

**IN THE SUPREME COURT OF BELIZE, A.D. 2021**

**CLAIM NO. 145 OF 2021**

**BETWEEN**

**(MARIE FRANCIS** **CLAIMANT**  
**((as administrator of the Estate of MAURICE FRANCIS))**

**(AND**

**(THE REGISTRAR OF LANDS** **1<sup>st</sup> DEFENDANT**  
**(MINISTER OF NATURAL RESOURCES** **2<sup>nd</sup> DEFENDANT**  
**(THE ATTORNEY GENERAL OF BELIZE** **3<sup>rd</sup> DEFENDANT**

**BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG**

**Decision Date:**

8<sup>th</sup> September 2022

**Appearances:**

Mrs. Melissa Balderamos Mahler, Counsel for the Claimant.

Mr. Mark Williams, Counsel for the Defendants.

**KEYWORDS: Land - Prescription - Registrar's Authority - Advertise - Notice  
- Satisfaction of Ownership - Certificate of Title - Arbitrary Deprivation - The  
Registered Land Act Cap 194 (the Act)**

**JUDGMENT**

1. The Claimant is the daughter and administrator of the Estate of Maurice Francis (the Estate) which has title to land on Freetown Road going back to 2000 (the

Baker Property). She claims that the Registrar of Lands acted without lawful authority in processing and approving Leonora Cain's application for prescription of a portion of the Estate's land (the Land) resulting in an arbitrary deprivation of property. She originally sought declarations in this regard and the cancellation of Leonora Cain's Certificate of Title.

2. The Claimant subsequently abandoned her claim for the cancellation of the Certificate of Title but pursued her alternate claim for damages. She then discontinued entirely against Leonora Cain.
3. The Registrar, in her defence, says that she was empowered to accept, process, and determine Leonora Cain's application for prescription. A proper assessment of the application and all evidence (including independent) was conducted, and a certificate issued to Leonora Cain as was statutorily authorised. There was, therefore, no arbitrary deprivation of property and certainly no compulsory acquisition.
4. The Claim ought to be dismissed with costs.

**Preliminaries:**

5. The Court begins with the Claimant's pleadings. There is a prayer for remedies - declarations that the Registrar of Lands was not entitled to accept, approve, and issue the Certificate of Title to Leonora Cain, that the subdivision of the Claimant's land in favor of Mrs. Cain is unlawful and constitutes an arbitrary deprivation and/or compulsory acquisition of the Claimant's property and damages for same.

6. A perusal of the Statement of Claim pleads two basic facts which allege how the acceptance and approval of the application for prescriptive title, or the issuance of the Certificate was unlawful. Paragraph 7 states that the application should not have been accepted and approved “*as the Claimant, Maurice Francis (“the deceased”) and his estate were always in possession of the Property with title for the entirety of the Land.*” Paragraph 8 adds that they had always been in occupation. This alleges only that there had been insufficient evidence before the Registrar on which she could make the finding which she did.
7. Paragraph 24 then states that “*(n)o notice, as required by law, was given to the deceased or his estate of any application for prescription by Leonora Cain. The occupation by Leonora Cain was never open, peaceful and uninterrupted as numerous letters to quit the premises were sent over the years.*” This allegation is pellucid. It refers only to the notice which ought to have been given as well as the insufficiency of the evidence.
8. These are the allegations which this Court finds grounds any issues in this case. However, the parties in their Joint Pretrial Memorandum have agreed a number of issues which the Court will endeavor to determine.
9. At paragraph 16, the Claimant merely alleged that the subdivision of the Claimant’s land was outside the scope and ambit of the **Registered Land Act**. However, the Claimant did not address the Court on this in his submissions and it formed no part of the list of issues agreed by the parties.
10. Belatedly, Counsel for the Claimant seemed to realize the state of his case in this regard so suddenly and for the only time he mentioned in his submissions in Reply that “*... the Claimant has claimed in the alternative a declaration that it is entitled*

*to damages for the subdivision of its property by the Registrar.” This can not cure the glaring problem that there were no relevant facts pleaded, no issue agreed, and no submissions made. The Court is not about to speculate but will reasonably assume that it had been abandoned.*

