated when there were suspicions with the associated demands for immediate explanation and accounting. There was none.
73. There could also have been bank transaction statements, receipts or proper financial records which would have been quite helpful. Mrs. Sapp said there were cancelled checks which support the allegation. Those are noticeably absent and the spreadsheet, even if taken at its highest, is worthless in furthering the Claimant's case.
74. There is still no proof that Mr. Martinez continued to show any affiliation with that organization, and more importantly that Mr. Martinez ever left the Property or acknowledged the Training School's or New Generation's ownership from the time he changed the name of the Church.
75. In that same 2010 document, Rev. Dr. Brogdon states quite definitively that from the missing paperwork, it seemed that someone was trying to cover up or

take the property from the Training Centre. Yet, it took another nine (9) or so years before any action was taken by way of this claim.

76. There is no evidence whatsoever that Mr. Martinez was employed by the former paper title owners, or the Claimant as pleaded by the Claimant. The testimony from Mrs. Sapp is that he categorically refused to work with them or to acknowledge any ownership they claimed to have to the Property.
77. There is no evidence that he was there with the Claimant's consent either as pleaded. There is no evidence that the Claimant built anything on the Property, again as pleaded. Mrs. Sapp's own evidence was that the El Shaddai Church had built a building with ministry funds.
78. There is no evidence that the Claimant or its predecessor in title ever dispossessed the Defendants. A letter/eviction notice from an attorney does not dispossess any more than cutting off utilities or sending police officers to speak on your behalf, does.
79. The Sapps left Belize without dispossessing the Defendants. They knew all their attempts had been unsuccessful. It appears to me that what should have been their reasonably expected reaction simply never occurred until the 2019 filing of this Claim.
80. Actually, when the Martinez family endured all this and still refused to move that sent a strong clear message of their intention. They were the rightful owners, and they were not about to be easily removed.

81. Whether they resided there all the time or not does not assist the Claimant either. The Defendants controlled the Property independently without the permission of anyone and nothing to the contrary has been proven to the civil standard. The paper owners and anyone else looking on would have seen the Defendants making use of the Property as if they were the owners.
82. The Court, therefore, finds that the Defendants have been in adverse possession since 2003. The Claimants and their predecessor in title have sat for far too long on their rights. By 2019, when this Claim was filed, the Defendants would have been in possession well beyond twelve years. This bars any action for recovery of the Property being made by the Claimants.

### **Do the Defendants have an overriding interest in the Property?**

The Relevant Legislation:

83. The Registered Land Act Section 26:

*“Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, but subject-*

*(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and*

*(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register:*

*Section 31.-(1) Subject to subsection (2), unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register-*

*(a) .....*

*(f) rights acquired or in the process of being acquired by virtue of any law relating to limitation or prescription;*

*(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed;”*

**The Court’s Consideration:**

84. The Defendants' presence on the land has been attested to by witnesses on both sides so that when the Claimant bought the Property in 2009 and became the registered proprietor, this Court finds the Defendants were in actual occupation and this secured for them an overriding interest (Section 31 (1)(g) of the RLA) which needed no registration under the RLA.
85. The Defendants lived there, raised their children there and held church there. They were seen by many, and their presence was known by the Claimant before they even purchased the Property. Mrs. Sapp states at paragraph 7 of her witness statement:
- “My Husband, along with Mr. Carlos August and Mr. Ismael Garcia, approached the 1<sup>st</sup> Defendant at the property to request that he delivers the records of the ministry and that he work with us after we purchased the property. The Defendant refused, however, and claimed that all the records of the ministry had been burned.”*
86. So, the Defendants' presence on the Property, associated with their rights which they were in the process of acquiring by virtue of Sections 12(2) and 22 of the Limitation Act (see Section 31(f) of the RLA) had not been enquired into by the Claimant before purchase and so the Property was in fact bought subject to the Defendants' overriding interest.
87. On the Counterclaim this Court is prepared to make a declaration as to limitation, the extinction of title and the existence of an overriding interest. On the strength of these declarations, the Defendants may apply to the Registrar for registration as proprietors through prescription.

**Should an order for rectification of the Register be made?**

**Alternatively, should the Defendants be compensated for its development of the Property?**

88. There is no need to discuss or consider issues 3 and 4. But for completion, there was no fraud specifically pleaded or proven and this can not simply be inferred as Counsel for the Defendant appears to be submitting. The mistake which the Defendants allude to in their submissions is no mistake at all. The Court has no basis on which to order a rectification of the register. Issue 4 is in the alternative and that speaks for itself.

**Disposition:**

It is Ordered:

1. The Claim is dismissed.
2. Judgment for the Counter Claimants on the Counterclaims.
3. Costs to the Defendants in the sum of \$6,500.00 as agreed.

It is Declared:

4. Elmer Martinez and Asucena Martinez have been in open peaceful and uninterrupted possession of all that piece or parcel of land known as Parcel 3614 Block 23, Santa Elena/Cayo Registration Section situated on the George Price Highway, Santa Elena Town, Cayo District, Belize for a continuous period of twelve (12) years without the permission of any person lawfully entitled to possession.
5. New Generations Ministries' title to all that piece or parcel of land known as Parcel 3614 Block 23, Santa Elena/ Cayo Registration Section situate on the George Price Highway, Santa Elena Town, Cayo District, Belize has been extinguished.

6. Elmer Martinez and Asucena Martinez have an overriding interest in all that piece or parcel of land known as Parcel 3614 Block 23, Santa Elena/ Cayo Registration Section situate on the George Price Highway, Santa Elena Town, Cayo District, Belize.

**SONYA YOUNG**  
**SUPREME COURT JUDGE**