

**IN THE COURT OF APPEAL OF BELIZE AD 2001**

**CIVIL APPEAL NO 1 OF 2001**

**BETWEEN** (THE ATTORNEY GENERAL  
(  
(AND  
(  
(HENRY YOUNG  
(NESTOR VASQUEZ, SR.  
(SILAS CAYETANO (Trustees  
for The United Democratic Party) **APPELLANT**  
**RESPONDENTS**

Court of Appeal  
Civil Appeal No. 15 of 2001  
March 7 & 8 and June 25, 2002.

**The Hon. Mr. Justice Rowe** **President.**  
**The Hon. Mr. Justice Mottley** **Justice of Appeal**  
**The Hon. Mr. Justice Carey** **Justice of Appeal**

Mr. Elson Kaseke, Solicitor General and  
Ms. Minnet Hafiz, Crown Counsel, for the Appellant.  
Mr. Dean Barrow S. C. for the Respondents.

*National Lands Act - Procedure for acquiring national land under the National Lands Act - Minister disposing of national land to Trustees of United Democratic Party by means of a "free grant" - Free grant issued under the Registered Land Act - Whether the Minister acted ultra vires the National Lands Act - Whether the acts of the Minister were due to a mistake of law - Effect of certificate of registration under the Registered Land Act - Whether certificate of registration can be cancelled when proprietor of property is not a bona fide purchaser for value - Whether certificate of registration can be cancelled when it is issued due to a mistake of law - Where language of legislation provides in mandatory words that forms in the legislation should be used, the courts have a duty to ensure compliance with the wishes of parliament - Meaning of the word "grant" in the National Lands Act.*

**ROWE, P.**

1. **This is an appeal from the judgment of Conteh C.J. in which he held that the Minister of Natural Resources had validly transferred parcel 912 in Lake Independence Registration Section to the Respondents and subject to his directions as to the payment of stamp duties the Respondents acquired valid title to the said property by the issue to them of Land Certificate No. 3212 on June 19, 1997. The Appellant filed three grounds of appeal against the judgment and provided as particulars of those grounds the following:**

(a) The Chief Justice erred in law when he said that the "free grant" under the repealed Crown Lands Act was only for the benefit of immigrants to Belize.

(b) The Chief Justice erred in law when he said that grants of national lands by the Minister are expressly recognized and provided for in the National Lands Act.

(c) The Chief Justice erred in law when he said that he does not accept that the transfer of Parcel 912 was a dealing forbidden by sections 71 and 72 of the Stamp Duties Act and that the sections do not invalidate any transfer or conveyance in the absence of payment of stamp duty.

(d) The Chief Justice erred in law when he said that section 111(1) of the Registered Land Act does not vitiate or avoid a transfer of land in the absence of payment of stamp duty.

### **THE FACTS AND ISSUES AT TRIAL**

2. The litigation was commenced by originating summons filed by the Appellant and on 27 November, 2000, the court ordered that the action proceed by the filing of a statement of claim and a defence. It is alleged in the statement of claim and admitted in the defence that the Respondents were at all material times the Trustees of the United Democratic Party. The defence admitted that in 1997 the Appellant was the freehold owner of parcel 835 situate at Lake Independence, Belize and that in 1997 parcel 835 was subdivided into three parcels one of which was parcel 912. It is alleged further, in the statement of claim, that on April 23, 1997 the Minister of Natural Resources wrongfully transferred parcel 912 as a "free grant" to the Respondents; that the "free grant" was in breach of the National Lands Act (No. 6 of 1992) and that the transfer was registered without payment of any consideration or stamp duty. The Appellant claimed a declaration that it was the owner of parcel 912, an order for the cancellation of the entry in the Register shown as instrument No. 3212 relating to parcel 912, damages, costs and other relief.
3. In defence it was pleaded that the Appellant was not the freehold owner of parcel 912. The Respondents alleged that the Appellant through the Minister of Natural Resources legally transferred parcel 912 to the Respondents as the Trustees of the United Democratic Party and properly registered the transfer on April 23, 1997. Thereafter the Appellant issued Land Certificate No. 3212 of 1997 to the Respondents evidencing their title in fee simple to the said parcel of land. They contended that it was not open to the Appellant to impeach its own act in transferring the land to the Respondents; that the transfer was not wrongful and that the Respondents had obtained absolute and indefeasible title to the said parcel of land. In the alternative, the Respondents contended that the Appellant was estopped from claiming to be the legal owner of parcel 912 as it had stood by and with full knowledge of the facts, allowed the Respondents to enter the parcel of land and inter alia, construct the headquarters of the United Democratic Party thereon.
4. There was a counterclaim by the Respondents. The Chief Justice in separate proceedings, denied the relief sought and although an appeal was taken from that judgment, no submissions were addressed to us thereon having regard to our decision on the Appellants claim.
5. The parties agreed that the issues to be tried by the Chief Justice were twofold: (a) whether in law, the transfer of parcel 912 in the Lake Independence Section to the Respondents was valid or not, and (b) did the Respondents acquire valid title to the said parcel 912 by reason of the issuance to them of Land Certificate No. 3212 of 19 June, 1997? As I said before, the Chief Justice answered both questions in favour of the Respondents.

