IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION
ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Appeal No BZCV2024/002
BZ Civil Appeal No 11 of 2021

BETWEEN

NEW DEAL LIMITED	**APPELLANT**

AND

ARTURO MATUS	**FIRST RESPONDENT**
REGISTRAR OF LANDS	**SECOND RESPONDENT**
ATTORNEY GENERAL OF BELIZE	**THIRD RESPONDENT**

Before: **Mr Justice Saunders, President**
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Burgess
Mme Justice Ononaiwu

Date of Judgment: **6 March 2025**

Appearances

Ms Naima Barrow for the Appellant

Mr Darrell Bradley and Ms Kimberly Wallace for the First Respondent

Ms Samantha Matute and Mr Jhawn Graham for the Second and Third Respondents

Land – Riparian rights – Easement of necessity – Access to river – Whether riparian rights created where there is an intervening strip of land – Whether creation of a parcel of land was done by mistake warranting rectification of the register – Whether creation of a parcel of land was ultra vires the powers of the Registrar of Lands – Belize Constitution Act, CAP 4 – Registered Land Act, CAP 194 – National Lands Act, CAP 191 – National Lands Rules, CAP 191.

SUMMARY

This appeal concerns whether the First Respondent, Arturo Matus, has riparian rights despite there being a portion of a parcel of land (Parcel 5031) registered to the Appellant, New Deal Ltd ('New Deal'), which lies between Mr Matus's property (Parcel 4105) and the Belize River. The Supreme Court dismissed Mr Matus's claim, finding that he had no riparian rights because his land does not abut the river. The Court of Appeal overturned this decision, holding that Mr Matus had riparian rights over the intervening strip of land, and that the issuance of Parcel 5031 to New Deal was void, made by mistake, and ultra vires the powers of the Second Respondent, the Registrar of Lands. The Court of Appeal ordered rectification of the Land Register, injunctive relief and the payment of damages to Mr Matus by New Deal for trespass and by the Third Respondent, the Attorney General for breach of Mr Matus's constitutional rights.

The Caribbean Court of Justice allowed the appeal, set aside the decision of the Court of Appeal and restored the judgment of the Supreme Court. The Court held that riparian rights are derived from ownership or lawful possession of land that abuts a natural watercourse and thereby makes actual daily contact with the water therein. The Court found that Mr Matus did not have riparian rights because Parcel 4105 did not abut the river but rather it abutted Parcel 5031.

The Court also rejected the finding that the creation and transfer of Parcel 5031 were made by mistake. Under s 143 of the Registered Land Act, the court may order rectification of the register due to mistake where a mistake was made in the process of registration and a registered proprietor in possession had knowledge of, caused or substantially contributed to the mistake. Since Mr Matus did not own the portion of Parcel 5031 that abuts Parcel 4105 and had no riparian rights, the inclusion of that portion of land in Parcel 5031 was not a mistake warranting rectification.

The Court also held that the Court of Appeal erred in finding that the creation and issue of Parcel 5031 were void and ultra vires, as the Registrar of Lands had not taken away any riparian rights of Mr Matus or otherwise acted unlawfully. As Mr Matus did not have

riparian rights, the Court also held that there was no foundation for the Court of Appeal's orders for New Deal to pay Mr Matus $20,000 for trespass and for the Attorney General to pay him $20,000 for breach of his constitutional rights.

The Court observed that there was no basis for implying an easement of necessity over Parcel 5031 to allow Parcel 4105 access to the Belize River as Parcel 4105 was accessible from a public road via other parcels of land owned by Mr Matus.

Cases referred to:

A-G v Rowley Brothers and Oxley (1911) 75 JP 81*; A-G of Southern Nigeria v John Holt & Co (Liverpool) Ltd* [1915] AC 599; *A-G of Straits Settlement v Wemyss* (1888) 13 App Cas 192; *Attwood v Llay Main Collieries Ltd* [1926] Ch 444; *Brand v Creasey* (BZ SC, 17 April 2013); *Brelsford v Providence Estate Ltd* [2022] UKPC 46, MS 2022 PC 1 (CARILAW); *Chasemore v Richards* [1859] 7 HL Cas 349, 11 ER 140; *Corkum v Nash* (1990) 71 DLR 4th 390 ; *Donaldson v Smith* [2007] 1 P & CR DG2; *Hindson v Ashby* [1896] 2 Ch 1; *Holmes v Goring* (1894) 2 Bing 76, 130 ER 233; *Kundysek Family Investments LP v Minister of Natural Resources* BZ 2022 SC 32 (CARILAW), (22 June 2022); *Louisien v Jacob* [2009] UKPC 3, LC 2009 PC 1 (CARILAW); *Lyon v Fishmongers' Co* (1876) 1 App Cas 662; *Manjang v Drammeh* (1990) 61 P & CR 194; *Matus v A-G of Belize* (BZ CA, 20 September 2023); *Matus v A-G of Belize* BZ 2021 SC 28 (CARILAW), (27 April 2021); *Mellor v Walmesley* [1905] 2 Ch 164; *Menzies v Breadalbane* (1901) F 59; *National Fishermen Producers Co-op Society v Brown Sugar Market Place Ltd (formerly River Front Duty Free Ltd)* BZ 2010 SC 20 (CARILAW), (16 April 2010); *North Shore Railway Co v Pion* (1889) 14 App Cas 612; *Original Hartlepool Colleries Co v Gibb* (1877) 5 Ch D 713; *Pearson v Spencer* (1863) 3 B&S 761, 122 ER 285; *Pheysey v Vicary* (1847) 16 M&W 484, 153 ER 1280; *Port of London Authority v Canvey Island Commissioners* [1932] 1 Ch 446; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326; *Quinto v Santiago Castillo Ltd* [2009] UKPC 15, (2009) 74 WIR 217 (BZ); *Rampersad v Jattan* TT 1989 HC 138 (CARILAW), (30 November 1989); *Rose v Groves* (1843) 5 Man & G 513, 134 ER 705; *Stollmeyer v Trinidad Lake Petroleum Co* [1918] AC 485; *Young and Co v Bankier Distillery Co* [1893] AC 691.

Legislation referred to:

Belize – Belize Constitution Act, CAP 4, National Lands Act, Rev Ed 2011, CAP 191, National Lands Rules, CAP 191, Registered Land Act, CAP 194.

Other Sources referred to:

Gaunt J and Morgan P, *Gale on Easements* (20th edn, Sweet & Maxwell 2017); *Halsbury's Laws of England* (5th edn, 2022), vol 87; *Halsbury's Laws of England* (5th edn, 2024) vol 100; Kodilinye G, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022); Owusu S, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007); Toohey J, *Daly River (Malak Malak) Land Claim: Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory* (Australian Government Publishing Service 1982).

