

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

CLAIM NO. 449 OF 2013

BETWEEN:

(ENRIQUE DEPAZ

CLAIMANT

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(AND

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(RAHIM AWE

DEFENDANT

(Administrator of the Estate of Jose Emilio Awe

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*BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA*

Mr. Hubert Elrington, S.C., for the Claimant

Mr. Orlando Fernandez for the Defendant

Hearing Dates:

24<sup>th</sup> March, 2015

18<sup>th</sup> May, 2015

6<sup>th</sup> July, 2015

28<sup>th</sup> September, 2015

9<sup>th</sup> June, 2016

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D E C I S I O N

The Facts

1. This is a claim brought by Mr. Enrique DePaz seeking title to a piece of land in San Ignacio Cayo District which he says was sold to him by Mr. Rahim Awe's father in 1978. Mr. DePaz says that the land was sold to him for BZ \$4000 by the late Mr. Jose Emilio

Awe but that title documents were never executed to transfer title to him. Mr. Rahim Awe, as Administrator of his father's estate, says that he has no knowledge of any such sale. Mr. Awe further states that the land was sold to a third party in 2013. The trial concluded on September 29<sup>th</sup>, 2015 and written submissions were due on November 6<sup>th</sup>, 2015. Mr. Fernandez on behalf of the Defendant filed his submissions on November 6<sup>th</sup>, 2015. To date, no submissions have been filed on behalf of the Claimant.

### **The Issue**

2. Did Mr. Enrique DePaz buy the land from the late Mr. Jose Emilio Awe in 1978 and is he entitled to the relief he seeks (a declaration that the property belongs to him)?

### **The Claimant's Evidence**

3. Two witnesses were called on behalf of the Claimant: Mr. Enrique DePaz and his son Mr. Norberto DePaz. Mr. Enrique DePaz said that he is a retired businessman and that on or about March 3<sup>rd</sup>, 1978, Mr. Jose Awe (now deceased) approached him about purchasing his land situate at 301 Church Street, San Ignacio Town, Cayo District as Mr. Awe was leaving for the United States of America. Mr. DePaz said he informed Mr. Awe that he would have to consult his wife and son before acquiring the land; upon their approval, he purchased the land from Mr. Awe. His son Norberto DePaz accompanied him to the bank to withdraw the purchase price from his account. Mr. Enrique DePaz said that on 6<sup>th</sup> March, 1978 he purchased Lot No. 301 Church Street San Ignacio Town Cayo District Belize from Jose Emilio Awe for the sum of Four Thousand Dollars. He tendered a receipt Exhibit "ED 1" as proof of payment of purchase price.

4. Mr. DePaz said that the following day, he requested Mr. Jose Awe to accompany him to the San Ignacio Town Board to change the name of the land from Mr. Jose Awe's name to his name. He says that the San Ignacio Town Board issued him with a letter every year from 1978 to 2013 informing him to come in and pay property taxes on the property and that he paid all taxes on this property. Mr. DePaz further states that upon paying Mr. Awe the full purchase price, he was let into possession of the property and that from March 1978 he has been in exclusive, continuous, open and undisturbed possession of the land. He also says that he occupied the land for over 30 years and built a two storey ferro concrete structure comprising of foundation, floors, walls and beams in 1981 on the property. Mr. DePaz said he requested Jose Awe and later his son Dr. Salvador Awe to put the title in his name; each promised to do so but never did. Finally, he got the law firm of Barrow and Williams to write to Mr. Rahim Awe in April 2009 in an attempt to settle the matter amicably but he received no response. In June 2011, he retained Mr. Hubert Elrington, SC, who wrote the Defendant again asking that the land be conveyed to him. Receiving no response, Mr. DePaz filed this claim seeking a declaration that Mr. Jose Awe sold this land to him in 1978 and that the Defendant Mr. Rahim Awe as Administrator of his late father's estate is a bare trustee and that Mr. Rahim Awe should transfer the land to him.
5. Mr. DePaz was cross-examined at length by Mr. Fernandez on behalf of the Defendant. He was challenged to explain what steps he took to assert ownership over the property over the years. He admitted that he put no sign on the property to indicate it was his. He claims he fenced the land but that fence is now gone after 32 years. He also claims to