**The Issues as agreed by the Parties:**

1. Whether the Registrar of Lands was authorized to accept, process, and approve the application of the 4<sup>th</sup> Defendant for the issuance of title by prescription in accordance with the **Registered Land Act** in respect of the Property?
2. Whether the processing and approval of the 4<sup>th</sup> Defendant’s application for prescription was done in accordance with the applicable provisions of the **Registered Land Act**?
3. Whether the issuance of the Certificate of Title to the 4<sup>th</sup> Defendant in respect of the Property amounted to/amounts to an arbitrary deprivation and/or compulsory acquisition of property of the Claimant in breach of Section 3 (d) and 17 of the Constitution?
4. Whether the Claimant is entitled to damages?

**By the Court:**

5. What costs are the parties entitled to?

**The Evidence:**

11. This matter is heavily evidence-based so a synopsis seems most helpful.
12. The Claimant had one other witness, Maurice Francis Jr., the 57-year-old son of the deceased. He said he lived on the Baker Property from about age sixteen

to around three to five years ago. During that time, he had left Belize for a number of years but returned around 1998.

13. He was always aware that the Baker Property belonged solely to his father. Mrs. Cain was a tenant, and he often collected the rent from her for their occupation of a portion of the Baker Property.
14. He recalled that in May 2012, a woman who claimed to be a representative from the Land's Department visited the family home looking for his father who was then in the Karl Heusner Memorial Hospital. She insisted on speaking with him, so he went there with her.
15. He was present while she spoke with his father who told her that the Baker Property was his, he wanted it for his children and did not intend fighting with anyone for it. She informed that Mrs. Cain could have rights as a squatter but did not leave any documentation. About a week later, Mr. Francis died. He, Mr. Francis Jnr., was unaware that Mrs. Cain had been given the Property.
16. Marie Francis also recalls collecting rent from Leonora Cain who lived on the Baker Property prior to her marriage to Perceval Cain. When she was a child, the rent was \$32.00. Then, they lived in the lower flat but subsequently moved to the upper flat with her mother's permission. They continued to pay rent but, recently, the rent stopped and demands had to be made. Eviction proceedings were begun in the Magistrate's Court.
17. She migrated in 1993, returning for a while in 1996 but left again returning once or twice every year. On one occasion, Mrs. Cain asserted that she had legal title

to the Property and her prolonged search eventually revealed that Mrs. Cain had somehow gained prescriptive title. She tried to access the documents used to secure this title but was unsuccessful and was only able to see them during these court proceedings.

18. She is unfamiliar with any of the persons who made declarations or that they lived in the area. She has seen the Gladden statement and does not believe that her father would have consented to the Baker Property being subdivided and a portion given to the Cain's since her family has always asserted its proprietary right to the entire Baker Property.
19. Under cross-examination, it became obvious that she did not know whether or not her father objected to the Cain's application for ownership by prescription.
20. Leon Cain, the son of Leonora Cain, born in 1978, produced his birth certificate which shows the address of his parents as 24A Kelly Street which is now the Land. He says his family has occupied the Property continuously throughout his own lifetime with the full knowledge of the Francis family.
21. He acknowledges that the Francis family occupied an adjoining piece of land which has access on Freetown Road but they never occupied or exerted control over the Land. The Cain family was often harassed by the Francis family, but no proceedings were ever commenced in the Supreme Court for their removal from the Property.

22. In October 2011, his mother applied for title by prescription and in 2017 they demolished a dilapidated structure intending to construct an income generating building.
23. Mrs. Leonora Cain explained how the Property came to be in her family's possession. Her husband had never been formally adopted by the Bakers who owned the entire property which spanned from Freetown Road to Baker Street (the Baker Property). However, he lived with them, and they raised him like their own.
24. When she met him, he was living at the Baker Property with the Bakers, and she eventually went to live there with him and his parents. She gave birth to both children (1975 and 1978) while residing there and neither she nor her husband ever paid rent.
25. Mr. Baker died in 1978 and Mr. Cain allowed Mr. Maurice Francis and his wife to move on to the Baker Property with the agreement that in return Mrs. Francis would be a caretaker to Mrs. Baker who was, by then, also ill. After Mrs. Baker died, the two families (Cain and Francis) continued to co-exist peacefully on the Baker Property.
26. When Mr. Cain migrated to the USA in 1988, Mr. Francis, who then lived in the Baker home, began asking her for rent which she never paid but she continued to live on the Land. After Mr. Francis' death, his children began asking for rent, but they too were ignored while she continued to occupy the Land.