### **THE STATUTORY SCHEME**

6. The National Lands Act (No. 6 of 1992) (now Chapter 191 of the Substantive Laws of Belize, 2000 Revision) came into force on 13 June, 1992 and makes provision under that Act for the manner in which national lands shall be dealt with or disposed of. "National Lands" is defined in section 2 of that Act to mean:

"all lands and sea bed, other than reserved forest within the meaning of the Forests Act, including cayes and parts thereof not already located and granted, and excludes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize."

7. "Grant" is defined as:

"grant means a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee, subject to the terms and provisions of this Act."

8. Section 5 of the Act provides as under:

" (1) National lands shall not, save as is excepted by section 6, be dealt with or disposed of, except in the manner hereafter provided.

(2) The Minister shall appoint an Advisory Committee to advise him generally, on all matters relating to land administration.

(3) The Minister may appoint local committees to assist him in the consideration of applications for all tenants of national lands and other matters relating to land distribution."

9. The legislative intent to be gathered from section 5 is that any dealing with national lands can only be lawfully done in conformity with the provisions of the Act. Two sets of advisory bodies were introduced under this section so that the Minister could obtain general advice on land administration from an Advisory Council and the assistance of local committees in the actual day to day resolution of concrete applications before him. Then one comes to section 6, which I will set out in full.

"6(l) Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings, or as places of interment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea or canals or for the purposes of sinking shafts and digging for minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment or for otherwise facilitating the improvement and settlement of Belize, or for special purposes."

10. Two of the matters much debated before us were (a) the true meaning of the phrase "excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of it in a manner as for the public interests may seem best" and (b) "or for special purposes" as used in section 6.
11. Sections 7 through 12 of the Act are concerned with the grant of leases and the regulation of such leases.
12. Section 13 which provides for the sale of national lands states as follows:

"(1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.

(2) An application to purchase national lands shall be made in the form of the Second Schedule."

There is a form in the Second Schedule to the Act which is made pursuant to section 13 of the Act and which is headed "Form of Application for a Grant of National Lands."

13. The final section to which I shall now refer, is section 17 of the National Lands Act. It provides:

"17. All grants or leases of national lands exceeding a term of seven years shall be effected by the issue of a fiat by the Minister in one of the forms of the Fourth Schedule and the Registrar shall thereupon enter such grant or lease respectively in the book named in such fiat and every grant or lease shall be deemed to be dated on the day on which the Minister's fiat is dated".

14. It was held by the Chief Justice at paragraph 21 of his judgment that national lands may be disposed of by grant, lease or sale. The Appellant has argued that section 6 does not give the Minister power to make a "free grant" of national lands but restricts him to a "sale" with exceptions of the normal conditions, in other words, sale at a reduced or greatly reduced price. Mr. Kaseke for the Appellant argued that there cannot be a "sale" without a consideration as a transaction in which property passes from one to another without any form of consideration is not a sale and is a gift. If, said he, the legislature intended that the Minister could make gifts of national lands in the form of "free grants" it would have adopted the scheme and language of the Crown Lands Act which it replaced. In the earlier Act there was a section 6 (reproduced in its exact form in section 6 of the National Lands Act) and a provision which was introduced into the Crown Lands Act in 1963 as section 34, providing for the issue "free grants" of rural lands for the purpose of encouraging immigration into Belize. If, said the Solicitor General, section 6 of the Crown Lands Act was capable of permitting the Minister to make "free grants" what was the purpose of adding the new section 34 thereto?

15. This argument was buttressed by the fact that the form prescribed in the Fourth Schedule for "Grant" pursuant to section 17 of the National Lands Act, does not make provision for "free grant" but instead, in pertinent part, states:

"MINISTER'S FIAT

No. Grant

Enter in the National Lands Book (grants) A. B. of as the grantee of acres of land situate at bounded and described as shown by plan No. of --- herewith for the sum of dollars , and this shall be your sufficient authority for so doing."

16. **The Chief Justice did not find the reliance upon the Form in Schedule 4 persuasive and relied on the dictum in *Bartlett v Gibbs* (1843) 5 M & G 81, 96 taken from *Craies on Statute Law* 7th ed. (1971) 225 which states that forms in schedules are inserted merely as examples and only to be followed implicitly so far as the circumstances may admit. In *Saunders v White* [1902] K.B. 318, it was clear to the Court that the legislature had forbidden every document except the particular form prescribed in which a valid bill of sale could be validly shaped and it therefore held invalid as a bill of sale a document**

that was not in the prescribed form. If the legislature has prescribed a particular form for the creation of a valid instrument and has forbidden every document except one which is made in a particular form, the court is bound to give the ordinary meaning to the legislation. *Saunders v White* (supra). It seems to me that for the orderly administration of the National Lands Act, the Minister is obliged to issue his Fiat in one of the forms prescribed in the Fourth Schedule when he is dealing with a sale for a consideration or a lease of national lands to which section 17 of the Act applies. As I will seek to demonstrate later, the legislature could never have intended that a parcel of land with a market value of one hundred million dollars could be transferred lawfully, pursuant to section 6, as a cemetery for a consideration of one dollar, but the disposition would fail if the one dollar consideration was absent. Such an interpretation would be formalistic, unrealistic and wholly without a purpose. Why maintain the façade of a sale when the intention is to pass the fee simple ownership of the national lands to a qualified entity pursuant to section 6 for a public purpose?

