IN THE HIGH COURT OF BELIZE, A.D., 2021

CLAIM NO. 700 OF 2018
BETWEEN

(LENORE ROSALIE VERNON	**1st CLAIMANT**
(TREVOR CHRISTOPHER VERNON	**2nd CLAIMANT**
(Administrators of the Estate of	
(Telford Christopher Vernon Sr., deceased	
(	
(AND	
(	
(MINISTER OF NATURAL RESOURCES	**1st DEFENDANT**
(REGISTRAR	**2nd DEFENDANT**
(GEORGE CHRISTOPHER VERNON	**3rd DEFENDANT**
(ATTORNEY GENERAL	**4th DEFENDANT**

BEFORE the Honourable Madame Justice Sonya Young

Decision Date:

26th January 2023

Appearances:

Mrs. Melissa Balderamos-Mahler, Counsel for Claimants.

Ms. Agassi Finnegan, Counsel for 1st, 2nd, and 4th Defendants.

Ms. Velda Flowers, Counsel for 3rd Defendant.

KEYWORDS: Administrative Law - Judicial Review - Declarations - No Leave - Abuse of Process - Objection taken in Submissions - Property - Ownership - Correction of Error - Minister's Fiat Grant - Adding Person who Did Not Apply, Pay or Receive Minister's Approval - Original Minister's Fiat Lease in Joint Names

JUDGMENT

1. When Telford Christopher Vernon Sr. died on the 24th April 2012, he owned two pieces of property in the Stann Creek District (the Properties) by virtue of Minister's Fiat Grants No. 355 of 2002 and 356 of 2002. They totaled a little more than 180 acres on which Mr. Vernon invested in, developed and operated an orange farm.

2. After his death, his duly appointed Administrators, also beneficiaries, Lenore, and Trevor Vernon, (the Administrators) discovered that the titles to the Properties had been cancelled or rectified and now stood in the name of George Christopher Vernon, the 3rd Defendant, brother to the Administrators and son of Telford Vernon Sr.

3. It appears that on the 31st October 2012 and 7th November 2012, after Mr. Vernon Sr. had died, and with neither notification or consultation with his Estate, new titles had been created for the Properties. These titles reflected the deceased holding jointly with George Vernon by virtue of Minister's Fiat Grants No's 804 and 805 of 2012.

4. The Administrators allege that on the death of Mr. Vernon Sr., the Properties ought legally to have passed to his Estate. The new Fiat Grants were, obviously, procured through George Vernon's own fraud.

5. Further, none of the Defendant's had any proper basis or the authority to cancel or rectify the titles of the deceased and issue new titles in the deceased's name and that of a third party. This unlawful act has caused significant loss to the Estate as the Properties are the only assets the deceased owned.

6. The Administrators now seek certain declarations as to ownership of the Properties as well as orders for the cancellation of the new grants and reinstatement of the old Grants, damages for loss of use, opportunity or unjust enrichment, an accounting of profits and recovery of possession.

7. In his Defence, the 1st Defendant explained that, by virtue of Minister's Fiat Lease No. 118 of 1983, Mr. Vernon Sr. had been granted a lease of 250 acres of land in the Stann Creek District on 18th October 1983. That same day Mr. Vernon Sr. made a written request that the lease be changed to reflect the names of both George and Telford Vernon. The amendment was made.

8. In April of 2002 Telford Vernon, lodged an application to purchase 109.787 and 70.613 acres of land situate in Stann Creek District and was given purchase approval. Upon payment being made, Minister's Fiat Grants No's 355 and 356 of 2002 were issued in the name of Telford Vernon.

9. In October 2012, George Vernon wrote to the Ministry of Natural Resources requesting that his name be added to the titles. He referred to Lease No. 118 of 1983, which had been in their joint names. He informed that the development on the Properties was a joint venture, and it was only since Telford Vernon had died that he realized that his name had somehow been left off the titles. He pleads, now, that the Government of Belize was bound by the terms of the lease to sell the Properties to them jointly.

