

IN THE SUPREME COURT OF BELIZE, A.D 2007

ACTION NO. 272 of 2001

BETWEEN: RUPERT MARTIN MARIN PLAINTIFF

AND

1. GEORGE BETSON DEFENDANTS  
2. ATTORNEY GENERAL

Ms. Magali Marin Young for the plaintiff.  
Mr. Hubert Elrington for the defendant.  
Ms. Andrea McSweeney for the Attorney General.

AWICH J.

26.10.2007

J U D G M E N T

- Notes:-Land Law: lease and fee simple absolute title: Minister's Fiat issuing lease of national land; termination of lease of national land; whether termination can be by a letter of cancellation signed by the Commissioner of Lands and Surveys; the principle of fair procedure in s: 11 of the National Lands Act; termination of a fixed term lease; approval by the Minister of an application to purchase national land; whether a contract for sale of national land was concluded entitling the applicant to a*

*Minister's Fiat granting a fee simple absolute title. Sections 7, 11, 13 and 27 of the National Lands Act, Cap. 191.*

*Procedure: whether private law action in trespass based on rights accruing from the exercise of the statutory powers of the Minister to issue Minister's fiats for leases over national land, and to approve application for the purchase of absolute titles, was an abuse of court process; whether the proper proceedings were judicial review proceedings; whether it was improper to join the Attorney General in the action.*

*The Minister issued fiats for leases of parcels of national land to one person, and subsequently approved his application for the purchase of the fee simple absolute titles to be followed upon payment, by fiats granting the fee simple absolute titles. Years later, an officer in the office of the Commissioner of Lands and Surveys reported that there was no development on the lands, and the Commissioner signed a letter cancelling the leases ,the Minister then approved an application of another person for a lease over the same land area. The second person has claimed trespass against the first person.*

2. This is yet another claim in which the Minister responsible, presently the Minister of Natural Resources and the Environment, has issued to one person a *fiat* for a lease over national land, that is, land belonging to the State, and has approved his subsequent application for the purchase of the fee simple absolute title to the land, and later, the Minister approved another application by another person for a lease over the same land; and then the first person showed up and asserted

- the earlier lease or approval of application to purchase the fee simple absolute title.
3. Let there be no doubt that the Minister has the authority to issue a lease or grant a fee simple absolute title to national land. His authority is in *ss: 7, 13, 17 and 27 of the National Lands Act, Cap. 191, Laws of Belize*. He carries out his function by an instrument known as *a Minister's Fiat* issued by him under **s:17**. *A fiat*, which means, "*let it be*", is an order or decree. The Minister also has undoubted authority to cancel a lease on certain conditions and in accordance with the procedure in *s: 11 of the Act*. The problem such as in this case, usually arises because the first lessee does not pay the rent or the full purchase price for the absolute title, or does not physically occupy or develop the land, thereby giving the impression that the land has not been occupied at all or has been abandoned.
  4. It might help reduce the number of this type of cases if conditions and covenants of lease of national land are monitored at regular intervals and breaches are attended to promptly; and in the case of approval of an application to purchase a fee simple absolute title, failure to accept

the offer or to pay the purchase price promptly, or to comply with other conditions are acted upon promptly either by granting extension and further extensions of time, or by affirming the contract despite the breach, or cancelling the contract promptly; and records are updated.

5. Regrettably this judgment is bound to be a long one. It is necessary to address all the points of law raised although some of them are trivial, in the hope that in future in similar cases, learned counsel in this action will realize that certain points are not worth the time spent on.
  
6. Another reason for the long judgment was that the defence and counterclaim by the first defendant were not well formulated and drafted, as the result parties were unable to identify and join issues as required under the old Rules. Leading evidence in chief, and in particular, crossexamination became fishing expeditions, frequently interrupted by unwarranted objections. With due respect to learned counsel Mr. Hubert Elrington, for Mr. George Betson, he wasted much time by long crossexamination suggesting what he called, “use of political influence”, on the part of Mr. Marin, yet when it was time for Mr. Elrington’s client to testify, he happily spoke about obtaining

“political influence” from higher up the political hierarchy on the same side of the political divide. It is improper to drag a political matter into a court case when it is not material in the determination of a point of fact or of law. The only material facts out of that detour were that Mr. Betson filled up the necessary application form and Mr. Marin also filled up one. Both facts could simply be ascertained by looking up the application forms among the documents disclosed. They ended up as non-issues anyway. I hope this advice will be taken.

7. I have to mention, however, that the statement of claim of the plaintiff, and the defence of the Attorney General were well drafted, although the Attorney General wasted much court time by raising a time consuming preliminary objection based on a point which had been decided in an earlier interlocutory application for an order to join the Attorney General. That was a matter for appeal not to be brought back to the same court. It is a good point that wins a case, not the number of points raised or repetition of them, or court time taken by counsel.

8. *The Facts, Claim, Defence and Counterclaim.*

In mid year 2000, (explained to be May or June 2000), Mr. Rupert Marin, the plaintiff, applied for allocation of land in the Caribbean Shores area of Belize City, to lease from the State. He wanted to move his sanitation business located then on Baymen Avenue, Kings Park, a residential area, to a commercial area. He submitted his application through the office of the area representative, the member of parliament for the Caribbean Shores, Belize City. He paid the fee of \$5.00. He was advised that if vacant land was identified he would be granted lease of it. About six months later on 29.12.2000, he received a telephone call from the Lands Office. He was informed that land had been identified and a lease of it to him had been approved by the Minister. An official of the Department gave to Mr. Marin the parcel number as 3545, Caribbean Shores, and a brief description of the land. He located it.

9. Mr. Marin related the events that directly led to this case as follows. On 3.1.2001, he took his workers to “clean the land”. They cut down bushes and grass in an area stretching over 20 to 25 yards from the

roadside; the land abuts the Northern Highway. Beyond was filled with deep water, workers could not continue on. On the morning of 4.1.2001, Mr. Marin saw Mr. George Betson, the first defendant, and news reporters on the land; he went to them. Mr. Betson asked if Mr. Marin was the one who had torn down his fence. Mr. Marin answered that he removed what was there because it was his property. Mr. Betson said that Mr. Marin was trespassing, he Mr. Betson, was the owner of the land, he had a lease over it. Mr. Marin answered that it was not possible, because he Marin, had been granted a lease over the land. In the evening Mr. Marin saw a wooden hut placed on the land. The following day, 5.1.2001, he saw that some cement and sand had been placed on the land. On the same day he went to Lands Office and signed what he called “a lease” for the land, Parcel 3545/1, Lot 16, Caribbean Shores Registration Area.