17. The Court has no power to rewrite the language of section 6 of the Act. Why the legislature chose the words "excepting from sale in the ordinary manner" to express its intention to confer some discretionary power on the Minister to deal in national lands, cannot now be fathomed, but from a reading of the statute, the court must interpret the words in their context. Twenty-one specific situations have been enumerated in section 6 in respect of which a discretion is given to the Minister to "except from sale in the ordinary manner" national lands and to dispose of national lands to the enumerated entities or for the enumerated purposes. Section 6(l) refers to "sale in the ordinary manner" but does not make reference to "lease". However, section 5(2) gives the Minister power to make variations of one sort or another to grants, leases or licences issued under section 6(l). This indicates to me that the Minister has a very wide discretion as to the extent to which he can "except from, sale in the ordinary manner" national lands that are required for the purposes of that section. The fact that there is no form in the Fourth Schedule to meet the situations envisaged in section 6(2) of the Act is further indication that the forms prescribed in that Schedule are not exhaustive.
18. It is an agreed fact that the transfer of parcel 912 was made to the Respondents as a "free grant", that is to say, without consideration. A question that arises is whether the Minister had a power under section 6(1) to dispose of the national lands contained in parcel 912 to the Respondents pursuant to section 6 of the National Lands Act. The Chief Justice when faced with this problem was very troubled and expressed himself at paragraph 47 of his judgment as follows:

"There is however, some merit in the argument of Mr. Flowers, S.C. that "special purposes" in section 6, does not include a disposition of national land to a political party: and when this contention is set in the context of the political pluralism enjoyed and practised in Belize, it does deserve some consideration. However, the Government of the day is given the right of disposing of such lands as it may adjudge best in the public interest. This Court is not equipped or in a position to say whether the allocation of Parcel 912 to the Defendants, the trustees of the United Democratic Party, one of the political parties in the country was or was not a disposition " in a manner as for the public interest may seem best" as a "special purpose" under section 6 of the Act. This is a determination to be made elsewhere, perhaps in the realm of public policy and public politics. I can, however, say that if that determination is not made objectively and on grounds of principles that the public can appreciate readily, it would only increase their cynicism and disenchantment."

19. A sale or lease of national lands may only be disposed of by the Minister by sale for valuable consideration or by lease except if the disposition falls squarely within the provisions of section 6 of the Act. Mr. Kaseke has argued that the purposes for which the exceptions in section 6 exist form a clear genus for the development of communications, reservations and the environment of Belize in the public interest. The ejusdem generis rule, he submitted, clearly applies in the interpretation of section 6(l) so that the term "or special purposes" must be construed in the light of the public service provisions which precede it. When so construed,

a political party, such as the United Democratic Party, could not be the recipient of a grant as a special purpose. Nor said Mr. Kaseke, could the category "or for special purposes" be construed as a free standing provision in that section. Special purpose, in the context of that section, if construed as a free standing provision, would distort the entire balance of the Act, in that there would be no legislative guidance as to what a Minister could designate a special purpose. Therefore, the Appellant argued, special purpose can only be construed in association with the genus which preceded it and although the Chief Justice noted the political pluralism that existed in Belize, he refused to make a finding on the issue as to whether the disposition in question could lawfully be for a special purpose.

20. I am fully persuaded that the categories of purposes enumerated in section 6(l) form a genus to which the *ejusdem generis* rule applies. For the reasons advanced by the Solicitor General, I am of the opinion that the term "special purposes" is not a free standing provision in section 6(1) and that it takes its colour from the preceding clauses in that section. The special purposes for which dispositions of national lands can be made pursuant to section 6(l) must all be in the public interest.
21. Parcel 912 was national land. In my view, the Minister acted *ultra vires* in transferring this parcel of national lands to the Respondents, the Trustees of the United Democratic Party, as a free grant. He could not validly dispose of this parcel of national lands pursuant to section 6(l) of the National Lands Act, as the transfer to a political party was not for the public interest or in the categories of interests enumerated in section 6 or for a purpose of a similar character, and therefore could not be a special purpose within the meaning of that section.

It is significant to note that there was no Minister's Fiat Grant to the Respondents pursuant to section 17 of the National Lands Act.

#### **EFFECT OF THE REGISTERED LAND ACT**

22. On April 23, 1997 parcel 912 was transferred by the Minister to the Respondents as a free grant. The instrument of transfer was made under the Registered Land Act. On that same day, the Minister declared the land on which parcel 912 is situated to be in a compulsory registration area pursuant to section 4 of the Registered Land Act. Section 14(2) of that Act provides that:

"14(2) On the declaration by the Minister of a compulsory registration area under section 4, sections 14 - 22 of the National Lands Act shall cease to apply to national lands in such area."

23. It is to be observed that section 17 of the National Lands Act requires that the disposition of national lands be by way of the Minister's Fiat Grant and but for the declaration by the Minister, that parcel 912 was in a compulsory registration area, the registration of the transfer of parcel 912 under section 17 would have to be in the National Lands Books. However, the declaration by the Minister rendered section 17 of the National Lands Act irrelevant. A new Land Certificate No. 321 2 of 1997 was issued to the Respondents on 19 June, 1997.

If national land is registered under the Registered Land Act, the Minister may only dispose of that land under the provisions of the National Lands Act - sec. 29 of the Registered Land Act.

24. Before us Mr. Kaseke submitted that the Respondents did not obtain an indefeasible title under section 26 of the Registered Land Act and that their title could be rectified pursuant to section 143 of the Registered Land Act.

