

**IN THE SUPREME COURT OF BELIZE, A. D. 2013**

**CLAIM NO. 548 OF 2013**

	<b>(GAETON VALANCE</b>	<b>CLAIMANT</b>
	<b>(</b>	
<b>BETWEEN</b>	<b>(AND</b>	
	<b>(</b>	
	<b>(ISOLENE AUGUSTINE</b>	<b>DEFENDANTS</b>
	<b>(CHESTER WILLIAMS</b>	

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***BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA***

**Mr. Nicholas Dujon, S.C., for the Claimant**

**Mr. Edwin Flowers, S.C., for the Defendant**

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**D E C I S I O N**

**The Facts**

1. Sometime in 1984 Gaeton Valance came to Belize from Canada. He met John Augustine (now deceased) who was the father of Isolene Augustine. Mr. Valance became friends with Mr. Augustine, and later had a common law relationship with Ms. Augustine which lasted for several years. The couple had no children together but Ms. Augustine had seven children from a previous relationship. Mr. John Augustine was the owner of a parcel of land in Seine Bight Village, Stann Creek District, comprising approximately twelve and one half acres. He gave one half of this land to his daughter Ms. Isolene

Augustine and to her common law husband Mr. Valance jointly by Deed of Gift dated October 27<sup>th</sup>, 1992 (EA 2). The consideration for the land as stated in this Deed of Gift was "*natural love and affection*". Mr John Augustine as Grantor gave this property to the Grantees Ms. Isolene Augustine "*as his daughter*" and to Mr. Gaeton Valance "*as his son-in-law*". This six acre parcel of land given to Ms. Augustine and Mr. Valance was later brought under the compulsory registration system and renamed the Placencia North Registration Section Block 36 and parcel numbers were allocated to the two lots namely Parcel 295 and Parcel 296. These parcels were subdivided into four parcels of land numbered 2328, 2329, 2330 and 2331. In December 2005, Mr. Valance and Ms. Augustine acting together signed instruments of transfers by which 2328 and 2331 were transferred to Mr. Valance and Parcel 2329 and 2330 were transferred to Ms. Augustine. The instruments of transfer were then given to Ms. Isolene Augustine's son, Chester Williams, to record and in March 2006 Chester Williams obtained all land certificates. Mr. Valance brings this Claim seeking inter alia the transfer of Parcel 2330 to himself as he claims that Parcel 2330 should have been transferred to him and not to Ms. Augustine. He claims that he executed the transfer in error and that Ms. Augustine was aware of this error when she transferred this Parcel to her son Chester Williams. He further claims that Chester Williams has perpetrated a fraud or at the very least was aware of the mistake and that Mr. Williams has since proceeded to sell that Parcel 2330 to a third party. He therefore asks that Parcel 2330 be restored to him as the rightful owner. In her defence, Ms. Augustine claims that she and Mr Valance initially had an agreement that he would receive Parcels 2330 and 2329, while she would receive Parcel

2328 and 2331. However, both she and Mr. Valance later agreed that since she had seven children (none of whom were fathered by Mr. Valance), and since the property of all four parcels originally belonged to her father, she would receive three out of the four parcels and he would keep one parcel. She said that Mr. Valance later changed his mind and brought this action against her. Ms. Augustine said that she had given her son Chester Williams a Power of Attorney to transact all her business regarding her parcels of land and that Chester Williams therefore had her permission to use that parcel as he wished. She asks the court that Mr. Valance's claim be dismissed.

### **The Issues**

2. 1) Was there a mistake committed in 2005 by Mr. Valance and Ms. Augustine in transferring Parcel 2330 to Ms. Augustine instead of to Mr. Valance, or did these parties agree to make this transfer of Parcel 2330 to Ms. Augustine?
- 2) Did Ms. Augustine and her son Chester Williams perpetrate a fraud or at the very least take advantage of the mistake made by Mr. Valance by proceeding to sell Parcel 2330 to a third party knowing that Parcel 2330 rightfully belonged to Mr. Valance?
- 3) Is Mr. Valance entitled to the relief he seeks of rectification of the register by the Registrar of Lands and declarations as to his ownership of Parcel 2330?