10. The document was in fact styled, “LEASE APPROVAL”. It was set out in the form of a letter addressed to Mr. Marin. It informed him that the Minister had on 29.12.2000, approved Mr. Marin’s application for a lease of parcel 3545, Caribbean shores, Belize City. It also set out terms of the lease. The agreed lease period was 7 years.

The rent was \$60.00 per year. It was dated and signed by the Commissioner of Lands and Surveys on 29.12.2000, and by Mr. Marin on 5.1.2001. It is exhibit No. P(RM)6. It was subsequently registered and, “a certificate of lease” was issued on 22.2.2001 under, “Registered Land Ordinance, Chapter 157”. In Belize a lease for a period of or more than two years or for the life of the lessor or of the lessee must be registered – see *ss: 28 and 29 of the Registered Land Act Cap 194, Laws of Belize*. I regarded the lease approval document as an agreement for a lease, not a lease.

11. Attorneys for Mr. Marin regarded the lease approval document as a lease, and in court all the learned counsel treated it as a lease. I note that, “*a lease of national land, exceeding a term of seven years*” is created and fully effected only by the Minister issuing a fiat under *s:17 of the National Lands Act*. The words of the section are as follows:

*“All grants or leases of national land 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...”*

12. Presumably it was intended to issue a lease for a period which would keep Mr. Marin's lease outside the leases that must be issued and effected by a Minister's Fiat in the format of the schedule in the National Land Act. However, there is discrepancy on the lease certificate, the lease period is stated as 30 years. The point was not taken that such a lease could only be created and effected by a Minister's Fiat. Nothing in this judgment turns on that.
  
13. On the above facts, Mr. Marin took court action by a writ of summons on 24.5.2001, on the ground of trespass. He averred that he had a leasehold title, Mr. Betson unlawfully entered the land, prevented Marin and his workmen entering the land, and placed a wooden house with septic tank on the land. Mr. Marin claimed delivery up of possession, damages and a permanent injunction order to restrain Mr. Betson. On 25.5.2001, Mr. Marin obtained an interim injunction order restraining Mr. Betson from stopping work on the land. On 10.7.2001, the interim injunction order was varied.

14. Mr. Betson for his part told court the following. In 1973, he conceived an idea to build a mechanic's workshop. He went to, "the Hon. George Cadle Price, the Prime Minister" then, and asked him for land to build on. The Prime Minister gave him a note to take to someone in the Lands Office where Mr. Betson filled a form. He got a Minister's Fiat No. 4 of 1974 dated 5.1.1974, for a lease of land situate at 2 ½ miles on the Northern Highway, Caribbean Shores area. The land measured 100x 150 feet. It did not have a parcel or lot number then. The lease was for 25 years from 5.1.1974.
  
15. Later, again through the Prime Minister, Mr. Betson got a lease over the land adjoining to the back, and that land was added to the land he had got earlier. The Minister's Fiat for the lease of the land added was No. 302 of 1977. The lease was also for 25 years, but from a later date, 3.8.1977. The land added also did not have a parcel or lot number. The total land area became 100x300 feet. Later the Government took back 50 feet for building Coney Drive Road. The two parcels of land which Mr. Betson regarded as one land, were swamp-lands and had large trees which he cut down. He said that he

- filled the swamp-lands, erected “a cement fence” around the lands, and built a plywood house on it.
16. Mr. Betson went on to explain that in 1993, the Government introduced a policy known as, “land ownership programme”. He applied under the policy to purchase the land. The application was approved on 2.4.1997. He was notified by a letter dated 3.4.1997, exhibit No. DD(NC)22, that the Minister had approved the purchase of the land. In the letter, the Department treated the land as two parcels and assigned parcel numbers 608 and 1737 to the parcels. The total purchase price assessed was shown as \$35,230.31, but Mr. Betson was asked to pay \$33,495.53. The first instalment payment was \$5,582.60; it had to, “be paid to the Lands Department within three months of the date of approval”. The full purchase price, “[could] be paid immediately or within three years, after which title [would] be issued”. Mr. Betson signed the letter.
17. He then applied for a reduction in the purchase price. It was granted. Two new letters, both dated 9.5.1997, notifying the same approval of 2.4.1997 and reduced prices were issued; one letter, which a file copy

of is exhibit No. DD(NC)28, was in respect of parcel 608, the other letter, which a file copy of is exhibit No. DD(NC)24, was in respect of parcel 1737. The total of the reduced purchase price and other charges for parcel 608 was given as \$5,280.00. \$5,000.00 of it was, “payable immediately or within 3 years from the date of approval”. The total of the reduced price and other charges for parcel 1737 was \$8,886.75. It “[could] be paid immediately or within three years, after which title [would] be issued”. The first instalment of \$1,405.84 was to be, “paid within three months of the date of approval”. On 14.5.1997, Mr. Betson paid the instalment sum and obtained a receipt acknowledging payment; it is exhibit No. D (GB) 16.

18. Mr. Betson said that he signed the two letters. He produced one photocopy, exhibit No. D(GB)15, which he said was of one of the two letters he signed, showing photocopied signatures, “for the Commissioner of Lands and Surveys”, and of Mr. Betson. Another photocopy was produced in evidence during the testimony of Miss Nichola Cho, witness for the Attorney general. It was produced by consent of all the parties. It is marked exhibit No. DD(NC) 25. Both were in fact photocopies of the same letter in respect of parcel No.

608. Mr. Betson did not adduce into evidence a similar signed photocopy for parcel 1737. The original copies of both letters were kept on the file of the Department. They were signed, “for the Commissioner of Lands and Surveys”. The space for Mr. Betson’s signature on each was blank. They are exhibits No. DD(NC)24 for Parcel 1737, and No. DD(NC)28 for Parcel 608. I do not believe that Mr. Betson signed them.

19. Mr. Betson testified further, that he then went off to the USA and remained there for “two to three years, he returned in the year 2000”. In that year the cement posts for the fence and the plywood house were no longer on the land, but he had on it a big plum tree and two coconut trees.

20. Mr. Betson’s account of events continued. After his return from the USA, he sought further reduction in the purchase prices. He went to the Hon. Prime Minister at the time, and requested further reduction in the prices. On 12.7.2000, the Prime Minister wrote a note to the Deputy Prime Minister, who was the Minister responsible for lands, recommending the request by Mr. Betson. The letter is exhibit No.

DD (NC)30. Five days later on 17.7.2000, another letter of approval to purchase both parcels of land was issued, it is exhibit No. DD(NC)29. The total purchase price for both parcels given in the letter was \$16,800.00. Regarding payment, the letter stated: “The purchase price can be paid immediately or within three years after which title will be issued,... the first instalment of \$2,666.67 of the purchase price... must be paid to the Lands and Survey’s Office, Belize City, within three months from the date of approval”. The letter was signed, “for the Commissioner of Lands and Surveys”, but not by Mr. Betson. He said that in the same month of July 2000, he went to the Lands Office to pay off the balance of the purchase price. The cashier retreated to consult, returned and informed him that she could not receive the payment.