Section 26 of the Registered Land Act in pertinent part provides that:

"Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, from all other interests and claims whatever . . ."

25. Section 30 is not material for the purposes of this case.
26. Section 143 of the Registered Land Act provides that:

"143(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 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 subsequently contributed to it by his act, neglect or default."

27. The system of land registration in Belize in the General Registry Act is based on the Torrens system first established in Australia and New Zealand. Mr. Barrow has submitted that the Registered Land Act is patterned after the Land Registration Act of England. The aim of the Torrens system is to ensure that someone dealing with the registered proprietor of title to the land in good faith and for value will obtain an absolute and indefeasible title, whether or not the title of the registered proprietor from whom he acquires was liable to be defeated by title paramount or some other cause. **British American Cattle Company v Caribe Farm Industries Limited and the Belize Bank Ltd. B.L.R, Vol. 3, 468. In Gibbs v Messer, (1891) A.C. 248, 254** it was held that:

"The main object of the Act, and the legislative scheme for the attainment of that object, appear to them to be equally plain. The object is to save persons dealing with the registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title and to satisfy themselves of its validity. That end is accomplished by providing that every one who purchases, in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title."

28. Mr. Kaseke accepted the authority of the **British American Co. v Caribe** case without question and the decision in **Frazer v Walker (1967) A.C. 569**. He says, however, that the Respondents were not *bona fide* purchasers for value, and therefore they do not fall within the mainstream protection provided by the Torrens system model of legislation. Our attention was drawn to a number of cases in every one of which the purchaser acted *bona fide* and the transaction was for value. Mr. Barrow did not provide a single example from decided cases where a volunteer successfully defended against an application for the rectification of the register on the basis of fraud or mistake.
29. Mr. Barrow submitted that the applicable principle of law to be distilled from **Frazer v Walker**, is that, provided there is registration, the title of the registered proprietor becomes indefeasible, without proof that the registered proprietor was a *bona fide* purchaser for value and however the title had devolved. I do not understand the decision in **Frazer v Walker** to mean that a registered title cannot be canceled if fraud is alleged. In that case the wife of a joint owner of property forged her husband's signature and obtained a mortgage. The mortgagee acted *bona fide* and in good faith and, when neither principal nor interest had been paid on the mortgage, sold the property at public auction. Title was transferred to one of the

Respondents in the case and he also mortgaged the property to the second Respondent. The parties conceded at trial that the Respondents acted throughout in good faith and without any knowledge of the original forgery and fraud by the wife. In the course of his judgment, Lord Wilberforce said at p. 580D of the report:

"It is these sections which together with those next referred to, confer upon the registered proprietor what has come to be called 'indefeasibility of title'. The expression, not used in the Act itself, is a convenient description of the immunity from attack from adverse claim to the land or interest in respect of which he is registered, which a registered proprietor enjoys. This conception is central in the system of registration. **It does not involve that the registered proprietor is protected against any claim whatsoever, as will be seen later, there are provisions on which the entry on which he relies may be cancelled or corrected, or he may be exposed to claims in personam.**" (emphasis added).

At page 585 of the report Lord Wilberforce continued:

"[T]heir lordships have accepted the general principle that registration under the Land Transfer Act, 1952, confers upon a registered proprietor a title to the interest of which he is registered which is (under sections 62 and 63) immune from adverse claims, other than those specifically excepted." (emphasis added).

30. To my mind, the two passages quoted above from the speech of Lord Wilberforce make it plain that a registered title may be rectified if there are enabling provisions contained in the governing Act. In this case section 143 makes provision for the cancellation of a registered title where registration was obtained by fraud or mistake. However, such cancellation may not take place if the registered proprietor had no knowledge of the fraud or mistake and had given valuable consideration for his purchase.
31. I am satisfied that the registration of parcel 912 in the names of the Respondents was done under a mistake of law. The Minister, I have held, had no statutory power to make a disposition of national lands to his own political party as a free grant, that is to say, as a gift, at a time when the United Democratic Party formed the Government of Belize. His act was *ultra vires* and void. If the Minister believed that he had a power pursuant to section 6 of the National Lands Act to make a gift of national lands to his own political party, he acted under a mistake of law. A gift of national lands under section 6 of the National Lands Act must be for a public purpose of the kind stipulated in that Act. The entire scheme of the National Lands Act is to protect and preserve the national lands of the country for the benefit of the public and for this purpose the statute provides the Minister with advisory bodies so as to avoid the appearance of arbitrary conduct on the part of the Minister. There was no evidence whatsoever, that in making the gift of national lands to the UDP, the Minister availed himself of the assistance of one of these advisory bodies. I hold that the Respondents do not have the protection afforded by section 143(2) of the Registered Land Act because they did not acquire title to parcel 912 for valuable consideration.
32. It was for those reasons that I concurred in the decision that the appeal should be allowed and that the decision of the Court below be set aside. It was ordered that the entry in the Register shown as Instrument No. 3212 relating to Parcel 912 be cancelled. Costs were awarded to the Appellant to be agreed or taxed.