have put a foundation on the land. When counsel pressed him on this point, asking him whether he produced any bills or receipts to prove this, he replied that the “*constructor*” is still alive and he can bring him here anytime. He then said he invested a lot of money in the land and Counsel’s client knows it. Learned Counsel asked whether he was aware that Mr. Rahim Awe applied for Letters of Administration in the estate of his father Mr. Jose Emilio Awe. Mr. DePaz said he had been living in the States at that time and was therefore not aware when this happened. He then said he was ill in the United States. It was also put to him that publication of the Grant of Administration was placed in the newspapers by Mr. Rahim Awe for the attention of all creditors and he did not object. Mr. DePaz said he was not in Belize at that time. It was also put to the witness that when the Defendant applied for First Registration of the property this application was again published in the newspapers asking for persons to object; he did not object. Mr. DePaz said no he did not object. He was also asked why it took him 2 years and 2 months (after sending a letter to the Defendant through his attorney Mr. Hubert Elrington, SC) to bring this action against the Defendant. He said he will explain. When asked why didn’t he put a caution on the property, he said he didn’t think he needed to do that. It was specifically put to the witness that he did not do any of these things because he knew that he had no interest in the property. Mr. DePaz said he disagreed and that he decided to file the lawsuit when he heard that Mr. Awe was selling the land to someone else. He was questioned about the fact that 33 years have passed since he claims the land was purchased by him in 1978 and he did not approach the court to appoint an administrator to give him title to the property. Mr. DePaz said

he was occupying the land throughout that time so he saw no need to do that. He agreed that he owns titles to several pieces of land in the Cayo District and that this is not the first time he is dealing with land issues. He was also asked whether he paid any taxes for the land and he said yes he did. In relation to documents which he had exhibited as receipts (ED 3) to prove such payment, it was put to him that these were not receipts but statements as to how much taxes were owed, he disagreed and insisted that the documents were receipts which showed he had paid the taxes. He said he never took any court action against Mr. Awe to enforce his rights and get title because Mr. Awe never refused to transfer the title he just kept promising he would do it and never did. When asked why the receipt showing he had purchased the land in 1978 bore the name British Honduras and not Belize, and that the country's name was changed to Belize in 1975, and that the receipt was a forgery, Mr. DePaz blurted out that Mr. Jose Awe gave him the receipt. He kept saying that Mr. Jose Awe must have been drunk and that Mr. Jose Awe probably forged the receipt as he used to drink heavily. The witness then said he never forged the receipt but that Mr. Jose Awe gave it to him after he paid the money for the land. He couldn't recall what date he found the receipt and couldn't recall if it was found before or after he filed this claim; he said he found it in an old case in his house. When asked whether he got a written agreement for sale, he said it was an oral agreement plus Mr. Jose Awe received the money. He was shown the signature of Mr. Jose Awe on a passport and the purported signature of Jose Awe on the receipt on the sale of land and it was put to him that the signature on the receipt is

forged. He insisted that the receipt was signed by Mr. Jose Awe because Mr. Awe told him he had signed it.

6. The second witness for the Claimant was Mr. Norberto DePaz. He said in his witness statement that he is the son of the Claimant. He is Revenue Manager at Belmopan City Council. He states that on or about March 3<sup>rd</sup>, 1978 he and his father went to Barclays Bank to withdraw money from his account to purchase the land at 301 Church Street, San Ignacio Town, Cayo District. He says that Mr. Jose Awe signed the receipt after Mr. Eduardo Luna made it out for him. Mr. Jose Awe signed and Mr. Luna also signed as witness. He says Mr. Jose Awe and Rahim Awe had been friends of his family for many years. Upon paying Mr. Jose Awe the full purchase price, Mr. Norberto Depaz says that Mr. Enrique DePaz was let into possession of the property; Mr. Enrique DePaz is therefore in exclusive, continuous open and undisturbed possession of the said land. He further states that from March 1978 his father began constructing a two storey ferro concrete building but was only able to complete foundation, floors, walls, and beams as he did not have the finance to continue construction. In 2009, he says his father asked his assistance in approaching the Defendant as Mr. Awe's son to transfer said land to him. The law firm of Barrow and Williams was retained by his father and himself to prepare the necessary paperwork for the transfer but that the Defendant refused to sign the transfer. Mr. Norberto DePaz says that his father frequently spends two to three months in the United States visiting his children who live there and that is why his father was unaware that Rahim Awe had applied for Letters of Administration in the estate of Mr. Jose Emilio Awe. In June 2011, his father retained the law firm of Hubert