21. Mr. Betson did not testify about the events of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> of January 2001, or of May 2001. It is, however, part of the record that Mr. Marin obtained an interim injunction order from this court on 25.5.2001 based on the events of those dates and other events.
22. On the above facts Mr. Betson denied trespass, and contended that he

had been in lawful occupation of the parcels of land since he obtained Minister's Fiats for leases over them; he had since entered contracts with the Government for the sale and purchase of the parcels of land, he was, "the owner of the parcels." He denied that he forfeited the leases over the parcels, stating that he never received any notice warning him of forfeiture and he had never been told by the Department to quit the parcels of land.

23. Mr. Betson counterclaimed that by the two fiats for leases issued in 1974 and 1977, he became the holder of leasehold titles, he had the right to exclusive possession, Mr. Marin and his workers trespassed on the parcels of land. He also counterclaimed that by the Minister approving the application to purchase the parcels of land, and by him Betson, accepting the offers to sell and making payment of the initial instalment of one purchase price, and because under the land ownership programme introduced in 1993 rents paid became part payment of the purchase price, he became the owner of the fee simple absolute titles to the two parcels of land combined into one parcel No. 3545. That claim to absolute title implied a claim to the right to immediate exclusive possession of the land.

24. Further, Mr. Betson counterclaimed that he was in actual occupation of the two parcels of land when the Minister approved a lease to Mr. Marin over them on 29.12.2000, and when Mr. Marin signed the letter of approval on 5.1.2001, and when he had his “lease” registered. Mr. Betson claimed, therefore, that he had overriding interests in the parcels of land.

25. ***The Attorney General as a party.***

The Attorney General, the second defendant, was not originally cited as a defendant. He was joined on the application of Mr. Betson, and became a defendant under the Crown Proceedings Act, Cap. 167, representing the Minister responsible. The reason given by Mr. Elrington for Mr. Betson, in the application, and accepted by the court, was that all the questions between Marin, Betson and Lands Department in the matter would be resolved in one action. The application was based on what was stated as a fact in the deposition of Mr. Betson, that the Minister “sold” land which belonged to Mr. Betson, (and not to the State anymore). The application was not a third party notice application ***under r: 42, O.17 of the Supreme Court (Civil Procedure) Rules, Cap 82 of the Subsidiary Legislations.*** Mr.

Betson did not ask for contribution or indemnity from the Attorney General, in the event the claim against Mr. Betson was successful, as would be the case in a third party application. His application was made under *r: 42, O.17*, to have the Attorney General joined as a party, not as a third party.

26. The learned Solicitor General at the time, Mr. E. Kaseke, took a very unhelpful view about the application, and went about it in a discourteous and unprofessional way. He or a Crown Counsel did not attend court at the hearing of the application. The Solicitor General was said to have informed attorney for the applicant that the Attorney General regarded the case as a matter between Mr. Betson and Mr. Marin. The Solicitor General or a Crown Counsel ought to have attended court to make that submission. It will be a dangerous development if the senior representative of the Attorney General will choose to ignore notices and other court processes.
27. On the other hand, Ms. Magali Marin Young, learned counsel for Mr. Marin, took a responsible view, she did not oppose the application. Her only concern was that Mr. Betson had commenced another case

against the Attorney General on the same facts. Mr. Betson had in fact commenced a separate action in which he made claims against the Attorney General, based on the same facts, as in this action.

28. I granted leave to join the Attorney General as the second defendant. The joinder has avoided multiplicity of proceedings based on the same set of facts, and offered one opportunity to resolve all the questions between Mr. Marin, Mr. Betson and Lands Department.
  
29. After the application was granted and the Attorney General was joined, the Solicitor General made an application raising a preliminary objection to the fact that the Attorney General was a party to the proceedings, on the ground that the matter was a public law matter, a private law action in it was an abuse of process, the proper proceedings were judicial review proceedings. I overruled the objection. Had the Solicitor General or a Crown Counsel attended the joinder application, his subsequent application raising the preliminary objection would have been unnecessary, and that much time would have been saved. The point in the preliminary objection had been decided in the application for the order to join the Attorney General.

30. At trial, learned Crown Counsel Ms. Andrea McSweeney represented the Attorney General. She adopted a more responsible approach. She raised several points of law in her submission. The first was a renewal of the points of law mentioned in the preliminary objection, namely that; the claim (of Mr. Marin) was a private law claim not a public law claim, the first defendant was seeking to secure judicial review of the Minister's decision to grant a lease to Mr. Marin and the order of *certiorari* by improper private law proceedings, and was seeking an order of *mandamus* which was not available against the Crown. The second was that there had been no claim for damages or for delivery up of possession against the Attorney General so the claim disclosed no cause of action against the Attorney General. The third, was that Mr. Betson had breached conditions of his two leases and the leases were lawfully cancelled with effect from 17.10. 2000, before the Minister approved the application for a lease over the same parcels of land (as one land) to Mr. Marin on 29.12.2000. The fourth, was that the lease in respect of that part of the land which was first given parcel No. 608, had expired on 5.1.1999, and Mr. Betson had not applied for renewal of it when the approval of Mr. Marin's application was made on 29.12.2000. The fifth point was that the

offers to sell the parcels of land were not accepted by Mr. Betson, he did not accept the purchase prices so no contract for the sale of the parcels of land between the Government and Mr. Betson was ever concluded.

31. The submission by Ms. Marin Young urged the same points as the third, fourth and fifth points in the submission by Ms. McSweeney, and added two more that; Mr. Betson was not in actual occupation of the land when the lease to Mr. Betson was approved, and that Mr. Betson failed completely to developed the land, a condition in his two leases. Ms. Marin Young supported her submission by citing many details in the evidence. She emphasized particularly, that all the offers to sell at various prices were rejected by Mr. Betson, who continued to negotiate for lower and lower prices.

32. ***Determination.***

*The question of abuse of process of the court.*

Before I deal with the question of rights of the parties in respect to the two parcels of land, it is convenient to deal with the first two points made in the submission by Ms. McSweeney.

