

IN THE COURT OF APPEAL OF BELIZE, A.D. 2026

CIVIL APPEAL NO. 6 OF 2026

BETWEEN:

KIM AIKMAN

Appellant

And

DR. JINYUE YOUNG aka Paul

Respondent

Before:

The Hon. Mme Louise Esther Blenman
The Hon. Mme Minnet Hafiz Bertram
The Hon. Mme Sandra Minott-Phillips KC

Chief Justice
President
Justice of Appeal

Appearances:

Mr. Jaraad Ysaguirre for the Appellant
Mrs. Paulette V. Elrington Cyrille for the Respondent

2026: June 26
August 13

JUDGMENT

Introduction

- [1] **Hafiz Bertram, P:** The is an appeal by Kim Aikman ('Ms. Aikman') against the judgment of the trial judge in which he ordered that the Respondent, Dr. Jinyue Young ('Dr. Young') is entitled to possession of the property situated at Lot No. 17 Burrell Boom Road, Belize District, Belize ('the property') and damages for trespass.
- [2] The first defendant named in the proceedings in the court below was Ms. Aikman as representative of the estate of Mr. Derek Aikman, her late husband. Ms. Aikman objected to being designated or authorized to appear as the personal representative of her late husband's estate. The claim was struck out against the estate by the trial judge as there was no evidence which established that she was the representative. Ms. Aikman was the second defendant in the court below and defended the claim in her personal capacity.

- [3] The determination of the claim in the court below as stated by the trial judge was whether Dr. Young brought his claim within the statutory limitation period, whether Ms Aikman dispossessed Dr. Young's title, and based on a determination of the possession issue, whether he is entitled to recover damages from Ms. Aikman.
- [4] Judgment was given against Ms. Aikman and she appealed on the ground that the trial judge erred in law and misdirected himself in finding that an email sent by the late Mr. Aikman in or about 8 April 2014, constitutes acknowledgement of title of Dr. Young's ownership of the property for the purposes of sections 29 and 30 of the *Limitation Act*.¹ The other ground was that the trial judge erred in law and misdirected himself in awarding damages for trespass in the sum of \$53,780.79.
- [5] The Court heard the appeal on 26 June 2026 and reserved its decision. We now allow the appeal on the basis that it was statute barred. The 8 April 2014 email construed by the trial judge from the late Mr. Aikman did not constitute an acknowledgement of Dr. Young's ownership of the property for the purposes of sections 29 and 30 of the *Limitation Act*.

Background of the proceedings

- [6] The background of the proceedings is taken from the judgment of the learned trial judge which shows that on 18 July 2024, Dr. Young claimed against the estate of the late Mr. Aikman and Ms Aikman a declaration that he is the owner of the property; an order for recovery of possession of the property; damages for trespass; interest and costs.
- [7] Dr. Young alleged that he and Chuo Man-Ping ('Ms Chou'), his sister, acquired the property jointly as shown by a deed of conveyance dated 11 July, 1995. Ms Chou did not participate in the proceedings. The Conveyance was signed by David Ho ('Mr. Ho') and Patricia Ho as directors of King's Way (C.A.) Development Limited which is recited as the owner of the subdivision in which the property is located.

¹ Chapter 170 of the Substantive Laws of Belize, Revised Edition 2020

- [8] In August 2000, through their agent, the late Mr. Ho entered into an oral agreement with the late Mr. Aikman and Ms. Aikman for the lease of the property at a monthly rental of \$800.00. Dr. Young alleged that Mr. and Mrs Aikman ceased paying rent around April 2001 (23 years prior to the claim) but continued to occupy the property, despite numerous attempts by him to recover possession of the property and the outstanding rent.
- [9] He stated that he instituted two separate proceedings against the Mr. Aikman in Claim No. 486 of 2003 and he successfully obtained judgment in the sum BZ\$83,200, together with costs in the amount of BZ\$500 and interest. Then in a further action, Claim No. 203 of 2004, Dr. Young alleged that he obtained an order for possession of the property. He stated that all attempts to enforce the judgments were futile. In cross-examination, Dr. Young testified that these proceedings which were instituted by the late Mr. Ho were directed solely against the late Mr. Aikman and not Ms. Aikman.
- [10] Dr. Young testified that since acquiring the property he had never received any rent from either Ms Aikman or Mr. Aikman. That Mr. Aikman paid rent for approximately four to five months to Mr. Ho who had been duly authorized to collect rent on his behalf. After that, Mr. Aikman ceased paying rent. He stated that Mr. Aikman died in or around March 2019, after which Ms Aikman and her family remained in possession, without paying rent. Dr. Young also asserted that he continued to pay the property taxes for the property and he was not dispossessed by the late Mr. Aikman and Ms. Aikman.
- [11] Dr. Young further stated that in or about 2014, the late Mr. Aikman acknowledged his ownership of the property, by way of an email. He said that the late Mr. Aikman proposed to purchase the property from him for the sum of \$60,000.00 less the sum of 7% of the offered consideration for Mr. Aikman's management of the property in which he resided, and 25% deduction as management fee for the remainder of the property and the other houses situated thereon. He also produced a chain of emails between himself and the late Mr. Aikman dated April 2014, concerning his claim for possession of the property and for arrears of rent and evidencing what he asserted was an offer to purchase the Property.
- [12] Dr. Young further testified that Ms Aikman had been in possession of the Property illegally for over twenty (20) years. He denied that he had abandoned the property.

[13] Ms Aikman denied that she was the personal representative of Mr. Aikman's estate. This was decided in Ms. Aikman's favour by the learned trial judge.

[14] Further, Ms. Aikman maintained that she and Mr. Aikman were let into possession of the property by his former employer, Data Pro as part of the terms of his employment. In her witness statement, she asserted that in or about 2007, 17 years ago, Mr. Aikman and a neighbour in a similar situation travelled to Taiwan to locate the owners of the subdivision and make formal arrangements for the acquisition of the lots and houses, including the property in which she resides, but that the owners could not be found.