27. Mrs. Cain subsequently made an application to the Registrar of Lands for prescriptive title of the Land. Her application was gazetted on 25<sup>th</sup> November 2012, and she was registered as proprietor on the 27<sup>th</sup> December 2012. She mortgaged the Property in 2016.
28. She was unaware that Mr. Maurice Francis had sought a declaration of title for the Baker Property from the Court sometime in 2000 as she had never been given notice. Had she known, she would have objected accordingly in respect of the Land.
29. She admits being harassed relentlessly by the Francis family; being threatened, receiving letters from lawyers demanding her immediate removal but she remained steadfast in occupation. She paid some taxes when she learnt the Baker Property was to be auctioned by the Belize City Council and she exhibits these receipts.
30. Patricia Robateau, the current Registrar of Lands, did not process or approve the application but searched the requisite file and found that the Baker Property, being Lot Number 1300 bounded on the North by Kelly Street and on the South by Freetown Road, had been transferred to John Baker in 1928. Maurice Francis received a First Certificate to the Baker Property in 2000 pursuant to a court Order dated 25<sup>th</sup> September 2000 made on a claim for adverse possession.
31. Mrs. Cain applied to the Registrar of Lands for prescriptive title of the Land (northern portion of the Baker Property) on the 5<sup>th</sup> day of October 2011. The Assistant Registrar of Lands conducted an investigation which included a series



of interviews of persons who provided declarations having known Mrs. Cain for several years.

32. This investigation revealed that after Mr. Baker died (never transferring his interest), Mrs. Baker became ill and received assistance from Mrs. Francis, Maurice Francis' wife. Mr. Francis and his family remained in occupation with the understanding that they would inherit the southern portion. The Cain's had occupied the northern portion for over 32 years at the time of the investigation. Mr. Cain had been adopted by the Bakers.
33. In November 2012, the Registrar of Lands gazetted a notice of Mrs. Cain's application for ownership by prescriptive title. The Baker Property was then lawfully subdivided, and on the 27<sup>th</sup> December 2012, a land certificate was issued to Mrs. Cain.

**Whether the Registrar of Lands was authorized to accept, process, and approve the application of the 4th Defendant for the issuance of title by prescription in accordance with the Registered Land Act in respect of the Property?**

34. As far as questioning the Registrar's authority to accept an application for prescription and to process it, these are really non-issues. The Claimant, in her submissions, did not address the Registrar's authority to accept. One can only assume that that issue has been quietly abandoned.
35. The Act by Section 138 (3) provides for an application of this nature to be made by anyone claiming to have acquired ownership by prescription. Section 140 then outlines the process to be followed by the Registrar when such an application is made. There is no doubt that the Registrar was authorized, and

she really had no discretion whatsoever in whether or not to accept or process the application.

36. A proper statement of the true issue is to be found in Issue 2 which subsumes the latter part of Issue 1 regarding the Registrar's authority to issue a certificate.

**Whether the processing and approval of the 4<sup>th</sup> Defendant's application for prescription was done in accordance with the applicable provisions of the Registered Land Act?**

37. Section 140 mandates the process which the Registrar is to follow:

*(1) On application by any person for registration as proprietor under section 138, the application shall be advertised by the Registrar at the expense of the applicant in such manner as the Registrar may direct.*

*(2) The Registrar shall give notice of any such application to the proprietor, if any, of the land affected and to any other persons who may, in his opinion, be affected thereby.*

*(3) After one month has elapsed from the date of giving notice under subsection (2) the Registrar, on being satisfied that the applicant has acquired the ownership of the land claimed, may allow the application and register him as proprietor of the land claimed, subject to any interests on the register which have not been extinguished by the possession.*

**Advertising:**

38. The first requirement is that of advertising by the Registrar. The Court can find no issue with this requirement, and none was pleaded by the Claimant. According to the Registrar, it was done in the official gazette on the 25<sup>th</sup> November 2012. The Court states, only because it noticed, that the Gazette is dated the 24<sup>th</sup> November 2012 while the advertisement is dated the 25<sup>th</sup> November 2012.