JUDGMENT

Reasons for Judgment:

ONONAIWU J:

Introduction

[1] This is an appeal against the judgment of the Court of Appeal of Belize, which set aside the decision of the Supreme Court that the First Respondent, Arturo Matus, did not have riparian rights over that portion of a parcel of land registered to the Appellant, New Deal Ltd ('New Deal'), which is situated between his land and the Belize River. The Court of Appeal arrived at a different conclusion that Mr Matus had riparian rights and consequently held that the creation and issue of the parcel of land to New Deal were void, made by mistake and ultra vires the powers of the Second Respondent, the Registrar of Lands. The Court of Appeal ordered rectification of the Land Register, injunctive relief and payment of damages to Mr Matus by New Deal for trespass and by the Third Respondent, the Attorney General, for breach of his constitutional rights. The Appellant is seeking from this Court a decision that the judgment of the Court of Appeal was wrong and restoration of the award of the trial judge.

[2] This is the first case before this Court concerning the common law rights of riparian owners or persons who own land next to a natural watercourse. Riparian rights are of value to waterfront property owners in Belize. A critical feature of this case is that Mr Matus is claiming riparian rights in circumstances where there is a strip of land which he does not own located between his land and the Belize River.

Factual Background

[3] The undisputed facts of this case are briefly set out below.

[4] Mr Matus is the registered proprietor of all that parcel of land described as Parcel No 4105, Block 16 in the Caribbean Shores/Belize Registration Section ('Parcel 4105'). He has occupied that land from around 2002 and became the titled owner of Parcel 4105 in 2003. There was an area of 44 feet between Parcel 4105 and the Belize River, which was denoted as a reserve on the survey plan of that parcel which Mr Matus commissioned in 2002.

[5] In 2014, the Registrar of Lands created Parcel 5031, Block 16 in the Caribbean Shores/Belize Registration Section ('Parcel 5031'). This parcel included the 44-foot area in front of Parcel 4105 identified on the survey plan as a reserve and title to Parcel 5031 was registered to New Deal. New Deal then constructed a fence which blocked off Mr Matus's access to the Belize River through Parcel 5031.

[6] In addition to Parcel 4105, Mr Matus owns Parcels 1335 and 4106, of which he became the registered proprietor in 1987 and 2005 respectively. Along with Parcel 5031, New Deal owns Parcels 148, 149 and 164, of which it became the registered proprietor in 1982 and 1983. These parcels of land are all within the same area and shown by a cadastral map, an exhibit to the Affidavit of the Commissioner of Lands and Survey, Wilbert Vallejos.[1] This map shows Parcel 5031 as a strip of land abutting the Belize River. Parcel 5031 connects Parcel 164 to Parcel 148 and passes

[1] Record of Appeal, 'Second Affidavit of Wilbert Vallejos, Exhibit WV-8' 461.

in front of Parcel 149. A narrow strip of Parcel 5031 passes in front of Parcel 4105 which is situated between Parcels 164 and 149.

[7] Mr Matus complained about the interruption of his access to the Belize River. A letter dated 24 March 2016 was subsequently written on behalf of the Registrar of Lands to David Quinto, a Director of New Deal. The letter advised that 'research was carried out' by the Ministry of Natural Resources and Immigration and 'it was discovered' that the recording of New Deal as the registered proprietor of Parcel 5031 was 'erroneous' in that New Deal was issued a portion of land comprising 520.418 square metres, which 'belongs to Arturo Matus'. The correspondence further noted that the size of Parcel 5031 should be 1.67 acres, and not 1.709 acres, as stated on the Land Register and the corresponding Land Certificate for the Parcel. It indicated that a resurvey dated 31 March 2015 was done at the request of Mr Matus. The letter sought Mr Quinto's written consent to amend the size of Parcel 5031 and requested the surrender of the land certificate to commence the rectification process.[2] Mr Quinto did not consent to that amendment or surrender the land certificate.

History of Litigation

(a) The Supreme Court

[8] Mr Matus initiated legal proceedings in the Supreme Court in 2017 against the Attorney General, Registrar of Lands and New Deal. In his amended fixed date claim form dated 18 May 2018, Mr Matus sought various forms of relief, including:

(i) a declaration that the taking away of his riparian rights by the creation, issue and sale to New Deal of Parcel 5031 other than by legislation which provides for adequate compensation payable within a reasonable time contravenes his constitutional rights under ss 3(d) and 17 of the Belize Constitution;

[2] Record of Appeal, 'Witness Statement of Arturo Matus, Exhibit AM-10' 436-437.

(ii) a declaration that the reserve area formed part of his land and belonged to him, or that he has a proprietary or beneficial interest in that area;

(iii) a declaration pursuant to s 143 of the Registered Land Act that the creation, issue and transfer of Parcel 5031 to New Deal were obtained, made or omitted by fraud or mistake;

(iv) a declaration that the creation and issue of Parcel 5031 were void and ultra vires s 12(8) of the National Lands Act, which requires that all surveys of national lands be subjected to a reserve not exceeding 66 feet;

(v) a declaration that the creation and issue of Parcel 5031 were void and ultra vires the powers of the Registrar of Lands because that parcel was previously designated as a reserve area and constituted his only access by way of public lands to Parcel 4105;

(vi) a declaration that an easement, including an easement of necessity, is created through Parcel 5031 permitting him to access Parcel 4105;

(vii) an order directing the Registrar of Lands to rectify the register in respect of Parcel 5031 and issue to him, title to a portion of that parcel;

(viii) a permanent injunction restraining New Deal from entering Parcel 5031 or commencing or continuing any development or construction on that parcel, or from interfering with his interest in or right to Parcel 5031 or at least the portion of Parcel 5031 directly in front of his land;

(ix) damages against New Deal for trespassing or interfering with his property rights, including riparian rights; and

(x) damages for infringement of his constitutional rights by taking away his property rights, including riparian rights.

[9] The judgment order of the Supreme Court was made on 27 April 2021 and entered and perfected on 19 May 2021. In her judgment, Arana J detailed extensively the evidence given by Mr Matus and his witness, a neighbour, Mr Wilbert Guardado,

the evidence given for the Registrar of Lands and Attorney General by the Commissioner of Lands and Survey, and the evidence given for New Deal by Mr Quinto and Marcelo Benavides, a part-time manager and maintenance supervisor of New Deal's property. Having also recounted in detail the parties' legal submissions, the trial judge briefly set out her decision.[3]

[10] Arana J lamented that Mr Matus and New Deal could not, as owners of neighbouring properties, find an amicable solution to the dispute. She noted that Mr Matus no longer had access to Parcel 4105 through the Belize River, once the title to Parcel 5031 was issued to New Deal. She observed that New Deal itself had lost access to Parcel 164 after Mr Matus secured title to Parcel 4105. Mr Quinto's testimony was that Parcel 164 used to be an island separated from New Deal's neighbouring parcels by swamp water, this swamp water silted up over time to form the land that became Parcel 4105 and Mr Matus' development of Parcel 4105 had prompted him to seek ownership of the land that was created as Parcel 5031.

