

IN THE COURT OF APPEAL OF BELIZE A.D. 2025
CIVIL APPEAL NO. 9 OF 2023

BETWEEN:

ERROL GLENN ELRINGTON
ANN REBECCA ELRINGTON

1st Appellant
2nd Appellant

and

THOMAS GREENWOOD

Respondent

and

LANCE REQUENA

Interested Party

Before:

The Hon. Mde Justice Woodstock Riley
The Hon. Mde Justice Minott-Phillips
The Hon. Mr Justice Foster

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Wilfred P. Elrington, SC for the 1st and 2nd Appellants
Estevan Perera for the Respondent

2024: October 9
2025: September 19

JUDGMENT

- [1] **MINOTT-PHILLIPS, J.A.:** The dispute giving rise to this appeal concerns the ownership of land in Caye Caulker, being Parcel 1040, Block 12, Caye Caulker Registration Section (**“the Property”**). The Appellants, Errol & Ann Elrington – husband & wife - (together **“the Elringtons”**) say they bought the Property from persons to whom it was sold by the Respondent, Thomas Greenwood (**“Greenwood”**). Greenwood, who has held title to the Property throughout the disputed period

denies having ever sold it and asserts ownership of it continuously since the issue to him of Minister's Fiat Grant No 831 of 2003.

[2] In their claim in the court below the Elringtons' position was that the Land Certificate for the Property was obtained by Greenwood through fraud. The main particulars of the fraud they alleged were that:

- a. When registration of the Property was granted to Greenwood (resulting in the issuance of the Land Certificate in his name on 30th December 2014) he knew he had already sold the property to Dons Waithe and Lance Requena (being the persons from whom the Elringtons claimed to have acquired ownership of the Property) via a Deed of Conveyance dated 19th March 2003 recorded in the Deeds Book Volume 10/2003 at folios 615-624.
- b. At the time of the first registration, the Property was already sold by Dons Waithe and Lance Requena to the Elringtons;
- c. Greenwood knew and was aware that the Elringtons were the legal and beneficial owners of the Property because he was once the tenant of them and/or their family members.

[3] Greenwood denied their claim and counterclaimed for:

- a. A declaration that he was the legal and beneficial owner, and entitled to possession, of the Property;
- b. A declaration that the 19th March 2003 Deed of Conveyance of the Property was void and of no effect; and
- c. That any caution placed on the Property be removed by the Registrar of Lands.

[4] The case was tried before the Hon Ms Justice Shoman in 2022 and, on 27th October 2022, the learned trial judge:

- a. Dismissed the Elringtons' claim;
- b. Granted Greenwood's counterclaim and declared him the legal and beneficial owner of the Property with liberty to apply to the Registrar of Lands to remove any caution placed on the Property by the Elringtons;
- c. Awarded costs of the claim and counterclaim to Greenwood to be paid by the Elringtons as agreed or assessed.

[5] By means of this appeal the Elringtons appeal the whole decision of Shoman, J. and seek to have it “reversed or vacated”. Their Notice of Appeal, dated 17th March 2023, contained six grounds of appeal, as follows:

- a. The decision is against the weight of the evidence.
- b. The Learned Trial Judge erred in law in holding that the Claimants have not proved that the Defendant obtained Land Certificate dated 30th December 2014 and being LRS 201416420 for the property in Caye Caulker by fraud nor that he applied for and obtained a replacement Land Certificate for the property dated 28th December 2017 (the 2017 Land Certificate) by fraudulent means.
- c. The Learned Trial Judge erred in Law in holding as follows: *“I need not determine whether the Power of Attorney was validly given and if the ensuing Agreement for Sale and consequent conveyance are void and/or invalid.”*
- d. The Learned Trial Judge erred in holding that *“The parties involved in those transactions [save for Lance Requena who is only an Interested Party] are not parties to this claim; and that Claimants would need to look for redress to the parties with whom they entered into those arrangements”*.
- e. The Learned Trial Judge erred in law in denying the Claimants’ claim for rents and interest;
- f. The Learned Trial Judge erred in Law in holding that the counterclaim of the Defendant succeeded and in declaring the Defendant to be the legal and beneficial owner entitled to possession of the property.

[6] At the outset of the hearing before us we were informed by counsel for the Appellants that only the first ground of appeal will be pursued, and that the Appellants were formally abandoning the last five of their six grounds of appeal.

[7] There is a difference between not pursuing and/or abandoning a ground of appeal, and saying it is subsumed within another ground. So far as grounds b-f at paragraph 5 above are concerned, the course adopted by the Elringtons was the former, not the latter (i.e. they were no longer pursuing any of those grounds).