Elrington & Co. who wrote the Defendant asking that the property be transferred to him, but received no response. On 23<sup>rd</sup> August, 2013 his father commenced this action asking that the property be transferred to him.

7. Mr. Norberto DePaz was cross-examined by Mr. Fernandez for the Defendant. He was asked whether he was present when the receipt was signed by Mr. Luna and by Mr. Awe. His answer was no he was not present. He admitted that he did not know for a fact whether Luna or Awe signed the receipt or not. It was put to him that there was never any Barclays Bank in Cayo, and that there was only a Royal Bank of Canada which later became Belize Bank. He said yes there was a Barclays Bank there at the time. He admitted that from the time his father purchased the land in 1978 until the time Jose Awe died in 1990, his father never approached a lawyer to write Mr. Jose Awe to transfer title to the land. It was put to him that no construction was done on the property by his father in 1981; he replied that they have photos of the construction done on the property. He was shown the plan for an apartment building in San Ignacio, Cayo Exhibit ED 4 and shown the date on that plan as March 2007. He then said that long after the construction, plans were made because he requested a loan from the bank to complete the structure and that's why they had taken a picture of what was there already. He was asked about receipts for the property taxes he said he and his father paid for the property. Mr. Norberto DePaz said he didn't tender them as part of this case because they had the statement already showing all the payments made which is the same as the individual receipts. At this point, Mr. Fernandez squarely confronted the witness with the question that as a Revenue Officer, he must be familiar with

statements from the Town Council and that the statements tendered as exhibits by his father do not show who paid the taxes. After initial refusal to accept counsel's suggestion, the witness reluctantly admitted the statements do not show who paid the taxes. He admitted that he did this type of work as part of Belmopan City Council duties, and that he is a Manager at the Council. He refused to accept that the name on the statement issued by the City Council does not prove ownership of the land and insisted that the statement has to be issued in the lot owner's name. He later said he wouldn't have the actual receipt because he can't recall where he placed them. He said he was present when his father handed the money over to Mr. Awe and that he did not collude with his father to make up this story about buying the land. He said on more than one occasion Mr. Rahim Awe offered to sign the transfer over to him and his father. He was questioned about the receipt not being written in 1978 because the stamp is a British Honduras stamp and not a Belize stamp. He said that to him the stamp and the name does not detract from the fact that they paid \$4,000 and that that receipt was issued to his dad for payment of that \$4,000.

### **The Defendant's Evidence**

8. The first witness called on behalf of the Defence was Mr. Orlando Vera. He said he is presently employed as Assistant Director of the National Forensic Science Service and that he is a Forensic Science Specialist. He said he is also a Firearms and Tool Mark Examiner and also an Expert in Forensic Questioned Document Examination. He has a Master of Science degree in Forensic Science from the University of Strathclyde in Glasgow, Scotland in the United Kingdom. He said that as a consequence of an order of

the court on May 18<sup>th</sup> he conducted analysis of a receipt and prepared a report as to his findings (Exhibit OV 1). He states that the analysis requested was the identification and evaluation of the receipt to determine its authenticity, analysis of signature on the receipt to determine if it was made by the hands and the lettering of Mr. Jose Awe and forensic analysis of the receipt to determine any discrepancies, alterations or modifications made on the receipt. He said that the instrumentation used to carry out this analysis was a Leica FSC Comparison Microscope, alternating light sources available, Leica Stereoscope and a Video Spectral Comparator 6000, the latest model for questioned document analysis. The findings of the expert at the conclusion of his analysis were as follows:

1. The receipt has brown colour stained areas which have been made to appear to the normal eyes as an aged document.
2. There has been several discrepancies, alterations and modifications made to the receipt.
3. The postal stamp placed on the stamp was on another document at the time it was stamped with the black wet seal stamp.
4. The receipt was not written or made on date, March 6<sup>th</sup>, 1978, as shown on the receipt.
5. The stains on the receipt were created by means other than aging.
6. All the writing on the receipt was made after the stain patterns were created.
7. The stain patterns are all superficial and have not penetrated into the openings of the microfiber on the paper.
8. There were two different types of stain pattern observed.
9. The signature on the receipt has major discrepancies and is totally different from the known signature of Mr. Jose Awe made in the year 1979.
10. The postal stamp was placed on the receipt after being stained.
11. The black ink ballpoint handwriting is all over the surface of the stain. None of the written symbols, letters, numbers and lines was seen embedded into the fibers of the paper.
12. The handwriting on the receipt had characteristics of being freshly placed over stained paper. The black ink is bright and not dull in colour.

13. There are some areas on the receipt where no stain was placed which maintained the original colour of the paper.
  14. There were several differences seen in the creation, style, pattern and design of the signature on the receipt, when compared to a known signature of Mr. Jose Awe found on his official US Passport.
  15. The signature on the receipt was not made from the handwriting of Mr. Jose Awe.
  16. There were also many differences in the other letters of the signature of questioned signature.
  17. The black ink from the ballpoint pen is all fresh. The entire handwritten words, symbols and lines are all fresh. The ink is shiny and brightly black colored.
  18. The analysis of the ink and paper texture revealed the stain to be fresh.
9. Mr. Vera was cross-examined by Mr. Elrington, SC, on behalf of the Claimant. He was asked whether the receipt is an old document and he said no, it is not old. He could not estimate how old the document was. He also could not say whether the stains had been placed on the document deliberately or accidentally. He agreed with Learned Counsel's suggestion that it is possible that old documents will get stained with the passage of time. Mr. Vera did not agree that he was trained to use five to nine specimens of handwriting to verify handwriting. He said he could look at one sample and draw a conclusion as an expert. It was put to him that he did not follow any scientific standards and that his conclusions are guesswork. His answer was No. Upon re-examination the witness said the sample he used for comparison purposes was the signature found in Mr. Awe's official US passport. He said he has served as an expert witness in court on a number of occasions.
10. The final witness for the Defence was Mr. Rahim Awe. In his witness statement Mr. Awe said he is a businessman living in San Ignacio, Cayo. He is the Administrator of the estate

of Mr. Jose Emilio Awe who died in the USA on 9<sup>th</sup> January, 1990. He is the son of the deceased. Mr. Awe says that from 1960 to 1969 he, his later father and their entire family lived at a house located at 301 Church Street, San Ignacio Town, Cayo District (the property in dispute). His late father migrated to the USA in 1969 but travelled to Belize yearly. Mr. Rahim Awe also migrated to the USA in the 1960s. To the best of his knowledge, his father did not return to Belize from 1971 to 1979. He exhibits the passport of the deceased (Exhibit 'A') which shows that the deceased visited Belize in the following periods:

- a) 13<sup>th</sup> May, 1980 to 20<sup>th</sup> May, 1980;
- b) 30<sup>th</sup> December, 1983 to 19<sup>th</sup> January, 1984;
- c) 3<sup>rd</sup> February, 1984 to 21<sup>st</sup> May, 1984;
- d) 6<sup>th</sup> July, 1984 to 24<sup>th</sup> July, 1984.