10. The Minister then proceeded to rectify what was perceived to have been an error, by cancelling the old grants and issuing the new grants. The Minister was of the view that there was no need to notify the deceased's estate since

by virtue of the rule of survivorship, any interest which Telford Vernon held on to his death would have passed to George Vernon.

11. The Minister, therefore, rejects any allegations of fraud and insists that he had at all times acted on information which satisfied him that an error had occurred and, which he had the power to rectify in accordance with the National Lands Act.

12. George Vernon equally denies any fraud. He says the grants had been properly and legally corrected. The business was always and had always been intended to be jointly owned by him and Telford Vernon. It was not a family business but rather a gift given to him in lieu of education which all his other siblings had had. The Properties were paid for by money generated from the business to which he contributed in labor and resources. Consequently, the Claim ought to be dismissed in its entirety.

The Issues for the Court to determine are as follows:

1. Did the 1st and 2nd Defendants have the authority to vest freehold title to the Properties in the 3rd Defendant jointly with the Deceased?
2. Was the estate the sole legal and beneficial owner of the Properties?
3. What remedies if any is the Claimants entitled to?

Other Issue:

13. Before going any further, the Court has been saddled with what the 1st, 2nd and 4th Defendants call a "preliminary issue". The Claimant is emphatic that it is not.

14. These Defendants ask the Court to find that this is in fact a judicial review Claim and the Claimant ought properly to have sought the leave of the Court before commencing such a Claim. Having failed to do so, the Claim constitutes an abuse of process and ought to be dismissed: ***O'Reilly v Mackman [1982] 3 ALL ER 680 at 691*** *"where a good and appropriate remedy is given by the procedure of the court with safeguards against abuse, it is in abuse for a person to go by another procedure, so as to avoid the safeguards."*

15. The Defendants also raise that the Claim was commenced long after the three-month limitation. This makes the abuse even more egregious as it entirely defeats the rationale behind the special process. As stated by Sykes J in ***Inspector Max Marshalleck v The Inspectors' Branch Board of the Police Federation Claim No. HCV 1499 of 2004 Jamaica***:

> *"To insist on correct procedure in respect of public bodies is not simply a question of a wrong or right approach to procedure. The rationale is found in public policy… This is buttressed by the fact that the judicial review rules require the applicant to come to court within three months of the date of the act or omission that provide the basis of the application. Again the time limit here is not one derived from any high legal principle but simply of the collective wisdom of the rules committee… The further removed in time from the three-month expiration the application is made, the greater the burden on the application to justify why he should be allowed to revisit an issue that has passed."*

16. The Claimant was adamant that this was not to be considered as a preliminary issue since the very definition of preliminary excluded it. Black's Law Dictionary defined it as *"coming before and usu. leading up to the main part of something."* The **Civil Court Practice (The Green Book) 2021** at **10.32** stated that trial of a preliminary issue is usually considered by the Court at case management and pre-trial review. This Court agrees.

17. This issue had never been raised before closing submissions. It did not appear in the agreed Pre-trial Memorandum. It had never been pleaded, there was no

application to amend those pleadings or to strike out. In fact, there was no application of any kind in relation to this issue.

18. Moreover, the Defendants participated fully in the proceedings from inception and allowed it to proceed to where all the evidence has been taken. This, the Claimant says, is the real abuse of process and is greatly prejudicial.

19. These Defendants accept that they have been very late in raising this issue. The Claimant on the other hand was taken entirely by surprise and was admittedly "shocked" so the Court granted permission to be addressed further by both sides on the issue. The Court thanks all Counsel for their submissions on this issue and generally.

The Court's Consideration:

20. Both Counsel presented ***AG v Isaac [2018] UKPC 11 as relied on in this jurisdiction in G.A. Roe & Sons Ltd v Commissioner of Stamps et*** or ***Claim No. 78 of 2018***. These cases seem to suggest that enquiry as to the true character of the Claim begins with the nature of the remedies sought but may conclude in rigorous scrutiny of the substance of the Claim.