[15] Following that unsuccessful attempt, she and her family continued in possession of the property as if it were their own, carrying out repairs and maintenance of the property under the belief that the property had been abandoned by its owners for about 18 years. Further, most of the houses in the subdivision were destroyed by the elements and several wildfires. She undertook all repairs and improvements at her own expense including replacing the entire roof and replacing windows, doors, kitchen cabinets, plumbing and electrical wiring. She also built a fence enclosing the property on which the house is located and an adjoining lot.

[16] Ms. Aikman asserted that she holds a beneficial and/or equitable interest in the property but had not filed a counterclaim seeking any declaratory or other relief in respect of the alleged interest. She asserted that Dr. Young's action for recovery of possession was statute barred because more than 12 years had elapsed since the cause of action accrued. It had been instituted outside the limitation period prescribed by section 12(2) of the Limitation Act.

[17] Ms. Aikman disputed Dr. Young's ownership of the property and denies any knowledge of Mr. Ho. Further, she stated that she has never had any dealings with any person in relation to the property, nor has she ever paid rent for her occupation there. She had no contact with Dr. Young prior to 2023, when she first received communication from him seeking possession of the property.

[18] Ms. Aikman testified that she had no knowledge of the emails between her husband and Dr. Young. Regarding the offer to purchase the property alleged to have been made by the late Mr. Aikman, she could neither admit or deny the offer.

Issues identified in the court below

[19] The learned trial judge distilled four issues for determination after considering the pleadings, evidence and submissions advanced by the parties. These were: (i) Whether Ms. Aikman is duly authorised to act as the personal representative of the late Mr. Aikman in this matter. (ii) Whether Dr. Young's action is statute-barred pursuant to the *Limitation Act*. (iii) Whether Ms. Aikman has a beneficial interest and/or had acquired the property by prescription; and (iv) Whether Dr. Young is entitled to recover damages from the Aikmans" for the unlawful occupation of his property.

Decision of the trial judge

[20] The claim filed in the court below by Dr. Young as mentioned above was against Ms. Aikman, as first defendant and the personal representative of the Estate of Derek Aikman and Kim Aikman in her personal capacity. Ms. Aikman as shown at paragraph 19 of the judgment of the trial judge objected to being designated or authorized to appear as the personal representative of her late husband's estate which is a named party in the proceedings.² She asserted that her late husband had been adjudged in or around 1992 bankrupt by the Supreme Court and died without any assets, and therefore, contends that there was no need for his estate to be administered. The judge found at [35] of the judgment that there was no evidence establishing that Ms. Aikman was the duly appointed personal representative of the estate of the late Mr. Aikman. Therefore, in the absence of a properly constituted personal representative, the estate of Mr. Aikman could not be sued and the claim against the estate was dismissed.

[21] Regarding the issue whether Dr. Young's claim is statute barred, the learned trial judge found that the limitation period for recovery of possession was reset on or about 2014, and Dr. Young's right of action to recover possession remains extant. He found that at the time the cause of action accrued it had been postponed pursuant to sections 29 and 30 of the Limitation Act because Mr. Aikman had acknowledged the title of Dr. Young in an email of 8 April, 2014 in which he made an offer to buy the property. The result was that the 12-year limitation period had not run prior to the institution of the claim.

[22] The trial judge found that although the emails raised a sequence of doubts and there is no explicit statement in which Mr. Aikman unequivocally acknowledged Dr. Young as the rightful owner of the property, the reasonable inference to be drawn is that Mr. Aikman proposed to Dr. Young that

² Paragraph 3 of the Witness Statement of Kim Aikman

he be compensated for expenses incurred in respect of the property or that they enter into an arrangement whereby he would receive a discount in the form of management fees for the proposed sale price of BZ\$60,0000. He explained that notwithstanding the vagueness of the evidence, the context of the email trail/chain suggests that the parties were negotiating the sale of the property.

[23] The prescription issue was determined against Ms. Aikman as she had not demonstrated that she met the statutory requirements for the acquisition of title by prescription. Having failed to discharge that burden, the judge stated that her defence cannot succeed. It is noted that Ms. Aikman did not file a counterclaim asserting any interest in the property.

[24] The trial judge found that Dr. Young is entitled to damages for trespass. He accepted that Ms. Aikman made improvement to the property. At [100] he set out his calculation of the damages:

“In the present case, the Court notes that the Defendant improved the property and takes judicial notice that the Property is located outside of Belize City and would therefore likely attract a lower rental rate. In those circumstances, the Court is satisfied that a sum of Five Hundred Belize Dollars (BZ\$500) per month represents a reasonable value for the use and occupation of the Property. Applied over a period of two hundred and fifty-eight months (258) months, being for the period 1st July 2004 to 31st January 2026, this yields a gross figure of One Hundred and Twenty -nine Thousand Belize Dollars (BZ\$129,000.00).”

[25] It was accepted by the trial judge that Ms. Aikman and her late husband, Mr. Aikman invested in the property and he applied a set off of BZ\$ 75,219.22. The balance of BZ\$53,780.78 was awarded to Dr Young.

[26] It was for those reasons the trial judge made the following order:

"1. The Claimant is entitled to possession of the property situated at Lot No. 17 Burrell Boom Road, Belize District, Belize approximately ½ Mile from the Northern Highway, registered in the Deed Book Volume 15 of 1995 Folios 1029-1048 (" the Property"), on the 11th day of July 1995.

2. The 2nd Defendant shall vacate the Property within six (6) months from the date of this Order.
3. Damages are awarded to the Claimant for trespass in the sum of Fifty-Three Thousand Seven Hundred and Eighty Dollars and Seventy-Eight Cents [BZ \$53,780.78].
4. Interest shall accrue on the sum of BZ \$53,780.78 at the rate of 6% per annum until the sum is paid. From the 30th day of January, 2026.
5. Costs are awarded to the Claimant in the sum of Two Thousand Five Hundred Belize Dollars (BZ\$2,500.00)".