[11] The trial judge's decision focused on two issues: first, whether Mr Matus had riparian rights and second, whether there was an easement of necessity in favour of Parcel 4105.

[12] On the first issue, Arana J found that, based on the evidence before her, Mr Matus had not established that he had any riparian rights over the 'open space' (the portion of land between Parcel 4105 and the Belize River) as Parcel 4105 does not abut the Belize River or Haulover Creek on its northern boundary. She noted that the Commissioner of Lands had testified that the open space was never designated a reserve under s 6(3) of the National Lands Act. The judge determined that Mr Matus had not occupied the open space for the requisite period of 30 years for acquiring title by prescription under s 138(2)of the Registered Land Act. She found that the open space remained national lands until it was sold by the government to New Deal in 2014. Arana J therefore concluded that Mr Matus had never owned the open space

[3] *Matus v A-G of Belize* BZ 2021 SC 28 (CARILAW), (27 April 2021) at [126]-[129].

in front of Parcel 4105. Rather, he had only owned Parcel 4105 which abuts the open space on its northern boundary. The judge further found that even accepting (which New Deal had not) that the Belize River was present on Mr Matus's land during high tides, s 28 of the National Lands Act (concerning land with tidal boundaries) was inapplicable to Parcel 4105 because it provides for boundaries in reference to ordinary tides. She therefore concluded that Mr Matus has no riparian rights for the court to protect.

[13] On the second issue, Arana J found that there was no easement of necessity that would arise in the circumstances as such easements are acquired after 20 years under s 141 of the Registered Land Act. She concluded that since Mr Matus already has access to his Parcel 4105 through his Parcels 1335 and 4106, an easement of necessity for Parcel 4105 would not arise.

[14] Having decided the case on those critical issues, the trial judge found that the other issues fell away. She dismissed the claim and awarded costs to the Defendants, to be agreed or assessed, to be paid by the Claimant.

(b) **The Court of Appeal**

[15] Through a Notice of Appeal dated 8 June 2021, Mr Matus appealed the decision of the Supreme Court on the following grounds:

(i) the trial judge erred on a point of law in finding that, because of the presence of the reserve located between Parcel 4105 and the river's edge, Parcel 4105 does not abut against the water's edge. The presence of the reserve in law does not negate the existence of riparian rights and his riparian rights subsist even though there is a reserve;

(ii) the trial judge's conclusion as a matter of fact that Parcel 4105 does not abut against the water's edge was against the weight of the evidence, as the

undisputed evidence at trial was that there is a narrow slither of land, the reserve, which disappears at high tide and reappears at low tide;

(iii) the trial judge erred in failing to conclude that the creation, issue and sale to New Deal of Parcel 5031 and New Deal's construction of a fence resulted in the taking away of his riparian rights as contained in ss 3(d) and 17 of the Belize Constitution;

(iv) the trial judge erred in failing to find that an easement of necessity was created through the reserve to permit him public access to Parcel 4105. The evidence at trial was that the reserve was the only public access way for him to access Parcel 4105;

(v) the trial judge erred in failing to find that the reserve formed part of Parcel 4105 and constituted part of his title.

[16] On 20 September 2023, Woodstock-Riley JA (Hafiz-Bertram P and Minott-Phillips JA concurring) delivered the judgment of the Court of Appeal.[4] As Mr Matus had conceded in argument on appeal that he could not sustain his claim of ownership of the disputed area in front of Parcel 4105, the appeal centred on the issue of riparian rights, or alternatively, an easement.[5]

[17] Woodstock-Riley JA found that the uncontradicted evidence was that Mr Matus at all material times enjoyed open and free access to the Belize River from Parcel 4105 over the reserve/open space.[6] She concluded that, as noted by authorities cited by Mr Matus, 'riparian rights can exist over land not owned.' While acknowledging that the trial judge was correct that Mr Matus's ownership of the reserve/open space was not established, Woodstock-Riley JA opined that 'the evidence is overwhelming' that Parcel 4105 'did abut the Belize River so as to establish riparian rights.'[7]

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[4] *Matus v A-G of Belize* (BZ CA, 20 September 2023).
[5] ibid at [10].
[6] ibid at [17].
[7] ibid at [19].

[18] Having determined that Mr Matus has riparian rights, the Court of Appeal touched on the issue of easement by necessity which it considered to be relevant. Woodstock-Riley JA recalled that the trial judge had found that there was no easement of necessity required for the benefit of Parcel 4105 because Mr Matus owned the adjoining Parcels 4106 and 1335 through which he could access a public road. However, she highlighted that Parcels 4105, 4106 and 1335 are separately titled and Parcel 4105 was now landlocked by the action of the Registrar of Lands. Woodstock-Riley JA stated that the letter sent on behalf of the Registrar of Lands to New Deal acknowledged that a rectification of title to Parcel 5031 was needed to 'recognize the rights of Arturo Matus'. She also recalled the oral testimony of the Commissioner of Lands that it is a requirement that all parcels of land have access to a public road and that Parcel 4105 has no access directly to a public road. She considered the importance of the land being able to directly access the waterway to be irrefutable in that context.[8]

[19] Woodstock-Riley JA noted that the Commissioner of Lands stated in his affidavit that the letter written to New Deal on behalf of the Registrar of Lands was sent in error without research. However, she opined that the acknowledgement in the letter that the area in front of Parcel 4105 should not have been included in Parcel 5031 supported Mr Matus's position 'and common sense and reason' that the creation and sale of Parcel 5031 were erroneously done.[9]

[20] The Court of Appeal set aside the decision of the Supreme Court. It declared that Mr Matus has riparian rights 'over' that part of Parcel 5031 which abuts Parcel 4105, and that the purported taking away of his riparian rights 'attaching' Parcel 4105 by the creation and sale to New Deal of Parcel 5031 was null, void and of no effect. The Court further declared that the creation and transfer of Parcel 5031 to New Deal were made by mistake and ultra vires the powers of the Registrar of Lands. The Court ordered the Registrar of Lands to amend the Land Register regarding the size

[8] ibid at [21].
[9] ibid at [22].

of Parcel 5031 and New Deal to surrender its title to that parcel to facilitate the amendment. An injunction was granted restraining New Deal from any development or construction that interfered with the riparian rights attached to Parcel 4105. The Court of Appeal also ordered New Deal to pay $20,000 to Mr Matus as damages for trespass and the Attorney General to pay $20,000 to Mr Matus for breach of his constitutional rights.