#### **MOTTLEY, J.A.**

1. The National Lands Act Cap. 191 (the Act) provides a comprehensive scheme for dealing with national land (the lands) by the Government of Belize. The power under the Act is given to the Minister responsible for lands. An examination of the Act shows that it deals, inter alia, with the following topics: classification of national lands, disposal of national lands both by way of sale or lease; the establishment of an Advisory Committee; the power of the Minister in

respect of the lands, the procedure to be adopted by the Minister for disposing of the lands; revocations, Government titles to the lands, penalties for unlawful occupation of the lands and the resolution of any perceived conflict between the Act and the Registered Land Act. The Schedules to the Act provides various forms to be adopted when disposing of the lands. The Act specifically provides that in certain circumstances the Minister is exempted from the provisions of the Act when dealing with the lands. It is this provision as contained in section 6 of the Act with which this judgment is concerned.

2. Section 4 of the Act provides for the classification of the lands into five different classes.
3. Section 5 provides for the disposal of lands. I shall return to this section later and set out in detail its provision.
4. Section 7 empowers the Minister to grant and renew leases of the lands on such terms and conditions as he thinks fit. Such leases are not to be transferred without the prior written permission of the Minister. The method of application for such leases is set out in the First Schedule to the Act and is made to the Commissioner of Lands and Surveys to whom the Minister is empowered in writing to delegate this authority to carry out any function connected with the Act (sec. 3). Section 10 provides for the recovery of arrears of rent due to the Government. Under section 11 the Commissioner is given the responsibility of reporting to the Minister breaches of the conditions under which the leases are granted, while the Minister is given the power in certain instances to cancel the leases. Certain statutory terms are implied in all leases of land as approved by the Minister (sec. 12).
5. The power of the Minister to dispose of the lands by way of sale is dealt with in section 13 of the Act. I shall return to this section at a later stage. Application to purchase the lands shall be made in the form set out in the Second Schedule.

Section 14 of the Act empowers the Minister to complete the sale of land by issuing a fiat for a grant in the circumstances set out in that section. The section also empowers the Minister to act where the lessee of lands dies intestate. Section 15 provides a statutory discharge for the Minister and Government of Belize from all liabilities when the Minister acts under the provision of section 14.

6. Sections 16 through 22 deal with creation of a National Land Book and for the matter to be entered therein and the maintenance of that Book by the Registrar of Lands.
7. Section 17 reads:

"All grants or lease of national lands exceeding a term of seven years shall be effected by the issue of a fiat by the Minister to the Registrar in one of the forms of the Fourth Schedule, and the Registrar shall thereupon enter such grant or lease respectively in the book named in such fiat, and every grant or lease shall be deemed to be dated on the day on which the Minister's fiat is dated."

This section in my view does no more than to provide a method for land to be disposed of by way of grant or by a lease exceeding a term of seven years. It is to be effected by way of the issue of the Minister's Fiat. "Grant" is defined in section 2 as meaning "a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee, subject to the provision of this Act."

8. Section 5(1) states:

"National land shall not, save as is excepted by section 6, be dealt with or disposed of, except in the manner hereinafter provided."

The effect of this section in my view is twofold - (a) to exclude the provisions of section 6 from the general provisions of the Act relating to the dealing with and disposition of the lands, (b) to restrict the dealing with or disposition of the land except in the manner set out in the Act. In order to ascertain the

manner in which the land may be dealt with or disposed of by way of sale under the Act, it is necessary to examine the provision of section 13. I am not, for the purpose of this judgment, concerned with the power to deal with or dispose of the lands by way of lease and my views are limited therefore to the dealing with or disposal by way of sale.

9. Section 13 of the Act deals with the sale of the land and provides:

"(1) National land may be sold at such prices and on such terms and condition as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.

(2) An application to purchase national lands shall be made in the form of the Schedule."

10. In my view, this section empowers the Minister to sell the lands. The Minister has authority to prescribe the price at which the lands must be sold and to attach terms and condition relating to its improvement. However in prescribing the price and other conditions he is required to act on the advice of the Advisory Committee established under section 5(2) of the Act. Subsection (2) merely provide for the method of making application for the purchase of the lands.

11. A Minister in my view is not entitled to dispose of land under section 13 otherwise than by sale. The section empowers the Minister to sell "at such price" as may be prescribed by him on the advice of the Advisory Committee. Under this section it is clear that disposition must be by way of sale and that the purchaser will pay a purchase price. That price is the prescribed price. This section does not envisage a disposition of the land other than for a purchase price. The Minister of Natural Resources in my view did not have any power under section 13 to transfer the property to the Respondents by way of a "Free Grant". Any attempt to do so would be, in my opinion, ultra vires the provision of the Act.

12. As stated earlier, section 5 of the Act restricts the dealing with or disposition of the land except in accordance with provision of the Act save as is excepted by section 6. It is therefore necessary to examine section 6 to ascertain whether the "Free Grant" fall within the ambit of that section.

13. Section 6 provides:

"Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interest may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the site of public building, or as places for the internment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of stream, or for the construction of tram or railways or railway station, or canals, or the purpose of public defence, safety, utility, convenience or enjoyment or for otherwise facilitating the improvement and settlement of Belize or for special purpose."

(2) The Minister shall have power to alter, vary or add to the ordinary terms and stipulations upon which any grant lease or licence is made, should it be considered to do so in any special instance.

(3) All reserves shall be notified in three successive issues of the Gazette and in one issue of a local newspaper and set forth on plans in the Office of the Commissioner.

(4) All dereservation of reserves shall be notified in three issue of the Gazette."

