

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. AP 387/2023

BETWEEN:

[1] RAMON LANDERO  
[2] ANGEL LANDERO  
[3] HENRY LANDERO  
[4] BENDICTO LANDERO  
[5] DARLINGTON LANDERO

Applicants

AND

[1] ATTORNEY GENERAL OF BELIZE  
[2] REGISTRAR OF LANDS  
[3] COMMISSIONER OF LANDS & SURVEYS  
[4] FOWLER WORKS ENTERPRISES LIMITED  
[5] LUIGI LUNGARINI  
[6] FELICE CARUSO  
[7] GIANNI CARUSO

Respondents

**Appearances:**

Mr. William Lindo for the Applicants  
Ms. Imani Burges with Mr. Stanley Grinage for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents  
The 4<sup>th</sup> to 7<sup>th</sup> Respondents were absent and unrepresented

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2024: October 30, 31;

2025: January 17;

May 5,

May 19.  
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***Law of Property Act – Title by Prescription – Burden of proof***

## JUDGMENT

- [1] **GOONETILLEKE, J.:** The 1<sup>st</sup> to 4<sup>th</sup> Applicants are brothers, while the 5<sup>th</sup> Applicant is a nephew to the 1<sup>st</sup> to 4<sup>th</sup> Applicants. The Applicants apply to court pursuant to **Section 42** of the **Law of Property Act**<sup>1</sup> on the basis of uninterrupted, long possession since 1979, for title to approximately One Thousand Acres of Land situated in Duck Run, Cadenna Creek Area, Cayo District.
- [2] Within this large area of land, the Applicants individually claim title to smaller parcels of land on the basis of long, uninterrupted and open possession as follows;
- (a) The 1st Applicant, RAMON LANDERO, to the fee simple of land, measuring **496.92 acres**;
  - (b) The 2nd Applicant, ANGEL LANDERO, to the fee simple of land, measuring **300 acres**;
  - (c) The 3rd Applicant, HENRY LANDERO, to the fee simple of land, measuring **50 acres**;
  - (d) The 4th Applicant, BENEDICTO LANDERO, to the fee simple of land, measuring **100 acres**;
  - (e) The 5th Applicant, DARLINGTON LANDERO, to the fee simple of land, measuring **50 acres**.
- [3] In support of their claim, each of the claimants filed an affidavit setting out the circumstances of their possession and a sketch/map, annexed to their respective affidavits depicting the larger land and a coloured outline of the specific area claimed individually.
- [4] The affidavits filed by the claimants are as follows;
- a) Affidavit of Mr. Ramon Landero sworn to on the 24th day of June, 2022; with parcels of land outlined in **Red** in Exhibit **RL1-1** depicting the extent of Land claimed;
  - b) Affidavit of Mr. Angel Landero sworn to on the 24th day of June, 2022; with a parcel of land outlined in **Green** in Exhibit **AL1-1** depicting the extent of Land claimed;
  - c) Affidavit of Mr. Darlington Landero sworn to on the 24th day of June, 2022; with a parcel of land outlined in **Blue** in Exhibit **DL1-1** depicting the extent of Land claimed;

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<sup>1</sup> Chapter 190, Substantive Laws of Belize, Revised Edition 2020

- d) Affidavit of Mr. Henry Landero sworn to on the 27th day of June, 2022; with a parcel of land outlined in **Purple** in Exhibit **HL1-1** depicting the extent of Land claimed; (Henry Landero had on a date after making his affidavit passed away)
- e) Affidavit of Benedicto Landero sworn to on the 27th day of June, 2022; with a parcel of land outlined in **Orange** in Exhibit **BL1-1** depicting the extent of Land claimed;
- f) Affidavit of Mr. Carlos Landero sworn to on the 30th day of November, 2023; with the parcel of land outlined in **Yellow** in Exhibit **CL1-1** depicting the contours and boundaries of the larger Land within which the 1<sup>st</sup> to 5<sup>th</sup> Applicants had claims for their individual parcels of land. Carlos Landero is the brother of the 1<sup>st</sup> to 4<sup>th</sup> Applicants and the father of the 5<sup>th</sup> Applicant. Carlos Landero made no claim of his own but gave evidence to support the claim of the Applicants.

[5] The 1<sup>st</sup> to 3<sup>rd</sup> Respondents relied on the affidavits of Mr. Talbert Bracket, Commissioner of Lands and Surveys, Department of the Ministry of Natural Resources, Petroleum and Mining; and Mr. Mario Castellanos, Lands Inspector, of the Department of the Ministry of Natural Resources, Petroleum and Mining. Mr. Bracket gave two affidavits while Mr. Castellanos gave three affidavits.

[6] On the 17<sup>th</sup> of July 2024, this court permitted parties to apply to court to amplify the evidence given by affidavit. On the first date of the hearing of the substantive matter, counsel for the Applicants and the 1<sup>st</sup> - 3<sup>rd</sup> Respondents applied to amplify the evidence of their respective witnesses, and be subjected to cross examination; neither party objecting to other's the applications. Accordingly, court granted both applications for amplification of evidence.

## **EVIDENCE ON BEHALF OF THE APPLICANTS**

### Carlos Landero

[7] Mr. Carlos Landero in his affidavit states that his father together with himself and his brothers worked the land since 1978 and built a wooden house in 1979 and two other wooden houses on the land which burned down during a fire and in which fire several documents were lost. He states they had lived in this house since 1979 as a family home He also states they engaged in agriculture growing rice, beans, corn, avocado and coconut, which the family does to this day.