39. It may also be time for some consideration to be given for the advertisement to be placed in a newspaper of wide circulation in Belize. The gazette does have its purpose for public notices and the like, but its audience may not be as

diverse, and its reach may no longer be as wide as it used to be. Since the Registrar is not constrained by a statutory requirement to gazette, this Court can see no reason to hold steadfastly to this procedure.

**Notice to Proprietor and Others:**

40. The Registrar is also to give notice of the application to the proprietor and any other persons who he believes may be affected by the application. The Defendant says this mandate was fulfilled with the Assistant Registrar's visit with the Deceased who was then the Proprietor.

41. The Claimant says that the subsection must be read in conjunction with Section 149 of the Act which states:

*A notice under this Act shall be deemed to have been served on or given to any person-*  
*(a) if served on him personally; or*  
*(b) if served on an attorney holding a power of attorney whereunder such attorney is authorised to accept such service; or*  
*(c) if sent by registered post to him at his last known postal address in Belize or elsewhere;*  
*or*  
*(d) if service cannot be effected in one of the above- mentioned ways, by displaying it in a prominent place on the land affected and by publishing it in three consecutive issues of the Gazette.*

42. There is a certain difference between giving notice and serving or giving a notice. A notice is a noun - a thing. So, there must be a document of some sort in existence which could actually be served or handed over to someone or left or posted at some place. It notifies or warns to allow for preparations to be made. However, giving notice is a verb. It is an action - the act of making someone aware. The Oxford Dictionary makes this distinction clear. The Claimant's submissions do not.

43. For this reason, this Court does not agree that the requirement of giving notice to a proprietor is the same as giving or serving a notice as prescribed by Section 149. Therefore, a discussion of what is personal service is unnecessary.
44. It would appear to me that giving notice could be done either verbally or in writing. Its main object in the subsection is to ensure that the proprietor is aware of the application and its possible consequences if approved. Whereas, giving or serving a notice must always be done in written form.
45. If the two were synonymous, then Section 149 ought to have begun “Notice under this Act....” or “Any notice under this Act...” rather than “A notice under this Act....” It is not mere semantics.
46. The Court is fortified in its view by various sections of the Act and the very specific wording used. For e.g., Sections 12(2) and 136(1) which read respectively:
- “Any person having an interest in any parcel of land registered under the General Registry Act shall be given notice in writing by the Registrar that the particulars of the said registration have been transferred to the Land Register compiled under this Act...*
- Upon the entry of a restriction, the Registrar shall give notice thereof in writing to the proprietor affected thereby.”*
47. The fact that the notice which is to be given must be in writing is made clear by the very words of the sections. A notice of this type would obviously attract Section 149.
48. Then there’s Section 13 (2) where the use of “a notice” also assures that Section 149 is to be complied with:

*On receipt of an application for the first registration, the Registrar shall-*

(a) .....

(b) *serve a notice on the owner of the land, if the owner is not the applicant, to submit an application for first registration in the prescribed form within such period as is stated in the notice, but the Registrar in his discretion may dispense with the submission of such application;*

49. This wording is also different to that used in Section 21(1) which is similar to that of the subsection in issue:

*Where the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or where any interested person makes application to the Registrar therefor, the Registrar shall give notice to the owners, lessees or chargees and to the occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.*

50. The Court is of the view that the legislation has clearly said what it means and means what it says. So, when the Deputy Registrar visited the proprietor at the hospital and they conversed about Mrs. Cain's application, she fulfilled the obligation imposed by Section 140.

51. Even the evidence given by Mr. Francis Jnr. assures that his father knew of the investigation and what was at stake. Mr. Francis Jnr. also knew as he was present, and the Deputy Registrar spoke to them both.

52. At paragraph 10 of his witness statement, he states "*I recall the lady said that Ms. Cain told her that she had been at the property for a long time and should get the back portion of it. She also said told (sic) us that Ms. Cain could have squatters rights to make a claim for it.*" (Emphasis mine). Under cross-examination, he even agreed that his father had been told that Mrs. Cain had an interest in the Baker Property.