14. The restrictions which apply generally to the dealing with or disposition of the lands as contained in the Act do not apply to the provision of section 6. The provision of section 6 is

expressed in a negative manner. Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner. This section, in my view, acknowledges the right of the Minister to except from sale in the ordinary manner such land as may be required for certain public purposes. A sale in the ordinary manner includes the payment of a purchase price or an agreement to pay a purchase price. The section recognized the right of the Minister to do this. But that right is restricted to the purposes contained in subsection (1). An examination of these categories shows that purposes are all connected with the development of the physical infrastructure of Belize. That this is so can be seen from the use of the words "or for otherwise facilitating the improvement and settlement of Belize." In my view, a genus is established by the subjects which, as I have said, deals with development of the physical infrastructure of Belize. In my view, the term "for special purposes" must be construed in keeping with the ejusdem generis rule. In short, the "special" purpose in my view must be a purpose which is connected with the development of the physical infrastructure of Belize. A Minister who purports to sell land by way of a sale other than in the ordinary manner for a purpose which is not connected with the development of the physical infrastructure of Belize is, in my opinion, acting ultra vires the provision of the Act. The Minister in transferring parcel 912 to the Respondents, therefore acted ultra vires the provision of the Act.

15. In my view, the provisions of section 6(1) are intended to remove from the Minister the statutory restriction otherwise imposed on him by the provision of sections 5 and 13 in so far as the disposing of the lands is concerned. Once the land is being disposed of for the purposes set out in subsection (1) nothing, in my view, prevents the Minister from disposing of the lands without the payment of consideration or purchase price.
16. Subsection (1) expressly reserved to the Government of Belize the right of disposing of the land in a manner for the public interest as the Government considers in the best interest of the public. This fortifies my view that section 6(1) dealing with purposes connected with the development of the physical infrastructure of Belize.
17. I have had the benefit of reading what Rowe P. has said about the effect of the Registered Land Act and I agree with the conclusion reached by him.
18. It was for these reasons that I earlier concurred in the decision to allow this appeal with costs to the Appellant to be taxed if not sooner agreed.

#### **CAREY, J.A.**

1. This appeal raises for consideration, the inter-relation between the National Lands Act Cap. 191 and the Registered Land Act. Cap. 194, and concerns a parcel of national land (parcel 912), Lake Independence registration section which in 1997 was transferred by the then Minister of Natural Resources to the Respondents as trustees of the United Democratic Party, one of the major political parties in the country. The issues which therefore fall to be determined are the validity of the transfer and whether the Respondents acquired a valid legal title on the issuance to them of a Land Certificate under the Registered Land Act.
2. These were the issues which the Chief Justice, with the agreement of the parties, ordered to be tried as preliminary questions with a view to resolving and disposing of the action brought by the Attorney General which claimed declarations and rectification of the register. The Chief Justice in a reserved judgment of 15 October, 2001 held that the transfer was valid and that the Respondents acquired a valid title to the said land. Thereafter, the Attorney General challenged that ruling in an appeal which we have heard and allowed, setting aside his orders, ordering cancellation of the Land Certificate and promising to provide at a later date, reasons for our decision. We also made consequential orders for costs in favour of the Appellant.
3. I now set out the reasons which persuaded me to that result.
4. The land in question was acquired by Government and thus became part of national lands. (See section 2 of the National Lands Act). This parcel was transferred and registered under the Registered Land Act and Land Certificate #3212 was duly issued to the Respondents.

5. National lands are subject to the provisions of the National Lands Act which has structured a regime for the management and disposal of these lands. As to disposal of such lands, it is enacted, as follows:

**"...5(1) National lands shall not save as is excepted by section 6, be dealt with or disposed of, except in the manner hereinafter provided..."**

6. The definitive or rather specific methods of disposal mentioned in the Act are by sale or by lease. Thus, section 13 provides as follows:

**"...13(1) National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.**

**(2) An application to purchase national lands shall be made in the form of the Second Schedule..."**

The power to grant leases is dealt with by section 7, which states:

**"...The Minister may grant leases of national lands on such terms and conditions as he thinks fit and may likewise renew leases on such terms and for such periods as to him may seem proper..."**

It is plain that with respect to parcel 912, the subject of this appeal, neither of these methods of disposal was involved. What took place amounted to nothing more than a gratuitous gift of land to his political party by the Minister responsible for lands at the relevant time. This raises the question whether the minister was empowered to transfer national land as a gift.

7. At the hearing below, the Chief Justice was of opinion that national lands were disposable by the Minister in three ways, as he said, "by either a grant, lease or sale" (paragraph 21 of his judgment). By "grant", he meant gift. He said this at p. 73:

**"40. ...Moreover, from the definition of "grant" stated in section 2 of the Act as meaning a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee, subject to the terms and provisions of the Act, I am unable to find anywhere in the terms and provisions of the Act that the payment of a consideration and if so, the amount or value of the consideration, as a prerequisite for the validity of the grant of national lands..."**

But it must be said that section 17 of the National Lands Act which I reproduce:-

**"...All grants or leases of national lands exceeding a term of seven years shall be effected by the issue of a fiat by the Minister to the Registrar in one of the forms of the Fourth Schedule, and the Registrar shall thereupon enter such grant or lease respectively in the book named in such fiat, and every grant or lease shall be deemed to be dated on the day on which the Minister's fiat is dated..."**

does not appear to support that conclusion.

An understanding of this provision and its true meaning are thus critical to the outcome of this appeal.

8. The section speaks to two methods of disposing of National Lands, viz grants or leases. We need not concern ourselves with leases. I turn then to consider "grants".