- [8] When giving *viva voce* evidence, in amplification of his affidavit and in cross examination, Mr. Carlos Landero stated that each of his brothers and he himself have houses in the village of *Santa Familia*, which is located nine (9) miles from the land. He also stated that his father and his brothers camped on the land in the wooden houses from Monday to Friday and returned home for the weekend. He confirmed that his mother did not live on the land but stayed back at *Santa Familia*.
- [9] He also marked on the sketch/map marked CL 1-1, three "x" s. The first 'x' was given the marking CL 1-1 X1, towards the bottom left of the sketch/ Map (second square from bottom left and two squares up from the bottom in the grid of the map) which was the place the original wooden house was built. Two other 'x' s were marked as CL 1-1 X2, and CL 1-1 X3 where the two other wooded sheds/houses were built which were located in the same grid of the sketch/map but further to the right and lower than the 'x' – CL 1-1 X1. He also marked on the same sketch/map two lines indicating roads that were used to access the land – the first line he drew, was a line indicting a road, which was a diagonal line tapering to the bottom and the right; a line traversing the square on the grid of the map which is third from the bottom and two squares from the left margin, all the way to the right side end of the square on the grid of the map which is second from the bottom and three squares from the left margin of the map. The line projects downwards diagonally to the right and ends in the middle of the right marking of the said second square from the bottom and the third square from the left of the grid map. This line was given the marking CL 1-1 A1. The second line is a vertical line in the grid in which the three 'x's were marked; the line traverses the grid in the middle from the top to three quarters of the square in the grid to the bottom. This line was given the marking CL 1-1 A2.
- [10] While he stated there was a fence on the land and showed pictures of the fence attached to his affidavit, this fence is not the original fence, the barbed wire in the picture looks new and the fence does not enclose the entirety of the land only about 100 acres according to him (annexure CL 1-2). There were no pictures of the original house or pictures from about 1979. He said the house on the land burned down in about 2021. In cross examination he admitted that there was no police report of the incident relating to the burning down of the house. Mr. Carlos Landero also confirmed that the pictures annexed as CL 1-4 to his affidavit were not those of the house on the land. The pictures indicate the house has a zinc roof, not a thatched roof, and that it has a tiled floor and a refrigerator indicating there is electricity. Mr. Carols Landero stated when questioned by court that the house depicted in CL 1-4 was a house in the village of *Santa Familia* and not situate on the land being claimed.

- [11] He stated that after the fire a new house was built about 10 years ago (in or about 2014 where CL 1-1 X2, CL 1-1 X3 was marked on the map). This was the thatched house he referred to in his affidavit. He said there is no electricity on the land and the water was obtained from a spring on the land.
- [12] He stated further that when the children of the family were small they attended primary school in the village of *Santa Familia*, while they resided there.
- [13] Mr. Carlos Landero also stated that they employed the Mennonites to use tractors and clear and plough about 150 acres of land and that the neighbours respected their boundaries. In cross examination it was put to him that none of the neighbours were giving evidence in this matter; his response was there was no dispute with the neighbours so there was no need to call them to give evidence.
- [14] Interestingly, in re-examination, Mr. Carlos Lendero stated that they thought the land was private land initially, and paid rent to one Mr. Alfred Burns at the rate Five Dollars a year, just to do farming. He opined that the government acquired the land in about the 1980's and that the government asked them to have a boundary line and that is when they ran a fence on the northern side. He also stated that as one Jonny Robinson had a concession for logging from the government, they sold logs to Robinson who had a mill. He also stated that the then Minister Florencio Marin had asked them and told them that they could do their farming on this land. He said that since the 1980's they had no problem with the land and that the family farmed the land without paying any rental.
- [15] The witness, showed familiarity with the layout of the land and the sketch/ map. He was however, only giving evidence in support of the claims of his brothers and his son. He made no claim to this land.

Benedicto Landero

- [16] Mr. Benedicto Landero, in his affidavit states that he has been in possession of an extent of land about 100 acres since 1979, that he has grown crops on it and fenced it and been in open and peaceful possession of that portion of the land since 1979.
- [17] He gave evidence in amplification of his affidavit remotely by video link from the United States of America (US). He stated that he was born in 1961 and that from about the age of 8 he helped his father to cultivate the land. He also stated that he left for the US in 1981 to pursue his studies and did not return for about 8 years due to issues with immigration.

[18] He has since then been visiting Belize once a year, stays for about two weeks when he gets leave from work and returns to the US. He has a family of three children who were born and raised in the US and live there. He said he owns a house and property in the US. Mr. Benedicto Landero also said he has lived and worked in the US since 1981 and is looking forward to come to Belize and do farming on his land in retirement.

[19] In cross examination he was asked if he was in continuous possession of this land, to which he replied that his brothers looked after and cultivated the land and fenced it for him.

Mr. Ramon Landero

[20] In his affidavit, Mr. Ramon Landero states that he constructed a wooden house on the land and lived in it since 1979. He states that he planted various forest produce including mahogany, cedar and rosewood and that his brother Carlos would apply for the permits on his behalf to exploit the forest produce. He also states that he uses about 150 acres for modernized farming and the rest about 200 acres is used for grass farming and the planting of trees. He states in his affidavit that he has raised his children on the land and that this is the only home he has known the majority of his life.

[21] In amplification of his affidavit, Mr. Ramon Landero in his *viva voce* evidence was unable to identify the land he was claiming on the sketch/map he had produced as RL 1-1. He stated that this was prepared by his brother Carlos who had read the affidavit over to him and that he signed it. He also stated that he has a home in the village of *Santa Familia* and that he had camped on the land. He confirmed that he only worked about 150 acres of land, the rest being reserved for forestry.

[22] The forest permits annexed to Mr. Ramon Landero's affidavit marked compendiously as RL 1-3, indicate that the permits were applied for by Carlos Landero who is resident at "*Santa Familia Village*". The description of the area on which the forestry produce is to be exploited, refer the land as "*lease land situated in Fowler's area and Duck Run Cadena Creek*". There is no indication that these permits were issued to Ramon Landero.

Mr. Angel Landero

[23] Mr. Angel Landero in his affidavit also states that he had entered on to the land and cultivated it since 1979 and continues to be in possession of the land to date. He too states that he had built a wooden

house on the land in 1979 and lived in it and erected a barbed wire fence on the land. Interestingly, he states at paragraph 12 of his affidavit that his brother Carlos applied for the permits for him to exploit the forest produce of the land. The permits are exhibited compendiously marked AL 1-5. A closer examination of these documents indicate that they are the identical forest permits exhibited marked RL 1-3 annexed to the affidavit of Mr. Ramon Landero, indicating that there were no new permits applied for or on behalf of Mr. Angel Landero. The permits are in the name of Mr. Carlos Landero and there is no indication that they have been obtained for anybody else.

[24] Further, the documents and pictures marked AL 1-2, AL 1-3 and AL 1-4 annexed to the affidavit of Mr. Angel Landero are the identical documents and photographs marked RL 1-2, RL 1-4 and RL 1-5 annexed to the affidavit of Mr. Ramon Landero. AL 1-2 corresponds to RL 1-2. AL 1-3 corresponds to RL 1-4 and AL 1-4 corresponds to RL 1-5.

[25] In amplification of his affidavit and in cross examination Mr. Ramon Landero stated that he lived on the land during the week days with his brothers to work the land and that his children and family live at *Santa Familia* village. Importantly he too was unable to identify the land he claimed on the sketch/map he had annexed to his affidavit marked AL 1-1. He stated that his brother Carlos “did everything” and that he trusts his brother Carlos. He also stated in his *viva voce* evidence that he does not know the exact land area he claims as he did not measure it. He stated that his brother Ramon was to get about 150 acres, so he now moved more to the edge of the land.