53. While this is the Court's finding on the matter of notice, it must nonetheless be stated that written notice by way of a letter or a copy of the advertisement

published in the Gazette is a far better way of giving notice and could avoid disputes.

54. It must also be recognized that persons may not always fully appreciate what is being said to them but having the written record in hand, they could always seek advice and further information elsewhere. The Registrar would be wise to take this recommendation on board in future.
55. The Claimant also pleaded that notice should have been served on the deceased's Estate. There is a fatal flaw in this argument. Counsel for the Claimant does not address precisely how the Registrar of Land's was to be made aware that the proprietor had died, nor does he indicate where in the Act the Registrar is mandated to notify a deceased proprietor's Estate if the proprietor had already been duly notified when alive. The Court finds no merits in this argument.
56. What strikes me, however, is that Mr. Francis Jnr. knew since May 2012 that there was some investigation being conducted by the Land Registry which concerned Mrs. Cain's claimed interest in the Land. He testified that his father died soon after, yet he did absolutely nothing until this claim of 2021, almost an entire decade later.
57. Further, the relevance of the gazetted advertisement must not be overlooked. It had been published in November 2012 and was available for the world to see. No objection was ever lodged by the Estate or anyone else for that matter, so the Registrar proceeded to subdivide the Baker Property and issue the First Certificate of Title in Mrs. Cain's name.

58. The Claimant also says that she found out from Mrs. Cain, and eventually confirmed through investigation, that Mrs. Cain had legal title to the Land. Conveniently, she never states when she found this out or when she confirmed it. She pleaded that it was not “*until sometime in 2020 she became fully aware.*” What was meant by fully aware remains unclear.
59. She, however, revealed that over the years she had retained various counsel to assist her without success. This is an indication that she knew of the prescriptive title for many years prior to filing this Claim but did nothing by way of seeking the Court’s intervention to vindicate her rights.
60. Noticeably, neither the Claimant nor Mr. Francis Jnr. availed themselves of the appeals process available under Section 13 (8) which prescribes that “*(a)ny person who is aggrieved by any decision made by the Registrar under this section may appeal to the court within thirty days from the date of confirmation or amendment of the record or within such extended time as the court may, on good cause being shown, allow.*”
61. Even if this Court’s interpretation of giving notice is incorrect and the Registrar should have complied with Section 149, but clearly did not, the Defendants say the Court ought not to invalidate or nullify the entire process.
62. Counsel postured that the requirement of a written document rather than a verbal notice is more so directory than mandatory. She relied on *Montreal Street Rly Co. v Normandin [1917] AC 170*. This case considered the effect of the Sheriff’s neglect to apply the statutory provisions relating to the preparation and revision of the jury list.

63. The appellant had been tried by a jury chosen from a list which had not been revised for several years but where all other procedures had been properly followed and the jurors had been qualified to serve. The appellant could not prove damage and a new trial could not have been ordered.

64. In refusing to nullify the trial, the Court stated at **page 175**:

*“When the provisions of statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.”*

65. Counsel for the Claimant countered at paragraph 19 of his Reply that even if the Court did not wish to invalidate what the Registrar had done *“without authority, the person who has a public duty can be punished for neglect of carrying out their functions. This means that a claim can be maintained successfully for the consequence of the failure to carry out statutory functions and for the detriment a person suffers from that failure.”*

66. There is no claim before the Court to invalidate what had been done i.e., the issuance of the Certificate of Title to Mrs. Cain. There is no claim for the Registrar’s neglect of duty either. In any event, the Act grants immunity to the Registrar and her officers for good faith acts or omissions. Bad faith has certainly not been pleaded. Section 8 states:

*The Registrar shall not, nor shall any other officer of the Registry, be liable to any action or proceeding for or in respect of any act or matter done or omitted to be done in good faith in the exercise or supposed exercise of the powers and duties under this Act or any regulations made thereunder.*



67. Continuing on with our inquiry into the process. The Registrar waited one month from the gazetted notice and more than the requisite one month from the date, notice had been given to the proprietor before approving the application and issuing title in December 2012. It means she was, by then, satisfied that Mrs. Cain had acquired prescriptive title.