He says that at no time did the deceased inform him or his siblings directly or indirectly that this property was sold to the Claimant or to anyone. In 1997, Mr. Rahim Awe returned to Belize to live permanently and in April 2009 he received a letter from Barrow and Williams Law Firm (Exhibit 'B') in which they claimed that the property belonged to their client Mr. Norberto DePaz. On 16<sup>th</sup> June 2010 he was granted Letters of Administration for the estate of the deceased (Exhibit 'C'). In 2010 the Government of Belize gazetted San Ignacio Town as a declared area under the Registered Land Act and on 10<sup>th</sup> December 2010 he applied to the Government of Belize for First Registration of the said Land. The application is attached and marked (Exhibit 'D'). The application was advertised by way of newspaper (Exhibit 'E') and neither the Claimant nor anyone else

objected to the application. On March 8<sup>th</sup>, 2011 Rahim Awe obtained a Land Certificate for the said land described as Registration Section San Ignacio North Block 23 Parcel 2891 (Exhibit 'F'). He paid the property taxes on the said property for the period 2002 to 2012, as per receipts attached (Exhibits 'G' and 'H'). On 15<sup>th</sup> June, 2011 he received a letter from Mr. Elrington Co Law Firm as attorney at law for the Claimant; the letter demanded that Rahim Awe transfer the land to the Claimant "*by the close of business on Thursday 30<sup>th</sup> June, 2011*" or else immediate court action would be taken. Nothing further was heard from the Claimant until 2 years and 2 months later when this claim was served on him. Mr. Awe says that he never entertained the Claimant's demands because he considered them to be unsound and without merit. He further states that the Claimant is the owner of several tracts of land in Belize and is a senior justice of the peace and former Minister of Government. He says that the Claimant made no effort to regularize the purported sale in 34 years because there was no sale. He failed to make any objection even after notice of Mr. Awe's applications for First Registration and Letters of Administration were published in the newspaper. He failed to lodge a caution against the property. Mr. Rahim Awe further stated that he has sold the land to a third party after getting Grant of Administration, having advertised the property in 2009 by placing a "For Sale" sign on the land which remained there for two years. He had started clearing the land in 2008, and at that time the land was bushy and unfenced and unoccupied. There was a piece of foundation on the land that he always thought was from his old family house.

11. Mr. Elrington, SC, cross-examined the Defendant at length. He asked Mr. Awe what year he remembers being back in Belize from the USA. The witness couldn't recall but he said he must have been back at least 50 times between 1968 and 1997. He said he used to travel back and forth to Belize from the USA driving for people, bringing goods, working as a driver and a handyman. He said he first heard from his siblings that the land belonged to his father in 2000 or 2003 but he is not certain. His father never told him that the land belonged to him. Learned Counsel put to him that the whole claim to the land is based on hearsay, and Mr. Awe said he is not the Claimant here, the land is his as part of his father's estate and not on hearsay and he has the papers to prove it. Mr. Awe was also shown a photograph of a structure at 971 Church St. and he said he had never seen it before. The structure was not on the land on the day he cleaned it. What he saw was an old concrete foundation that their old wooden family house used to sit on. When he and his siblings and his mother left to go live in the US in 1968, it was out of that building they all left. He never visited the structure on his many trips back to Belize from the US. Mr. Awe says he doesn't know anything about Mr. DePaz buying this land from his father in 1978, or about his building any structure on the land in 1981. He said that he received a request from Barrow and Williams asking that he sell the property to Mr. Norberto DePaz for one dollar. Mr. Rahim Awe said after his father died his mother was in charge of the property but he doesn't know whether his mother ever lay claim to it; she is now deceased. He says when he went on to the property to cut the bush sometime in 2007 to 2008 that is when he first became aware that Mr. DePaz was claiming it when DePaz said to him *"Do you know I bought this land from your father?"*

He says Mr. DePaz saw him on the land yet did not get a police to take him off the land. He, Mr. Rahim Awe, was in occupation of the land. It was put to him that if between 1968 and 1990 his father wanted to sell the land to Mr. DePaz, he had no power to stop him; Mr. Rahim Awe disagreed and said his mother would have stopped his father from doing that. He was asked if between 1968 and 2008 he or his mother paid any taxes on the land. He said he didn't pay and he doesn't know if his mother paid any taxes on the land. Under re-examination he clarified that when he went to the Town Board to pay taxes, he can't recall the date and he was asked to pay taxes going back seven years from the date he went in.