[26] Mr. Angel Landero also confirmed that the Mennonites bull-dozed the land about 20 years ago to clear the land. As regards the land he claims he states that about 10 acres was cleared by the Mennonites using bulldozers and that another 10 acres was cleared by hand using machetes. He also stated that at times he found Guatemalans hunting on the land and asked them to leave. He confirmed in his *viva voce* evidence that he had not fenced the land and that his land is in the corner and there was no need for a fence.

Mr. Darlington Landero

[27] In his affidavit, Mr. Darlington Landero claimed possession of about 50 acres of land. He also stated that he had been in open peaceful and uninterrupted possession of the land since 1979 and that he had cultivated fruits and vegetables on the land. Her also states that he built a house on the land in

1979 and that he lived in that house and made it his family home. He states in his affidavit that he also erected a fence and produced a picture of it marked DL 1-2. He states he raised his children on this land.

[28] In his *viva voce* evidence in amplification of his affidavit, Mr. Darlington Landero stated that he cannot read and write and that the secretary of his Attorney read out his affidavit several times to him and that having understood it he signed it. He was also unable to identify his land on the sketch/map marked DL 1-1 annexed to his affidavit.

[29] He states that he measured the land of 50 acres himself, by walking and making manual estimates of the land extent he claimed. It was also his evidence that he lived in this hut on the land but that he went to Mexico for about six (6) months of the year to teach “*Kundalini*” Yoga to obtain an income. He stated that his wife lived overseas and came to visit for about 2 weeks of the year and did not live in the hut on the land. Further, he stated that he had children from another previous union and that those children are not on the land and did not live on the land. This part of his evidence contradicted his affidavit in which he stated that he raised his children in this home on the land. He stated in his *viva voce* evidence that the hut was not a family home that when he was there he lived with the “birds and animals”. He stated that he farmed the land with his uncles and that Carlos Landero was his father, who obtained the permits for the land.

#### Mr. Henry Landero

[30] Though an affidavit was filed for Mr. Henry Landero, the court was informed by Mr. Lindo, counsel for the Applicants that Mr. Henry Landero was deceased. Mr Henry Landero in his affidavit had claimed 50 acres of land and produced a picture of a fence marked HL 1-2. Court observes that the document HL1-2 is identical to the exhibits marked DL 1-2 annexed to Mr. Darlington Landero’s affidavit and also identical to the annex marked BL 1-2 annexed to Mr. Benedicto Landero’s affidavit.

### **EVIDENCE ON BEHALF OF THE 1<sup>ST</sup> TO 3<sup>RD</sup> RESPONDENTS**

#### Mr. Talbert Brackett

[31] Mr. Brackett produced two affidavits in opposition to this application. In the first affidavit, sworn to on or about the 28<sup>th</sup> of November 2022, he states that he is the Commissioner of Lands and Survey and that

it is his duty to appraise the Minister responsible for Lands on all issues in relation to land disputes and conflicts relating to land.

[32] Mr. Brackett states that he is advised that he has had notice of the Application filed by the Applicants for title of the land on the basis of Section 42 of the Law of Property Act, and opposes the application.

[33] He states that the land claimed for by the Applicants is situated outside the compulsory registration area.

[34] He also states that he has been advised by the Solicitor General that in respect of land situated outside the compulsory registration area an application ought to be made under section 42(1) of the Law of Property Act and according to the Practice Direction No. 2 of 2011 made in terms of Section 42(3) of the said Act.

[35] Mr. Brackett states that most of the lands for which the Application has been made by the Applicants under Section 42 of the Law of Property Act, is the subject of another application by Fowler Works Enterprises Limited for a lease and thereafter a Grant by the Minister. He states however that Fowler Works Limited has not yet obtained a certificate of title to the land but has an interest in the land. He goes on to state that he has been advised by the Solicitor General that the Landeros' application under Section 42 of the Law of Property Act cannot be made under the said Practice Directions as there are other persons that have a legal interest in the land and that the applicants have not followed the prescribed procedure set out in the Practice Directions when making such an application.

[36] He also states that service of the Notice of the Application was received late and that in those circumstances the objection was belated. Mr. Brackett stated however that such delay ought not to prejudice any party.

[37] Mr. Brackett's second affidavit sworn to on 24<sup>th</sup> October 2024, is to the effect that neither the Minister nor he as Commissioner have yet signed any documents granting the lands in question (comprising of four parcels of land) to Fowler Works Enterprises Limited. He states that the documents relating to the Grant of the land to Fowler Works Enterprises Limited are yet in draft form, and that "*there has been no transfer or conveyance in legal proprietary rights in the subject land*". He goes on to state that the issue in relation to Grant of the land to Fowler Works Limited "*is still being ventilated in the courts*".

[38] In *viva voce* evidence Mr. Brackett stated that Fowler Works had an equitable interest in the land. He confirmed that once ownership was passed upon a Grant, that would be recorded in the National Lands Book, but that in this instance as there were some issues the Grant was not issued to Fowler Works Enterprises Limited. He stated that Fowler Works Enterprises Limited was not recorded in the National Lands Book as owner of these lands.

[39] In response to a question by court, Mr. Brackett confirmed that the lands at present were national lands and that as far as he was aware, the land claimed by the Applicants was not previously privately owned. He stated that ownership of the land was always with the Crown.

Mr. Mario Castellanos

[40] Mr. Mario Castellanos, Lands inspector employed at the Lands and Survey Department of the Ministry of Natural Resources, Petroleum and Mining, gave three affidavits on behalf of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.

[41] In his *first affidavit*, sworn to on 27<sup>th</sup> October 2023, he states that he has done over 200 land inspections and has in depth knowledge and skills in handling Global Positioning Systems (GPS) devices, reading maps and researching satellite images as well as obtaining and verifying facts from occupied land and surrounding areas.

[42] Mr. Castellanos states that he together with Assistant Lands Officer, Mr. Carlos Jimenez conducted a physical inspection of the subject lands on or about the 6<sup>th</sup> of October 2023, in the presence of Mr. Carlos Landero, Angel Landero and one Abib Landero, who provided guidance during the inspection and showed the land being claimed and points of interest. He has annexed to that affidavit a comprehensive report marked MC-1 dated 10<sup>th</sup> October 2023.