[27] It is noted that the trial judge found that Dr. Young was entitled to an order for possession of the property notwithstanding there was no finding that he was the owner of the property and no declaration granted that he was the owner. Ms. Chou, the other alleged joint owner was not a part of the proceedings. The trial judge reasoned that Dr. Young was entitled to recovery of possession of the property because Ms. Aikman had not dispossessed him by way of prescription.

The grounds of appeal

[28] Ms. Aikman filed two grounds of appeal. One on the limitation issue and the other on the damages awarded for the trespass:

1. The learned trial judge erred in law and misdirected himself in finding that the email sent by the late Mr Aikman in or about 8 April 2014 constitutes an acknowledgement of Dr. Young's ownership of the Property for the purpose of sections 29 and 30 of the Limitation Act because, inter alia,
 - (i) the communication is simply not a clear and unequivocal acknowledgement of Dr. Young's title to the property within the meaning of the Limitation Act;
 - (ii) the email forms part of negotiations between Dr Young and Mr Aikman to settle a long outstanding legal claim to the Property and so was
 - (a) as against Mr Aikman, properly subject to without prejudice privilege, and/or

- (b) does not contain an offer to purchase the property on an open market but was a simple offer to settle/compromise a legal claim and/or
 - (iii) Mr. Aikman forcefully maintained a legal claim to possession of the property in the email in the face of the claims of the Claimant and notwithstanding expression of an offer to pay some money to the Claimant; and
- 2. The learned trial judge erred in law and misdirected himself in awarding damages for trespass in the sum of \$53,780.79 based on the assessment of the total value of unpaid rent going back 21.5 years or 258 months because,
 - (i) there was no claim for that sum made in the Statement of Claim or otherwise so that such a claim was never pleaded as special damages and no specific defence offered thereto;
 - (ii) there was no claim made for the recovery of any mesne profits;
 - (iii) the limitation period for the recovery of rent is 6 years;
 - (iv) the limitation period for a claim for damages for trespass, assuming as the judge found that the trespass was continuing and renewed daily, is still only six years; and/or
 - (v) the parties never had any opportunity to be heard on any such fantastical claim or award.

Issues

[29] The issues for determination are:

- (i) Whether the learned trial judge erred in law and misdirected himself in finding that the email sent by Mr Aikman in or about 8 April, 2014 constitutes an acknowledgement of Dr. Young's ownership of the property for the purpose of sections 29 and 30 of the Limitation Act.
- (ii) Whether the trial judge erred in awarding damages for trespass in the sum of \$53,780.79 based on the assessment of the total value of unpaid rent going back 21.5 years or 258 months.

The Applicable Law under the Limitation Act

[30] *Limitation of action to recover land*

Section 12(2) of the *Limitation Act* provides for a limitation period of 12 years to recover land. It provides that:

"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, if the right of action first accrued to the State through whom the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the State or of twelve years from the date on which the right of action accrued to some person other than the State, whichever period first expires."

Accrual of right of action

[31] Section 13(1) addresses dispossession and when the right of action is deemed to have accrued:

"13.-(1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

Fresh accrual of action on acknowledgement

[32] The limitation period can be interrupted or reset if there is acknowledgement of title. Sections 29(1) state that:

"29.- (1) Where there has accrued any right of action to recover land, or any right of a mortgagee to apply for an order for sale of the mortgaged Property, and,

(a) the person in possession of the land acknowledges the title of the person to whom the right of action has accrued; or

.....

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

Formal provisions as to acknowledgement

[33] Section 30 provides for the formality:

30.-(1) Every such acknowledgment as mentioned in section 29 of this Act, shall be in writing and signed by the person making the acknowledgment.

Issue 1: Whether the email of 8 April, 2014 constitutes an acknowledgement of Dr Young's ownership of the property for the purpose of sections 29 and 30 of the Limitation Act

[34] The trial judge found that the limitation period for recovery of possession which is 12 years as provided by section 12(2) was reset on or about 2014, and Dr. Young's right of action to recover possession remains extant. He found that the cause of action accrued had been postponed pursuant to sections 29 and 30 of the Limitation Act because Mr. Aikman had acknowledged the title of Dr. Young in the email of 8 April, 2014 in which he made an offer to buy the property. This email as found by the trial judge was in writing and signed by Mr. Aikman in accordance with the provisions of the Electronic Evidence Act.

[35] Ms. Aikman's first ground of appeal is that the learned trial judge erred in law and misdirected himself by implying a meaning unto the 2014 email that the text does not bear. She identified three reasons as shown at [28] which will be considered in the same order. Learned counsel Mr. Ysaguirre submitted that the appeal turns on a misapplication of the *Limitation Act* as it relates to acknowledgments for the purpose of resetting limitation periods.

[36] Mrs. Elrington Cyrille submitted that the Appellant, Ms. Aikman is not appealing the learned trial judge's application of the *Limitation Act* but his finding of fact that the Respondent, Dr. Young proved statutory acknowledgement as defined by the Act. Learned counsel relied on **Stephanie Jones v Jessie Stephenson**³ and contended that Ms. Aikman must satisfy the test that the decision under appeal is one no reasonable judge could have reached.

[37] It is accepted that the Court of Appeal is a court of review and its function is not to have a retrial. In **Karen Acosta Longsworth v Bay Trust Corporate Services Limited**,⁴ cited by learned counsel, Mrs Elrington Cyrille, the Court explains the function of the court,

³ Stephanie Jones v Jessie Stephenson Civil Appeal No. 21 of 2016, Court of Appeal Belize dated 22nd June 2018 at 11-13

⁴ Civil Appeal No. 12 of 2013 BZ

“[33] The purpose of appeal proceedings is for an appellate court to determine whether the judgment or decision of the trial judge, particularly the order made by the judge, is wrong on a question of law, or unjust because of irregularity or other cause, and to correct the error or rectify the injustice, if warranted. Accordingly, the proceedings of an appellate court are by way of a review of the proceedings and the order made in the court below. The proceedings of the appellate court are not a retrial of the case, not a retrial of the facts.”