33. For her submission that this action was an abuse of the process of court, the proper proceedings were by judicial review for an order of *certiorari* and that the order of *mandamus* was not available, Ms. McSweeney relied on the judgment of a past learned judge of the Supreme Court, Meerabux J. in, ***Supreme Court Civil Action No.464 of 1993, Eduardo Espat v Attorney General and David Fernandez; and on O'Reilly v Mackman [1983] 2 A.C. 237 (UK).***
34. In the ***Eduardo Espat's Case***, Meerabux J. held that the intention in the action was to have the court, review the exercise of the power of the Minister to cancel a lease under s: 11 of the National Lands Act; and to issue an order of *mandamus*; and that both reliefs were not available in private law action; the action was an abuse of process. The learned judge relied on ***O'Reilly's Case***. He dismissed the action by Mr. Espat.
35. With due respect, it is not possible to say from the judgment of Meerabux J. whether ***Eduardo Espat's Case*** was decided correctly. The facts of the case which would disclose what was claimed to be the wrongful act or omission were not given in the judgment. The learned

judge simply stated that: “*by an originating summons the applicant seeks a declaration, 1. that the plaintiff is entitled to a lease Fiat by the Minister to national land ... and, 2. an order that the plaintiff be issued with the said Minister’s lease Fiat within a time to be specified by the Honourable court*”. The learned judge then went on to make the determination that the reliefs could not be obtained in a private law action, they could be obtained in judicial review proceedings. The reader is informed that the judgment was based wholly on the nature of the two reliefs sought, which reliefs were available only in public law by judicial review proceedings. There was no information as to whether any private law claim such as a claim in contract or in trespass; or any private law reliefs such as damages and delivery up of possession, were also claimed in the action.

36. With due respect, I do not think that a determination of abuse of process of court can be made by considering only the nature of the relief asked for by the plaintiff; the facts must be included in the consideration so that all the circumstances are taken into account. After all, the primary question is whether there has been an abuse of process. As far as the submission regarding the order of *mandamus* is

concerned, the short answer is that it has not been claimed in this action. For those reasons, it is my view that the judgment of Meerabux J. does not provide persuasion for deciding the present case, *Eduardo Espat's Case* is distinguishable from the present action.

37. In *O'Reilly's Case*, four prisoners brought actions, three by writs of summons and one by originating summons, against three persons who were the board of visitors of Hull Prison (UK). The plaintiffs claimed that their convictions by the board, for prison disciplinary offences under the Prisons Rules, were unlawful, and that the proceedings were conducted contrary to the principle of natural justice. Each plaintiff asked for a *court declaration* that the findings of the board and the penalties awarded were void and of no effect. Their actions were brought four years after their convictions. Several other prisoners had much earlier brought proceedings by judicial review. If the claims of the four plaintiffs were brought by judicial review proceedings, the claims would have been met with objection under the Rules, that the judicial review proceedings were not brought, "*promptly, in any case not later than three months*", and should not be allowed to proceed in court. A preliminary objection was taken to each of the four actions

on the ground that it was an abuse of process to bring the proceedings by private law action instead of by judicial review proceedings. The trial court dismissed each objection. The Court of Appeal and the House of Lords allowed the appeal. The House of Lords held that:

*“since all the remedies for the infringement of rights protected by public law could be obtained on an application for judicial review, as a general rule it would be contrary to public policy and an abuse of process of the court for a plaintiff complaining of a public authority’s infringement of his public law rights to seek redress by ordinary action...; since in each case the only claim made by the plaintiff was for a declaration that the board of visitors’ adjudication was void, it would be an abuse of process of the court to allow the actions to proceed and thereby avoid the protection afforded to statutory tribunals”.*

38. The general rule in ***O’Reilly’s Case*** has since been much criticized and much restricted, on the grounds that the right to access to court

cannot be taken away except by very clear words or when the proceedings are clearly an abuse of the process of court. There have even been calls to overrule the judgment.

39. The subsequent general rule in, *Roy v Kensington and Chelsea and Westminster Family Practitioners Committee [1993] AC. 624, (UK)*, seems to meet the more usual situation such as in the present case, where an action or a decision by a public official or public authority taken under public law gives rise to claims of rights under public law as well as rights under private law. In that case, Dr Roy brought a private law action in contract claiming that the Family Practitioners Committee wrongfully withheld part of his remuneration on allegation that he did not devote enough time in his practice to medical aid patients. The House of Lords held that:

*“ A litigant possessed of a private law right could seek to enforce that right by an ordinary action, notwithstanding that the proceedings would involve a challenge to a public law act or decision, and that the plaintiff’s relationship with the committee, whether contractual or*

*statutory, conferred on him private law rights to remuneration in accordance with his statutory terms of service, the bringing of ordinary action to enforce the right to receive the remuneration did not constitute an abuse of process”.*

40. In the present proceedings by action, it has been alleged that a decision was made by the Minister under public law, that by that decision contracts for leases and subsequently for sale of the two parcels of land, between the Government and Mr. Betson were concluded, and that the contracts conferred on Mr. Betson a private law right to immediate and exclusive possession of the parcels of land, the right was subsequently interfered with by Mr. Marin with an unlawful permission of the Minister. Put another way, it has been alleged that by cancelling the leases of Mr. Betson and granting a lease over the same land area to Mr. Marin, the Minister acted wrongfully under the National Lands Act and under the earlier contracts for leases and for sale with Mr. Betson. On those grounds Mr. Betson claimed rights accruing from public law, as well as rights under private law, namely, the right to titles and the right to exclusive

possession of the two parcels of land, and claimed the reliefs of damages and delivery up of possession, which are in the nature of private law remedy.

41. According to the rule in *Roy v Kensington FPC*, it is open to Mr. Betson to enforce those rights by private law action. Even if it were to be accepted that the rights claimed by Mr. Betson were not rights accruing from contracts, but from the exercise of a public function, namely, the decision by the Minister, private law right would accrue to Mr. Betson from the decision, the right would be enforceable by an ordinary action. In my view, the general rule applicable to the present action is the rule in *Roy v Kensington and Chelsea and Westminster FPC Case*. The subject matter of judicial review proceedings in *O'Reilly's Case* was a criminal case, no private law right accrued in it. For these reasons, I allowed the application to join the Attorney General, disallowed the preliminary objection by the Attorney General, and directed the case to proceed with the Attorney General as the second defendant. For the same reasons, I now reject the submission raising the same points to stop the claim by Mr. Betson proceeding.

42. *The question of cause of action.*

The second submission on behalf of the Attorney General, about non-disclosure of cause of action was also of a preliminary nature, it should have been raised at pleading stage. In any case, with due respect, I think it was not a well thought out point of law. It was argued that in the defence and counterclaim of Mr. Betson the reliefs of possession and damages were not claimed against the Attorney General, so Mr. Betson's case (and Mr. Marin's case) disclosed no cause of action against the Attorney General.

43. It is correct that Mr. Betson did not claim delivery up of possession of the parcels of land and damages against the Attorney General, but that does not mean that there have been no claims for reliefs at all against the Attorney General, or that relief in the form of court declarations, is an insufficient and inappropriate remedy for the wrong averred, or that no cause of action has been disclosed against the Attorney General at all.

