

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO: ANUHCV 2006/0156

In the Matter of the Registered Land Act, Cap 374 Sections 146 and 121

In the Matter of an Application for the Registrar of Lands to State a Case for the Opinion of the Court in respect of:

<u>Registration Section</u>	<u>Block</u>	<u>Parcels</u>
St. Phillips South	32 3282A	55, 56, 57

BETWEEN:

CECILE HILL, REGISTRAR OF LANDS

Claimant

And

HMB HOLDINGS LIMITED

Defendant

Appearances:

Mr. Justin Simon Q.C for the Claimant

Ms. Stacy Richards for the Defendant

.....  
**2007:** June 26

**2008:** May 07  
.....

**RULING**

[1] **Harris J:** This matter is on a Case Stated from the Registrar of Lands who seeks the opinion of the Court under Section 146 of the Registered Land Act (**RLA**) Cap. 374. The Defendant, HMB Holdings Limited (HMB), is the party aggrieved which has requested of the Registrar to state a case in respect of the Registrars decision to register parcels 55, 56 and 57 of Block: 32 3282A in Registration Section: St. Phillips South in the name of the Government of Antigua & Barbuda on the application of the Attorney General. The

Defendant was the former title holder of the three (3) parcels of land which were lawfully compulsorily acquired by the Government of Antigua and Barbuda (Government).

[2] The background to this matter includes an appeal to the Privy Council on the substantive dispute between the said parties who delivered its judgment on the 5<sup>th</sup> of June 2007<sup>1</sup> approximately one (1) year after the filing of this case stated. The history of this matter for our purpose here is best encapsulated by Lord Hope of Craighead in the said Judgment of the Board delivered on the 5<sup>th</sup> June 2007. I repeat paragraph 3, 4 and 5 of the Judgment, here for convenience.

[3] *On 12 February 2002 the House of Representatives approved a resolution that the Secretary of the Cabinet should cause a declaration to be made for the acquisition of HMB's lands for a public purpose.*

*“namely, to create a fresh environment for investment in the defunct hotel business at Half Moon Bay with a view to facilitate the revival of the tourist industry and to provide jobs for the inhabitants of the Half Moon Bay and the surrounding villages.”*

*The resolution was approved by the Senate on 21 February 2002. It was published in the Gazette on 7 and 14 March 2002.*

[4] *HMB applied for judicial review of the Cabinet's decision to acquire its property and the approval of its decision by the legislature. On 16 March 2002 Mitchell J gave leave and ordered that a hearing be fixed for 7 May 2002. On 5 April 2002 HMB made a further application for constitutional relief. It asked that this application be heard at the same time as its application for judicial review. On 30 April 2002 the respondents applied for HMB's statement of claim to be struck out on the ground that it failed to disclose any reasonable grounds for the reliefs sought. The respondents' application for a strike out was heard on 8 July 2002. On 29 July 2002 Mitchell J dismissed this application. On 28 January 2003 the Court of Appeal of the Eastern Caribbean (Sir Dennis Byron CJ, Satrohan Singh and Albert Redhead JJA) allowed the respondents' appeal against the decision of Mitchell J,*

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<sup>1</sup> Privy Council Appeal 18/of 2006, 5<sup>th</sup> June 2007

*set it aside and struck out HMB's application. On 16 September 2003 the Court of Appeal gave final leave to appeal to their Lordships' Board.*

[5] *The grounds on which HMB sought relief by way of judicial review were, in summary, that the Cabinet's decision was in violation of a legitimate expectation which HMB had formed that its land would not be acquired compulsorily, provided it embarked on a programme to refurbish the hotel in accordance with plans disclosed and approved at a meeting on 22 January 2001 with the Minister of Tourism and the Attorney General, that it was irrational and that the process adopted by the Cabinet was infected by bias and hostility to its principal officer Mrs. Natalia Querard, amounting to an abuse of power. It sought constitutional relief on the ground that the declaration by the Cabinet and its approval by Parliament were in violation of its constitutional rights as protected by sections 3, 14, 18 and 19 of the Constitution of Antigua and Barbuda.*

[6] The Respondent in the substantive matter before the Privy Council was the Cabinet of Antigua and Barbuda and the Appellant HMB Holdings Ltd.