Appeal to the Caribbean Court of Justice

[21] Through the Notice of Appeal to this Court filed on 1 July 2024, New Deal has appealed against the whole judgment of the Court of Appeal and specified four grounds of appeal, namely:

(i) the Court of Appeal erred in law in holding that Mr Matus has riparian rights over that part of Parcel 5031 which abuts Parcel 4105, and in so holding

a. erred in law in failing to appreciate that the boundary of Parcel 4105 is taken to be the line of high-water mark at ordinary tides and not at high tide;

b. misconstrued or failed to give full effect to the fact that it is necessary for the existence of a riparian right that the land should be in contact with the flow of the river for a great part of every day in the ordinary and regular course of nature;

(ii) the Court of Appeal erred in law in finding that the creation and issue of Parcel 5031 and its transfer to New Deal were made by mistake;

(iii) the Court of Appeal erred in law in finding that the creation and issue of Parcel 5031 were void and ultra vires the powers of the Registrar of Lands;

(iv) the Court of Appeal erred in law in ordering New Deal to pay $20,000 to Mr Matus as damages for trespass.

[22] The central issue raised in this appeal is whether Arturo Matus has riparian rights notwithstanding that he does not own the portion of Parcel 5031 intervening between Parcel 4105 and the Belize River (alternatively referred to as the 'reserve' or 'open space'). This issue is first assessed as the answer is determinative of the issues raised in grounds (ii), (iii) and (iv) of the appeal, which are subsequently examined.

[23] As noted above, the Court of Appeal touched on but did not make any determination with respect to Mr Matus's ground of appeal that the trial judge failed to make a finding that an easement of necessity over Parcel 5031 was created to allow public access to Parcel 4105 via the Belize River. During the hearing of this matter, this Court invited the parties' views on the possible creation of an easement over Parcel 5031 in favour of Parcel 4105. We provide observations on this issue.

Analysis and Conclusions

(a) Whether Arturo Matus has Riparian Rights

The Law Concerning Riparian Rights

[24] Before examining Mr Matus's claim to riparian rights, we survey established principles from the considerable body of case law on the rights of riparian owners.

[25] An owner of land abutting a natural watercourse has certain rights in respect of the water therein. These riparian rights derive from ownership or lawful possession of land abutting on the water ('riparian land'). In 1859, Lord Wensleydale in *Chasemore v Richards* noted:

> It has been now settled that the right to the enjoyment of a natural stream of water on the surface, *ex jure naturae,* belongs to the proprietor of the adjoining lands, as a natural incident to the right to the soil itself, and that he is entitled to the benefit of it, as he is to all the other natural advantages belonging to the land of which he is the owner.[10]

[10] [1859] 7 HL Cas 349; 11 ER 140 at 153.

[26] The rights of riparian owners, which have developed at common law, include:

(i) the right of access to and regress from the water on which their land abuts,[11] distinct from the public right of navigation;

(ii) the right to land or to pass over the shore or bed even if the shore or bed is not vested in them;[12]

(iii) the right to moor vessels adjacent to their land for the period necessary to load or unload them, provided that they do not interfere with the right of access of other riparian owners or the public right of navigation;[13]

(iv) the right to have the water flow in its natural state, without sensible diminution or increase and without sensible alteration in its character or quality, as well the right to take and use the water, subject to the rights of other riparian owners.[14]

[27] As Lord Selbourne noted in *Lyon v Fishmongers' Co*, the 'facts of nature' constitute the foundation of riparian rights.[15] The word 'riparian' is relative to the bank of the watercourse. Riparian rights are the natural incident of ownership of land abutting the watercourse and do not depend on ownership of the bed of the watercourse.[16]

[28] It is necessary for the creation of riparian rights that the land should be in actual daily contact with the watercourse, whether laterally or vertically.[17] Riparian rights may arise from ownership of land that abuts a tidal river or the sea where there is no continuous contact between the land and water during the whole of the day. According to *Halsbury's Laws of England:*

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[11] *Lyon v Fishmongers' Co* (1876) 1 App Cas 662; *North Shore Railway Co v Pion* (1889) 14 App Cas 612; *Corkum v Nash* (1990) 71 DLR 4th 390 .
[12] *A-G of Straits Settlement v Wemyss* (1888) 13 App Cas 192; *Hindson v Ashby* [1896] 2 Ch 1.
[13] *Original Hartlepool Colleries Co v Gibb* (1877) 5 Ch D 713.
[14] *Young and Co v Bankier Distillery Co* [1893] AC 691; *Stollmeyer v Trinidad Lake Petroleum Co* [1918] AC 485; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326.
[15] *Lyon v Fishmongers' Co* (1876) 1 App Cas 662 at 682.
[16] ibid at 683.
[17] *North Shore Railway Co v Pion* (1889) 14 App Cas 612 at 621-622.

> In the case of land abutting on a tidal river or the sea, where the foreshore is left bare at low water so that there is no continuous contact between the riparian land and the water, there is sufficient contact to support a right of access, for there is actual contact for much of the day.[18]

[29] In the nineteenth century, Lord Selbourne in *Lyon* had expressed this principle concerning the creation of riparian rights in relation to a tidal river as follows:

> It is true that the bank of a tidal river, of which the foreshore is left bare at low water, is not always in contact with the flow of the stream, but it is in such *contact for a great part of every day in the ordinary and regular course of nature*, which is an amply sufficient foundation for a natural riparian right [19] (emphasis added).

[30] Given that riparian rights are the natural incident of ownership or lawful possession of land that abuts the water and thereby makes actual daily contact with the water, landowners will not acquire riparian rights if there is intervening land between the watercourse and their land. This is clear from the English case *Attorney General v Rowley Brothers and Oxley,*[20] in which it was held that land owned by the first defendants which was separated from a watercourse by a strip of land that they had conveyed to the second defendant did not abut on the watercourse. Similarly, in his 1982 report on the *Daly River (Malak Malak) Land Claim,* Toohey J, the Aboriginal Land Commissioner notes:

> If a strip of land lies between the banks of a river and the land of a nearby landholder, that is sufficient to deprive the landholder of any riparian rights he might otherwise have had. So much is clear from English authority (Attorney-General v. Rowley Brothers & Oxley (1911 75 JP 81) and Australian authority (Richardson v Browning & Another (1936) 31 Tas. LR 78, especially at pp. 130-2; Moor v Corrigan & Ors (1949) Tas. SR 34, especially at pp. 45-9).[21]

[31] The right of riparian owners to access the water on which their land abuts is a private right, interference with which is actionable without proof of special damage.[22]

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[18] (5th edn, 2024) vol 100, para 325.
[19] *Lyon* (n 15) at 683.
[20] (1911) 75 JP 81.
[21] John Toohey, *Daly River (Malak Malak) Land Claim: Report by the Aboriginal Land Commissioner, Mr Justice Toohey, to the Minister for Aboriginal Affairs and to the Administrator of the Northern Territory* (Australian Government Publishing Service 1982) para 207.
[22] *Rose v Groves* (1843) 5 Man & G 513, 134 ER 705.