[38] The appellate court does not usually interfere with finding of facts made by a trial judge. But there are exceptions such as when a trial judge “.... misunderstood the evidence (the facts); when the judge applied the wrong principle in arriving at the facts; and when the judge drew an absurd inference from the primary facts that have been proved, or and which is demonstrably impossible or so improbable, that it cannot be reasonably accepted.” – **Re A Solicitor** [1945] 1 All ER 445.

[39] An acknowledgement of title is to be determined by the trial judge and requires interpretation of the communication for the purpose of resetting the limitation period in accordance with sections 29 and 30 of the Limitation Act. Having reviewed the proceedings in the court below, it is my view, that the appeal concerns mixed fact and law. The judge interpreted the email of 8 April 2014 in which he stated there was no offer to buy the property. Thereafter the learned trial judge reached to additional emails to infer that there was an offer to buy the property. This raises the issue as to whether the email of 8 April 2014 met the threshold for an acknowledgment of title pursuant to sections 29 and 30 of the Limitation Act. Further, the issue of admissibility of the email was raised based on without prejudice privilege, a point not taken before the learned trial judge.

Communication is simply not a clear and unequivocal acknowledgement of title

[40] Mr. Ysaguirre contended that the communication is simply not a clear and unequivocal acknowledgement of Dr. Young's title to the property within the meaning of the Limitation Act. The trial judge as shown by his finding at [60] construed the 8 April 2014 email from Mr. Aikman to Dr Young, which was a response as to why he had not moved from the property. The contents of the email state:

"My last Response!

For your information, the window that you saw broken had just been ripped out by thieves who broke into our house for the 11th time since we have lived up there !!!!.

We can't get the replacement window to buy in Belize because they do not sell that type already made in the store! So, we had to board up that window for security! We have arranged for someone to make a window to fit in the space, but he has had a hard time to fit it due to the frame of the house!

You want a record of receipts and expenditures! I would be happy to show you sir! Just get your check book ready to reimburse me for a significant sum of money! Or we could arrange for you to deduct the excess expenses together with the 7% management fee for the house as well as an additional management fee of 25% of managing the entire property and all other houses, plus a fire prevention fee for the three houses I saved from being burnt to the ground which includes the one I occupy, the house for David Ho and the house next to mine! We can simply deduct that cost from the 60,000 and I will gladly pay you the difference!

My lawyers will be happy to explain to you why we have not moved.
I am sure sister Chou will be in touch with you after I meet with her in Taiwan."

[41] The trial judge at [57] of the judgment said, "... The alleged email correspondence between the Claimant and the late Mr. Aikman consists merely of discussions surrounding a supposed offer to purchase, subject to various conditions, and does not purport to effect any legal transfer or creation of an interest in land." The learned trial judge then raised doubts about the 8 April 2014 email which he considered as a response to other emails because certain earlier communications leading up to the responses in question were not provided to the court. He stated that there was "... no explicit statement within the emails in which the late Mr. Aikman unequivocally acknowledges the Claimant as the rightful owner of the Property." The trial judge stated those doubts at [58]:

"The email correspondence, however, raises a sequence of doubts, as it appears that certain earlier communications leading up to the responses in question were not provided to the court. Moreover, there is no explicit statement within the emails in which the late Mr. Aikman unequivocally acknowledges the Claimant as the rightful owner of the Property. In one email, the late Mr. Aikman described himself as the Properly manager or caretaker of "a property," while in another, he referred to the same premises as his "house", thereby creating some ambiguity as to the capacity in which he was acting."

[42] In my view, the conclusion reached by the trial judge at [57] and [58] was sufficient to find that the 8 April 2014 email does not amount to an acknowledgement by Mr. Aikman of Dr. Young's title. There was no clear offer to buy the property and an acknowledgement of title cannot be implied from the text of the 8 April 2014 email.

[43] There is no general rule as to what constitutes an acknowledgment of title pursuant to section 29 of the Limitation Act. But it must be in writing and signed as provided by section 30 of the Limitation Act. Whether or not a particular writing amounts to an acknowledgment must depend on the true construction of the writing considering all the surrounding circumstances as opined in **Edgington v Clarke and another**,⁵ relied upon by Mr. Ysaguirre. An unreserved offer or clean offer to purchase property may constitute an implied acknowledgement of title to property.

[44] In **Edgington** a person in adverse possession of certain freehold property, of which he did not know who was the owner, wrote letters to a person whom he knew to be the owner's agent making an offer, subject to contract, to purchase the property for a specified sum. The offer was accepted and a deposit paid, but the contract fell through. It was held that the making of the offer to purchase freehold property, even though subject to contract, showed that the offeror realised that the offeree had a better title to the property than the offeror, and so the letters constituted an acknowledgment of the true owner's title for the purposes of s 23(1)(a) and s 24(1)(2) of the Limitation Act.

[45] On appeal the first question which arose on the plaintiff's cross-appeal, was whether the plaintiff, by offering to purchase some land of which the judge held he had been in possession for over twelve years, thereby acknowledged the title of the person who was the true owner, so as to prevent the plaintiff from acquiring a title by adverse possession. The court considered whether certain letters which the plaintiff wrote amounted to an acknowledgment of the title. The letter states: "*Dear Sir, re 121/123 Poplar High Street, E.14. re: the above mentioned plots of freehold land. I herewith offer the sum of £275 subject to contract. Yours faithfully.*" There was no reply to that letter. On October 14, 1954, the Plaintiff wrote:

Dear Sir, re 121/123 Poplar High Street. Regarding the sale of the above numbered property I herewith make an offer of £320. If this offer is accepted I hereby authorise you to proceed on my behalf in this matter."

[46] The offer was accepted and the Plaintiff paid a deposit. The court saw the letter as a clear offer and stated "If a man makes an offer to purchase freehold property, even though the offer be subject to contract, he is quite clearly saying that as between himself and the person to whom he makes the offer he realises that the latter has a better title, and that would seem to be the plainest possible form of acknowledgment."