- [8] From my perspective the abandonment of the grounds of appeal at paragraph 5 b-f above make it extremely difficult and almost impossible, in the circumstances of this case, for this appeal to succeed.
- [9] Greenwood defended the claim on the basis that he was vested with freehold title to the Property via Minister's Fiat No 831 of 2003 and that, thereafter, via a First Registration Application, he obtained a Land Certificate dated 30th December 2014. Sometime later, he applied for a lost certificate of title and obtained a replacement Land Certificate for the Property dated 28th December 2017.
- [10] The Elringtons' claim against Greenwood centered around being able to prove that the First Registration of, and the issuance of the Land Certificate to, Greenwood in respect of the Property were obtained by fraud. Fraud was the sole pleaded basis of their contention that Greenwood's asserted ownership of the Property was unlawful.
- [11] In paragraph 26 of her written reasons, Shoman, J. set out the applicable law. She said,

"The Registered Land Act, Chapter 194 of the Laws of Belize at section 26, provides that absolute ownership of a registered parcel of land is vested to a person to whom title is registered, as follows:

"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 interest as affect the same and are declared by section 31 not to require noting on the register,

..."

*Under section 143(1) of the same Act, the Court may “**order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud.**”* [Words in bold are Shoman, J’s emphasis].

[12] In her written reasons for her decision Shoman, J. made at least three distinct findings in relation to the Elringtons’ allegations of fraud by Greenwood, namely:

- a. (at numbered paragraph 30 of her reasons) *“With all due regard to the evidence of Errol Elrington, Lance Requena, Albert Wallace Elrington and Albert Elrington, Jr., I do not find that the Claimants have provided the necessary proof to substantiate the particulars of fraud alleged...”*
- b. (at numbered paragraph 32 of her reasons) *“I do not find that the Claimants were able to prove, on a balance of probabilities that the Defendant obtained the Land Certificate for the Property in 2014 by fraud. The Claimants have failed to discharge their burden to prove the fraud alleged in obtaining the 2014 Land Certificate or the 2017 replacement Land Certificate.”*
- c. (at numbered paragraph 33 of her reasons) *“I also do not find that evidence was provided to show that the Defendant obtained, by fraud, a replacement in 2017 for his lost 2014 Certificate of Title.”*

[13] The Elringtons’ abandonment of their challenge to the judgment of the learned trial judge on the ground that she erred in holding that they have not proved the fraud they alleged, removed any basis for this court setting aside her order, whether on the basis that she wrongly exercised her discretion, or on the basis that she otherwise erred in law. Every aspect of the decision and order of Shoman, J. flowed from her dismissal of the claim on the basis that the fraud alleged by the Elringtons was not proved.

[14] Under the law of Belize as set out in the Registered Land Act (and applied by the trial judge) the basis for a court ordering cancellation of a Land Certificate and rectification of the Register in

circumstances such as obtained here would be the Judge's satisfaction that the registration was obtained by fraud. It is clear from her written reasons that in this case the learned trial judge was not so satisfied.

[15] Shoman, J. in her written reasons (at paragraph 31) expressly found that the evidence provided by the Elringtons did not substantiate their submission to her that Greenwood made a deal to convey the Property to Waithe & Requena for \$25,000, who then legitimately sold the Property to them for \$125,000. In paragraphs 34-36 of her written reasons, Shoman, J., referring to the evidence before her, sets out why she found the Elringtons unable to prove the Particulars of Fraud they alleged against Greenwood.

[16] The judge below (at paragraph 12 of her reasons) points out that although Greenwood admitted to authorizing Waithe and Requena to sell the Property on his behalf *via* the Power of Attorney dated 4th March 2002, he was never informed that they sold the Property to themselves for \$25,000 under a Deed of Conveyance dated 19th March 2003 (that utilized the Power of Attorney), or that they subsequently on-sold the Property to the Elringtons for \$125,000 *via* the Agreement for Sale dated 8th September 2003. Greenwood's evidence (which the court accepted) was that he received no benefit from the 'sale' of the Property (not even the \$25,000 he said he was promised for executing the Power of Attorney prepared by Waithe). The judge below ascribed importance to the fact that neither Waithe nor Requena (from whom the Elringtons claimed to have acquired the Property) were parties to the action and that the Elringtons were unable to put evidence before the court that they paid the purchase price of \$125,000 for the Property. In that regard Shoman, J.'s words (at paragraph 17 of her reasons) were,

"There is, in fact, a distinct dearth of evidence to prove that the Claimants were bona fide purchasers for value of the Property at all."