The term "grant" is defined in section 2 of the National Lands Act as meaning a land certificate or a conveyance effectual to pass an estate in fee simple to the grantee. It is of significance that the prescribed form of application to purchase national land found in the second schedule is headed "Form of Application for a Grant of National Land". That form, it should be noted, is an application to **purchase** land (emphasis supplied). If the application is approved, the applicant would receive a "fiat" from the Minister (section 17 National Lands Act supra). The form, is to be found in a schedule to the Act and thus forms an integral part of the Act. Section 13(2) of the National Lands Act mandates that form to be used to secure a grant of land which is effected by the issue of a fiat. That section states:

***"...An application to purchases National Lands shall be made in the form of the Second Schedule..."***

By section 16 the Registrar is required to keep a register called "The National Lands Book". By section 17, the Registrar is required to enter "such grants", which logically can only refer to purchases in respect of which a fiat has been issued. Further, I would call attention to section 27, the marginal note to which reads - "Power of Minister to make grants etc., in case of invalid title", and observe that the Minister's powers to act favourably only occurs in the case of a purchase. The section provides:-

**"...27(1) Where the title of any land occupied or acquired by any person is invalid in law against the Government, the Minister may, upon such terms as appear to him just and reasonable, make a grant title or enter into a lease with respect thereto-**

**(a) to, upon or with any person who bona fide purchased the land from any other person for valuable consideration; or**

**(b) to, upon or with any person who derives title from any person who purchased the land bona fide from some other person for valuable consideration..."**

The Solicitor General was, in my view, entirely correct in his submission that "the procedures and forms in the Act unerringly and consistently provide statutory limitations to the ministerial powers to dispose of national lands [except by sale or lease]. It is true to say that Mr. Barrow, S.C. candidly acknowledged that there was no provision in the National Lands Act which allowed the Minister to make a gift of land. He did add, except for special purposes or in the interest of the public.

9. This leads me then to section 6 on which most learned Senior Counsel pinned his flag. It is in the following form:

***"...6(1) Nothing contained in this Act shall prevent the Minister from excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interests may seem best, such lands as may be required as reserves, public roads or other internal communications, or commons, or as the sites of public buildings, or as places for the interment of the dead, or places for the education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves or landing places on the sea coast or shores of streams, or for the construction of tram or railways or railway stations, or canals, or for the purpose of sinking shafts and digging for minerals, or for any purposes of public defence, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement and settlement of Belize, or for special purposes.***

**...(2) The Minister shall also have power to alter, vary or add to the ordinary terms and stipulations upon which any grant, lease or licence is made, should it be considered expedient to do so in any special instance.**

**...(3) All reserves shall be notified in three successive issues of the Gazette and in one issue of a local newspaper and set forth on plans in the office of the Commissioner.**

**...(4) All dereservations of reserves shall be notified in three consecutive issues of the Gazette and in one issue of a local newspaper...**

Under the umbrella of this provision the Minister is empowered to "except from sale in the ordinary manner" and reserve to the government the right to dispose of land to subserve the public interest. Section 6 thus provides one of the methods of dealing with national lands. The words "...in the ordinary manner..." would seem to govern - sale. The phrase "excepting from sale in the ordinary manner" does not, I suggest, lend itself to permitting land to be disposed of as a gift for that would be, to do violence to the language used in the provision. As the Solicitor General correctly pointed out, there would be little difficulty in simply enacting, "excepting from sale", simpliciter, if that were the intention of Parliament.

10. The context in which the expression appears, would suggest that the intention of Parliament was to allow the Minister in the public interest or for special purposes to depart from the terms of section 13(1):

**"...National lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee..."**

The price contemplated in section 13(1) would plainly represent the market value of the land and would, I venture to suggest, constitute "a sale in the ordinary manner". The Minister would have the benefit of advice of his Advisory Committee created under the Act - to ensure transparency and integrity in the disposal of national lands. In the light of what I have stated, I conclude that there is no room for holding that the Minister is able to make a gift of land pursuant to section 6 of the National Lands Act.

11. The Solicitor General also invited us to have in mind the precursor of the National Lands Act, viz. the Crown Lands Act. It is of some significance that the latter Act permitted land to be given free to a restricted group of persons. Thus, it was enacted. Section 34:

**"...The Minister may for the purpose of encouraging immigration or for the development of the resources of Belize, issue free grants or conditional freehold titles of rural lands to persons who may desire to settle in Belize, in lots not exceeding twenty acres for each adult above eighteen years of age, and ten acres for each person under that age, subject to such conditions as to improvements or residence as the Minister may impose..."**

It would be passing strange if a minister responsible for lands could give away the country's patrimony for no gain. The minister constitutionally can only exercise powers given him by law. Nothing in the National Lands Act allows, permits or requires him to make a gift of national lands to anyone. Such authority, it seems to me, would have to be conferred on him in the clearest terms. With all respect to the learned Chief Justice, I do not think that section 6 is apt to achieve that end.

12. As I understood the submissions of Mr. Barrow, S.C. there is no statutory prohibition against the transfer of national land without consideration. He argues that section 6 confers on the

minister a power to transfer national lands without consideration in the public interest or for special purpose.