⁵ [1964] 1 QB 367 at 376- 377

[47] The instant case before this Court can be distinguished from **Edginton** as there was no clear offer to purchase the property. In my view, the trial judge's observation at [57] and [58] was right on point. I have reviewed the 8 April 2014 email and it shows negotiations to settle legal disputes in relation to Mr. Aikman's management of the entire subdivision including the house he lived in and the adjoining lot. Mr. Aikman as shown by the email said ... *My lawyers will be happy to explain to you why we have not moved...*" This statement can be construed as an assertion of an independent legal right to possession in response to Dr. Young, demanding to know why Mr. Aikman remained in possession despite an old, unexecuted possession order.

[48] In **Edginton**, the court analysed **Doe d Curzon v Edmonds** which was distinguished. There was no final bargain. The person in possession wrote a letter to the true owner stating, "*Although, if matters were contested, I am of the opinion that I should establish a legal right to the premises, yet under all circumstances, I have made up my mind to accede to the offer you made, of paying of a moderate rent, on an agreement for a term of 21 years.*" The Court held that because the letter challenged ownership and offered a compromise, it was not an acknowledgement.

[49] In the present case, the late Mr. Aikman addressed several issues in the 8 April 2014 email which in my view challenged ownership and offered compromises. It did not meet the requirement for the purposes of section 29(1) of the Limitation Act. As such, the limitation issue should have been decided in favour of Ms. Aikman as the claim was statute barred and the title of Dr. Young had been extinguished as provided by section 22 of the Limitation Act.⁶ But this was not done as the trial judge considered additional evidence, reaching beyond the 8 April 2014 email, to draw an inference that there was an offer to buy the property.

Inference regarding the 8 April 2014 email based on an assessment of additional emails

[50] Despite the above observation by the trial judge at [58] that there was no explicit statement within the emails in which the late Mr. Aikman unequivocally acknowledges Dr. Young as the rightful owner of the property, the trial judge found at [60] that the email of April 2014 is a valid statutory acknowledgement of Dr. Young's ownership of the property. He concluded that:

⁶ 22. Subject to the provisions of section 15 of this Act 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.

“60. The Court finds that the production of the email trail by the Claimant is sufficient to invoke the statutory presumption that the communications were sent by the person to whom they purport to relate. In the absence of any contrary evidence, there is no basis to rebut the presumption that the emails represent the genuine acts and intentions of the late Mr. Aikman. Consequently, the Court accepts that the email sent by the late Mr. Aikman in or about 8th April 2014, constitutes a valid acknowledgment of the Claimant's ownership of the Property for the purpose of sections 29 and 30 of the Act, as read with the ETA.” (emphasis added)

[51] This finding as shown above at [60] was reached because the learned trial judge considered additional emails and made an inference that Mr. Aikman and Dr. Young were engaged in discussions regarding a possible sale of the property. The trial judge recognised the vagueness of the evidence but stated that the context of the emails suggests that the parties were negotiating the sale of the Property. It is based on this suggestion that he grounded his inference as shown at [59] of the judgment,

“It is only from the additional emails that one is able to infer that the parties were engaged in discussions regarding a possible sale of the Property. The reasonable inference to be drawn is that the late Mr. Aikman proposed to the Claimant either that he be compensated for expenses incurred in respect of the Property, or that they enter into an arrangement whereby he would receive a discount, in the form of management fees, from the proposed sale price of Sixty Thousand Belize Dollars (BZ\$60,000). Notwithstanding the vagueness of the evidence, the context of the emails suggests that the parties were negotiating the sale of the Property.”

[52] In my view, the additional emails relied upon by the trial judge to draw the inference of a possible sale do not meet the plain requirements of sections 29 and 30 of the Limitation Act. Section 30 requires the acknowledgement itself to be in writing and signed.⁷ The acknowledgement must therefore be found within the signed document itself and not supplied by inference from an email trail or additional emails, especially so since the trial judge said “it appears that certain earlier communications leading up to the responses in question were not provided to the court.” The entire email trail/chain in the possession of Dr. Young was not put into evidence. It seems that he was very selective and this should have caused the inference drawn to be weakened. Yet the trial judge ultimately drew the inference most favourable to Dr. Young. Further, no examination was done by the trial judge to see if the additional evidence met the requirements of section 30 of the Limitation

⁷ 30.-(1) Every such acknowledgment as mentioned in section 29 of this Act, shall be in writing and signed by the person making the acknowledgment

Act. It was only the 8 April 2014 email which was examined to determine if it met the statutory requirements. The trial judge used the additional emails to infer an acknowledgment after finding that the operative signed email of 8 April 2014 did not expressly acknowledge title. In my view, sections 29 and 30 require the signed document itself to contain the acknowledgement and the inference drawn by the trial judge from the surrounding correspondence is insufficient to satisfy the statutory requirements.

[53] In any event, the 8 April 2014 email which was examined by the trial judge shows bargaining/negotiations and is not a clear offer to purchase the property. The trial judge accepted there were discussions regarding a possible sale of the property. In my view, that was insufficient to satisfy the requirements of section 29 and 30 of the Limitation Act. There was no clear offer by Mr. Aikman to purchase the property and by extension not an acknowledgement of title. Additionally, there are other reasonable inferences that can be drawn from the 8 April 2014 email, apart from the two identified by the trial judge, such as settlement of a variety of legal disputes arising out of his management of the entire subdivision and was not offering a sum of money to purchase the property. There is no clear statement that the \$60,000.00 was a price offered to buy the property. It was Dr. Young who gave evidence of his perception of the 8 April 2014 email as an offer to buy the property.

[54] In the emails referred to by Mrs Elrington Cyrille in her written submissions there is no offer from Mr. Aikman to buy the property from Dr. Young. The email of 27 July 2012 was from Dr. Young and requested Mr. Aikman to leave the house. The email of 7 April 2014 was also from Dr. Young and shows bargaining without any commitment as he needed advice of co-owner sister Chou. Both were signed by Dr. Young and not Mr. Aikman.