Obstruction of access of a riparian owner, without parliamentary authority and indemnity is an actionable wrong.[23] In the Belize Supreme Court case *National Fishermen Producers Co-op Society v Brown Sugar Market Place Ltd (formerly River Front Duty Free Ltd),* on which Mr Matus relied, Awich J noted that riparian rights enjoy protection from arbitrary deprivation of property under ss 3(d) and 17 of the Belize Constitution.[24]

Legal Basis for the Court of Appeal's Finding that Arturo Matus has Riparian Rights

[32] In finding that Arturo Matus did not have riparian rights, the determining factor for the trial judge was that he did not own the open space between Parcel 4105 and the Belize River and therefore did not own land that abuts the Belize River. A key factual finding of the judge was that Parcel 4105 does not abut the Belize River, by virtue of the intervening land. Accordingly, Arana J found that there was no basis in law for Mr Matus to have riparian rights.[25] This conception of how riparian rights arise is consistent with the established principles from the case law earlier reviewed.

[33] In arriving at a different conclusion that Mr Matus has riparian rights 'over' that part of Parcel 5031 which abuts Parcel 4105, the Court of Appeal articulated several considerations, namely, (i) riparian rights can exist over land not owned, (ii) Mr Matus enjoyed open and free access to the Belize River over the reserve/open space and (iii) Parcel 4105 did abut the Belize River so as to establish riparian rights. The Court of Appeal therefore adopted a conception of how riparian rights can be established which was different from that adopted by the trial judge. Based on this view, riparian rights can arise from ownership of land which is adjacent to another person's land that borders the river, thereby entitling the landowner to access to the river through that adjacent land.

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[23] *North Shore Railway* (n 17).
[24] BZ 2010 SC 20 (CARILAW), (16 April 2010) at [25]-[26].
[25] In a subsequent case, Arana J similarly decided that the Claimant did not have riparian rights because its land was abutted by land and not by the sea: *Kundysek Family Investments LP v Minister of Natural Resources* BZ 2022 SC 32 (CARILAW), (22 June 2022) at 47.

[34] This different understanding of land abutting a body of water does not find support in the case law on riparian rights. In the case of a tidal river, such as the Belize River, the authorities contemplate the creation of riparian rights for the owner of land on the *bank* of the river with which the water makes actual contact for the great part of every day. The authorities do not envisage the creation of riparian rights for the owner of land which adjoins another person's land that is bounded by the river, as is the case with Parcel 4105.

[35] New Deal submitted that the Court of Appeal's decision that Parcel 4105 did abut the Belize River so as to establish riparian rights was flawed. Citing Lord Selbourne in *Lyon ,*[26] New Deal contended that it is a fundamental requirement for the existence of riparian rights that the land should be in contact with the flow of the river for a great part of every day in the ordinary course of nature. New Deal argued that there is no special abutment that takes place to establish riparian rights. Property either abuts the river or not, as a matter of fact. The Government of Belize, represented in these proceedings by the Registrar of Lands and Attorney General, similarly maintained that riparian rights are created by virtue of ownership or possession of land that directly abuts the river and is in contact with the water of the river for the greater part of every day in the ordinary course of nature.

[36] In stark contrast, Mr Matus submitted that the presence of a reserve does not in law negate the conclusion that Parcel 4105 abuts the water's edge for the purpose of finding the existence of riparian rights and that these riparian rights subsist even though there is a reserve. Mr Bradley, counsel for Mr Matus, asserted in oral submissions that, as a matter of law, riparian land need not be contiguous with the water for riparian rights to be established. He argued that riparian rights can exist despite the presence of intervening land between the subject property and the water if there is regular or continuous contact (which need not be daily contact) between the subject property and the water. Mr Bradley opined that there must be some relationship between the subject land and water, in terms of use, access and contact,

[26] *Lyon* (n 15).

which is a qualitative assessment. He maintained that his arguments find support in several authorities he cited. The Court of Appeal noted those authorities when putting forward the proposition that riparian rights can exist over land not owned.

[37] We agree with Ms Barrow, counsel for New Deal, that the authorities cited by Mr Matus do not provide support for the propositions he advanced. None of those authorities involved the creation of riparian rights in favour of the owner of land that does not abut the water, that is, land that does not adjoin or border the water. Mr Matus asserted that in *Lyon,*[27] there was a bank or inlet located between the plaintiff's land and the River Thames. To the contrary, the plaintiff (in whose favour riparian rights were established) was the owner of land with a double river frontage and the inlet of the River Thames formed the western boundary of the plaintiff's property.

[38] Mr Matus also sought to rely on an extract from *Halsbury's Laws of England*, which states that 'if in the course of time the water recedes from the riparian land owing to natural silting up or artificial reclamation, the riparian owner may exercise [his] right of access over the accreted or reclaimed land.' [28] He contended that, at the time of acquisition of Parcel 4105, a portion of that parcel and the reserve would have been swamp land, which was subsequently filled in and developed over time. He therefore argued that, as a matter of law, the accreted land did not sever his entitlement as a riparian owner to continue to have access to the water. The difficulty with this argument is that when Mr Matus acquired Parcel 4105, the land in front of that parcel, which was owned by the Government, already existed. Therefore, Mr Matus would not have been a riparian owner at that time because Parcel 4105 did not abut the Belize River. He could not therefore claim to have riparian rights entitling him to a right of access over accreted or reclaimed land in front of Parcel 4105.

[39] Mr Matus's situation is distinguishable from cases which applied the principle referred to in the foregoing extract from *Halsbury's.* For example, in *Mellor v*

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[27] ibid.
[28] *Halsbury's Laws* (n 18) para 325.

Walmesley,[29] there was a conveyance of land described as 'situate on the seashore' and bounded 'on the west by the seashore', with a plan showing a small intervening strip of land between the west side of the plot and the 'sea coast'. After the conveyance, there was an accretion of land on the west side of the plot. The Court of Appeal, by a majority, held that the land between the plot and the seashore (taken to be the foreshore) did not pass to the grantee, but the grantor was estopped from saying that the land to the west of the plot was anything but 'seashore'. The grantee therefore was entitled to free and unrestricted access to the sea from the western frontage over the land lying between that frontage and the sea. Similarly, in *Attorney General of Southern Nigeria v John Holt & Co (Liverpool) Ltd,*[30] the respondents occupied and carried on businesses on lands on the shore of the island of Lagos. The respondents' predecessors in title had originally obtained the lands by Crown grants which described the lands as bounded by the sea. It was held that the respondents continued to have the rights of riparian owners over the reclaimed foreshore which was owned by the Crown.

[40] In addition, Mr Matus relied on the English case *Attwood v Llay Main Collieries Ltd,*[31] involving a strip of land abutting on a river which connected industrial premises. It was held that the industrial premises were located too far from the riverbank to sustain the character of a riparian tenement, which connotes not only contact with the river but also reasonable proximity to the riverbank. Again, this case does not support Mr Matus's proposition that the presence of intervening land does not negate the creation of riparian rights.