[43] Mr. Castellanos in his affidavit makes brief observations in regards to the claims as follows;

- a) Ramon Landero' claim – Mr. Castellanos states that the representation of the area of land developed is inaccurate. He observed that there was micro scale farming on the land with about 20 coconut trees covering an area of about one acre of land, a small thatched house which appeared to have not been more than five years old, a dried up natural spring, a barbed wire fence and about twenty (20) acres of *Warmil* (burring of natural forest vegetation)

- b) Angel Landero's claim – Mr. Castellanos states that the area of development is inaccurately represented and that there was no apparent development amounting to 300 acres.
- c) Henry Landero's claim – the same comment made by Mr Castellanos in regard to Mr. Angel Landero claim is repeated. Mr. Castellano adds that the land claimed by Mr. Henry Landero had been previously surveyed by a Mr. Anthony Morris, demonstrating an interest in that land by Mr. Morris.
- d) Benedicto Landero's claim – Mr. Castellanos states that it is an inaccurate representation that 100 acres of land was developed. Mr. Castellanos states that he did not observe development on the relevant portion of the land.
- e) Mr. Darlington Landero's claim – again, Mr. Castellanos states that there is no development to justify a claim of 50 acres of land. Mr. Castellanos states he observed about 2 acres of *Warmil*, due to natural forest fires which may have occurred in the past adjacent to the road access that travels through the subject lands.

[44] Mr. Castellanos also states in this affidavit that there has only been a total of about fifty four decimal four (54.4) acres of land that has been manually developed and that relying on his observations which have been confirmed by satellite imagery the development cannot be more than ten (10) years old.

[45] He was cross examined in regard to the satellite imagery and confirmed that there was no imagery for the years 1986 and 1987. He also stated that he personally used the hand held Global Positioning System (GPS) and plotted the coordinates on the map he produced. He said he obtained the maps or images from Google earth and the screen shots were taken from his work computer. He stated that the Polygons appearing on the map/images were not drawn by him but were superimposed by the Lands Department Information Centre (LIC) on the Google earth images and that these images were available on his office computer which he had produced with his report.

[46] Mr. Castellanos's *second affidavit* (sworn to on the 20<sup>th</sup> of May 2024) has been made consequent to a further inspection of the land on 7<sup>th</sup> of December 2023 and 16<sup>th</sup> of February 2024. A further report also marked MC -1 dated 15<sup>th</sup> March 2024 is annexed to the second affidavit. The report is based on satellite imagery and inspection. Markers or points are superimposed on the satellite images. The conclusion of the report states that a complete and thorough inspection was conducted and that all areas of the land

identified are depicted as pointed out by Mr. Carlos Landero. Mr. Castellanos states that all points of the land claimed were defined through satellite imagery.

[47] This second comprehensive report revised the acreage of clearing to sixty decimal eight (60.8) acres of land from the previous (10th October 2023 report) estimation of fifty four decimal four (54.4) acres of land. This revised finding is based on satellite image. The report goes on to state that the total acreage of development by the Landero family is about thirty four decimal fifty one (34.51) acres of land.

[48] Mr. Castellanos was cross examined in respect of his second affidavit and he stated that Mr. Corrin Sanders, the Drone Operator from the Forest Department gave him the images/pictures of the land appended to his report from page 366 onwards.

[49] Mr. Castellanos's *third affidavit* is sworn to on 29<sup>th</sup> October 2024. He annexed to that affidavit a document marked MC -1 which is a survey map depicting the subject land and the surrounding areas. Superimposed thereon, are the areas claimed by the Applicants shaded in Green. The area of Fowler Works is shaded Red and the area of Mr. Eugene M. Leslie in shaded in light Blue. The area of Mr. Cornelius Krahn in shaded in dark Blue. According to this map, there is an obvious overlap of the lands claimed by the Applicants, on the lands for which other persons have interests. Also annexed to this third affidavit of Mr. Castellanos is a document marked MC-2 which is a Deed of Conveyance to Mr. Cornelius Martinez Krahn.

[50] Mr. Castellanos was cross examined in regard to the superimposed map MC -1 in which the 'Note' at the bottom states that the map may not be 100% accurate. In re-examination, the entirety of the *Note* was read out to state that the inaccuracy may arise due to the map not reflecting parcels already issued, or that are being processing or that are reserved for future use by the Government of Belize.

[51] Mr. Castellano confirmed in cross examination that he had received this map from LIC, through legal counsel. He said that he had forwarded information regarding the land claimed by the applicants to the LIC and that the LIC drew it on the map/sketch – MC –1. The map was then given to him by the LIC.

[52] It was also put to him in cross examination that his reports only provided a snapshot of the land when he inspected it and that he had not inspected the land in 1979 or any date previous to 2023. He admitted that position, but he stated that he got satellite images from the past. It was also put to Mr Castellanos in cross examination that had not spoken with or interviewed the neighbours of the Landero family. He

responded by stating that he got the information for his report from the Landeros themselves and did not corroborate that information with the neighbours. He also stated that as regards the old shed, it was in a poor condition and that the thatched house had been built on old stumps and there were no more than 10 stumps to be seen.

## THE RELEVANT LEGAL PROVISIONS

[53] The applicable law is set out in Section 42 of the **Law of Property Act** as follows;

*“42.-(1) Title to the fee simple in any land, or to an easement, right or privilege in or over any land, including land belonging to the Government, may be acquired **by continuous and undisturbed possession of that land for thirty years** if such possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in respect of the said land, easement, right or privilege in favour of the person who has had such possession.*

*(2) The possession of some other person through whom the applicant for a declaration of title lawfully derived his possession may be taken into account in computing the period of thirty years possession required by this section.*

*(3) The application for a declaration of title shall be made in accordance with **rules of court**.*

*(4) The title to any land, easement, right or privilege declared by the court under this section shall not vest in any person until the Registrar has issued to him a certificate of title based upon the said declaration”.*

[54] In terms of Section 42(3) above, the then Supreme Court issued Practice Directions dated 14<sup>th</sup> August 2011. The relevant practice directions read as follows;

*“...(2) The proceedings for obtaining a court order or declaration to title to land on the ground of long possession shall be commenced by filing at the Court Registry an application supported by an affidavit or affidavits stating among others **the facts of the long possession** on which the applicant relies.*

*(3) The application shall be assigned to a judge immediately, and the judge shall assign a date for first hearing, taking into consideration paragraph (4) of this Practice Direction.*

*(4) Notice of the application for title shall be published by the applicant immediately after filing the application, in two consecutive issues of a newspaper circulating in the area where the land is situate, and may be published at least once in the Government Gazette; the notice must give full description of the land, the full name and address of the applicant, and the date of the first hearing of the application.*