21. This is quite understandable since a litigant may couch his claim in such terms as may exclude a prerogative writ but nonetheless on closer scrutiny be revealed as one for judicial review.

22. This task must, however, always be undertaken with **CPR 56.1(3)** foremost in mind. While that rule does not present a complete definition of judicial review, it was described as perhaps the best guide available.

23. The Claimant in the Claim at bar seeks declarations against the 1st and 2nd Defendants. Declarations sought against a public body may prove a matter to be an administrative one but without more it need not be one specifically for judicial review - ***Isaacs's case ibid***.

24. The Claimant, however, goes on to seek orders for the cancellation of the Minister's Fiat Grant and the reinstating of the original grant. This requires writs of certiorari and mandamus. Undoubtedly, this is a Judicial Review Claim and access to bring such a claim requires that special, technical procedure.

25. The Court is well aware that it can and must guard itself against abuses at any stage of proceedings, but the real issue here is what is the abuse. It appears to me that all the relevant parties were at all times involved in these proceedings. Having joined issue with the Claimant and proceeded to trial, these Defendants admitted that there was a good arguable case. This case was clearly not without merit and so the first test or filter for judicial review has been passed.

26. Then there is the issue of delay and limitation which this Court is quite aware of. The new grants were issued in 2012. The Affidavit in Support of the Claimants' Claim states that they became aware of them in 2016 but the Claim was only filed in 2018.

27. In a judicial review action, this limitation is an obvious safeguard available to the Defendants and it is unlikely that the Claimants would have surmounted that hurdle, but they were not afforded the opportunity to try.

28. This issue of delay could have been raised by the Defendants at any time and in the proper way. The Claimant would then have been given an opportunity to respond. One of those responses may have been the amendment of its Claim. The Court may even have used its power under **Rule 56.6** to convert the Claim to one for judicial review. There is now no possibility of either.

29. Having allowed the Claim to move to this stage with there being no objection, there seems in my mind to have been a waiver of any procedural irregularity. This is not to say that parties are allowed to flout procedure as they see fit. Rather, it is a recognition that the Claimant had been allowed to proceed believing all was well, while the other parties took no action other than to participate fully right down to the proverbial bitter end. This is manifestly unfair to the Claimant.

30. The overriding objective of the Rules seeks to reduce the importance of technicalities and trial by ambush. Justice demands that their objection, coming at this late stage, must not be condoned any further than for the Court to use its power under **Rule 56.6** to allow the matter to proceed as an administration claim only but not one for judicial review.

31. This means that the Court will not grant any remedies that may be granted only on judicial review. The Court will not dismiss the Claim either and there will be no orders as to costs on this issue as requested by Counsel for the Claimant.

32. The Court is allowed on an administrative claim to make declarations and to award damages. The **Judicature Act** by **Section 28** also allows the Court to

make any orders it considers necessary to do justice in a cause or matter whether or not that order has been expressly sought by the party entitled to the benefit thereof.

33. Now, to the first Issue.

Did the 1st and 2nd Defendants have the authority to vest freehold title to the Properties in the 3rd Defendant jointly with the Deceased?

Claimants' Submissions?

34. The undisputed fact is that the Deceased alone applied to purchase Blocks 4 and 7 and the 2nd Defendant granted him approval to purchase. Upon payment of the purchase price, the deceased was issued with Minister's Fiat Grants in his name.

35. The Claimants relied on ***Rupert Marin v George Betson et al Action No. 272 of 2001*** that the purchase of the Property by the deceased created his legal interest or estate. That legal estate or interest could not be unilaterally affected by the 1st and/or 2nd Defendants under the guise of correcting an error.

36. Further, if there was indeed an error it should have been dealt with by the Estate of Telford Vernon. This was of the utmost importance because the error related to the ownership of land. As cited in ***Prest v Secretary of State for Wales (1982) 81 LGR 193***:

"The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinized. The courts must be vigilant to sese to it that that authority is not abused. It must not be used unless it is clear that the Secretary of the State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."