**Satisfaction of Ownership:**

68. While there is nothing pleaded in the Claim in relation to the process undertaken by the Registrar in making the determination other than giving proper notice, the Claimant in her submissions sought to attack the way in which the evidence on which the Registrar relied to make her determination was presented.

69. The Court notes that the Statement of Claim alleged that the First Defendant had refused to provide a copy of the application and documents in support. Even prior to the Case Management Conference, the Claimant could have made an application for information under Part 34 which would have assisted in getting the documents needed to properly plead her case. She did not avail herself of this process.

70. Nonetheless, it appears to me that when the documents were eventually disclosed pursuant to a Case Management Order, the Claimant should have then sought leave to amend her Claim to plead any further or other allegations she deemed it necessary to make.

71. Be that as it may, the parties have agreed to a very wide issue in the Joint Pretrial Memorandum, and they have both addressed me on the state of the evidence

presented to the Registrar. This means that they have both accepted the state of the evidence to be a live issue and so the Court will consider it.

72. In making a determination on whether the application should meet with approval, the Registrar is to be guided by Section 139 which sets out the principles of possession as follows:

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

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

*(3) Where, from the relationship of the parties or from other special cause, it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.*

*(4) If a person whose possession of land is subject to conditions imposed by or on behalf of the proprietor continues in such possession after the expiry of the term during which such conditions subsist, without fulfilment or compliance with them by such person and without any exercise by the proprietor of his right to the land, such subsequent possession shall be deemed to be peaceful, open and uninterrupted possession within the meaning of section 138.*

*(5) For the purposes of subsection (4)-*

*(a) a tenancy at will shall be deemed to have terminated at the expiration of a period of one year from the commencement thereof unless it has previously been determined;*

*(b) a periodic tenancy shall be deemed to have terminated at the expiration of the period: Provided that where any rent has subsequently been paid in respect of the tenancy it shall be deemed to have terminated at the expiration of the period for which the rent has been paid.*

*(6) Possession shall be interrupted-*

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

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

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

73. The Claimant and her witness admitted that Mrs. Cain had been in possession for over 12 years. They say she was a tenant, but they brought no proof whatsoever of this. They also say she stopped paying rent and efforts were made to evict her. They do not testify to when any of this occurred.

74. What is most noticeable throughout the evidence for the Claimant is the lack of dates or time periods even. What they did attach to the Statement of Claim are letters issued through various attorneys which sought to evict Mrs. Cain. The earliest is dated 2005. This Claim was filed in 2021. They did not enter that letter into evidence at all. I found the Claimant and her witness to be less than forthright.
75. The Claimant raised in their submissions only that Mrs. Cain's application and the declarations of her supporting witnesses was insufficient. Her Counsel asked the Court to compare what was required by the United Kingdom Practice Guide to the Land Registration Act with what was presented to the Registrar and to find them lacking.
76. As the Defendants rightly pointed out, new legislation had been introduced in the UK in 2002 so there are differences between that Act and Belize's.
77. The most glaring, for our current purpose, being that there are rules which direct that certain requirements should be met by the application and the statutory declaration. Belize has no such rules, and it would be unreasonable if not unlawful to try to impose or to hold applicants in Belize to the standards enforced elsewhere, even if those standards may prove beneficial to the process.

**The Application:**

78. While Mrs. Cain's application does not state exactly how long she had been in possession, the mere fact that her application is for prescription under the **Registered Land Act**, it must have been made pursuant to Section 138. This

indicates that she was claiming to have been in “*open, peaceful and uninterrupted possession for a period of twelve years*” as it is not national land.

79. Section 138 provides:

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

*(2) In the case of national land other than the foreshore, the period of such possession shall be 30 years. Prescription shall not lie with regard to the foreshore.*

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

**Statutory Declaration:**

80. Section 138 does not require a statutory declaration from the Applicant and Mrs. Cain presented none. But there are those of six other persons stating how long they knew her to have been living at the Property. These ranged from 25 to 37 years.

81. The Court takes judicial notice that the stated addresses of the declarants were all in the general area of Kelly Street which is where the Baker Property is situated. They were essentially in the neighborhood. That seems sufficient corroborating evidence to conduct an investigation, which the Deputy Registrar did.