The brother of Errol Elrington, Albert Wallace Elrington, who claimed to have sent money to assist in purchasing the Property, in cross-examination, conceded that he had not provided the court with any such evidence. The judge below found his oral evidence directly contradicted his claim of having sent money to assist in the purchase of the Property. She also noted that Albert Elrington's claim that his son occupied and maintained the Property was undermined in cross-examination, and he

was forced to admit that his son neither lived in the building nor occupied the Property. Importantly, Shoman, J. did not find Albert Elrington to be a credible witness.

[17] There were several factors that influenced Shoman, J.'s findings in the case.

[18] As regards the testimony adduced by, or on behalf of, the Elringtons, there was:

- a. Errol Elrington's admission that he never saw an original land title for the Property that he claimed to have purchased;
- b. The absence of any evidence that any witness for the Elringtons ever saw such a title deed;
- c. Errol Elrington's inability to say if any member of his family had ever occupied the Property;
- d. Errol Elrington's inability to say that the purchase price for the Property was paid in full.

Shoman, J. expressly (at paragraph 19 of her reasons) found that Errol Elrington was *"not a witness of veracity"*.

[19] Shoman, J. (at paragraph 20 of her reasons) took particular note of the fact that neither Errol Elrington nor any witness for the Elringtons ever explained why they never obtained (or even requested) executed transfer instruments from the vendors named in the 2003 Agreement for Sale.

[20] At paragraph 22 of her reasons Shoman, J. also found it significant that Requena (one of the alleged vendors of the Property to the Elringtons under the power of attorney dated 4th March 2002- and an Interested Party in the proceeding before the court below) testified that he had never before seen that Power of Attorney which was exhibited to his own witness statement. As the judge said,

"In effect, Requena completely controverts what was contained in his own witness statement."

Additional elements of Requena's testimony of which the judge below took note were:

- That he was “told by Dons Waithe to sign the document” to purchase the property for \$25,000; and
- That he also confirmed that no money was ever in fact paid to Greenwood for any purchase of the Property.

Shoman, J. expressly stated (in paragraph 23 of her reasons) that,

“Mr Requena was shown, under rigorous cross-examination to be a manifestly unreliable witness, contradicting under cross-examination what was contained in his witness statement.”

[21] Shoman, J. summed up her impressions of the Elringtons’ case with these words,

“The evidence provided to this Court to substantiate the alleged fraud of the Defendant is not only tissue thin, it is a veritable spider’s web of speculation, accusation and recrimination by Claimants who seem to have put too much faith in what they believed to be true, albeit without any proof, by those seeking to sell them a slice of paradise.”

[22] The issue before this Court is whether, on the material before her, Shoman, J. could have made the findings she did. The answer to that is an unequivocal ‘yes’. Absent an error in her understanding or application of the law, there is no basis upon which we could, or should, set aside her decision/order. Shoman, J. (at paragraph 29 of her reasons) correctly identified the issue confronting the court in this case as being whether the Elringtons could prove that Greenwood’s title to the Property was obtained by fraud and, in so doing, displace the indefeasibility of his title to the Property. The judge below demonstrated throughout a proper understanding of the Torrens system of land registration applicable in Belize and applied the law correctly.

[23] The sole ground of appeal was that the decision of Shoman, J., is against the weight of the evidence. The question of what weight is ascribed to any facet of the evidence before the court is entirely within the purview of the trial judge. The ground is not that there was no evidence before the court which

could give rise to the decision (the question of the existence of such evidence being an issue of law), but that the decision is against the weight of the evidence. The latter goes to the correctness of the exercise of the discretion of the trial judge ascribing what he/she feels is the appropriate weight to various aspects of the evidence. Once it is clear (as it is here) that there was a basis for the judge below to exercise her discretion in the way she did, this court will not interfere. It is not a matter of whether, looking at the material, we would have exercised our discretion differently, but whether there was material before the trial judge that allowed her to exercise her discretion in the way she did.

[24] The sole ground of appeal is not made out.

[25] The order of this court is that the appeal is dismissed.

[26] Failing receipt within 7 days of promulgation of this decision of submissions from either party on an alternative costs order for our consideration, the costs of this appeal are awarded to the Respondent against the Appellants, such costs to be assessed if not agreed.

Minott-Phillips
Justice of Appeal

[27] I concur.

Woodstock Riley
Justice of Appeal

[28] I concur.

Foster
Justice of Appeal