37. The Ministry was not justified particularly in relation to Block 7 since Block 7, according to the expert Mr. Cecil Arnold's report, fell outside the original land which had been leased to both the deceased and the 3rd Defendant. The expert also revealed that the Fiat Grants issued to the deceased solely had never been cancelled and continued in existence.

38. When the Deceased died, his interest passed to his estate who is now legally vested in fee simple in Blocks 4 and 7. The Claimant also submitted that the deceased had an equitable interest in the properties as he owned and operated a business there and harvested citrus for over 27 years.

39. On the other hand, the 3rd Defendant has never denied the Claimant's investment, nor has he produced any evidence to prove his own stated investment. Rather, he makes bald statements about planting trees, paying loans and land taxes, and making a joint venture agreement with the deceased with either one to inherit on the death of the other.

40. The Claimants say the 3rd Defendant's name only appeared on the lease because the deceased wanted to qualify for a DFC loan. However, he made it clear to the 3rd Defendant that the business was for the benefit of the family and his name on the lease was not intended to vest him with an interest. The mere fact that the Deceased then made two applications to purchase the properties in his sole name is damning evidence that there never was any intention to pass any interest to the 3rd Defendant.

41. In any event, the lease had been surrendered to the 1st Defendant by the deceased and there is no purchase agreement in existence between the 1st and

3rd Defendants. Any right which the 3rd Defendant may have had to enforce certain terms of the lease agreement have long been extinguished.

The 1st, 2nd, and 4th Defendants' Submissions:

42. These Defendants submit that dealings with national lands can only be done under the **National Lands Act**. Under that Act, the Minister is empowered to rectify or cancel erroneous entries or plans in any of the National Land Books, issue a new fiat and direct a new and proper entry or plan be made - Section 21.

43. Counsel submitted that the section utilizes plain language. A reasonable interpretation of the section is that *"it is lawful for the Minister to cancel and issue new fiats whenever it appears to his satisfaction that there exists an error in San entry in the National Lands Books or to be put another way, that the Minister is authorized to cancel and issue new fiats whenever he is satisfied errors exist in an entry in the National lands Book."*

44. She continued, and this Court agrees that by virtue of section 21, *"the Minister is lawfully able to make rectification where fiats are concerned… to correct entries which are inaccurate or deviate from what should have been done."* Counsel then considered all the powers given to the Minister under the Act and viewed their extensiveness as Parliament's intent to entrust the management of national lands to the Minister and the Minister alone.

45. She concluded that the Minister had an unfettered discretion and power to correct errors in fiats which informs entries on the National Lands Books.

46. Through a letter from the 3rd Defendant, the Ministry learnt of the existence of errors in two Fiat Grants. An inquiry was launched to determine the veracity

of the claim. This revealed that the two grants had *been "issued in error given that the lease prior to sale was held in joint names. That upon the discovery, two Minister's Rectification Error forms were issued and signed by the Minister and new grants were issued."* There was nothing unreasonable about what he did.

47. The evidence is that a fiat lease had been issued in the joint names of the deceased and the 3rd Defendant. Subsequently, permission was sought and granted for them both to mortgage the leasehold. The deceased's eventual second application to purchase met with success. He received purchase approval for 109.787 and 70.613 acres of land.

48. Jerjet Gutierrez, Senior Lands Officer and sole witness for the 1st, 2nd and 3rd Defendants, testified that the original lease was in the possession of the Ministry and that would only be possible where it had been surrendered by the leaseholder in exchange for the grant.

49. The error, Counsel submitted, which the Minister sought to correct was that one tenant to a joint tenancy had conducted business with the Property without the consent or hand of the other. That application, according to Ms. Gutierrez, should have been made in the joint names or a letter from one authorizing the sale to the other should have been presented.