44. First, the submission overlooked the fact that reasonable grounds were

disclosed in the defence and counterclaim by challenging as unlawful, the actions of the Minister, cancelling Mr. Betson's leases and cancelling approval of his application for the purchase of the parcels of land, and approving a lease to Mr. Marin.

45. Secondly, the submission ignored the fact that, "such other reliefs as the court deems just and costs," were also claimed against the attorney General.
46. Thirdly, it was open to Mr. Betson to claim or not claim damages and delivery up of possession against the Attorney General. There may have been good reason for not claiming damages against the attorney General. Mr. Betson might have considered that the relief of the declarations he claimed would achieve his objective. I also note that he was negotiating price reduction with the Government when Mr. Marin came into the picture; that may also have been a reason.
47. Fourthly, delivery up of possession could not be claimed against the Attorney General. It was averred that it was Mr. Marin who entered the parcels of land and claimed to be in possession, or to have the

right to possession, it was not averred that Lands Department was in possession of the parcels of land.

48. Moreover, implicit in some of the numerous declarations sought were causes of actions on which the counterclaim was based. Three examples are: 1. a declaration that the two leases granted by the Minister to Mr. Betson subsisted until replaced by agreements to sell the parcels of land to Mr. Betson; 2. a declaration that the Government had entered into contracts for sale of the land to Mr. Betson; and 3. a declaration that the grant of a lease by the Government to Mr. Marin was a nullity". A government which respects the principle of the rule of law is expected to heed a declaratory judgment of court.

49. Failing to claim possession and damages against the Attorney General did not deprive the counterclaim of Mr. Betson of a cause of action against the Attorney General. I appreciate, however, that the formulation and the drafting of the defence and counterclaim left much to be desired, nonetheless, causes of actions were identifiable, albeit with some difficulty.

50. ***Determination; rights of the parties.***

*The issues identifiable.*

In my view, the facts of this case raised the following main issues. The first is, whether the two leases over Parcel 608 and Parcel 1737, issued to Mr. Betson by Minister's Fiats of 5.1.1974, and of 3.8.1997, were still subsisting when the application of Mr. Marin for a lease over the same land area renumbered Parcel 3545/1, was approved on 29.12.2000, by the Minister. If Mr. Betson's leases were still subsisting, granting another lease to Mr. Marin over the same land area would be invalid because Mr. Marin's lease would have the effect of denying Mr. Betson exclusive possession of the land area, and defeating his leases.

51 The second issue is, whether when the Minister approved the application of Mr. Marin for a lease over the same land area renumbered 3545/1, the two parcels, 608 and 1737, comprising it had not already been committed as the subjects of a contract for sale between the Government and Mr. Betson and the contract was still subsisting. If there was a contract for sale, the Government would

have acted in breach of it when it approved a lease over the same land area to Mr. Marin, the approval of the lease would be invalid.

52. The third issue is, if the two parcels had already been committed as the subjects of a contract for sale, whether any conditions of the contract had been breached and the contract was rescinded so that the Minister was no longer obliged to proceed with the contract and issue Minister's Fiats granting fee simple absolute titles to Mr. Betson, the Minister could lawfully commit to a new lease to Mr. Marin.

53. The fourth issue is, if the agreement for a lease of the registered land to Mr. Marin was valid, whether when Mr. Marin obtained it, Mr. Betson was in actual occupation of the parcels of land so that he would be entitled to claim that Mr. Marin took his agreement for lease, subject to the interests of the occupier, Mr. Betson, which interests would be overriding interests under *s: 31(g) of the Registered Land Act*. The interests that Mr. Betson contended that he had were two leasehold titles to the parcels and a contract or contracts for sale entitling him to a grant of a fee simple absolute title to each

parcel. This issue takes us back to the first two. Answers to the first two issues are answers to this issue.

51. *The contentious facts.*

The significant contentious facts between the Attorney General and Mr. Marin on the one part, and Mr. Betson on the other, on which they urged their positions in regard to the above issues in favour of their rights, were adduced in evidence as follows. Mr. Betson testified that when he obtained the leases, he occupied the parcels of land, developed them and paid the rents, he did not receive notice cancelling the leases, they were still running when Mr. Marin entered the parcels of land. He later signed a letter dated 3.4.1997, from the Department offering the two parcels of land for sale. He said that he then made request for reduction in the purchase prices, which he obtained. The latest reduced prices were offered on 17.7.2000, in a letter of that date. It was tendered as exhibit, No. DD (NC) 29, in it the total purchase price for both parcels was \$16,800.00. The letter gave Mr. Betson up to three years which would end on 17.7.2003, to pay up the purchase price. He said that in the same month of July, he tendered full payment of the total purchase price; the cashier at the

Lands Department refused to receive it. It was testified for the Department that Mr. Betson failed to pay rent and failed to pay the purchase prices, and further, that the revised letter of approval of 17.7.2000, was never sent to Mr. Betson. Further still, it was testified that the Department cancelled the two leases of Mr. Betson, “from 17.10.2000, for non-fulfillment of the condition regarding development”.

55. Mr. Marin, in particular, testified that on 5.1.2000, he asked the Lands Department about Mr. Betson’s interest in the land area, and the Department informed Mr. Marin that the leases of Mr. Betson had been cancelled. Mr. Marin said, he then signed “a lease” for land parcel 3545/1, Caribbean Shores Compulsory Registration Area, (which is the same area of land as Parcel 608 and Parcel 1737). He also said that Mr. Betson was not in occupation of the land on 3.1.2001, and had not carried out any development of it.

56. From the evidence, I found the following facts proved. Mr. Betson took possession of the two parcels of land when he obtained the Minister’s Fiats for them, and he remained in possession for the

period including 3.1.2001, when Mr. Marin and his workmen entered the parcels of land. Factual occupation was one element of the possession he had, the other was the *animus possidendi*, the intention to possess the parcels of land exclusively for himself. Mr. Betson may have abandoned actual occupation during the two years he was in the USA, but he resumed it before the Lands Department noticed, and before Mr. Marin entered the parcels of land. He land-filled the land area to some extent, erected fence at least along the western boundary and challenged Mr. Marin and his workmen immediately the following day after they had entered the land area. Given the nature of the land area, the intended use which was not residential, and the immediate reaction by Mr. Betson to entry by Mr. Marin, Mr. Betson did enough to establish that he had the *animus possidendi* and factual occupation of the parcels of land up to when Mr. Marin entered them. The rule as to what amounts to possession was restated recently in, ***Supreme Court Claim No. 571 of 2004, Harrison August Sr. v Oswald Patten***, in which the useful English case, ***Buckinghamshire County Council v Moran [1989] 2 All E.R. 225***, was cited.