[7] On this Case Stated, the court raised the question as to the significance (if any) of the Privy Council decision of the 5<sup>th</sup> of June 2007 on the submissions on the case stated and asked that further submissions be made with respect to this new development. The case stated for the opinion of the Court is as follows:

(a) Whether there had been an improper exercise of the powers of the Registrar under RLA s.121 in registering the Crown as the person entitled as registered proprietor of the land on 8 March 2005, *no application having been made by any interested person on or prior to that date pursuant to s.121 LRA;*

(b) Whether the document captioned "Minute" dated 1 April 2005 from the Attorney-General and Ministry of Legal Affairs to C *was an application as intended by Section 121 of the Registered Land Act and having regard to the procedure established by the Registrar of Lands;*

(c) Whether the registration of the Crown as registered proprietor on 8 March *should be cancelled, and registers relating to the land rectified to record D as registered proprietor.*

[8] The Privy Council has dealt with the bone fides of Cabinet decision to compulsorily acquire and the Public Purpose issues thereto in favour of the Cabinet of Antigua and Barbuda.

This case stated before the Court can perhaps best be described as a dispute over the process of registration as opposed to acquisition. The Defendant's case as I understand it does require some analysis of the compulsory acquisition process in so far as it impacts on the process of the registration of the Parcels of land in dispute.

- [9] The Defendant concedes that the first question raised in that case as stated for the Court's opinion has been dealt with by the Claimants evidence- that the registration date of 8 March was entered in error. I accept this concession and note further the evidence and submissions of the Claimant support the said registration being entered in error. However, the Defendant contends that the Court should express an opinion on the other two (2) questions "b" and "c" that;

*With respect to "b", that the application of the Attorney General of 1<sup>st</sup> April was not a valid application under RLA s.121 because it did not contain evidence showing that the Crown was entitled to the land "under any Law" within the meaning of that provisions (properly construed) and /or because it was not made on notice to D;*

*and with respect to;*

*"c" that the purported registration of "The Government of Antigua and Barbuda" as the registered proprietor of the Land, dated 8 March 2005 should be cancelled and registers relating to the land rectified to show D as registered proprietor"<sup>1</sup>.*

- [10] The issue of whether by virtue of the Privy Council decision referred to above the Defendant has no *locus standi* in this matter-the case stated- is dealt with below.

## **FACTS**

- [11] *On 9 April 2002 and 26 April 2002 C (The Registrar) promulgated Circulars to all legal practitioners specifying the requirements for filing applications under the RLA [Statement of Claim (SoC) paragraph 6].*

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<sup>1</sup> para. 68 of Defendant's Submissions filed Dec. 20, 2006

- [12] *“Circular No 1” of 9 April is at “NQ 11”. This required “formal applications supported by affidavits and exhibits” to be filed under LRA ss.12, 17, 29, 32, 34, 96,103,129 (applications to remove/object to the removal of a caution), 132-4, 139,143 and 146. It went on to state that this list of sections “is not inclusive and directions should be sought in other cases ...” A precedent for a formal application was provided.*
- [13] *The circular of 26 April 2002, “Circular No 3”, is at “NQ 12”. It indicates that “effective 1st day of May 2002 Sections 121 and 140 should be added to the list of matters in Circular No 1 for which a formal application must be filed, supported by an affidavit, court order etc;...” [emphasis added].*
- [14] An application ‘for transmission’ of the land compulsorily acquired by the Government was filed by the Attorney General by way of a “Minute” dated 1 April 2005 attached to which were “copies of the Gazette” dated 7<sup>th</sup> March 2005 and 14<sup>th</sup> March 2005 respectively.
- [15] The notation endorsed on the minute suggests that it was copied to the Permanent Secretary of the Min. of Agriculture, Land, Marine Resources etc. and was not copied to the Defendant.
- [16] On 8 April 2005 the Claimant made and signed an Order numbered M10/05. The Order is dated 8 March 2005 and refers to an application by the Attorney General “for transmission by compulsory acquisition” dated April 1, 2005.
- [17] The Claimant states that the date, 8 March on the Order M10/05 was a ‘typographical error’<sup>1</sup>. The Order refers to registering “the Crown” as the proprietor of the land.
- [18] The Defendant contends that at the time the Claimant/Registrar, registered the Government of Antigua & Barbuda as the registered proprietor of the subject lands she had not sufficiently satisfied herself <sup>2</sup> of the Government’s entitlement to be so registered.

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<sup>1</sup> Statement of Case para. 4

<sup>2</sup> The Defendant avers that Registrar of lands does not have an unfettered discretion as to the evidence she requires to register an applicant as a proprietor under the Land Registration Act.

Further, contends the Defendant (HMB), the Registrar did not afford HMB the benefit of a fair hearing prior to so altering the Register.