*(5) The Notice shall; notify that an application for the title to the land, on the ground of long possession of the land had been filed at the Supreme Court by the applicant, and shall call on any person objecting to the application to file notice and the reason for his objection at the Supreme Court within 45 days of the date of the second publication of the notice or to attend court on the date appointed or to be appointed by the Court for the first hearing of the application.*

*(6) The application, affidavits, and a copy of the published notice shall be served on occupiers of any adjoining land, a person or persons on the land without permission of the applicant and the Commissioner of Lands; and a copy of the notice only shall be displayed on the land. The applicant shall file an affidavit confirming compliance with the foregoing.*

*(7) The application shall be listed for a first hearing for the purpose of enquiring whether the procedure in this Practice Direction has been complied with; and for enquiring whether any notice of objection has been filed or any person objecting to the application has attended court, and any other matter arising or that the judge considered appropriate.*

*(8) An objection filed late but before the court has heard the application does not bar the objector from being heard at the hearing of the application if he shows good reason for late filing of the objection.*

*(9) A court order of declaration of title to land made under s: 42 of the Law of Property Act shall be transmitted by the Registrar of the Supreme Court to the Commissioner of Lands immediately” [Emphasis added].*

## **DISCUSSION**

### **Analysis of the law**

## **Rationale and historical development of recognising title by long possession**

- [55] The history of mankind is that men and women (men) gathered in groups for convenience and security and led a nomadic life searching for food as hunter-gathers. Somewhere about five millennia ago, upon the discovery and use of agriculture, men began to settle on the land, marking it and claiming it (ownership). They defended their territory as they had to protect their crops, farm land, homes and families. The forms of ownership varied with the community. Some communities recognised private ownership, others communal ownership, and in yet others all the land belonged to the leader or the king; people on the land were his tenant or peasants.
- [56] The essence of ownership, whether the lands were private, communal or belonged to the king or State, is that it is defined with meats and bounds and is under the control of the owner or possessor. The owner or possessor must be capable of defending the land. These concepts have been recognised even in international law where territory has been ceded by one state to another either by peaceful surrender or by force. For example, in Belize, a holiday has been declared to mark the day when the Spanish ceded St. George's Quay in a battle won by the forces of the King of England. The ability to defend territory signifies control. Even in the animal kingdom hunting grounds and territory are marked and defended. Prior to the adoption of the United Nations Law of the Sea Convention (1981) there were unsettled principles regarding the extent of the territorial sea that could be claimed by a coastal State. One such principle for claiming the territorial seas was the "cannon shot" rule. According to this rule, the distance from the shore that can be defended by cannon (in most instances up to the horizon which is about three nautical miles) belonged to the coastal state. Not unsurprisingly, vestiges of this era are to be seen in Belize too, where ancient cannons can be seen facing the sea at various vantage points.
- [57] Acquisition of territory was not only by force. It was and is possible to acquire territory by occupation of new or virgin lands and lands that have been abandoned.
- [58] Title by long possession is a combination of these historical concepts - abandonment by a previous owner or the takeover, claim and defence of the land by a new possessor. Possession and control are therefore key elements in establishing ownership. Long possession reinforces the attribute of control and the fact of possession.

[59] In modern times, to avoid violence, the law countenances legal ownership. The court will come to the aid of an owner/possessor who is dispossessed by unlawful means. In other words, the owner/possessor has the protection of the State for his property. The Roman Dutch common law provided that possession for a third (1/3) of a century was sufficient to prescribe against the crown or State.<sup>2</sup> The rationale for this length of time rests on abandonment, where it is reasoned that the crown itself can abandon property. A third of a century is considered sufficient time for the crown with all its power, to assert its rights over persons who adversely possess its land. The Law of Property Act in Section 42 has codified this principle and has rounded off the years of long possession to thirty (30) years.<sup>3</sup> The principle however remains the same.

### **What is meant by possession?**

[60] Flowing from the above, it becomes necessary to enter upon a discussion of what possession is. In ordinary parlance, possession would be to hold and be in control of anything. As regards land, this would usually, but not always, mean that the possessor was on the land (*Pye (Oxford) Ltd. v Graham*<sup>4</sup>). A further attribute of possession is that the possessor would mark the boundaries of the land to prevent and control others entering on it. This could be done by erecting a wall or fence on the boundary of the land to indicate to others that this is a separate land for which permission is required to enter (*Prudential Assurance Co. Ltd. v Waterloo Real Estate Inc*<sup>5</sup>).

[61] In a city or a town where most areas are built up and where in general there would be no vast uninhabited areas of land, it is quite noticeable when a new occupier has come on to the land. He is seen on the land, he interacts with neighbours, and he would have to secure a boundary which is noticeable for others, so that there is no trespass on the land.

[62] How would this concept apply to vast tracts or rural lands and to forests? To begin with, no one will notice if one has gone into a remote area has cleared a patch of forest and begun farming or cutting down trees. In other words, the real owner would have no notice of such possession to evict such a squatter or adverse possessor. The basis of title by long possession is that it must be peaceful, open

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<sup>2</sup> *Toolsie Persaud Ltd. v Andrew James Investments Ltd. and Others*, [2008] CCJ 5 (AJ), paragraph [36]

<sup>3</sup> *August Sr. v Patten*, Claim 571 of 2024, paragraph [10] and [14] per Awitch J.

<sup>4</sup> [2003] 1 AC 419.

<sup>5</sup> [1999] All ER (D) 55

and uninterrupted possession.<sup>6</sup> The question of whether there is 'open' possession when one goes and clears a forest and does farming is a matter that is debatable.

[63] Secondly, what is the degree of control that can be exercised by a person to claim ownership of rural lands? Can felling of trees or the cultivation of the land or the growing of trees denote control? There is a concept known to Roman law as "*superficies sole cedit*"; which means; that which is on the land belongs to the land. If you grow or build on another's land without their consent, you do not own the crops or the structure, it belongs to the land. Similarly, by cutting a few trees could anyone assert that they possess and control a forest? The issue of control rests on proof.