[55] In the email which is quoted at paragraph 23 of Mrs. Elrington Cyrille's written submissions, Mr. Aikman informed Dr. Young that he will cease to negotiate with him. He spoke of bush fires and the houses he saved in the subdivision including the one he occupied and all the money he spent. At the last line of that email he informed Dr. Young that "*I will not deal with you anymore under these conditions of extortion!*" This communication shows negotiations gone bad.

[56] In an earlier email of 8 April 2014, 12.12 am from Mr. Aikman, (the email the judge construed was the one sent at 2:21 am) Mr. Aikman said: "You are determined to ignore and acknowledge my work over all those years to rescue and salvage a development in deprivation and disrepair! Most importantly, you are determined to ignore the excessive expenditure that has been spent over 13 years on the house I

occupy.” In my view, other inferences can be drawn from all these correspondences as to ownership. There was no clear offer by Mr. Aikman to buy the property from Dr. Young or from his sister, Chou. Further and an offer cannot be implied from the text of the 8 April 2014 email. As such, I disagree with learned counsel Mrs. Elrington Cyrille that Mr. Aikman acknowledged that Dr. Young and his sister Chou had the better title. In my view, the trial judge made an error in finding that the email sent by the late Mr. Aikman in or about 8 April 2014, constitutes a valid acknowledgment of the Dr. Young’s ownership of the property for the purpose of sections 29 and 30 of the Limitation Act.

The legal nature of the emails – without prejudice privilege

- [57] Mr. Ysaguirre submitted that the emails forms part of negotiations between Dr Young and Mr Aikman to settle a long outstanding legal claim to the Property and therefore was (a) as against Mr Aikman, properly subject to without prejudice privilege, and/or (b) does not contain an offer to purchase the property on an open market but was a simple offer to settle/compromise a legal claim.
- [58] Mrs. Elrington Cyrille submitted that Ms. Aikman did not propound this argument of privilege in the court below and submitted no evidence in support of this position. That this argument of privilege is a defence by ambush and should be disregarded in its entirety.
- [59] It is accepted that the point on without prejudice privilege was not taken before the trial judge. Further, to be fair to the trial judge no authority to support such arguments were brought to his attention for consideration. However, in my view, it was not for Ms. Aikman to do so since the email originated from Mr. Aikman. The claim against the estate of Mr. Aikman was struck out. Therefore, I am of the view that it is open to this Court to address the issue of prejudice as it is a legal argument which concerns the admissibility of the evidence.
- [60] Mr. Ysaguirre argued that offers for the payment of money in settlement of existing legal claims are not only commonly made without any admission of liability or acknowledgement of any wrongdoing but are also subject to privilege. I agree. In the case of **Ofulue and another v Bossert**⁸ relied upon by learned counsel (an authority not brought to the attention of the trial judge) the court confirmed that a letter offering to purchase a property in settlement of a claim for possession where adverse possession was raised as a defence was not admissible to prove acknowledgment of title and postpone

⁸ [2009] Ch 1

accrual of the cause of action because the letter was protected by privilege and therefore inadmissible. In **Ofulue**, the letter was headed "Without prejudice".

[61] However, as rightly submitted by Mr. Ysaguirre a written offer need not contain that designation 'Without prejudice' to enjoy the same protection. The House of Lords explained in **Ofulue** that to allow the letter to be so used in such circumstances violates the public policy founding the privilege which sought to encourage parties to settle their disputes without resort to the court.

[62] In this case, the emails from Mr. Aikman constituted an effort to resolve long-standing legal disputes related to property management, property repairs over 13 years and court judgments, and would have been protected by privilege. However, as the late Mr. Aikman was neither a party to the trial nor represented in the proceedings, his privilege could not be asserted. Furthermore, this privilege could not have been waived, as it belonged to Mr. Aikman, who remained unrepresented during the trial. Nevertheless, that does not prevent this Court from considering the public policy founding the privilege which sought to encourage parties to settle their disputes without resort to legal proceedings.

[63] The public policy articulated in **Ofulue** which serves to safeguard without prejudice communications, ought to have prevented the use of the 8 April 2014 email as evidence for the purposes of a statutory acknowledgement. In my view, the emails were privileged and inadmissible.

[64] In relation to the other points raised, I agree with point (ii) (b). The email does not contain an offer to purchase the property on an open market but was a simple offer to settle/compromise a legal claim. Further, I agree with point (iii) that Mr. Aikman forcefully maintained a legal claim to possession of the property in the email in the face of the claims of Dr. Young and notwithstanding expression of an offer to pay some money to him. As in the case of **Doe d Curzon**, the 8 April email challenged ownership and offered a compromise. This was not an acknowledgement of title as Mr. Aikman maintained a legal claim to possession.

Conclusion

[65] For all those reasons, the limitation period for recovery of possession was not reset on or about 2014 and the action against Ms. Aikman was statute barred. Consequently, the Order of the trial judge should be set aside.

[66] The issue of trespass falls away. Had it not fallen away, I would have remitted it to the court below for the reasons stated in that ground of appeal.

[67] I would propose the following Order:

- 1) The Order of the court below which includes possession of the property is set aside.
- 2) Costs is awarded to the Appellant, Ms. Aikman, in this appeal and the court below. This is to be taxed, if not agreed.

Minnet Hafiz Bertram
President

Blenman CJ

[68] I have read the judgment of Hon President Hafiz Bertram and I fully agree with the reasons and conclusion.

Louise Esther Blenman
Chief Justice

Minott-Phillips JA

[69] I too would allow this appeal, but on account of the non-conformity of the underlying action with a legal principle that made it unmaintainable. Neither side made submissions to us on the principle that applies to an action for possession of land that is jointly owned where only one of the joint owners is a party to the action. As was the case with the '*without prejudice*' rule, this legal principle does not appear to have been raised by either side at trial -nor did it form the basis of a ground of appeal. However, as it goes to the issue of whether the action, as constituted, was maintainable, I hold the view that it must be addressed.