## THE LAW AND STATUTES

[19] The Land Acquisition Act Cap. 233 (the “LAA”) Section 3 provides insofar as is relevant:

- (1) *If the Cabinet considers that any land should be acquired for a public purpose they may, with the approval of the Legislature, cause a declaration to that effect to be made by the Secretary to the Cabinet in the manner provided by this section and the declaration shall be conclusive evidence that the land to which it relate is required for a public purpose.*
- (2) *Every declaration shall be published in two ordinary issues of the Gazette and copies thereof shall be posted on one of the buildings (if any) on the land or exhibited in suitable places in the locality in which the land is situated and in the declaration shall be specified the following particulars relating to the land which is to be acquired –*
  - (a) *the parish or district in which the land is situate;*
  - (b) *a description of the land giving the approximate area and such other particulars as are necessary to identify the land;*
  - (c) *in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;*
  - (d) *the public purpose for which the land is required.*
- (3) *Upon the second publication of the declaration in the Gazette as aforesaid the land shall vest absolutely in the Crown, and the authorized officer and his agents, assistants and workmen may enter and take possession of the land accordingly [emphasis added].*

[20] Section 6 provides insofar as relevant:

- (1) *As soon as any declaration has been published in accordance with the provisions of section 3, the authorized officer shall without delay, enter into negotiations (or further negotiations) for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and by voluntary agreement with the owner of the land ...*

[21] Section 10 provides:

- (1) *At any time before any land has been acquired compulsorily the Governor-General may, by notification published in the Gazette, declare that the intended acquisition of such land is abandoned.*

- (2) *Where the acquisition of land under this section is abandoned in accordance with the provisions of this section...any compensation payable by virtue of this Act shall, in default of agreement, be assessed as though it was compensation payable under this Act for the acquisition of land.*
- (3) *No compensation shall be payable in any case for loss of bargain or for damages for breach of contract.*

### **SUBMISSIONS**

- [22] The Defendant submits that the Registrar erred in failing to register the land in the name of the Crown. She refers to the request/application by the Attorney General by way of Minute dated April 1 2005 to the Registrar indicating that the subject lands were compulsorily acquired by the Crown on March 14, 2002 and requesting that the transfer and alteration of the Land Register be effected accordingly.
- [23] The register was in fact altered to reflect the proprietor as the 'Government of Antigua & Barbuda' and not the 'Crown'. The Defendant submits that this is not a point of procedure but a point of considerable substance.
- [24] I do not accept that this is fatal to the Registration and that the request for registration of the 'Crown' in the circumstances of this case is distinguishable from that of the actual registration of "the Government of Antigua".
- [25] The Compulsory Acquisition Act talks of Cabinet effecting the acquisition. Cabinet is an arm of the Government of Antigua of which the Attorney General is an integral part. The Attorney General also acts on behalf of the Crown (see the Crown Proceeding Act).
- [26] If I am wrong, then, in any event, it appears to me that the dispute as to the registration of the Government of Antigua and Barbuda as opposed to the Crown is a dispute between these two (2) parties and not HMB Holding Ltd. Further, it is for either the *Crown* or the *Government of Antigua and Barbuda* to take steps to cause the Register to be rectified/altered to reflect the true position of proprietor as between them.

- [27] I turn now to the question of the sufficiency of the 1/April/2005 minute by the Attorney General to the Registrar of Lands as an Application to have the 'Crown' registered as proprietor and the Registrars reliance on it. I deal with this point in short order and refer to the submission of the Claimant on this point at pp 4, 5 and 6 of the Claimants Submissions on the Case Stated filed on the 10<sup>th</sup> August 2005. The Registrar, I agree, in the context of this case is not fettered by her own administrative directions with regard to the form of the applications. The Registrar had earlier issued several circulars to all practitioners specifying the requirements for filing applications under the R.L.A and providing a precedent for a formal application under s.121 of the R.L.A. She then subsequently treated the said 1/April/2005 minute as an application under s.121 of the RLA. The minute unarguably was not in the circulated 'precedent' form.
- [28] The Claimant has commended to the Court and I have accepted as sensible and as the applicable law, *the observations of Griffith CJ in Perpetual Executors and Trustees Association Ltd v Hoskin, (1912) 14 CLR 286 quoting Cockle C.J. in R v Registrar General Exp. Roxburgh "It is more reasonable to suppose that the operation of the Registrar General's Office should be adapted to the transaction of business than that the transaction of business should be adapted to suit the Registrar General's Office."*
- [29] Counsel for the Claimant submits that the forms recommended were for an "*administrative convenience rather than a legal requirement*" and that the directions given to legal practitioners with respect to the use of the forms stated that the use of the forms were being implemented to "*assist the staff in tracking and processing these applications in an efficient manner*". In my judgment, for the reasons provided above, the "Minute" of 1/April/05 was a proper application to effect the registration of the 'Crown' as Registered Proprietor under the R.L.A not withstanding the said circular issued by the Registrar.
- [30] The Defendant submits further, that deleting the Defendant, HMB Holdings, as the registered proprietor, effects substantial detriment to the rights of the Defendants, such as