57. Whether or not Mr. Betson was in breach of the terms of his leases as to development and as to payment of rent was not proof of whether or not he was in actual occupation of the parcels of land or in possession.
58. I found it proved anyway, that Mr. Betson failed to pay the annual rent. He did not produce a single receipt acknowledging payment of rent, yet he produced the one receipt acknowledging payment on 14.5.1997, of the first instalment of the first reduced purchase price of parcel 1737. He cannot claim that he has paid any portion of the purchase price of Parcel 608, under the land ownership policy, by payment of rent.
59. It has also been proved that Mr. Betson was in default of the term as to the development of the two parcels leased, apparently as building land. The term required, that he build a mechanic's workshop measuring 25x50 feet. Up to the date of trial of this case there has been no mechanic's workshop of any dimensions on the parcels of land. So much time was wasted on trivial facts such as land-filling, planting trees, erecting fence and the presence or absence of old bushes and grass on the land. The single crucial fact for the plaintiff

to prove was whether a mechanic's workshop of the specified dimensions had been built. That was indeed proved in no time. Mr. Betson was in breach of a condition or covenant of the leases, there was no need to spend time on trivial facts. Next, it was necessary to prove that following the failure of Mr. Betson to build a mechanic's workshop or to pay rent, the procedure required by law, in *s: 11 of the National Land Act*, to terminate a lease of national land was complied with by the Minister, leading to termination of Mr. Betson's leases lawfully.

60. *The question of a contract for sale between the Government and Mr. Betson.*

Based on the above proved facts, I decided this case by the answer to the issue as to whether there has been a contract for sale of parcels 608 and 1737, between the Government and Mr. Betson. So I start my determination of the question of the rights of the parties with that answer.

61. It is convenient to repeat the common argument on behalf of the Department and Mr. Marin, that: Mr. Betson did not make payment of

any of the purchase prices, so he never accepted the offer to sell, there has been no contract for sale, and that the leases were cancelled “from 17.10.2000”, and any offer or contract for the sale of the parcels of land to Mr. Betson ended with the cancellation.

62. It was my conclusion that the practice of the Minister of approving applications for leases, and for the purchase of fee simple absolute titles to national land was in law, the making of an offer. When the offer was communicated, and accepted by the applicant it became a contract for a lease, or for sale of the fee simple absolute title. The applicant accepted by signing the standard letter notifying him of the approval, or simply by making payment in accordance with the letter. A Minister’s Fiat then issued for the lease or grant of the fee simple absolute title. Legal interest or estate was then created.
  
63. In this case, Mr. Betson signed the first letter dated 3.4.1997, notifying him of the approval by the Minister made on 2.4.1997, of Mr. Betson’s application for the purchase of the two parcels, 608 and 1737. A contract for the sale of the parcels of land was concluded. All the subsequent letters notifying approval and revised purchase

prices did not change the fact that a contract for the sale of the parcels had been concluded on 3.4.1997, pursuant to which the Minister would issue a Minister's Fiat in the format of the schedule, granting fee simple absolute titles to the two parcels of land to Mr. Betson, if he paid the purchase price. The subsequent letters were merely offers to have the term as to the purchase price varied in accordance with the terms of the subsequent letters. The letters did not cancel the original contract in the letter of 3.4.1997, signed by the Commissioner of Lands and Surveys and Mr. Betson.

64. After the making of the contract for the sale of the parcels of land, Mr. Betson did not make payment of the total purchase price as required by the contract. The Minister could have terminated the contract for non payment, after three years ending on 3.4.2000. He could also have terminated the leases together with the contract for sale much earlier for non payment of rent, since it was a term of the contract for the sale that the leases would be maintained until the contract for sale was performed.

65. The Minister did not terminate the contract, instead the Department, acting on requests by Mr. Betson, proceeded to issue several letters revising the terms of the contract of 3.4.1997. The latest was the letter dated 17.7.2000, following the recommendation of the Prime Minister, addressed to the Minister. Its terms required that an instalment of \$2,666.67, be paid within 3 months, and the full purchase price could be paid immediately or within three years, after which title would be issued. Mr. Betson had up to 17.7.2003, to pay up the purchase price. He said that in the same month of July 2000, he went to Lands Office and tendered payment in full, it was not accepted. By tendering payment he accepted the offer in the letter of 17.7.2000, to vary the term of the contract of 3.4.1997.

66. I did not accept the part of the testimony of Ms. Cho that the letter of 17.7.2000, offering a revised purchase price was not sent to Mr. Betson. Ms. Cho was not the actioning officer. She was completely honest about it, she offered the information. There has been no evidence in court proving that the letter was not sent or issued to Mr. Betson. Instead there has been evidence proving that a copy of it was on the file like copies of all the letters sent out. It was for the plaintiff

to prove to a balance of probabilities that the letter of 17.7.2000, was not sent or issued to Mr. Betson. The plaintiff could have called as a witness, the cashier on duty in July of 2000, from 17<sup>th</sup>. The Department was, in particular, well placed to call the witness, it did not. I accepted the testimony of Mr. Betson on the point.

67. The position was then as follows. The Government concluded a contract with Mr. Betson on 3.4.1997, for the sale and purchase of Parcel 608 and Parcel 1737, of national land; then the Government accepted a request to revise the purchase price, and made an offer for variation on 17.7.2000, to Mr. Betson. He accepted it by tendering payment in July 2000. The contract of 3.4.1997, for the sale and purchase of Parcel 608 and Parcel 1737 was accordingly varied by changing the price and extending the period of payment by three years from 17.7.2000. Mr. Betson tendered payment within time. The contract for sale remained effective to date. Mr. Betson was and is still entitled to make payment of the full purchase price of each parcel, and upon that, he will be entitled to a Minister's Fiat granting a fee simple absolute title to each of the two parcels of national land.

68. On the other hand, the application of Mr. Marin for a lease was approved by the Minister on 29.12.2000. It was after the contract of 3.4.1997, between the Government and Mr. Betson had been made, but before Mr. Betson made payment. The contract would have expired on 3.4.2000, but was kept running by waiver and offers of variation of the term as to payment, from time to time, the last was made on 17.7.2000. Each offer of variation allowed payment to be made up to three years later, thus it extended or renewed the contract for three years. Mr. Betson tendered payment within the month. The approval of the application of Mr. Marin, and the acceptance by him were invalid.

69. *The question of Mr. Betson's leases.*

In view of my determination that there was a contract of sale between the Government and Mr. Betson, it is not necessary to make a determination as to whether the leases of Mr. Betson were still subsisting when the application of Mr. Marin was approved. I have proceeded to make determination of the question in deference to counsel for the efforts they put in the case.