[70] The underlying claim that resulted in the order for possession that is the subject of this appeal was brought by Dr Jinyue Young in relation to property he claimed to own jointly with his sister, Chou Man-Ping. This evidence is contained in paragraphs 1-4 of his affidavit in support of his claim and the

Conveyance through which proprietorship of the property is claimed is exhibited (as “JY 1”). That evidence forms a part of the factual background to the case as set out by the judge below⁹.

[71] The Conveyance that is dated 11 July 1995 (and exhibited by Dr Young) is between an incorporated entity

*“(hereinafter called “The Vendor” of the one part and **CHUO, MAN-PING AND YOUNG, JIN YUE**, both of No 49 Queen Street, Belize City, Belize (hereinafter called “The Purchasers”) of the other part,...”¹⁰“*

The Deed of Conveyance goes on to witness that the property is conveyed by the Vendor,

“unto the purchaserss...to have and to hold unto the purchaserss.”¹¹

The trial judge correctly stated that a Deed of Conveyance constitutes a form of title for unregistered land¹². It is clear from the Deed of Conveyance that the interest Dr Young claims in the property subject of the dispute is one held jointly by his sister and him – a fact also reflected in the oral testimony¹³.

[72] The problem with the action as it is constituted, is that Dr Young’s sister is not a party. She is not a co-claimant with him, nor did he add her to the action as a Defendant. **She is altogether absent from the proceedings.** Dr Young’s acknowledgment of her absence from the proceedings was recorded by the trial judge at numbered paragraph [9] of his judgment.

[73] As a matter of law, whenever an interest subject of an action is jointly held, a claim founded on that interest must be brought by all joint holders. Where one of the co-owners does not join in bringing the action, he/she must be added to it as a defendant. **The purpose of the rule is to enable the court to make an order that binds all holders of the joint interest. Absent the presence of all of them, the court will consider itself hindered and unable to pronounce an effective order.** The principle is one of long standing and remains good law.

⁹ At numbered paragraphs [5] and [9] of his reasons.

¹⁰ Exhibit “JY 1” recital paragraph on page 1

¹¹ Within the paragraph under the rubric “**NOW THIS DEED WITNESSETH as follows:**” on pages 2-3 of the Conveyance that is Exhibit “JY 1”.

¹² At numbered paragraph [86] of his written reasons.

¹³ At paragraphs [5] and [9] of the written reasons of the trial judge.

[74] **Cullen v Knowles and Birks**¹⁴ is a case in which Cullen and Birks were the owners of a patent they sold to Knowles for 1,600l. Cullen brought an action against Knowles to recover the 1,600l paid. He asked Birks to join with him as co-plaintiff in bringing the action against Knowles. Birks, however, refused his consent. Cullen, accordingly, joined him as an additional defendant to the action. A preliminary objection was taken that **the action will not lie** because one of two joint covenantees cannot sue without joining his co-covenantor as **co-plaintiff**. The preliminary objection failed and the action was allowed to proceed, but only because the co-covenantor had been joined as a defendant and was, thereby, also before the court. In giving the judgment of the court Bingham J said¹⁵:

“This is an action brought by one of two joint promisees. It is perfectly clear that no action can be maintained by one of two joint promisees unless the other promisee is also a party to the action. It is usual for the joint promisees to be joined as joint plaintiffs if they are bringing, and as joint defendants if they are defending, the action. In this case, however, the other joint promisee has refused to join as a plaintiff in bringing the action although he has had tendered to him an indemnity against the costs of the action. It seems that he was within his right in so refusing. ... The question, therefore, here is whether such refusal prevents his co-promisee from suing at all, or whether he can get over the difficulty by joining the co-promisee, who refuses to join as plaintiff, as a defendant. I think that he can do so. I can see no difference between this case and the cases on the Chancery side of several co-mortgagees, where it is clear that co-mortgagees who are unwilling to join as plaintiffs can be made defendants in an action by one of the co-mortgagees to foreclose. The object of this is to get all the parties interested in the litigation before the Court; and when they are before the Court, whether as plaintiffs or defendants, there is no reason why the action should not go on. ... if, after hearing this action, I should come to the conclusion that the co-promisees in this case are entitled to some relief, I shall have no difficulty in giving judgment for both, although one is plaintiff and the other defendant. The trial must therefore proceed.”

[75] **In Gill and Another v Lewis and Another**¹⁶ the UK Court of Appeal dismissed an appeal against an order granting joint tenants who were lessees relief from forfeiture. The dismissal resulted from the judgment in favour of the lessor for possession (that was the precursor for the forfeiture order) being entered against one only of the two joint tenants; and in it thereby not being an effective judgment for possession. The UK Court of Appeal said the following¹⁷ (after expressly noting¹⁸ that judgment for possession of premises held by joint tenants was thus obtained against one only of those joint tenants),

¹⁴ [1898] 2 QB 380

¹⁵ At 381-382

¹⁶ [1956] 1 All ER 844

¹⁷ (Per Jenkins, LJ) at 849, letters B-D.

¹⁸ At 848, letter I

"It seems to me that the right view must be that in order to obtain an effective judgment for possession against joint tenants judgment must be obtained against both of them. I cannot see that a judgment against one only, both being equally entitled to possession of the whole premises as joint lessees thereof, can have any effect at all.

...When all that has happened is that judgment for possession has been signed against one only of two joint tenants, I do not think there has been a completed 'trial' within the meaning of s. 212¹⁹, or an effective judgment for possession."

In his concurring judgment, Lord Hodson said²⁰,

*"...It is true that judgment has been given against one of the tenants (who are the defendants here), but the judgment against him is not an effective judgment and not a judgment against both. The position, therefore, is this, that...the action is one for ejectment, that there has been no trial, and that before trial, or before **effective trial**, the tenants have paid or tendered to the landlords all the rent and arrears, with the costs.... This section [212] covers this case, and the consequence laid down by the section is that all further proceedings on the ejectment shall cease and be discontinued. In my judgment the order which should issue from this court ought to reflect the bidding of that section, and, accordingly, proceedings instituted by the landlords must be ordered to cease and be discontinued."*

The reason there hadn't been an "**effective trial**" was that its result was a judgment for possession in favour of the landlord signed against one only of two joint tenants.