[64] The crown does not need to fence off forests. It may however, delineate boundaries by publishing the same in the Gazette. The central idea is notice to the public or outsiders of the limits of the land owned. If a party is to be in adverse possession however, it is incumbent on that party to demonstrate the area of land he controls and to give notice of it to others. This is most often done by means of fencing. As stated by the Caribbean Court of Justice (CCJ) in ***Toolsie Persaud Limited v. Andrew James Investments Limited***<sup>7</sup> citing the dicta of Brown Wilkinson LJ., in ***JA Pye (Oxford) Limited v Graham***<sup>8</sup>;

*"The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner...except in the case of joint possessors, possession is single and exclusive..."*

*...there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control (factual possession); (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit (intention to possess)."*

[65] If one takes on the burden of claiming possession of a vast acreage of land, then despite the cost, the best means of signifying possession and control so that others are excluded from using the property, is to fence it off.<sup>9</sup> Boundaries can be delineated in more than one way; fencing is only one method. A bare land could be delineated by rocks and boulders or by a live fence of trees that can easily be

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<sup>6</sup> *Toolsie Persaud Ltd. v Andrew James Investments Ltd. and Others*, [2008] CCJ 5 (AJ), paragraph [30]

<sup>7</sup> [2008] CCJ 5 (AJ).

<sup>8</sup> (HL) [2002] UKHL 30.

<sup>9</sup> *Riley v Brathwaite* (1979) W.I.R. 66

determined as a margin of the land or by painting a colour or symbol on trees along the boundary. Boards and signs at appropriate places on the land is another method of giving notice to others of control over the land so that they do not trespass. This list is not exhaustive but only indicative of the means of notice to others of the owner's control over the land.

[66] The central idea of possession therefore is control of the land to the exclusion of others. The world (outsiders) should have notice that the land with defined boundaries are under the control of the owner/possessor.

### **What is meant by 'continuous' in the context of possession?**

[67] 'Continuous' in the context of possession, would mean uninterrupted. A break in possession however, small would break the chain in time. An interruption would require time to be computed afresh as regards the thirty (30) years required to claim ownership (**August Sr. v Patten**<sup>10</sup>).

[68] What events then would constitute interruption? This may happen in a number of ways such as when the possessor himself voluntarily abandons possession for a while by going away and resumes possession or is forced off the land due to physical eviction or a legal challenge. However, as referred to in **Courtney Arnold and Another v Daniel Tun**<sup>11</sup>, quoting Pennycuick J., in **Bligh v Matrin**<sup>12</sup>;

*"Possession is a matter of fact depending on all the particular circumstances of a case. In very many cases possession cannot, in the nature of things, be continuous from day to day, and it is well established that possession may continue to subsist notwithstanding that there are intervals, and sometimes long intervals, between acts of user"*

### **Issues:**

[69] In this background the following issues arise to be determined;

a) On whom does the burden of proof fall to demonstrate continuous, undisturbed possession?

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<sup>10</sup> Claim No. 571 of 2004, judgment dated 23<sup>rd</sup> March 2007 per Awich J.

<sup>11</sup> Claim No. 507 of 2020

<sup>12</sup> [1968] WLR 804 at 811 F, per Pennycuick J.

- b) What are the elements of continuous, undisturbed possession as regards fields and forest land?
- c) Have the applicants individually demonstrated continuous, undisturbed possession of their defined areas of land, for a period of thirty (30) years or more?
- d) Are any of the applicants entitled to title to the lands claimed? And if so to what extent?

## ANALYSIS OF THE ISSUES

### Issue (a): The burden of proof to demonstrate continuous, undisturbed possession

[70] The evidentiary burden is on the person that claims or asserts a fact or position. The rule of evidence is that he who asserts must prove.<sup>13</sup>

[71] The burden is therefore squarely on the Applicants to prove that they have been in continuous, uninterrupted possession of the lands claimed as it is for the squatter to prove adverse possession (*Courtney Arnold and Another v Daniel Tun*<sup>14</sup>). The respondents do not have a burden to disprove the Applicants' possession. This is clear on a reading of the words in section 42 of the Law of Property Act which reads; "Title to the fee simple in any land ... may be acquired by continuous and undisturbed possession of that land for thirty years **if such possession is established to the satisfaction of the Supreme Court**" (emphasis added). Establishment of the claim is that of the Applicant, hence, the burden of proof is on the Applicants.

### Issue (b): The elements of continuous, undisturbed open possession as regards fields and forest land

[72] The elements of continuous, undisturbed open possession do not differ for fields and forest lands. A person claiming possession would have to demonstrate control of the land.<sup>15</sup>

[73] Such control would have to extend to the boundaries of the land, by fencing or other means to inform outsiders that the area is possessed by the person claiming it. This is a requirement to inform all others that they would be trespassing upon such land and would require leave and licence of the owner/possessor to enter upon the land.

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<sup>13</sup> *In Re B (Children)* [2008] UKHL 35

<sup>14</sup> Claim No. 507 of 2020, Paragraph [3]; citing *Solling v Broughton* [1893] AC 556

<sup>15</sup> *Rajpattie Thakur v Deotat Ori* [2018] CCJ 16 (AJ) at paragraph [37], *Bligh v Martin* 1 All ER 1157.

[74] Continuity of possession equally applies to rural land, fields and forests. The mere presence on the land for a few days or months or the growing or felling of tree does not by itself demonstrate continuous possession. It is possible however, in regard to farming lands to possess an entire land on the basis that parts of it are farmed in rotation (*Higgs v Nassauvian Ltd*.<sup>16</sup>). Nevertheless, continuous possession signifies continuous control of the land. If the possessor himself is absent he cannot be in a position to assert his rights against others entering upon the land.

Issue (c): Have the applicants individually demonstrated continuous, undisturbed possession of their defined areas of land claimed for a period of thirty (30) years of more

[75] The evidence of the applicants taken as whole is not satisfactory. The most articulate and knowledgeable persons regarding the land was Mr. Carlos Landero. He however is not an Applicant. It appears that the whole process of application for ownership of the land is driven by Mr. Carlos Landero. Instructions in regard to the boundaries of the land were given primarily by him to the land inspector. In court, he was also the most articulate and knowledgeable witness who pointed to and marked areas on the sketch/map CL 1-1 and was able to describe it. The Applicants were deferential to Mr. Carlos Landero, stating that they trusted him and that he prepared the sketch/maps AL 1-1, BL 1-1, DL 1-1. The Applicants themselves were unable to identify the lands claimed on the respective sketch/maps RL 1-1, AL 1-1, BL 1-1 and DL 1-1. This may be due to a lack of knowledge or literacy.

[76] There are also inconsistencies in the affidavits given by the Applicants. For example, the court observes that the fence in pictures annexed marked BL 1-2, DL 1-2 and HL 1-2 is the same. The sketch of the land that is claimed and the respective coloured outlines made on the sketch/map BL 1-1, DL 1-2 and HL 1-2 indicate that based on the locations of these claimed lands, the fence could not be a common fence as the three lands do not have a common boundary.