taking away the Defendants absolute proprietorship/ownership including it's attendant right of disposition. Further, she submits, all this was being done without its knowledge.

[31] In support of the contention that the Defendant is being deprived of its rights to property by virtue of the *alteration*, HMB relies significantly on the Privy Council case of Green Bay Limited v The A.G. of Bermuda (P.C. Appeal 69 of 1998), a distinguishable a case as any.

[32] It appears to me that there is no detriment in a Compulsory acquisition effected by compliance with the Law and culminating in fair compensation in a reasonable time. This is due process. The Registrars alteration or non alteration of the Land Register surely could not alter the reality that the Defendant no longer possessed the right of an absolute registered proprietor and her only interest - at the time of the alteration of the Register - was in the "fair compensation".

[33] In relation to this point, the acquisition under the Act is as effective in stripping the Defendant of her absolute proprietorship rights under the L.R.A as is the deletion of her name on the Register.

[34] The Defendant contends that pursuant to s.121 of the L.R.A. of Antigua and Barbuda the Registrar is given a discretion in satisfying herself of the Crown's entitlement to the land, before registering the Crown as the proprietor and that this discretion was not an unfettered discretion in that regard.

[35] The power to act under s.121 contends the Defendant, exists only when the precondition of "entitlement to any land ...under any law" exists. The Registrar, the Defendant contends, was not in possession of satisfactory evidence of this 'precondition' at the time of altering the register and removing the Defendant as the registered proprietor.

[36] The Defendant argues, citing authorities, that any statute which involves an "expropriation" of property rights is to be construed strictly in favour of the party whose property is to be taken.

- [37] This, suggests the Defendant, evokes the requirement for the Registrar in altering the Register, to have notified (see para. 40 below) the Defendant of this proposed alteration and given the Defendant an opportunity to be heard on the registration. Essentially the Defendant is saying there was a duty on the Registrar in the circumstances of this case to exercise her powers judicially, to exercise it fairly. (Defendant cites the UK rules to their section equivalent to the Antigua and Barbuda RLA, s.121).
- [38] At the onset let me make the observation that the “expropriation” of a person’s property is a different proposition than that of this compulsory acquisition. Expropriation being the “...taking by the state of private property for public purposes, normally without compensation” (Oxford Dictionary of Law, Oxford University Press 6<sup>th</sup> edit.).
- [39] On the question of whether the Registrar was satisfied that the Crown was entitled to the land under any law, the evidence suggests and the Claimant does not deny, that the Registrar relied upon the “Minute” dated 1<sup>st</sup> April 2005 and the attached copies of the Gazettes of 7<sup>th</sup> March 2005 and 14<sup>th</sup> March 2005 respectively. The critical words of the said minute bears repeating here “... kindly effect the transfer and alter the respective Land Registers accordingly ...”
- [40] The combined effect of the Minute of the 1<sup>st</sup> April 2005 and the two issues of the Gazette containing the compulsory acquisition notices satisfying the Compulsory Acquisition Act are in my judgment notice to the world and satisfactory evidence of the Government’s “entitlement to the land under any law”.
- [41] This evidence, I find, sufficient to have moved the Registrar to enter the new proprietor on the Register. The Defendant however, does not stop here, but goes further to say that the Defendant should have been given notice of the “*case being made against him/her and an opportunity to answer it*” suggesting that a favourable ruling for the Defendant by the Registrar on this point could override the legal effect of the compulsory acquisition .