[76] The principle requiring all joint tenants to be before the court in a dispute about the property (to enable the court to be properly and effectively seised of the matter) derives from the status of joint interest holders (as being all jointly entitled and obligated). An order that does not bind them all is ineffective because the one who is not a party to the action and, therefore, not bound by the court's order, is free to act heedless of it. As pointed out in **Cullen v Knowles**, the principle applies whether the joint interest holders are bringing, or defending, an action. In an action for recovery of possession of land, the principle applies whether the land is jointly owned as joint tenants or as tenants-in-common (unity of possession being a defining characteristic of both those forms of co-ownership). As stated in **The Law of Real Property- by Megarry and Wade**, in its chapter on Co-Ownership,²¹

¹⁹ Section 212 states: "If the tenant ...shall, at any time before **the trial** in such ejectment, pay or tender to the lessor or landlord, ...or pay into court...where the same cause is depending, all the rent and arrears, together with the costs, then and in such case all further proceedings on the ejectment shall cease and be discontinued; and if such lessee... shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease."

²⁰ At 853, letters F-H

²¹ Fifth Edition. London. Stevens & Sons Ltd. 1984. Page 417 at 419.

“Unity of Possession. *Unity of possession is common to all forms of co-ownership. Each co-owner is as much entitled to possession of any part of the land as the others.”*

[77] As this action was brought against the Estate of her husband (Derek Aikman) and Mrs Aikman²² by one only of two joint owners of the property, I would allow this appeal on the basis that it was not maintainable by Dr Young alone and that his claimed co-owner (sister) was a necessary party to the proceedings if the court was to be able to grant the recovery of possession of the property sought. If she would not consent to being a co-claimant with him, he should have joined her as a defendant in order to enable the trial to proceed.

[78] A point of law going to the maintainability of the action before the court, can be taken at any time and should be taken, once spotted. It matters not that it was not raised in the proceedings before the court below or in the submissions made to us. The Caribbean Court of Justice (CCJ) in its recent judgment delivered in ***Andrew Avelline Bennett v Government of the United States of America & Attorney General of Belize***²³, reminds us of the doctrine of *jura novit curia* meaning “the court knows the law” and that, in deciding a question of law, the court is not limited by the submissions of the parties. In that case the CCJ said²⁴,

“...judges retain the prerogative to decide the matter according to legal principles that are the most appropriate, whether or not the parties have addressed them.”

[79] For those reasons I have given, I too would allow this appeal. I hasten to add that, even if the court below did have the right to grant the relief it did, I would, nevertheless, have allowed this appeal for the reasons stated by my sister, the Hon. President of the Court of Appeal.

[80] In so saying I am aware of the existence of exceptions (as set out by the House of Lords in ***Rush & Tompkins Ltd. v. Greater London Council***²⁵) to the rule against admission in evidence in court proceedings of correspondence aimed at negotiating a settlement of a dispute. I agree that it is the purpose of the correspondence that determines its inadmissibility (not whether it is headed “without

²² Their interest in the property (which originally would also have been jointly held) was not joint at the time the action was brought because the death of Derek Aikman would have triggered the *jus accrescendi* (right of survivorship) and made his wife the sole holder of their interest.

²³ [2026] CCJ 7 (AJ) BZ – Eboe-Osuji J (Jamadar and Bulkan, JJ concurring) at numbered paragraph [29].

²⁴ At numbered paragraph [45]

²⁵ [1989] 1 AC 1280

prejudice”). In my view, however, the particular correspondence in this case does not fall within any of the exceptions to the rule against inadmissibility (the categories of which are not closed).

[81] The decision in ***Rush & Tomkins*** was taken within the context of an examination of the right to discovery of documents in the face of a summons for specific discovery of “*without prejudice*” correspondence. Although, unlike in that case, the issue in the case at bar arose for the first time in the appeal before us, the principle of law remains apposite in the absence of the prejudice being waived by the holder of the person entitled to the privilege. Lord Griffiths outlined the relevant law as follows:²⁶

“The “without prejudice” rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish....The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence. A competent solicitor will always head any negotiating correspondence “without prejudice” to make clear beyond doubt that in the event of negotiations being unsuccessful they are not to be referred to at the subsequent trial. However, the application of the rule is not dependent upon the use of the phrase “without prejudice” and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible at the trial and cannot be used to establish admission or partial admission.”

He went on to say²⁷,

“The cases show that the rule is not absolute and resort may be had to the “without prejudice” material for a variety of reasons when the justice of the case requires it. ...these authorities...all illustrate the underlying purpose of the rule which is to protect a litigant from being embarrassed by any admission made purely in an attempt to achieve a settlement. Thus the “without prejudice” material will be admissible if the issue is whether or not the negotiations resulted in an agreement settlement...The court will not permit the phrase to be used to exclude an act of bankruptcy;... nor to suppress a threat if an offer is not accepted. In certain circumstances the “without prejudice” correspondence may be looked at to determine a question of costs after judgment has been given....There is also authority for the proposition that the admission of an “independent fact” in no way connected with the merits of the cause is admissible even if made in the course of negotiations for a settlement.”

[82] In fairness to the judge below, there does not appear to have been an objection taken to the admission

²⁶ At 1299, letter D – 1300, letter A.

²⁷ At 1300, letter C

of the email correspondence in evidence at the trial. That could have caused him to overlook the general rule prohibiting the admission of the email correspondence into evidence. Waiver didn't apply here because, while it is the case that privilege may be waived by the party entitled to it, that party (Mr Aiken) was deceased before the proceedings started. He could not, therefore, have waived his right not to have this email correspondence admitted in evidence.

[83] As the admission into evidence of '*without prejudice*' discourse offends against public policy, the reliance by the judge below on that evidence was, in the circumstances of this case, an error of law that allows this court to give its own view of the implications of the email correspondence. In that regard the view set out by my sister, the Hon President, reflects my own.

Sandra Minott-Phillips, KC
Justice of Appeal