[77] Further, the documents and pictures marked AL 1-2, AL 1-3 and AL 1-4 annexed to the affidavit of Mr. Angel Landero are identical to the documents and photographs marked RL 1-2, RL 1-4 and RL 1-5 annexed to the affidavit of Mr. Ramon Landero. The documents AL 1-2 corresponds to RL 1-2. AL 1-3 corresponds to RL 1-4 and AL 1-4 corresponds to RL 1-5.

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<sup>16</sup> [1975] AC 464.

[78] In the face of the fact that the Applicants' affidavits were not read by the affiants and that they relied on another person to read and explain it to them, and due to the inconsistency in the evidence in those affidavits, the court has no alternative but to come to the conclusion that the affidavits are not reliable. It is more reliable to proceed on the basis of the *viva voce* evidence given by the Applicants in court.

[79] It was the common position of Mr. Angel Landero and Mr. Benedicto Landero that the family employed the Mennonites to clear about 150 acres of land by mechanical means for the family to plough and grow crops. When the court questioned the witnesses as to how they arrived at the figure of 150 acres and how that was measured; the answer given was that the Mennonites charged per acre to clear the land and that they had charged to clear 150 acres of land. However, no proof of payment or receipts or any documentation to this effect was put before this court to verify those statements or to establish when the clearing had taken place.

[80] Of the approximately one thousand acres being claimed, much of it is not only unoccupied land but land that is overgrown or forest land. As identified by aerial/satellite photography, the area is all green except for a few patches of clearing and some areas of *warmil* (clearing by natural or man-made fire). As stated in the case of ***Courtney Arnold and Another v Daniel Tun***<sup>17</sup>;

*"No matter however many witnesses of fact are called, the best evidence in disputes like this is photographic and documentary evidence. In any adverse possession case, it may be necessary to determine exactly when it was that the occupier began his occupation so it is important to know how the land looked historically. In this regard, aerial photographs evidence of the state of the land, can be illuminating and decisive. Historical aerial photography can play an important part in the evidence especially when the issue is how long the disputed land has been occupied. Aerial photographs are widely available including Google Earth images of the same place historically and there are available images over the last 20 years that could have assisted the Court in showing the state of the land..."*[Emphasis added].

[81] The evidence that logging had been done on the land is based on the permits produced. All these permits are in the name of Mr. Carlos Landero, and refer to the location of the logging as 'Lease Land

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<sup>17</sup> Claim No. 507 of 2020, paragraph [22] per Westmin James J.(Ag)

*in the Duck Run Area*'. There is no evidence to indicate that anyone other than Carlos Landero did logging.

- [82] On the forest permit, the land is stated to be "Lease land"<sup>18</sup>. This description poses an issue in regard to the character of the possession of the land. If the logging was permitted on land that had a lease, that fact goes counter to the Applicants' adverse possession. Further, the logging permits are only from 1997/1998, therefore, at the time of the Application to this court in June 2022, only 25 years can be shown for logging in the area. This period is short of the 30 years that is required to claim ownership under section 42 of the Law of Property Act.
- [83] Even if the court were to disregard any evidence produced by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, what emerges from the evidence put forward by the Applicants is that as a family, the 1<sup>st</sup> to 4<sup>th</sup> Applicants helped their father to farm a portion of this land (about 150 acres according to them) from time to time. There is no contemporary record to establish this fact except for the *viva voce* evidence of the Applicants themselves. No neighbour or independent witness can corroborate this fact.
- [84] It was the evidence of the Applicants that their mother did not live on the land claimed and that they together with their father camped on the land from Monday to Friday and went to their home in *Santa Familia* for the weekend. As adults, each of the 1<sup>st</sup> to 4<sup>th</sup> Applicants have a family home in *Santa Familia*. Based on the principle of "*ubi uxor ibi domus*" (the home is where the wife is), neither the 1<sup>st</sup> - 4<sup>th</sup> Applicants' father nor they as adults had their family home on the land they farmed. This is quite plausible as there is no electricity and no running water on the subject land.
- [85] There is no evidence before the court except for the *ipse dixit* of the Applicants that they have been continuously on the land since 1978/79. The only other common account is that a thatched house was built thereon from about 1979 which was destroyed by fire. Again there is no corroboration of this fact.
- [86] Further, an interesting comment was made by Mr. Angel Landero when questioned about whether there was a fence to his portion of the land. He replied that he had now moved to the corner of the land because his brother Ramon 'was to be given' the middle area and that there was no requirement for a fence in the corner where he is now situated. This is a startling comment. It suggests that individually there was no fixed area of land controlled by the Applicants themselves and that at best, as a family

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<sup>18</sup> Documents marked AL 1-5, CL 1-3, RL 1-3.

they had worked the land in common. For prescriptive title to be applicable, each of the Applicants individually would have to have the requisite possession and the *animus domini* (intention to own) in regard to the particular area of land that each Applicants individually claims (***Bisnauth v Shrewprashad***<sup>19</sup>). Mere intention to possess is insufficient. What is required is the intention to own that particular lot claimed and the possession thereof for a continuous period of thirty (30) years.

[87] Common possession of a larger land may be a claim in common for the entire land. However, when the larger land is divided up amongst the common group, each person in the group would have to re-establish factual control of the divided lot, together with the intention to exercise such custody on his own behalf and for his own benefit for the requisite 30 years (the formula for adverse possession set in ***Pye (Oxford) Ltd. v Graham*** cited with approval by the CCJ in the case of ***Toolsie Persaud Ltd.***) Custody by a group of an entire land cannot translate to custody by an individual for a specific area. From the time of the division of the larger land to smaller individual lots, each individual would have to show 30 years of open uninterrupted adverse possession.

Issue (d): Are any of the applicants entitled to obtain title to the lands claimed? And if so to what extent?

[88] I shall now consider the claims individually.

[89] Mr. Benedicto Landero – He makes a claim for one hundred (100) acres of land. Mr. Benedicto Landero together with his family lives, works and pays his taxes in the US and visits Belize just for two weeks a year since the late 1980's. This situation would not enable him to either possess or work the land in any meaningful way. He states that his brothers looked after the land for him. However, as discussed above this is merely an *ipse dixit*, there is no hard evidence of this fact and if at all it is probable that the entire land was worked by the Landero family and not a particular plot separately designated as Benedicto Landero's land.

[90] There is no evidence to satisfy court of the *animus possidendi* (the intention to possess) or the *animus domini* (the intention of ownership), or the *factum* of possession by Mr. Benedicto Landero for the land area claimed by him, in his application. The court is therefore not satisfied that Mr. Benedicto Landero had or has continuous and undisturbed possession of that land for thirty years.