[41] Mr Matus also raised the Canadian case *North Shore Railway Co,*[32] arguing that there was a finding that the plaintiffs' land remained a riparian tenement despite the riverbank separating that land from the river. To the contrary, the plaintiffs'/respondents' property fronted a tidal river and there was no dispute that

[29] [1905] 2 Ch 164.
[30] [1915] AC 599.
[31] [1926] Ch 444.
[32] *North Shore Railway* (n 17).

they were riparian owners. The appellants' erection of an embankment on the foreshore of the river extending along the entire length of the respondents' frontage, cutting off all access to the water except through two openings, was held to be an actionable wrong.

[42] Further, Mr Matus cited the English case *Hindson v Ashby*[33] to support his proposition that, as a matter of law, he could be entitled to riparian rights despite the presence of the land between Parcel 4105 and the river. However, in that case, a riparian owner (of land adjoining the River Thames) was held to be entitled to a right of access over a strip of land that had formed from the gradual accumulation of mud on what had once been the bed of the river. The Court of Appeal found that on the facts the strip had not ceased to form part of the riverbed, which belonged to the defendant, the owner of several fishery in the part of the river which bounded the plaintiff's land. This case simply confirms one of the common law rights of riparian owners, namely, the right to pass over the bed of a river even if it is not vested in them.

[43] Additionally, Mr Matus relied on the English Court of Appeal case *Port of London Authority v Canvey Island Commissioners*,[34] submitting that it held that the plaintiff was a riparian owner notwithstanding that there was a ditch, seawall and embankment located between the river and the plaintiff's land. However, the plaintiff in that case owned property on the southern boundary of an island in the Thames estuary. It was held that a wall constructed on the northern edge of the property did not interpose a strip belonging to a separate landowner between the plaintiff's estate and the river.

[44] In sum, the case law on riparian rights does not support the Court of Appeal's finding that riparian rights can arise from ownership of land which adjoins another person's land that abuts on a river.

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[33] [1896] 2 Ch 1.
[34] [1932] 1 Ch 446.

Evidential Basis for the Court of Appeal's Finding that Arturo Matus has Riparian Rights

[45] As noted above, the Court of Appeal found that there was overwhelming evidence that Parcel 4105 did abut the Belize River so as to establish riparian rights. However, the evidence at trial does not clearly support a finding that there was sufficient contact between Parcel 4105 and the river for the creation of riparian rights in favour of Mr Matus.

[46] Mr Bradley argues that there was evidence before the Supreme Court that the waters of the Belize River came into regular or continuous contact with Parcel 4105. In this regard, he pointed to the following assertions in Mr Matus's witness statement:

> Even though the survey from C.B. Samuels includes a reserve on his plan, from since 2000 to a date in 2017 I have always occupied all the land up to and immediately abutting a body of water called the Belize River, and my land was always river frontage in that the land went all the way to the water's edge as existed then based on the ebb and flow of the river or depending on the high and low water mark. So, the land that I used and occupied as owner of Parcel 4105 abutted the Belize River. Parcel 4105 was always riverfront and the reserve was simply the distance between the high water mark and the low water mark as measured by the surveyor. At high tide the water from the river came all the way up to the edge of Parcel 4105 and sometimes the water from the river went into Parcel 4105 as much as ten feet, and at low tide the water receded and more of the riverbank was exposed. But at all times I had unimpeded access to the Belize River directly from Parcel 4105.[35]

[47] In written submissions, Mr Matus contended that the uncontradicted evidence at trial was that the waters of the Belize River, at *low tide,* cover the reserve entirely and come onto Parcel 4105 and that the reserve disappears entirely into the water at *low tide.*[36] However, we agree with New Deal that this is not consistent with Mr Matus's testimony (or other assertions in his written submissions[37]) that at *high tide,* the waters of the Belize River cover the entire reserve area and wash onto Parcel 4105.

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[35] Record of Appeal, 'Witness Statement of Arturo Matus' para 6.
[36] Record of Appeal, 'Respondent's Written Submissions' para 8.
[37] ibid para 11.

[48] We note that upon cross-examination, Mr Matus had testified that the distance from the fence constructed by New Deal to the Belize River was about 10 feet[38] and that at high tide, the water of the river comes right up to the fence.[39] He also asserted that the distance between the fence and the dock that he had built on the river's edge to moor his boats was about five feet, and that at high tide 'all that becomes water'.[40] Further, he averred that 40 feet north of the northern boundary of Parcel 4105 was deep in the Belize River.[41]

[49] Mr Matus contended that his evidence was not impeached or diminished at trial and was sufficient to support the conclusion that Parcel 4105 abuts the water's edge. He argued that the reserve merely compensates for the ebb and flow of the water and that the Court of Appeal appreciated that the reserve area represents the area between the high-water mark and the low water mark, or the area of the riverbank, the foreshore or beach, where water may rise and recede.

[50] However, New Deal and the Government of Belize disagreed that the evidence at trial supports a conclusion that the waters of the Belize River came into daily contact with Parcel 4105. New Deal submitted that the physical and geographical realities of Parcel 4105 render it impossible for its boundary to have been in contact with the flow of the river for a great part of every day. New Deal maintained that, as a matter of fact, Parcel 4105 does not abut the Belize River. Rather, Parcel 4105 abuts Parcel 5031 and Parcel 5031 abuts the Belize River.

[51] In oral submissions, Ms Barrow argued that Mr Matus had established the connection between Parcel 4105 and the river by treating as his own land the area denoted on the survey plan as the reserve. She recalled that Mr Matus had originally asserted but later abandoned a claim to prescriptive title to the reserve. In his witness statement, he stated that he had always considered the reserve as part of his title.[42]

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[38] Transcript of proceedings, *Matus v A-G of Belize* (Supreme Court of Belize, Claim no 699 of 2017, 1 April 2019) 337.
[39] ibid 340.
[40] ibid 337-338.
[41] ibid 358.
[42] Record of Appeal, 'Witness Statement of Arturo Matus' para 7.

Upon cross-examination, he asserted that the surveyor could not give him title for the reserve but it was 'my reserve.'[43] Ms Barrow therefore argued that when Mr Matus referred in his witness statement to the water from the Belize River washing onto his land, he was actually referring to the reserve not Parcel 4105.

[52] The Government of Belize submitted that Mr Matus's evidence that he traversed the reserve area to moor his boats and for other purposes provides a highly probable inference that the reserve area was not frequently covered by water and Parcel 4105 could not be riparian land.