82. The Court accepts that the Deputy Registrar had the authority to perform this investigation. Nothing to the contrary has been pleaded or proven and Section 6 of the Act informs that:

*(1) “.....*

*(2) There shall be a Registrar of Lands responsible for administering the Land Registry, a deputy registrar of lands and as many assistant registrars of lands as may be necessary for carrying out the provisions of this Act. In the absence for whatever reason of the*

*Registrar, the deputy registrar may exercise any of the powers vested in the Registrar by this Act.*

*(3) The Registrar may in writing authorise the deputy registrar or any assistant registrar to exercise or to perform all or any of the powers or duties conferred on the Registrar by this Act or by any regulations made thereunder, and may at any time revoke or vary any such authorization”*

83. The Deputy Registrar’s memorandum revealed that as part of her investigation, she spoke with most of the declarants. She seemed to have been satisfied by the contents of their declarations as she does not state that any were found to be untrue or even questionable.
84. Counsel for the Claimant opined that there ought to have been more information on the statutory declarations. This Court may have been more inclined to agree if that was all the information on which the Registrar relied to make her determination.
85. However, the Deputy Registrar also spoke with Mr. Francis Snr. at the hospital in the presence of Mr. Francis Jnr. She reported that he expressed a desire to live peacefully. He did not wish to fight over material things. He verbally consented to the property being subdivided with the northern portion being given to Mrs. Cain. He also consented to the Registrar of Land’s rectifying the record accordingly.
86. While the Deputy Registrar may have been wise to get this in writing signed by Mr. Francis Snr. and witnessed appropriately, this Court can find no reason to doubt the contents of her report for a number of reasons.

87. The Deputy Registrar had nothing to gain by falsifying this report. Her report seemed accurate in all other particulars. It seems that Mr. Francis Snr. was a dying man, as the Claimant says he passed shortly after this conversation. From all that transpired, it seems more likely than not that he had no desire to fight over the Land. He simply wanted to die in peace. He, above the Claimant or her witness, knew what had transpired for all those years on the Baker Property.
88. It must be remembered that the Baker Property had not been bought or acquired through Mr. Francis' sweat. Title had been declared by the Court as he was found to have been in adverse possession. He must have also been aware that the Cain's had been in possession of the northern portion for many years and that they had for some time been insisting that they owned it.
89. He acknowledged that there had been a verbal arrangement with the Bakers that the northern portion was to go to the Cains. Importantly, neither the Deputy Registrar's report nor Mr. Cain Jnr.'s testimony mentioned anything of Mr. Francis Snr. being shocked or surprised by Mrs. Cain's claim. That is quite telling.
90. The Court preferred to accept the Deputy Registrar's report over what Mr. Francis Jnr. testified to. He was found to be a less than forthright witness. The Deputy Registrar's report was contemporaneous while he was relying on his memory almost 10 years later. His recollection was quite self-serving since he stands to benefit if this Claim is successful.
91. The Deputy Registrar's memorandum also detailed, as admitted by the Claimant and her witness, that Mrs. Cain was in open possession and

occupation of the Property for a period of time. The Claimant says Mrs. Cain paid rent; however, she provided nothing to show for what period she had been paying rent or when it stopped.

92. I can find no evidence to prove it was not quiet or had been interrupted. A letter giving notice to quit or threatening legal proceedings is not sufficient to interrupt possession (**see Section 139(6) above**).
93. This is all sufficient to satisfy the requirements for prescription. I can find no fault with the Registrar's findings or her decision to issue a Certificate of Title to Mrs. Cain.

**Whether the Claimant is entitled to damages including vindicatory damages?**

94. No evidence whatsoever was presented of a compulsory acquisition of land so that is also a non-issue. The Court's finding that the Registrar of Land's was well within her right to accept, process, and approve the application for prescription defeats the entire arbitrary deprivation of property allegation and Issue 4, accordingly, falls away.

**What costs order should be made?**

95. The Defendants have seen full success in this matter. They are entitled to their full costs on the prescribed basis. This is calculated at a claim value of \$50,000.00 with costs being \$12,500.00 pursuant to Rule 64.5(2)(b)(iii).

**Determination:**

1. The Claim is dismissed.

2. Costs to the First to Third Defendants in the sum of \$12,500.00 to be paid by the Claimant.

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