### **The Claimant's Case**

3. The Claimant called two witnesses. Mr. Valance testified in his witness statement that he first came to Belize from Canada in 1984. He states that he planned to go to Placencia, but he ended up in Seine Bight Village, where he met Mr. John Augustine

(Mr. John) and became close friends with him. He later met Mr. John's daughter Isolene Augustine (Ms. Isolene) with whom he lived in a common law relationship for many years. In 1992, Mr. John gave one half of his twelve and one half acre property to Mr. Valance "*as his son in law*" and to Ms Isolene "*as his daughter*" for natural love and affection by way of Deed of Gift (EA 2). Mr. Valance hired Mr. Ellis Arzu, Senior Licensed Surveyor, to carry out the survey prior to the preparation of the Deed of Gift (EA 1). He paid the taxes owed on the property and attached receipts as proof (GV 1). He states that with the passage of time the relationship between himself and Ms. Isolene deteriorated and they agreed that they would divide the property in two; she would get the Southern portion and he would get the Northern portion. The property was brought under compulsory registration under the Registered Land Act, and Mr. Valance hired Mr. Arzu to conduct the necessary survey and to subdivide the land. He states that Chester Williams, son of Ms. Isolene, then asked if he could take over the registration process and Mr. Valance agreed. He said he has known Chester from the time Chester was a boy and he agreed because he was happy that Chester was looking out for his mother's interest. Mr. Valance states that he had full faith in Chester's ability as he had done well for himself in the Police Force. Mr. Valance claims that he signed the transfer instruments not realizing that an error had been made in relation to Parcels 2331 and 2330. He further states that he was to be given Parcel 2330 absolutely and Ms. Isolene was to be given Parcel 2331 absolutely, but that the signed transfer documents revealed the opposite. He claims that he was not aware of this error until 2006 when he started wondering why he had not received his titles. He approached Mr. Arzu for advice and

Mr. Arzu drew up new transfer forms. Mr. Valance said that he and Ms. Augustine signed these new forms (EA 6 and EA 7) and returned them to Mr. Arzu but they were never filed at the Land Registry in Belmopan as Chester said he was looking after everything. He further said that he left Mr. Arzu in charge of collecting his titles when they were ready. Mr. Arzu informed him that he was only able to obtain title for Parcel 2328 as Chester told him he had lost the other title. Upon hearing this Mr. Valance lodged a caution against Parcel 2330 to restrict dealing with it (GV 2). He got an attorney one Mr. Cardona to assist him in rectifying the situation. He was advised to bring Ms. Isolene to Mr. Cardona's office where supportive statutory declaration and replacement land certificates were prepared along with transfer forms for Ms. Augustine to transfer Parcel 2330 to Mr. Valance (EA 8 and EA9). He claims that the replacement land certificates were signed by him and by Ms. Isolene and then filed with the Land Registry. His attorney wrote letters to the Registry inquiring about the replacement certificate for Parcel 2330 (EA 10 and EA11). He later learnt that Chester Williams had transferred Parcel 2330 to himself using a Power of Attorney. Mr. Valance claims that sometime between the time that Chester Williams had them sign documents in Seine Bight and presenting them to the Land Registry in Belmopan, his printed name on application for Parcel 2331 was scratched out, and Ms. Isolene Augustine's name was written in as Transferee. He also claims that he never signed a statutory declaration which was filed to support the scratching out of his name as Transferee and substitution of Ms. Augustine's name (GV 5). He blames Chester Williams for this situation which has deprived him of title to Parcel 2330 which he claims should rightfully belong to him,

and seeks orders from the Court for declarations as to his ownership and directing the Registrar to rectify title.