[53] Additionally, New Deal and the Government contended that there was no evidence at trial of the frequency with which the water of the Belize River washed onto Parcel 4105. Indeed, we note that the trial judge did not make any factual findings with respect to the regularity of contact between the waters of the Belize River and Parcel 4105. In her decision, Arana J had simply observed that even accepting (though New Deal did not) that the Belize River was present on Parcel 4105 during high tides, s 28 of the National Lands Act is inapplicable to that parcel because it provides for boundaries in reference to ordinary tides.

[54] The Government of Belize had invited this Court to consider where the boundary for Parcel 4105 lies and submitted that s 28 of the National Lands Act would be helpful in this regard. While we agree that the boundary of Parcel 4105 should be considered, we do not regard s 28 to be relevant to the identification of the boundary of that parcel (as all the parties appear to have concluded). Section 28 provides:

> In any grant, lease or other document where the sea, or any sound, bay, or creek or any part thereof, affected by the ebb or flow of the tide, described as forming the whole or part of the boundary of the land to be disposed of, such boundary or part thereof shall be deemed and taken to be the line of high water mark at ordinary tides.

[43] Transcript of proceedings (n 38) 339.

[55] As Parcel 4105 adjoins Parcel 5031 on its northern boundary, the Belize River does not form a boundary of Parcel 4105. Therefore, the northern boundary of Parcel 4105 cannot be taken to be the line of the high-water mark of the river at ordinary tides (that is, the mean or average high-water mark). Instead, s 28 could apply to Parcel 5031, which is bounded to the north by the Belize River. If, indeed, the northern boundary of Parcel 5031 is taken to be the high-water mark of the river at ordinary tides, this would cast further doubt on the frequency with which the water made contact with Parcel 4105 as the open space/reserve might not represent the foreshore or the area between the high and low water mark, as Mr Matus asserted. As the Government of Belize maintained, there was no evidence at trial to confirm this assertion of Mr Matus. In this regard, we note that the Commissioner of Lands testified that a surveyor may denote an area as a reserve for reasons other than to compensate for the high and low water mark, such as to indicate land which the Government is not yet prepared to dispose of.[44]

Conclusion

[56] In light of the foregoing analysis, this Court concludes that the Court of Appeal erred in finding that Arturo Matus had riparian rights over that portion of Parcel 5031 which abuts Parcel 4105. There was no legal basis for its decision that Mr Matus could derive riparian rights from his ownership of Parcel 4105 which is adjacent to Parcel 5031 that abuts the Belize River. There was also no evidential basis for the Court of Appeal's finding that Parcel 4105 did abut the Belize River so as to establish riparian rights.

(b) Issues Arising from the Other Grounds of Appeal

[44] Transcript of proceedings (n 38) 379-380.

[57] We now address the issues arising from the other three grounds of appeal, all of which are impacted by this Court's determination that Mr Matus does not have riparian rights.

Whether the Creation, Issue and Transfer of Parcel 5031 were Done by Mistake

[58] The Court of Appeal found that s 143 of the Registered Land Act applies, and that the creation of Parcel 5031 and the issue and transfer of that parcel to New Deal as proprietor were done by mistake. Consequently, the Court ordered the Registrar of Lands to amend the Land Register regarding Parcel 5031 to the extent and in the manner set out in the letter of 24 March 2016 to New Deal Ltd.

[59] Under the Torrens system of land registration in Belize, the court has the discretion to order rectification of the register if registration of title is brought about by fraud or by a mistake. Section 143 of the Registered Land Act provides:

> (1) Subject to sub-section (2), the court may order rectification of the register by directing that any registration be made, cancelled or amended where it is satisfied that any registration, including a first registration, has been obtained, made or omitted by fraud or mistake.
>
> (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession or is in receipt of the rents or profits and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

[60] The Registered Land Act of Belize reflects a balance between a simple system of land transfer and the interests of justice. The remedy of rectification is within the court's discretion and subject to the protection given to the *bona fide* purchaser in possession by s 143(2). The absence of any provision for indemnification of a person unfairly prejudiced by the operation of the system of registration underscores the utility of this balanced approach. See *Quinto v Santiago Castillo Ltd.*[45]

[45] [2009] UKPC 15, (2009) 74 WIR 217 (BZ) at [39].

[61] Two requirements must be met for a court to order the remedy of rectification. First, the registration must have been obtained, made or omitted due to fraud or mistake. Second, in cases where the registered proprietor is in possession of the land, in receipt of rents or profits from the land and acquired the land for valuable consideration, the proprietor must have had knowledge of the fraud or mistake in consequence of which the rectification is sought, caused the fraud or mistake or substantially contributed to the mistake by his act, neglect or default.

[62] The term 'mistake' in provisions in similar legislation in other Caribbean jurisdictions has been interpreted to be a mistake in the process of registration. See *Louisien v Jacob*[46] and *Brelsford v Providence Estate Ltd.*[47]

[63] In concluding that the creation and sale of Parcel 5031 were erroneously done, the Court of Appeal referred to the letter sent on behalf of the Registrar of Lands to New Deal which suggested that the land in front of Parcel 4105 should not have been included in Parcel 5031. The Court of Appeal regarded that letter as an acknowledgement by the Registrar of Lands that a rectification of the title to Parcel 5031 was needed to recognise the rights of Arturo Matus. Given that the Court of Appeal accepted that Mr Matus did not own the area denoted on the survey plan as the reserve, its assessment that the inclusion of that area in Parcel 5031 was a mistake and consequential order of rectification of the register was presumably based on its finding that Mr Matus had riparian rights over the portion of Parcel 5031 that abuts Parcel 4105.

[64] The letter sent on behalf of the Registrar of Lands to New Deal had stated that the company was erroneously issued a portion of land comprising 520.418 square metres which 'belongs to Arturo Matus'. In submissions to this Court, the Government of Belize reiterated the evidence of the Commissioner of Lands and Survey, which the Court of Appeal rejected, that this letter was issued erroneously

[46] [2009] UKPC 3, LC 2009 PC 1 (CARILAW).
[47] [2022] UKPC 46, MS 2022 PC 1 (CARILAW) at [54].

and prematurely because the declaration that the portion of land belonged to Mr Matus would have been incorrect without a title or survey indicating that he had a proprietary interest therein.

[65] Mr Matus does not own the portion of Parcel 5031 that abuts Parcel 4105 and this Court has concluded that he has no riparian rights. Therefore, the inclusion of that portion of land in Parcel 5031 when it was created and issued and the subsequent transfer of that parcel to New Deal would not have been a mistake in the registration process.

[66] Our finding that there was no mistake would be dispositive of this ground of appeal. Nonetheless, we observe that although New Deal had purchased and was already in possession of Parcel 5031, it is not evident from the Court of Appeal's judgment that the Court considered whether the registered proprietor had knowledge of, caused or substantially contributed to the alleged mistake. It is therefore not apparent how the Court of Appeal arrived at a conclusion that this requirement under s 143 was met.