- [42] I take this to mean that prior to entering the 'Crown' as the proprietor, the Registrar should have informed the Defendant of the request contained in the 'Minute' of 1 April 2005 and afforded the Defendant a response and at the very least a response in accordance with s.152 of the Registered Land Act Cap. 374. The "*case being made against her...*", if that is what it was, is in any event the very case that went before the Privy Council and which has already been decided upon. (see para. 4 and para. 5 above)
- [43] At the time the Defendant claims the Registrar was under a duty to act fairly, the acquisition notices had already been gazetted and s.3 of the Compulsory Acquisition Act taken effect, leaving the Defendant not with any right to the subject lands but only to 'compensation' for the land, a matter not within the purview of the Registrar<sup>1</sup>. HMB's property vested absolutely in the Crown. It had no existing interest in the registered property at this time sufficient to prevent the alteration of the Register in favour of the Crown.
- [44] The decision by the Registrar did not create any detriment to the Defendant so as to deprive the Defendant of his right as a registered proprietor. The lands already vested in the Government of Antigua and Barbuda absolutely. Surely it could not be suggested that upon the Defendant being *heard*, a ruling by the registrar in favour of the Defendant can in effect override and frustrate the lawful vesting of the lands in the Government under the Land Acquisition Act?
- [45] The rights of a registered proprietor under the Registered Land Act are set out in Part III of the said Act as "EFFECT OF REGISTRATION" at section 23 to section 30. It is section 28 however, that fetters the registered proprietor's rights in various ways, one of which is particularly relevant to this matter. S.28 (c) notes "rights of Compulsory acquisition" as an interest that overrides the statutory rights of a registered proprietor.
- [46] I think it convenient to set out s.28 of the Registered Land Act, Cap. 374 here:

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<sup>1</sup> **Grape Bay** case pp. 13 "...but there was no existing business of which they were deprived."

**“Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register –**

- (a) rights of way, rights of water and any easement of profit subsisting at the time of first registration under this Act;**
- (b) natural rights of light, air, water and support;**
- (c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any other law;**
- (d) leases or agreements for leases for a term not exceeding two years, and periodic tenancies within the meaning of section 2;**
- (e) any unpaid moneys which, without reference to registration under this Act, are expressly declared by any law to be a charge upon land;**
- (f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;**
- (g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed.**
- (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and virtue of any power conferred by any law:  
Provided that the Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.”**

[47] It bears repeating here that the ‘detriment’, if that is what it was, that impacted upon the Defendants rights as a registered proprietor, was the effect of the ‘acquisition’, which is given the force of law with respect to the Defendants rights as a registered proprietor under the Registered Land Act by virtue of s.28 thereof.

[48] The Defendant submits further, that whilst the State was moving to have itself registered as the proprietor of the subject lands culminating in the Attorney General’s “Minute” of 1 April 2005, the Defendant was “unaware of any of these events”. It was not until after the Parliamentary sessions in July 2005 that it realized that it had been struck out as registered proprietor of the land on the Land Register (pp 5 of submission of the Defendant filed 20/Dec/2006). I note here that the Defendant was not struck off the Register as a result of an allegation, hearing and finding of fraud or mistake, a process that would certainly have required a hearing.

- [49] However, by letter dated April 1/2005 (also the same date of the application for registration) from the Attorney General to Ms. E. Ann Henry, counsel for the Defendant at that time, the Attorney General indicated that "... the formal registration of the titles in the name of the "Crown are in process." The letter also suggests that the registration of the 'Crown' as proprietor was a precursor to an ancillary agreement subject to certain conditions that need not concern us here, but which in any event are *conditions* the parameters of which are unclear from the said letter. The Defendant was aware of the request for the registration of the 'Crown', albeit for a different ultimate purpose, if that is what it was. In any event the Defendant would have had at least constructive notice of this application it being a natural step in any acquisition, compulsory or otherwise.
- [50] The Defendant submits as her *primary case* on this Case Stated, that the "precondition of the Crown being entitled to ... land" is not met simply because the declaration of acquisition has been published twice in the Gazette. S.(3) of the Land Acquisition Act Cap. 233 (L.A.A) reads, that upon the second publication of the 'declaration' in the gazette *the land shall vest absolutely in the Crown ...*"
- [51] "Vests" here, the Defendant argues, is to be taken in its ordinary linguistic sense. But that cannot be right. 'Vests' in the context of the law and Land Law in particular is a term of art. It has a certain meaning ascribed to it which does not necessarily accord with the "ordinary linguistic meaning" that was suggested by counsel for the Defendant in her written submissions to the Court.
- [52] In deed, the word 'vests', in the section, does not stand alone, it reads "vests absolutely ..." and in my view means, to confer absolute legal ownership on the Crown. This legal ownership is not a future right but an immediate right in the enjoyment of the interest in the acquired property. In the consolidated Privy Council Appeals 61 and 62 of 2000 , involving Rosie Blanchfield, The Attorney General of Trinidad and Tobago, The Chaguaramas Development Authority and others, in defining the meaning of "*vesting*" under the relevant compulsory acquisition Act, Lord Millett at para. 20 of the Judgment said: "...*this means*

*the physical land and the totality of the estates and interest therein...” (this authority is admittedly not the clearest of authorities but the language conveys my findings).*

[53] The said section 3 (3) of the L.A.A. goes on to say that the “...authorized officer and his agents, assistants and workmen may enter and take possession of the land accordingly.” So, if one had any doubt as to whether the subject lands vests now or in the future (say, after the payment of compensation) this puts it to rests and grounds the vesting immediately.