70. At the start of the determination, I again repeat for convenience, the common submission on behalf of the Department and on behalf of Mr. Marin, that both Mr. Betson's leases had been cancelled because Mr. Betson did not carry out the terms as to the development of the parcels of land and as to payment of the annual rent, and that in any case, lease over Parcel 608 had expired on 5.1.1999, by effluxion of 25 years.

71. *Mr. Betson's Lease over Parcel 608.*

My determination in regard to the lease over Parcel 608 is as follows. It has been proved that by 29.12.2000, when the Minister approved the application of Mr. Marin for a lease over the same land area, the first lease No. 4 of 1974 for parcel 608, in favour of Mr. Betson had expired. It was a fixed period lease for 25 years, commencing on 5.1.1974. It expired on 5.1.1999. At common law, notice was not required to bring a fixed period (fixed term) lease to an end – see the Jamaican case, *Scott v Lerner Shop Ltd [1988] JLR 19* and a case from Trinidad and Tobago, *High Court action No. 89 of 1983, Seetahal v Batchasingh.*

72. In this case, no issues were raised under the Landlord and Tenant Act, Cap. 195, or under the Rent Restriction Act, Cap 158. So upon the expiry of the lease, over parcel 608, the Department was entitled at common law, to demand that Mr. Betson vacate parcel 608. It did not demand so. He continued to have possession of the parcel of land after 5.1.1999, and continued not to pay rent. Despite that, the Department never took steps to evict him until one year and nine months, on 26.10.2000, when it sought to evict him retrospectively with effect from 17.10.2000. Two months and two days later on 29.12.2001, the Minister proceeded to approve the application of Mr. Marin for a lease over the land area.

73. In my view, the Department did not evict Mr. Betson from parcel 608 on the expiry of his lease for a reason, and there are consequences. I have concluded that the Department did not act on the breach of the terms as to payment of rent, and as to the development of the land early enough, and did not take back parcel 608, when the fixed term lease over it expired, because the Department regarded parcel 608 as already committed as a subject of sale in the contract for sale of it to Mr. Betson. The Department was allowing Mr. Betson extended time

to make payment of the purchase price, and whenever Mr. Betson made a request for a reduction in price, the Department allowed time for negotiation and late payment. The Government was acting on the contract for sale.

74. In respect to parcel 608 only, if Mr. Betson tendered rent after 5.1.1999, when the lease over it had expired and the Department accepted the rent, he would be regarded as a tenant in a periodic tenancy immediately. He did not tender rent. In my view, Mr. Betson remained initially on parcel 608 from 5.1.1999, in a relationship known as “*a tenancy at sufferance*”, but for the contract of sale he had entered into. ***Section 3(5) of the Landlord and Tenant Act***, provides that:

*“A tenancy on sufferance (sic) is a holding of land in exclusive possession by a person who without the assent or dissent of the person entitled to possession wrongfully continued in possession of it after his right to possession thereof expired”.*

75. As a person in a relationship of tenancy at sufferance, Mr. Betson risked being subjected to a demand without notice, by the Department that he vacate, or risked the Department simply doing something clearly inconsistent with his possession, such as leasing the parcel to someone else like Mr. Marin, thereby evicting Mr. Betson. The Department did not so act. Then about one year and 9 months later, after the fixed term lease had expired, the Minister approved the application of Mr. Marin to lease the same land area. What happened to cause the Minister to change his mind so suddenly about the leases and sale to Mr. Betson when he had not defaulted in payment of the purchase price? Time for payment had not expired.

76. My determination of the question of the lease in respect to parcel 608, is that the fixed period lease over it expired on 5.1.1999, and that because of the contract for its sale, the Department acquiesced to a change of the status of Mr. Betson from that of a tenant at sufferance having no lease, to that of a periodic tenant, or a tenant at will, or merely a licensee being given time to comply with the contract for sale. Given that one of the terms in the approval of the application to purchase was that the lease would remain effective until a freehold

title was issued, I was inclined to the view that the parties acquiesced to a periodic tenancy. The terms of the periodic tenancy that set in had to be modified according to the changed circumstances. The periodic tenancy was a yearly one and would end with the performance of the contract for sale or with termination because of breach, or by six months notice.

77. A good case could be made that Mr. Betson became a licensee whose licence would expire upon receipt of the absolute title to Parcel 608, or if the contract for sale was terminated for breach. Precedents in the Caribbean regarding the difference between a tenant, especially a tenant at will, and a licensee have often been conflicting. Contrast for instance, *Sylvester v Cyrus (1959) 1WIR 407* and *Isaac v Hotel de Paris [1960] 1 All ER 348 PC*. The facts of this case are similar to some extent to those in the Trinidadian case, *Ramnarce v Lutchman (2001) Privy Council Appeal No. 8 of 2001*, but again contrast the judgment in that case with the judgment in another Trinidadian case, *Quan v Gonzales (1966-1969) Trini LR 331*, in which the facts are somewhat similar, but a different conclusion was reached.

78. *Mr. Betson's Lease over parcel 1737.*

The lease over parcel 1737 was also a fixed period lease for 25 years. It commenced on 3.8.1977, so it would expire on 3.8.2002. It would still be running when the Government and Mr. Marin concluded the agreement for a lease on 5.1.2001, over the land area, unless the lease had been lawfully terminated by the letter of cancellation. The submission in respect of both parcels was that under the leases the Minister was entitled to cancel both leases for breach of the terms as to development and as to payment of rent so the letter of cancellation lawfully terminated both Mr. Betson's leases.

79. I accepted that it has been proved that Mr. Betson failed to meet the terms as to the development of the parcels of land and as to payment of rent for both parcels right from the commencement of the leases. But I also found that the Department ignored the breach of the two conditions for a long time. Its first action was to send an undated standard letter about lack of development, the letter is exhibit No. DD(NC)18. No action followed. Then later on 2.11.1996, it sent another letter, exhibit No. DD(NC)19, giving Mr. Betson time, "to

fulfill conditions of your lease”. The two letters would have been in respect of parcel 608 only; lease over parcel 1737 had not yet been created. There has been no proof that any letter of notice or notice in any other form, was given to Mr. Betson requiring him to correct his breach in respect of parcel 1737, before the letter of cancellation issued on 26.10.2000.

80. Only as late as over twenty one years, did the Department carry out inspection of Parcel 1737, together with Parcel 608, on 16.12.1998, to determine whether conditions of the leases were breached or waste or injury to the land occurred. The inspection was followed after a long time, almost two years later, by the letter to Mr. Betson, cancelling both leases. That was the first letter to Mr. Betson in respect to parcel 1737, in which breach was mentioned. Generally in law, the letter of cancellation should have been preceded by a letter demanding that the breach be corrected within a given reasonable period, or termination would follow. If such a letter had been sent, but breaches continued beyond the time given, the procedure under *s: 11 of the National Lands Act* would be followed. The point about no further

notice generally was made in the case, *Cayman Arms (1982) v English Shoppe Ltd [1990-91] CLR*, cited by Ms. McSweeney.