4. Under cross-examination by Mr. Flowers, SC, Mr. Valance was asked about the dates that the instruments of transfer were signed by Ms. Augustine and himself. He said he could not recall as it was a long time ago. At one point he had to be reminded by counsel that he was the one who brought this claim, as he appeared unable to recall elementary matters such as the date the transfers were signed, which are the basis of his claim. He admitted that in order for the parcels to be transferred both he and Ms. Augustine had to sign. He did not recall when he first became aware that Chester Williams had a Power of Attorney. All he said was that he does not recall. He does not have a timeline but it is obviously part of the record. He also said he is not a lawyer. This witness appeared lost and confused and at times defensive and at one point attempted to tell counsel how he should be questioned until the court advised him that he had to answer questions put in cross-examination and he could not dictate what was to be asked.
  
5. The second witness for the Claimant was Mr. Ellis Arzu Sr. He testified that he has been an experienced Land Surveyor for over 40 years. Mr. Arzu conducted all the requisite fieldwork on behalf of Mr. Valance who paid him fees to survey Mr. John Augustine's property in Seine Bight and he also paid the price of the survey plan. He also produced an undated agreement signed by Mr. Valance and Ms. Isolene which showed that the property was to be divided between the two parties with equal beach front (EA 3). He

says he obtained this agreement from Mr. Valance and Ms. Augustine when Mr. Valance asked him to obtain provisional approval to subdivide the property so that Ms. Augustine would obtain the southern portion and Mr. Valance would obtain the northern portion. According to the plan, Mr. Arzu claims it shows that Parcels 2328 and 2330 were to be transferred to Mr. Valance solely, while Parcels 2329 and 2331 were to be transferred to Ms. Isolene solely. Mr. Arzu said he was to do a further subdivision of Parcel 2330 and 2331 but he never did because Mr. Valance informed him that Chester Williams would look after everything. Mr. Arzu says he later contacted Chester Williams at Belize City and Chester said he had lost title to Parcel 2330. Mr. Arzu further states that Ms. Isolene (known to Mr. Arzu since 1964) came with Mr. Valance to Belmopan, and all three proceeded to Lawyer Cardona's office in June 2007 where she signed a statutory declaration and transfer forms transferring Parcel 2330 to Mr. Valance (EA9). These forms were to be filed once the replacement title certificates were issued. Mr. Arzu later learnt that Chester Williams used a Power of Attorney (given to him by his mother Ms. Isolene) dated 17<sup>th</sup> December, 2007 to transfer Parcel 2330 to himself. There was no cross-examination of Mr. Arzu so his evidence is unchallenged.

### **The Defendants' Case**

6. The Defendants called two witnesses. Ms. Isolene Augustine states she is a Domestic of Seine Bight Village. She says that she was living in a common-law union with Mr. Valance but they had no children together. She says Chester Williams is one of her children. She says that her father John Augustine owned a parcel of land in Seine Bight village which he gave to Mr. Valance and to her as a gift. The seven acre parcel was

subdivided into four parcels numbered 2328, 2329, 2330 and 2330 and instruments of transfer were signed on December 26<sup>th</sup>, 2005 giving Parcels 2328 and 2331 to Mr. Valance and Parcel 2329 and 2330 to her. She says that upon further reflection and consideration Mr. Valance agreed with her that since she had children that were not for him and seeing that the land was a gift from her father, she would get three of the four parcels (Parcels 2329, 2330 and 2331). Based on this agreement she claims that Mr. Valance received Land Certificate to Parcel 2328, while she received Land Certificates to Parcels 2329, 2330 and 2331 in the early part of 2006. Shortly after she received the titles she gave a Power of Attorney to her son Chester Williams to act on her behalf in dealing with the parcels of land. In May 2006 Chester acting on her behalf sold Parcel 2329 to one Charles Parkins. She claims she subdivided Parcel 2331 into smaller parcels and sold those off to third parties. In 2007, Chester told her he wanted to pursue a course of studies in law but that he was unable to secure a scholarship from the Government of Belize to assist him financially. She told Chester that all she had left was Parcel 2330 and that she could transfer that title to himself and use it as he saw fit to pursue his studies. Ms. Isolene states that she had no discussions up to this point with Mr. Valance about these properties. Suddenly Mr. Valance came to her and asked her to sign some documents about a piece of property that was supposed to be transferred but the transfer did not go through. She says he never mentioned any Parcel number to her so she signed, thinking that she was signing documents in relation to Parcel 2328 which was the parcel he should have received. There was never any discussion with Mr. Valance about any lost title. Ms. Augustine said she knew Chester Williams had all