[54] It, in my view, merely states the obvious and enumerates several critical incidents of land ownership consistent with the Crown's acquisition.

[55] This interpretation of “vests”, I believe is consistent with the settled view that a land owner's rights upon compulsory acquisition lies in his right to fair compensation, buttressed by his constitutional protection; “*in a reasonable time*”. If the acquisition was not complete until the payment of compensation then the oft cited proposition that a party is entitled to fair compensation in a reasonable time upon acquisition would be incorrect, because, following the Defendant's argument, compensation would have had to have been made **prior** to the ‘acquisition’ and not ‘**upon**’ acquisition for the acquisition to be complete.

[56] Counsel for the Defendant argues that in further support of the proposition that the title does not pass to the Crown upon the 2<sup>nd</sup> publication of the notice in the Gazette, one need only look at s.10 of the L.A.A. S.10 of the L.A.A provides for the abandonment of the acquisition; “At any time before any land has been acquired compulsorily ... by notification published in the Gazette ...”<sup>2</sup> and that the section provides for it after the 2<sup>nd</sup> publication.

[57] But the notion of a Compulsory acquisition of land as a process extending beyond the publication of the gazette, may persist for purposes of facilitating the peculiar statutory regime for the assessment and payment of compensation. However, the land owner to

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<sup>1</sup> *abandonment* is particularly relevant(although not necessarily limited to) to circumstances under s.4 and s.5 of the LAA Cap 233-Preliminary notification/survey/other investigation.

<sup>2</sup> S. 10(1) refers to an ‘intended acquisition’ as opposed to an actual acquisition.

whom a lawful acquisition is directed loses his right to the lands absolutely upon the second publication, his interest being converted to the purchase/compensation monies only (see: *Blomqvist v. Attorney General of the Commonwealth of Dominica*)<sup>1</sup>.

[58] The Defendant, HMB Holding lost its 'cap' as land owner upon the second publication of the acquisition notice in the Gazette and not upon its deletion from the Land Register.

[59] Counsel for the Defendant indicated in her submissions that the Defendant will not pursue limb "a" of the case stated but calls on the Court to express the opinion as to limb "b" and "c".

[60] Merely removing a registered proprietor from the register would not be sufficient to deprive a party from asserting his alleged rights before the Court. The Privy Council decision in the substantive matter herein did not address the issues in the Case Stated before this Court. These two factors taken together suggest that the Defendant does have locus standi before this Court in the Case Stated, albeit a very academic standing.

### **ORDER**

[61] With respect to limb "a", the Court finds (and the Defendant in any event concedes) that there has been no improper exercise of the powers of the Registrar under Section 121 of the Registered Land Act in registering the Crown [The Government of Antigua] on the 8 March 2005, that date having been entered in error. The Registrar is authorized to rectify the register accordingly.

[62] With respect to limb '(b)' the Court finds, for the reasons provided above and the arguments contained in the written submissions of both the Claimant and the Defendant, that the application by the Attorney General of 1 April 2005 was a valid application as intended by S.121 of the Registered Land Act and having regard to the procedure established by the Registrar of Lands.

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<sup>1</sup> [1987] A.C.489

- [63] With respect to limb '(c)', the Court finds that in the circumstances, the registration of the 'Crown' or Government of Antigua and Barbuda as registered proprietor on 8 March should not be cancelled and the registers relating to the land not rectified to record H.M.B. Holding as registered proprietor.
- [64] That costs to the Claimant on the Prescribed Costs scale (incl. the Prt. 65.5(2)(iii) amount, unless the parties apply under Prt. 65.(6) to apply, unless costs not otherwise agreed between the parties within 21 days of this Order.
- [65] That parties at liberty to apply with respect to Costs within 28 days of this Order.

*DAVID C. HARRIS*  
**Judge**  
**The High**  
**Court of Justice**  
**Antigua and Barbuda**