13. That, I fear cannot be correct. Section 6 allows the Minister to "except from sale in the ordinary manner", land to be devoted to the betterment socially and economically of the country. But there must be a sale, not a gift. Mr. Barrow, S.C. relied on this provision to assert that the donation of the land was for special purposes, that is, for the improvement and settlement of Belize. There is no evidence so far as I have been able to see which showed what was the special purpose in the mind of the minister, assuming for the moment that he had power to make a gift to his party. I can see no basis for saying that special purpose in the context of section 6 could include providing a local habitation for one political party. Some political goal might well come within the ambit of special purposes but I agree with the Solicitor General that there must be a factor of benefit to the country as a whole or of support for some cherished ideal shared by Belizeans. I have in mind for example, the provision of a home for war veterans or of headquarters for the Boy Scouts or Girl Guides. Special purposes calls for a construction by the court and should not be left to political experimentation. As the phrase appears in a statute, it cannot therefore be exempt from judicial consideration or construction. Accordingly, I am constrained to differ from the Chief Justice's view that such a determination is to be made perhaps in the realm of public policy and politics.
14. Mr. Barrow, S.C. submitted very strongly that the issue before the court was never a failure to comply with the National Lands Act. He said the only challenge was the failure to pay consideration and stamp duties. But that cannot be correct. The originating process in this matter raised very starkly the minister's powers under the National Lands Act and questions of consideration or stamp duties were but incidental aspects of the fundamental questions which the judge in agreement with the parties, accepted as preliminary issues.
15. By virtue of section 17 of the National Lands Act, grants and leases are effected by the issue of a fiat by the Minister to the Registrar in accordance with forms in the Fourth Schedule of the Act. No such fiat witnessed the grant of national lands to the Respondents in this case. In fact, they received a Land Certificate under the Registered Land Act. Under that Act, the minister is empowered to declare any area to be a compulsory registration area (section 4) and we were made to understand that this parcel of land was within a compulsory registration area. The effect of such a declaration by the minister, is that sections 14 - 22 of the National Lands Act ceases to apply. That meant that in the circumstances of this case, the proper instrument of title would therefore be a Land Certificate under the Registered Land Act, and not a grant under section 17 of the National Lands Act.
16. This registration of the Respondents as proprietors vested absolute title in them. But this indefeasibility of title thus created, can itself be defeated. It can be defeated by fraud or mistake. Section 143 of the Registered Lands Act provides as follows:-

**"...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..." [Emphasis supplied]**

And the person dealing with the registered proprietor may also be defeated if he is not a bona fide purchase for value. The principle of the indefeasibility of title was articulated in *Gibbs v. Messer* (1891) A.C. 248 at p.254:

***"...The main object of the Act, and the legislative scheme for the attainment of that object, appear to them to be equally plain. The object is to save persons dealing with registered proprietors from the trouble and expense of going behind the register, in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that every one who purchases in bona fide and for value, from a registered proprietor, and enters his deed of transfer or mortgage on the register, shall***

***thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title...***

That case, as a matter of interest, was concerned with the position of a bona fide purchaser for value from a fictitious person. The Registered Land Act, section 41(1) which creates this indefeasibility of title provides as follows:-

**"...No person dealing or proposing to deal for valuable consideration with a proprietor shall be required:**

***(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered or the manner in which any such consideration or part thereof was utilised;***

***(b) to search any register kept under the General Registry Act...***

17. Mr. Barrow, S.C. argued very strongly that the Respondents are protected by this principle of indefeasibility of title and found support in *Frazer v. Walker (1967) 2 WIR 411*. He did not, however, suggest that this protection could not be destroyed by fraud or mistake. He contended that in the instant case, where the Minister may have thought he had power to transfer national land as a gift, that did not amount to a mistake capable of nullifying the absolute title which the Respondents had. Further, he added, it was then far too late to set matters right by rectifying the register. After the mistake had been discovered, he said, the Appellants, allowed the Respondents to proceed to the execution of works on the land.
18. The Solicitor General, in sum, argued that the Minister had no power under the National Lands Act to deal with the land in the manner he had. He had acted *ultra vires*, and had made a mistake of law which was sufficient to defeat the absolute title vested in the Respondents by their land certificate. Nor were they protected because they were not bona fide purchasers for value. Mr. Barrow, S.C. never sought to argue that value had been given. Indeed he conceded the fact, contending as perforce he had to, that the Minister had the power to make a gift of land for special purposes.
19. It is undoubtedly correct that on the authority of *Boyd v. Mayor of Wellington [1924] NZLR 1172* a registration based on a void declaration is nevertheless valid to confer indefeasibility of title on the proprietor. But it must be borne in mind that this statement of the law is correct, only in the absence of fraud and it is not inappropriate to add as well, or in the absence of mistake. In my opinion, the mistake of the Minister as to his powers under the National Lands Act disqualifies the Respondents from relying on a claim of indefeasibility. I would suggest that the mistake of the Minister is not equivalent to a void proclamation. It is on the same footing as fraud. In the result, the register can, pursuant to section 143(1) of the Registered Land Act, cap. 194 be rectified.
20. As to the submission of Mr. Barrow, S.C. that it is now too late to grant rectification because the Appellants stood by and allowed the Respondents to proceed to execute works on the land, there really is no evidence to which our attention was drawn to demonstrate the fact. Absent such evidence, I cannot therefore accede to the submission.
21. This case doubtless was and will remain a cause celebre in the political history of the country and it may, for that reason have a salutary effect on the exercise of ministerial power and responsibility under laws which a minister is charged, fairly and conscientiously to uphold.