the papers to deal with all her properties including a Power of Attorney from her so Chester Williams would never say titles were lost. She states that she made no agreement with Mr. Valance to transfer Parcel 2330 to him, neither did she make any application to the Land Registry for any replacement certificate.

7. Under cross-examination by Learned Counsel Mr. Dujon, SC, Ms. Isolene admitted that she could not remember the date that the decision was made by Mr. Valance and her to transfer the three parcels to her alone and one parcel to Mr. Valance alone but she thinks it was in 2006. She was asked to describe the circumstances that led to that decision, and she replied that it was because they had separated and so she told him that it was time for them to subdivide the land so that she would have her part and he would have his. Ms. Augustine claims that she was not aware that Mr. Valance was the one who paid all or most of the money to get title for the land. She was shown a transfer document dated 2005 (GV 3) transferring a parcel of land from Mr. Valance and herself to her alone, she was then asked why was it necessary if a subdivision was being carried out for Mr. Valance's name to appear on a transfer form transferring Parcel 2330 to her. She said she did not know. She said that she probably made a mistake as she thought she was signing Mr. Valance's piece of land over to him. Counsel then asked whether in 2005 all four parcels were in their joint names after the subdivision had been done. She said no. After Counsel clarified the question she said yes that all four parcels were in their joint names in 2005. She agreed that it was her understanding that the documents would be taken to Belmopan to be registered. She agreed that Mr. Valance's name was crossed out on the transfer document showed to her by

counsel (GV 4). She agreed that she went to Belmopan in June 2007 to a lawyer's office. She did not agree that she was asked for certificates for Parcels 2330 and 2331; she says she was given some papers to sign and she signed without reading them. Counsel read portions of EA 8 to her (statutory declaration as to lost title) and she admitted that document has her signature but does not remember swearing to the document; she also said the contents of the document are not true. She was also shown EA 9, a transfer document of Parcel 2330 to Mr. Valance, also signed by her; she agreed that she signed that the same time that she signed the statutory declaration. She could not recall when she gave Chester a Power of Attorney in relation to Parcel 2330; she said she gave him all land papers but she could not recall what numbers were there. She does not agree that when she went to Belmopan she was fully aware that an error had been made and that Mr. Valance was to get Parcel 2330 and she was to get Parcel 2331. She disagreed with counsel's suggestion that she was fully aware that she was rectifying the error by signing this statutory declaration and transfer at the lawyer's office in Belmopan.

8. Under re-examination by Mr Flowers, SC, Ms. Augustine said that she was not aware that it was a lawyer's office which she visited in Belmopan along with Mr. Valance; she said she was taken there by Mr. Valance and he did not tell her why she was there. She agreed that she signed the document shown to her by Mr. Dujon, SC, but she says the document was already prepared when she got to the office and she just signed it. She said she signed it without reading it properly out of "*bad habit*".