[67] Accordingly, this Court concludes that the Court of Appeal erred in finding that the creation, issue and transfer of Parcel 5031 were done by mistake.

Whether the Creation and Issue of Parcel 5031 were Void and Ultra Vires

[68] This Court agrees with New Deal that the Court of Appeal did not specify the basis for its determination that the creation and issue of Parcel 5031 were void and ultra vires the powers of the Registrar of Lands. We infer similarly that the Court's declaration resulted from its finding that Mr Matus is entitled to riparian rights over the portion of Parcel 5031 that abuts Parcel 4105. Relying on *National Fishermen Producers Co-op Society v Brown Sugar Market Place Ltd (formerly River Front Duty Free Ltd),*[48] Mr Matus submitted that the Registrar had no power to deprive

[48] *National Fishermen Producers* (n 24).

him of his constitutionally protected riparian rights except under laws that provide for compensation. He therefore argued that by creating Parcel 5031, the Registrar took away his riparian rights without lawful authority.

[69] Having found that Mr Matus had no riparian rights, this Court finds that the creation and issue of Parcel 5031 would not have been void or ultra vires the powers of the Registrar of Lands because it took away his riparian rights.

[70] We note the submissions of the Government of Belize that the land which formed Parcel 5031 was national land which the Government owned in its entirety and had the power to dispose of lawfully. It was submitted that no law compels the Government to establish a buffer, embankment or beach between a parcel of land and the river in Belize City where the subject land is located. In this regard, it was pointed out that the requirement of reserves not exceeding 66 feet along water frontages for Government or public purposes applies to rural lands. See s 33(3) of the National Lands Rules, subsidiary legislation to the National Lands Act. Accordingly, the Government submitted that it was lawful for the Registrar to create Parcel 5031, the northern boundaries of which directly touch the Belize River.

[71] This Court therefore concludes that the Court of Appeal erred in finding that the creation and issue of Parcel 5031 were void and ultra vires the powers of the Registrar of Lands.

Award of Damages

[72] Having found that Mr Matus did not have riparian rights, this Court concludes that the Court of Appeal erred in ordering New Deal to pay Mr Matus damages of $20,000 for trespass. The Court of Appeal therefore also erred in ordering the Attorney General to pay Mr Matus damages of $20,000 for breach of his constitutional rights.

(c) The Prospect of an Easement over Parcel 5031

[73] There is no direct public access to Parcel 4105. That parcel can only be accessed from the Belize River or a public road through other parcels of land. The fence constructed by New Deal on Parcel 5031 obstructs access to Parcel 4105 from the Belize River. Parcel 4105 can be accessed from a public road through Parcels 4106 and 1335 which are also owned by Mr Matus. An easement could provide Parcel 4105 with a right of access from the Belize River through Parcel 5031.

[74] Easements can be acquired by grant or reservation, statutory provisions or by prescription.[49] The Registered Land Act of Belize addresses easements by grant or reservation (s 95), as well as by prescription (s141). Arana J found that the 20-year period of enjoyment of access to and from Parcel 4105 through the open space, which is required under s 141 of the Registered Land Act for acquisition of an easement of prescription, had not been satisfied. Where an easement is acquired by a grant, the easement may be created by an express grant. There remains the possibility that New Deal could expressly create an easement over Parcel 5031 to allow Parcel 4105 access to the Belize River.

[75] The grant of an easement may also be implied where both the dominant and servient tenements have been in the common ownership of one person and that person has disposed of one or other of the tenements.[50] An easement of necessity to access a public highway may be implied from a disposition where (i) there is a common owner of a legal estate in two plots of land, (ii) access between one of the plots and the public highway can be obtained only over the other plot, and (iii) there was a disposition of one of the plots without any specific grant or reservation of a right of access. See *Manjang v Drammeh.*[51] An easement of necessity will only be implied where, without the easement, the property could not be used at all, not simply on the basis that it would be necessary for the reasonable enjoyment of the property.[52] The

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[49] Sampson Owusu, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007) ch 10; Gilbert Kodilinye, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022) ch 9.
[50] Sampson Owusu, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007) 409-429; Gibert Kodilinye, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022) 157-163; *Halsbury's Laws of England* (5th edn, 2022), vol 87, para 786.
[51] (1990) 61 P & CR 194 at 197.
[52] ibid. See also *Brand v Creasey* (BZ SC, 17 April 2013).

availability of an alternative access that is legally enforceable, even if less convenient, will negative any implication of an easement of necessity.[53] A way of necessity terminates when the necessity for access through the servient tenement ceases.[54]

[76] In the instant case, the conditions do not exist for implication of an easement of necessity over Parcel 5031 in favour of Parcel 4105. Parcel 4105 and the land which formed Parcel 5031 were in the common ownership of the Government of Belize. When the Government issued title to Parcel 4105 to Mr Matus in 2003, public access to the parcel (via the Belize River) could only be obtained through the national land in front of the parcel. Even if an easement of necessity over that national land could have arisen by implication, the necessity for that easement would have ceased when Mr Matus acquired Parcel 4106 in 2005. By virtue of the common ownership of Parcels 4105, 4106 and 1335, Parcel 4105 gained access to a public road. If there is a subsequent disposition of Parcel 4105 without an express grant of an easement over Parcels 4106 and 1335, the question of implication of an easement of necessity might arise.

Disposition

[77] For the foregoing reasons, the Court orders that:

(i) The appeal is allowed;

(ii) The judgment of the Court of Appeal dated 20 September 2023 is set aside;

(iii) The order of the Supreme Court dated 27 April 2021 is restored;

(iv) The First Respondent shall pay to the Appellant and the Second and Third Respondents the costs in the Court of Appeal, to be assessed or agreed;

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[53] *Menzies v Breadalbane* (1901) F 59; *Rampersad v Jattan* TT 1989 HC 138 (CARILAW), (30 November 1989); *Manjang* (n 51).
[54] *Pheysey v Vicary* (1847) 16 M&W 484, 153 ER 1280 at 1285; *Pearson v Spencer* (1863) 3 B&S 761, 122 ER 285 at 287; *Holmes v Goring* (1894) 2 Bing 76, 130 ER 233; *Donaldson v Smith* [2007] 1 P & CR DG2; Sampson Owusu, *Commonwealth Caribbean Land Law* (Routledge-Cavendish 2007) 419; Jonathan Gaunt and Paul Morgan, *Gale on Easements* (20th edn, Sweet & Maxwell 2017) 3-175.

(v) The First Respondent shall pay to the Appellant the sum of USD22,500 or its Belizean equivalent and to the Second and Third Respondents the sum of USD22,500 or its Belizean equivalent, representing the Costs of the Appeal.

/s/ A Saunders

Mr Justice Saunders (President)

/s/ W Anderson

Mr Justice Anderson

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ A Burgess

Mr Justice Burgess

/s/ C Ononaiwu

Mme Justice Ononaiwu