**Legal Submissions on behalf of The Defendant**

12. Mr. Fernandez on behalf of the Defendant states that the only document tendered by the Claimant as proof of sale of this property for \$4,000 paid to the original owner was the receipt. The receipt is handwritten and signed purportedly by the original owner and a witness, both of whom are now deceased. This receipt was lost and mysteriously appeared after pleadings were filed and the Claimant admitted he did not know when he found the receipt or where exactly. No evidence was presented by the Claimant to prove that the signatures were those of the original owner and the witness, and the Defendant contends that the document and the signatures are a forgery. It was the duty of the Claimant to provide sufficient evidence to the court that the signatures were authentic and he failed to do that. The receipt bore a British Honduras stamp and had an introductory address entitled "*British Honduras, March 6 1978*" even though there was no country by the name of British Honduras in 1978 since the name of the country

changed to Belize in June 1973. The Defendant submits that in his haste to forge the receipt, the Claimant wrongfully assumed that in 1978 the country's name was still British Honduras. The Defendant had a court approved expert examine the receipt and opined among other things that the paper used for the receipt was deliberately aged; that the receipt was not written on the 6<sup>th</sup> March, 1978; that the signature of Mr. Jose Awe had major discrepancies when compared with his signatures on his passport dated 1979; and that the signatures were falsely placed on the receipt. Learned Counsel also summarized the findings of the expert. Based on these findings, the Defendant submits that the expert's report, which was not seriously challenged by the Claimant represents an independent and valuable opinion as to the lack of authenticity of the "receipt". He further submits that the Claimant admitted that his daughter owns a stationery business dealing in inks, stamps and paper and this proves that the Claimant had the means and access to the materials to forge the receipt.

13. Mr. Fernandez also contends that while the Claimant says that around 1981 he built a foundation on the land in question, the only evidence he produced in support was a house plan in the name of Mr. Norberto DePaz dated March 2007 and the testimony of his son Mr. Norberto DePaz. He did not produce a single receipt for material or labour, no testimony from the builder or persons who witnessed the construction, no written estimate of material from the original builder and no building permit. Learned Counsel also argues that the Claimant under cross-examination could not establish a nexus between the construction in 1981 and the architect's plan dated March 2007, with 26

years between these two events. The Defendant submits that the Claimant failed to prove that he constructed a foundation on the land.

14. Learned Counsel also submits that while the Claimant based his claim on the purported payment of property taxes charged by Santa Elena, he merely presented tax statements for the period 2001 to 2004. He did not produce a single receipt and when asked he said he did not save them. He also argues that tax statements in no way amount to proof of ownership or possession of land and that the defendant admitted in examination in chief that the person paying the tax could tell the clerk at the Town Board in whose name the receipt or statement was to be made and it was done. By contrast, the Defendant was able to present tax statements and receipts for the land for the period 2007 to 2014. The Claimant also failed to call an assessor from the Town Board to prove that he paid taxes, and even if he did, such payment would not prove ownership of the land.

15. Mr. Fernandez specifically disputes the Claimant's allegation at paragraph 7 of his witness statement that *"Upon paying Mr. Awe the full purchase price, I was let into possession of the said property. Therefore from March 1978 I have been in exclusive, continuous and open and undisturbed possession of the said land"*. The Defendant states that when he visited the property in 2007-2008 it was unoccupied, bushy and unfenced and that no sign of ownership or occupation was posted on the property. He further states that the Claimant's omission to apply for an eviction or injunction to remove him from the land when he saw him on the land raises question as to his claim of ownership. The Claimant also failed to provide proof of fencing the land, planting on the land,

erection of a sign on the land or bushing of the land. The Defendant submits that the Claimant was unable to provide any believable proof because he never occupied the property.