9. The second witness for the Defendants was Chester Williams. He says that he is a Senior Superintendent of Police and that he is a student at the Norman Manley Law School. He says that Mr. Valance is his step-father and that Ms. Augustine is his mother. Mr. Williams says that his Grandfather owned a parcel of land which he gave to his mother and stepfather, and that his mother relied on him to assist her in matters relating to this land. He further states that he knows that instruments of transfer between his stepfather and his mother were signed on December 26<sup>th</sup>, 2005, giving Parcels 2328 and 2331 to Mr. Valance and Parcels 2330 and 2329 to Ms. Augustine. Instruments of transfer were recorded and Ms. Augustine got title to Parcels 2329, 2330 and 2331 while Mr. Valance got title to Parcel 2328. Mr. Williams says that his mother then gave him a Power of Attorney to act on her behalf with regard to all three parcels of land. In May 2006, Ms. Isolene instructed Chester to sell Parcel 2329 to one Charles Parkins and under a Power of Attorney given to him by his mother he did so. He further states that Ms. Isolene subdivided Parcel 2331 into smaller parcels which were then sold to third parties. Chester Williams said his mother told him that he could then have Parcel 2330 to assist him with his tuition for university, and using the same Power of Attorney he transferred Parcel 2330 to himself. His mother did tell him that at some time in 2007, Mr. Valance had approached her to sign some papers for a parcel of land that he should have received but that the transfer did not go through and the papers had to be signed again. He said that if Ms. Isolene had wanted to transfer Parcel 2330 to Mr. Valance she would have asked him to do so using this said Power of Attorney. Chester states that at no time did Ms. Isolene inform him that she would be signing over

Parcel 2330 to Mr. Valance nor did she ever request title to that property from him. He also states that no time did he lose or misplace the title for Parcel 2330 or any of the other parcels belonging to Ms. Isolene. In 2011, on his return to Belize from his studies, Chester said he learned that Mr. Valance had lodged a Caution against his title for Parcel 2330 on the basis that Ms. Isolene had agreed to transfer that parcel to him. Chester states that since his mother gave him all the titles and a Power of Attorney to deal with them on her behalf, it is clear that Mr. Valance deceived her into signing a transfer for a lost certificate of title in respect of Parcel 2330.

10. Under cross-examination by Mr. Dujon, SC, Mr. Williams said that he was the one who paid to get the property subdivided. He agreed that it was divided into four lots: 2328, 2329, 2330 and 2331. Two of the lots were on the lagoon side and two were on the seaside. He agreed that in 2005 he assisted his mother with the transfers of these lots and that the lots were all in the joint names of Mr. Valance and his mother. He said that in December 2005, he did not prepare the transfer instruments but he did take them to Belmopan to be registered. He agreed that initially Parcel 2331 (GV 4) was to have been transferred to Mr. Valance. He said it was Mr. Valance who scratched out his own name on the transfer form and did a statutory declaration to support it. When asked if as a police officer if he was aware that people are to initial changes they make to documents, he said some people do some people don't; he agreed that sometimes he initialled changes made by him to documents in his line of work. Chester Williams said that he could not recall where the transfer was signed by Mr. Valance but it was either down South or in Belmopan. He was shown GV 5, a statutory declaration dated March

2006 saying that an error had been made in respect to the parcels; the declaration further stated that the correct way the parcels should have been transferred was as follows: that Isolene Augustine is to receive 2329 and 2331, and Gaeton Valance is to receive 2328 and 2330. Mr. Williams said that he was not aware of this statutory declaration and it was the first time seeing that document in court. He said that as far as he could recall all titles for the lots were filed at the land registry at the same time. He agreed that he got title to Parcel 2329 in March 2006 and he sold that parcel on his mother's behalf to one Charles Perkins. He said he never told anyone that he had lost or misplaced title to Parcel 2330 because he never lost any of the titles. He said he executed a sales agreement in relation to Parcel 2330 and the money from that he used to pay for school and for his mother's medical treatment for cancer. He agreed that he did not disclose the sale agreement which he signed with one Madeleine Lomont to Parcel 2330 in 2007. He agreed that at the time he executed the Power of Attorney the land was not in his name but in his mother's name. He states that by the time he made the sales agreement with Ms. Lomont title was in his name. He explained that it was easier for him to transfer title to himself and then to Ms. Lomont than to transfer directly from his mother to Ms. Lomont because Ms. Lomont was paying him the purchase price incrementally and full payment is due at the end of 2016. He said that his mother did not understand the Parcel numbers so she asked him to deal with the parcels. He rejected Counsel's suggestion that he prematurely signed a sales agreement and that is why this matter is in court today.