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<sup>19</sup> [2009] CCJ 8 (AJ).

- [91] Mr. Darlington Landero – He makes a claim for fifty (50) acres of land. Mr. Darlington Landero was unable to identify the land he claimed on the sketch/map marked DL 1-1. Even if this fact was to be discounted, it was his evidence that he did not live throughout on the land and that he left for periods of six (6) months of the year and went to Mexico to teach Yoga. He therefore cannot have complete and continuous (uninterrupted) control of the land for thirty years. A forest land cannot be said to be owned by anybody, and if a person is away from such an area for any extended period, the forest remains a forest and possession is lost and regained each time one goes and comes.
- [92] He too relied on the assertion that he did farming with his uncles and that they looked after his land in his absence. However, a person seeking to make a claim to land on the basis of continuous and uninterrupted long possession ought to have a stronger degree of control over the land. Being habitually absent from the land does not lend itself to the control test required for such an assertion to ownership. Though Mr. Darlington Landero states that this is his only home – the little hut he has on the land, it is his evidence that he does not live there with his family - his wife and children have never lived there and he himself stays on the land at best for just six months a year which would suggest he has a nomadic lifestyle rather than a permanent abode on the land.
- [93] In the totality of the evidence presented to support his claim, I am not satisfied that Mr. Darlington Landero has made out a claim for uninterrupted long possession of the fifty (50) acres, claimed by him.
- [94] Mr. Ramon Landero – He claims 496.92 acres of land. This is a very large extent of land, and quite a bit of effort would be needed to exert control over such a large area of land. Again, Mr. Ramon Landero was unable to identify his claimed portion of land on a sketch/map. It becomes all the more important therefore for there to be hard evidence of boundaries, of control of those boundaries and evidence of continuous possession. The logging receipts are not in his name. The control test would anyway not be satisfied by the receipts and permits as they refer to Lease Lands. If the lands were leased lands, they could not be the basis of the claim by Mr. Ramon Landero. As stated above the logging permits also do not go back a period of 30 years, and that is not helpful to the claim for long possession.
- [95] Furthermore, evidence of the fence is that of a picture of a fence that looks recent in origin. There is no indication that this fence existed for thirty years, nor are there statements by any of the neighbours stating that there was such a fence in long existence. Other than the *ipse dixit* of the Applicant, there is

no evidence before the court to base a claim of long possession going back to 1979. There is neither documentary nor corroborative evidence that can satisfy the court of this claim.

[96] The court is not required to go on a voyage of discovery or to speculate on possession. The burden is squarely on the Applicant to satisfy the court that there is open and continuous possession of the specific area claimed over a period of 30 years or more. Here again, it is important to stress the *animus possidendi* (intention to possess) and the *animus domini* (intention to own) and the *factum of possession* (fact of possession) must coincide in regard to the individual plot claimed. The intention or the fact of possession of the larger land must be distinguished from the intention to possess the separate area claimed. It is interesting to note that the thatched house alleged to have been built in 1979 by the applicants' father, is the basis for the claim by all applicants. Even if they lived in that hut as children with their father, in adulthood they now have families of their own, and this single house cannot be the basis of family home for all the brothers. In fact, Mr. Ramon Landero also stated in his *viva voce* evidence that he has a house in the *Santa Familia* village.

[97] In these circumstance, I am not satisfied on the evidence that Mr. Ramon Landero has been in continuous uninterrupted possession for thirty (30) years of the defined area of land claimed by him.

[98] Mr. Angel Landero – He claims 300 acres of land, again a very large area for which he would have to exert a lot of effort to maintain control. As discussed above under the heading of “evidence for the applicants”, he interestingly states *viva voce*, that he moved his position on the land to make way for his brother Ramon, and that he moved to the corner of the land. He also stated there was no need for a fence in the corner.

[99] There are also several glaring inconsistencies in his affidavit. As discussed above, the annexes used are the same as those used by his brother Ramon Landero and cannot be the basis of a claim for himself. The thatch house allegedly built in 1979 is again a claim for himself and his immediate family to be on the land. The permits for timber are not in his name and are the identical documents annexed to his brother Ramon's affidavit. Furthermore, he too confirmed that he has a house in the village of *Santa Familia*. He was also unable to identify the land he claimed, marked on his own document AL 1-1, stating that his brother Carlos did everything and that he trusted his brother.

[100] All these facts taken together; the lack of control over a single defined area for himself over a thirty year period, the lack of a fence around the land, no documentary or other corroborative evidence to demonstrate continuous possession going back thirty years, is not helpful to his claim.

[101] Based on the paucity of evidence, I am not satisfied that Mr. Angel Landero has satisfied the court of his claim for ownership of the land area he claims.

[102] Mr. Henry Landero – It was submitted that he was deceased since signing his affidavit in support of his claim. As stated above in the discussion of evidence for the Applicants, Mr. Henry Landero's affidavit also has inconsistencies. It would appear as stated above, that Mr. Carlos Landero had prepared the contents of these affidavits for his brothers and perhaps even decided who got what portion of land among his brothers (who are the 1<sup>st</sup> to 4<sup>th</sup> applicants) and his son the 5<sup>th</sup> applicant. It was Mr. Carlos Landero, according to Mr. Castellano the land inspector, who did the pointing out of the lands, the boundaries and the points of interest.

[103] As Mr. Henry Landero has passed away and as no one is claiming the land on his behalf, his Application falls away as the Application is personal to the person who makes it.

### **Disposition**

[104] In view of the above discussion, I hold that none of the Applicants have satisfied the court that they individually have been in continuous, undisturbed, open and adverse possession of their respective claimed areas of land for a period of thirty (30) years.

[105] As such, their Applications are liable to be dismissed. All is not lost, they remain in possession and may negotiate with the government for a lease or grant to acquire ownership of lands they possess.

### **Costs**

[106] This claim has been pursued by the Applicants and it involved the expenditure of resources on the part of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. There was a site visit by the court on 7<sup>th</sup> of December 2023, three inspections by the Land inspector, drone equipment used, and considerable time expended by him in the preparation of reports.

[107] The Applicants would therefore be liable to the 1<sup>st</sup> to 3<sup>rd</sup> Respondents for their costs in this Application.

**IT IS HEREBY ORDERED THAT**

- (1) The Application is dismissed.
- (2) The Applicants shall pay the costs of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.
- (3) Costs are to be agreed or assessed.

**Rajiv Goonetilleke**  
High Court Judge