16. Learned Counsel also addressed the testimony of Mr. Norberto DePaz by saying it is natural that as Enrique DePaz's son he would support his father. Mr. Fernandez points out that Mr. Norberto DePaz:

- a. Was not present when the Claimant and the original vendor discussed the sale;
- b. Was not present when the original owner and witness signed the purported receipt;
- c. Merely said that the Claimant commenced construction on the land in 1981 but gave no evidence as to the identity of the builders, receipts of material or dimensions of the building;
- d. Claimed that he and the Claimant paid property taxes yet did not present any receipt to the court;
- e. Provided no details to support the Claimant's assertion that the Claimant was in continuous possession of the land.

17. Mr. Fernandez submits that on a balance of probabilities the Claimant has failed to prove his case. Mr. Enrique DePaz had a total of 34 years to regularize the purported sale of the property but instead did nothing. The Defendant contends that the Claimant never approached the courts for an order that the sale be completed because his claim would not have been entertained. The Claimant had several opportunities to object or file an injunction or commence a claim in the Supreme Court but he never did so until after the property was legitimately sold to a third party by the Defendant. The Claimant

could have challenged the following applications by the Defendant, the first three of which appeared in the Government of Belize Gazette and the local newspapers:

- a) Application for Letters of Administration;
- b) Statutory notice to Creditors;
- c) Application for First Registration;
- d) 'For Sale' Advertisement posted on the land by the Defendant.

Mr. Fernandez says that the Claimant never challenged any of these processes because his claim has no basis in law or in fact. The Claimant chose to lay the burden on the court and hoped that the court will put right what he did not care to address in over 34 years. It took the Claimant 2 years, 1 month and 26 days (after the letter dated 15<sup>th</sup> June, 2011 from Elrington & Co.) threatening a lawsuit to file the present claim. The procrastination clearly shows that the Claimant never purchased the land and never took his purported ownership seriously. The Defendant in the meantime went through an open, legal, above-board and lengthy process to obtain title for the land. At no time did the Defendant in his capacity as Administrator of the estate of Mr. Jose Awe deceased conceal any facts from the Claimant or anyone or tried to fast-track any process to defeat the interest of anyone. He therefore submits that the Claimant is not entitled to any of the relief sought, and asks for costs to be paid to the Defendant.

### **Ruling**

18. S.55 of the Law of Property Act Chapter 190 of the Laws of Belize reads as follows:

*"No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorized.*

*2) This section shall apply to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance or sales by the court."*

Having considered all the evidence in this case from the Claimant and the Respondent, I have to say that I agree fully with the submissions made by Mr. Fernandez that the Claimant has failed to prove his claim on a balance of probabilities. The receipt that Mr. Enrique DePaz was relying on to substantiate his claim to this property was completely discredited by the expert evidence of Mr. Orlando Vera. I find that that evidence from this expert witness was entirely convincing, sound and persuasive and there was no serious challenge to that evidence by Mr. Elrington, SC. In addition, I am not persuaded by Mr. DePaz's evidence that he took no steps to object to the different legal processes executed by Mr. Rahim Awe over this land because he did not know of them or because he was out of the country. It has been 34 years since Mr. DePaz alleges that he bought the land in 1978, and over that period of time Mr. Rahim Awe applied for Letters of Administration and also for First Registration of the land, both processes which were publicly advertised in the Gazette and in newspaper precisely to bring to the attention of parties who might have interest in the land; yet Mr. DePaz did nothing to object to these proceedings nor did he do anything to further his claim. I also find it untenable that Mr. DePaz claims to have constructed a building on this property, yet has failed to produce a single witness who worked on the construction of that building or receipts showing payments he made for labor or materials used in that construction. While Mr. Awe produced actual receipts from San Ignacio Town Board proving he paid taxes on this property, Mr. DePaz merely produced statements and no receipts as proof

of payment of land taxes. I therefore dismiss the claim and refuse the relief sought by the Claimant.

Judgment is granted in favor of the Defendant. Costs awarded to the Defendant to be paid by the Claimant to be assessed or agreed.

*Dated this Thursday, 9<sup>th</sup> day of June, 2016*

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**Michelle Arana**  
**Supreme Court Judge**