## Legal Submissions on Behalf of the Claimant

11. Mr. Dujon, SC, argues that section 143 of the Registered Land Act Chapter 194 of the Laws of Belize grants the court the power to order rectification of the register under certain circumstances. He cites Olivetti J in Claim No. 388 of 2011 ***Carmine Emy Cabanas v. Jesus Cowo et al.*** as follows:

*“The Law*

*11. Section 26 of the RLA provides that the registration of any person as proprietor with absolute title shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto free from all other interest and claims whatsoever.*

*12. However, this must be read subject to s. 143 which stipulates:- ‘(1) Subject to subsection (2), 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 or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.’ (Emphasis added)*

*13. This section, to my mind, having regard to the specific words used, signifies that the person seeking rectification bears the onus of proof to establish that any registration in the chain of title was obtained by fraud or mistake. (See Santiago Castillo Limited v. Quinto & Anr (Belize) ([2009] UKPC 15) 74 WIR 217, Lord Phillips of Worth Matravers para.39 at p.230).*

*14. And, where fraud or mistake has been established the onus of proof shifts to the person opposing the rectification who must satisfy the requirements of s. 143(2) of the RLA. This translates in the circumstances of this case, to Family Cawich having to prove fraud or mistake in the first registration and if so proved then to the Investors satisfying the court of the factors required by section 143(2).*

*15. In doing so they must establish all of three things-*

*1) That they are in possession of Block 53 or in receipt of the rents and profits, and*

*2) That they acquired Block 53 for valuable consideration, and*

3) That they had no knowledge of the omission, fraud or mistake or did not substantially contribute to it by their act, neglect or default.

16. I am bolstered in this interpretation of s. 143 (2) that these factors are conjunctive and that the onus is on the person opposing rectification by comparing it with the common law defence of 'bona fide purchaser for value without notice' in relation to unregistered land where the onus is on the person raising the plea to establish it in its entirety. See *The Law of Real Property Megarry and Wade 6th edn para.5-005 p.138* – 'It is a fundamental rule that a purchaser of a legal estate for value without notice is 'an absolute, unqualified, unanswerable defence' against the claims of any prior equitable owner or incumbrancer. The onus of proof lies on the person putting forward this plea: it is a single plea, and is not sufficiently made out by proving purchase for value and leaving it to the plaintiff to prove notice if he can.'

Mr. Dujon, SC, submits that in the case at bar the Claimant has discharged the burden of proof placed upon him in that the evidence shows that at least a mistake was made. Even if Chester were a "bona fide purchaser for value without notice," and counsel submits he is not, Chester has not been able to discharge the burden of proof which shifts to him once mistake or fraud has been proven. This transfer to Chester was not an arms length transaction but rather one where Chester acted as the agent for Ms. Isolene. Mr. Dujon, SC, argues that GV 3 and GV 4 prove that the wrong parcel numbers were entered on the transfer instruments and that mistake should have been rectified. Instead subterfuge and deception ensued ending in Ms. Isolene executing a Power of Attorney to Chester who then transfers Parcel 2330 to himself. Counsel therefore asks that judgment be entered for the Claimant and that an order for prescribed costs be made.

#### **Legal Submissions on Behalf of the Defendants**

12. Mr. Flowers, SC, submits on behalf of the Defendants that the governing authority on the construction and operation of Section 143 of the Registered Land Act is **Quinto &**

**Quinto v. Santiago Castillo Ltd** [2009] UKPC 15, a decision of the Privy Council on appeal from the Belize Court of Appeal in which Lord Phillips said this:

*“Under the Torrens system registration confers title on the registered proprietor. A merit of the system is that a purchaser from the registered proprietor does not normally need to look further than the register for reassurance that the vendor has good title. Under some systems once a title is registered it is indefeasible. Under other systems the title of a bona fide purchaser from the registered proprietor will, once it is registered, be indefeasible. The indefeasibility of title is, however, capable of giving rise to injustice if the registration of the title is brought about by fraud, or by a mistake. For this reason, many Torrens systems make provision for rectification of the register, but the nature of such provision varies from system to system. The effect of each depends on its own terms.”*

Mr. Flowers, SC, argues that so far as fraud is concerned there is no evidence of fraud in the registration of the 1<sup>st</sup> or 2<sup>nd</sup> Defendant as the proprietor of Parcel 2330.