81. The letter of cancellation, in any case, begged explanations which were not given in court. First, it notified cancellation which was to be effected retrospectively; why? Secondly, it was based on a report of an inspection carried out almost two years before; why the delay? I think the letter of cancellation was written as an afterthought to try and change the fact that the Department had waived the breach of the terms as to development and as to payment of rent and had chosen to proceed with the two leases and the contract as varied, for sale of both parcels of land to Mr. Betson. It was too late, in my view.
  
82. Besides the questions about the letter of cancellation, there is a statutory reason for regarding what the Department did as insufficient to cancel Mr. Betson's lease over parcel 1737. In effecting termination of a lease over national land issued by a Minister's Fiat, the Minister is required to comply with the procedure set out in *s: 11 of the National Lands Act*, which provides as follows:

*“11(1) If at any time it appears to the Commissioner that the condition of any lease has been neglected or broken... it shall be his duty forthwith to bring the matter to the notice of the . Minister.*

*(2) If upon inquiry it appears to the Minister;*

*a) that such neglect or breach of conditions has occurred; or*

*b)...*

*he may after giving the lessee a reasonable opportunity to make representations, cancel the lease”.*

83. Subsection (1) requires that the Commissioner bring a breach of condition of a lease over national land to the notice of the Minister. There has been no evidence proving that the Commissioner brought the report of the inspection on 16.12.1998, to the notice of the Minister. Subsection (2) ensures that the principle of fair procedure is complied with in the termination of a lease. There has been no evidence to prove that after the report of the inspection, the Minister afforded Mr. Betson any opportunity to make representations as to why his leases should not be cancelled.

84. Further still, the letter of cancellation was signed, “for the Commissioner of Lands and Surveys”; there has been no evidence proving that the letter was written or signed by the Minister, or with his authority or on his instruction. The letter is not sufficient evidence of the exercise of the Minister’s function or discretion under subsection (2).

85. It is my conclusion that the lease of Mr. Betson over parcel 1737 was not lawfully cancelled, it was still running when the application of Mr. Marin for a lease over the same land area was approved by the Minister on 29.12.2000, and accepted by Mr. Marin on 5.1.2001. The agreement for lease did not entitle Mr. Marin to enter Parcel 1737 (and Parcel 608) on 3.1.2001.

86. *The question of overriding interest of Mr. Betson.*

It is also not necessary for me to consider whether Mr. Marin took his “lease” subject to overriding interests of Mr. Betson. He did not take any valid lease or agreement for a lease in respect to the land area. However, I shall mention that the evidence proved that Mr. Betson

was in actual occupation of the land area when Mr. Marin entered upon it on 3.1.2001, and that Mr. Marin made inquiry about Mr. Betson's interest, his inquiry disclosed the claim that Mr. Betson had leases over the land area. It was the duty of Mr. Marin to ascertain the legal position in regard to the leases, or take the risk as he has. Further inquiry would have disclosed that Mr. Betson also claimed a contract for the sale of both parcels of land. Mr. Marin took his agreement for lease knowing that he would face claims by Mr. Betson. The claims have been made and won in court.

87. ***The orders made.***

The claim of Mr. Rupert Marin against Mr. George Betson fails. It is dismissed. The Lands Department misled Mr. Marin, but he did not make claim for any specific relief against the Attorney General. Judgment is not entered for Mr. Marin against the Attorney General.

88. The counterclaim of Mr. Betson against Mr. Marin succeeds, and his ground that the Minister acted wrongfully when he entered an agreement with Mr. Marin also succeeds. The court makes four declarations instead of the twelve asked for, as follows:

1. On 3.4.1997, the Minister responsible, and Mr. George Betson entered a contract for the sale of land Parcel 608 and land Parcel 1737, Caribbean Shores Registration Area, Belize City; they had the terms as to the purchase price varied on 17.7.2000, the contract was still operative on 29.12.2000, when the Minister approved the application of Mr. Marin for a lease over the same land area, the approval is invalid.

2. The lease of Mr. Betson over Parcel 608 Caribbean Shores Registration Area, Belize City, expired on 5.1.1999, Mr. Betson has remained on the parcel as a periodic tenant, and is entitled to tender the full purchase price as set out in the letter dated 17.7.2000, from the Commissioner of Lands and Surveys; upon payment Mr. Betson will be entitled to the fee simple absolute title to parcel 608, Caribbean Shores Registration Area, Belize City.

3. The lease of Mr. Betson over parcel 1737, Caribbean shores Registration Area, Belize City, expired on 3.8.2002, after he had tendered the purchase price, and after this court action had been commenced, Mr. Betson is entitled to tender again the purchase price stated in the letter of 17.7.2000; upon payment he will be entitled to a Minister's Fiat for the fee simple absolute title to Parcel 1737, Caribbean Shores Registration section Area, Belize City.
  
4. The approval, on 29.12.2000, of the application of Mr. Marin for a lease is invalid, Mr. Marin has no valid agreement for a lease or a valid lease over Parcel No. 3545/1 Caribbean Shores Registration Area, Belize City, which was the new parcel number assigned to replace Parcel 608 and Parcel 1737.

Further orders are made as follows:

1. Arrears of rent in respect of Parcel 608 shall be regarded as part of the purchase price, but interest at court rate of 6% per annum is payable on the arrears, the interest shall not be part of the purchase price.
2. Arrears of rent in respect of parcel 1737 is payable in addition to the purchase price, and interest at court rate of 6% per annum is also payable on the arrears, the interest is not part of the purchase price.
3. The Registrar of Lands is directed to cancel the registration of the lease for 30 years in favour of Mr. Rupert Marin, and to cancel the certificate of lease dated the 22<sup>nd</sup> day of February 2001, evidencing the registration.

89. *Costs.*

This claim was the result of errors made at the Lands Department, and Mr. Marin knowingly took the risk of entering the land area; the costs

occasioned by Mr. Betson shall be paid by the Lands Department and Mr. Marin in equal proportions. The costs payable will be one-half of agreed or taxed total cost, Mr. Marin will pay one quarter and the Lands Department the other one quarter of the total cost. Only one-half of the total cost is awarded because Mr. Betson's case was conducted in a wasteful manner.

90. Delivered this Friday the 26th day of October 2007  
At the Supreme Court  
Belize.

Sam Lungole Awich  
Judge  
Supreme Court