50. This defect in the process and the steps which followed were all shrouded in error and led to the fiats being issued in error and the eventual error in the Fiat Book. There was nothing unreasonable in the minister's decision to correct the error by issuing new fiat grants in the joint names of the deceased and the 3rd Defendant.

The 3rd Defendant's Submissions:

51. The 3rd Defendant supported the 1st, 2nd, and 4th Defendants' submission that there had indeed been an error which the Minister had the power to correct and which he lawfully corrected. He also accepted that the two parcels granted were intended to cover the full acreage of land that had originally formed the lease. He urged that his titles could therefore not be challenged.

Court's Consideration:

52. There is no doubt that the Minister has the power to make rectifications of error where fiats are concerned. While these powers are wide, they do not extend to changing ownership to property.

53. A leasehold is distinct from a freehold. The joint lease was for a period of 20 years. This means that the lessees had an interest or a legal estate in the land for the duration of that time. The lease would therefore be determined or expire within 20 years of its commencement. The deceased thereafter entered into a contract for the purchase of the two parcels of land. On payment of the purchase price and transfer of the properties, they ceased to be National land and were then privately owned by the deceased.

54. It was now possible for the deceased to make an application to have any error corrected on his Fiat Grant. If there were any applications for correction of errors being made by anyone else to the Minister, it could not be approved without first notifying the deceased or later his estate and allowing him or them an opportunity to be heard.

55. The next issue is whether there existed any error in any entry or plan in any of the National Lands Books. My definitive answer is that there was none. This trail of evidence which the 1st, 2nd and 4th Defendants say began with an error by an intake clerk may perhaps have had serious internal repercussions for the Ministry, but those repercussions did not include an error in any entry or plan.

56. The Minister had agreed to sell the properties to the deceased, the deceased had accepted that offer, paid the full consideration and had been granted title. He therefore acquired a greater interest than any the 3rd Defendant may have had.

57. There was absolutely no error in the entry in the National Lands Book and the Minister was therefore not empowered to make a correction. His power to correct is limited to errors in the entry, not purported or presumed errors made by an intake clerk and research person.

58. This Court could also find nothing and was presented with nothing which indicated that the law is that joint leaseholders may only jointly purchase the property being leased. That may have been a policy of the Ministry, or something contractually agreed between the lessee and the lessors (which was not proven) but it is not the law. The failure to abide by contractual terms raise issues of breach of contract, not error of entry. The failure to abide by one's own internal policy is also not an error of entry.

59. Having had no power to exercise, the Fiat Grants issued in rectification were unlawful, null and void and a declaration shall be made as sought by the Claimant.

60. This means that the grants which now bear the 3rd Defendant's name as owner are void *ab initio* and are of no effect. There is no need for this Court to order their cancellation. It is my understanding that the original Fiat Grants issued in the deceased's name had never been cancelled and so continue to be of effect.

61. With this finding, any issues of survivorship and whether the 3rd Defendant holds the parcels on trust will fall away and need not be discussed here. The 3rd Defendant may perhaps have a cause of action otherwise but he has made no counterclaim in these proceedings.

What remedies, if any, are the Claimants entitled to?

62. The Claimants seek damages for loss of use or loss of opportunity. They also seek the disgorgement of any profits which unjustly enriched the 3rd Defendant. They desire that an account of profits be had to assist that process.

63. While a party can claim both damages and an account of profits in their pleadings, they must ultimately make a choice. The Claimants in this case have not made a choice and the Court can not insert its own view. The Court will, therefore, make no determination on the issue of a remedy but will give the Claimants an opportunity to make their choice.

IT IS ORDERED:

1. Minister's Fiat Grants No's 804 and 805 of 2012 issued in the name of the 3rd Defendant are void *ab initio* and of no effect.
2. The Claimant is put to the election of an award of damages or an accounting of profits to be filed and served on all other parties no later than the 3rd February 2023.

SONYA YOUNG

HIGH COURT JUDGE