He also submits that as far as mistake is concerned Mr. Valance alleges that he made a mistake in signing the instrument of transfer for Parcel 2330 to Ms. Augustine, but Ms. Augustine says it was no mistake and that she and Mr. Valance agreed that she would get three of the four parcels. The instrument of transfer had to be signed by both parties (Mr. Valance and Ms. Augustine) as Transferors and to Ms. Augustine as Transferee, and that was how it was executed. He finally submits that the provisions of the Registered Land Act Chapter 194 were complied with and that Mr. Williams was eventually duly registered as the proprietor of Parcel 2330 with absolute title. This claim should therefore be dismissed.

### **Decision**

13. I have examined all the evidence in this case and I have read the legal submissions made by both sides. I am grateful to both counsel for their submissions on the law. In



assessing the evidence, I have to state that I did not find the evidence of any of the major parties to the claim to be particularly convincing. I found Mr. Arzu's evidence to be stellar and very helpful to the court especially in terms of assistance with timeline of the dates for relevant events that occurred in this matter, as well as his experience as an exemplary land surveyor in delineating the properties involved. This case must be examined against the background that this is in essence a family dispute over ownership of land. Mr. Valance came to own a portion of this property through his friendship with Ms. Augustine's father, Mr. John Augustine, and through the fact he lived with Ms. Augustine in a common law relationship for several years from 1998 until as recently 2005 when they decided to separate. Ms. Augustine is the mother of the second Defendant Chester Williams and Mr. Valance helped her to raise her seven children including Chester as he was Chester's stepfather. The land was given to Mr. Valance and Ms. Augustine by her father in exchange for their natural love and affection because of their relationship to Mr. John as daughter and son-in-law respectively; Chester is therefore Mr. John's grandson. It is against the context of these very intimate familial relationships that the events concerning the mysterious transactions surrounding the transfer of Parcel 2330 from the joint ownership of Mr. Valance and Ms. Augustine to the sole ownership of Ms. Augustine must be examined.

I must state at the outset that I agree with Mr. Flowers, SC, that there is absolutely no evidence of fraud in this matter. Fraud must be particularized and specifically proven and that has simply not been done. The evidence in this case, taken at its highest,

would at most indicate that a mistake may have been made in the transfer documents by Mr. Valance in that he is claiming that he did not realize that there was an error in the parcel number when he signed the transfer form to transfer Parcel 2330 to Ms. Augustine. I have to weigh this contention against that of Ms. Augustine that there was no such error and that Mr. Valance had agreed with her that she was to have three out of the four parcels but that he later changed his mind. I must state that on the balance of probabilities, I believe the version of events set out by the Defendants. I believe that there was no mistake, and that Mr. Valance willingly agreed to give Ms. Augustine three out of the four parcels of land that had been left to them by her father. This was a woman who had been Mr. Valance's common law wife for many years, a woman for whom he stated in his evidence that he had built a larger house to take care of her and all her seven children even though none of those children were fathered by him. I find that Chester lawfully came into possession of Parcel 2330 through the Power of Attorney given to him by his mother who then authorised him to use the land to fund his education and that is what he did. The evidence shows that in any event Parcel 2330 has already been sold to Ms. Lomont.

I therefore dismiss the claim in its entirety and order each party to pay their own costs.

***Dated this Monday, 25<sup>th</sup> day of January, 2016***

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**Michelle Arana  
Supreme Court Judge**