[2019] JMSC Civ 231

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2011HCV06339

IN THE MATTER OF all that parcel of land part of Sandy Bay in the parish of Hanover containing by survey 355.1066 square metres of the shape and dimensions and butting as appears by the plan dated 18th March, 1999

AND

IN THE MATTER OF the Limitation of Actions Act, 1881

AND

IN THE MATTER OF the Registration of Titles Act, 1889

BETWEEN	**EVELET CUNNINGHAM-DARLING**	**CLAIMANT**
AND	**HILLARY SAMUELS**	**1ST DEFENDANT**
AND	**THE REGISTRAR OF TITLES**	**2ND DEFENDANT**

IN CHAMBERS

Ronald Paris instructed by Paris & Co. for the claimant

Jean M. Williams for the 1st defendant

Hazel Edwards instructed by the Director of State Proceedings for the 2nd defendant

April 09 and 19, 2013 and December 2, 2019

Necessary status before court to obtain a remedy – Different ways to establish a good root of title – Documentary evidence and evidence of "adverse" possession are two methods – A licensee does not have an interest in land – Operation of the Limitation of Actions Act where adverse possession relied upon to ground title – Both factual open undisturbed possession by the dispossessor for the limitation period and the intention of the dispossessor to possess the property are important in determining if the dispossessor acquires title by adverse possession – Factors to be considered to determine if an occupant has obtained possessory title to a part of a building where the building has multiple occupants – Registration of Titles Act – Appropriate procedure to be followed where application being made for first registration of land – Inappropriate to join Registrar of Titles in proceedings in which certain remedies are sought.

D. FRASER J

BACKGROUND TO THE CLAIM

[1] The claimant and the 1st defendant are cousins, who share the same great-grandmother Annie Mandro. This claim arises from a dispute between those two parties concerning the claimant's beneficial interest, if any, in the property, known as all that parcel of land, part of Sandy Bay in the parish of Hanover containing by survey 355.1066 Square Metres of the shape and dimensions and butting as appears by the plan dated the 18th March, 1999 (the property). The parties accept that the 1st defendant's grandmother, Edna Lawrence, was in sole occupation of the property for a long period and that at some point after her death, the claimant and the 1st defendant along with others were in occupation of the property.

[2] A dispute arose between the claimant and the 1st defendant concerning the claimant's residence at the property and in 1999 the claimant was served with a Notice to Quit by the 1st defendant. Despite that Notice the claimant has remained in occupation of the property. At the instance of the 1st defendant, the property was surveyed in 1999. In 2000 the 1st defendant made an application to the 2nd

defendant to be made the first registered proprietor of the property, under the **Registration of Titles Act**.

[3] The claimant received a Notice from the National Land Agency dated April 19, 2011 advising her of the application by the 1st defendant to bring the land under the **Registration of Titles Act**. In response, the claimant lodged a caveat with the 2nd defendant against the property and commenced this claim.

THE CLAIM

[4] The claimant filed a fixed date claim form and supporting affidavit on 12th October, 2011, seeking the following reliefs:

(i) a declaration that she is entitled in equity to the ownership of two (2) rooms of Edna Lawrence's original board house, which have been converted by the claimant into two (2) concrete rooms, as well as the land on which they are situated;

(ii) an injunction restraining the 2nd defendant from completing the first registration of the 1st defendant as the registered proprietor of the property; and

(iii) a declaration that she is a bona fide occupier of the property together with the 1st defendant and others, which fact the 1st defendant ought to have disclosed to the 2nd defendant in her application A.1117234 for first registration, thereby obliging the 2nd defendant to give statutory notice to the claimant and others of the 1st defendant's application, in accordance with the provisions of the **Registration of Titles Act** (**ROTA**).

[5] By this claim the claimant contends that she has acquired an interest in two (2) of the four (4) rooms in Edna Lawrence's house by adverse possession and that the 1st defendant has no greater right than she does to be registered as proprietor of the subject property. The 1st defendant disputes this interest, maintaining that the claimant has no interest whatsoever in the property.

THE CLAIM AGAINST THE REGISTRAR OF TITLES

[6] Prior to the commencement of the evidence in this matter the court heard submissions from counsel for the claimant and for the 2nd defendant regarding the propriety of the joinder of the 2nd defendant in this claim. Counsel for the 2nd defendant relied on ss. 158, 160, 162, 164 - 166 of the **ROTA** and the Court of Appeal decision of ***The Registrar of Titles v Melfitz Limited and Keith Donald Reid*** SCCA No. 9 of 2003, (jud. del. July 29, 2005). Counsel submitted that i) as there are no allegations of fraud, collusion, complicity and/ or wrong doing, the Registrar ought not to have been joined in the proceedings; ii) there is no provision in the **ROTA** for the bringing of an action against the Registrar of Titles (Registrar) for a declaration of any kind, where there has been no error, misdescription or omission; and iii) the application for an injunction was misconceived as the 2nd defendant having been served with the claimant's fixed date claim form on 27th October, 2011 had not since then taken any steps to issue a registered title to the 1st defendant. Counsel further submitted that the 2nd defendant would be obliged to carry out the order of the court if it was found that the claimant has an interest in the property, the subject of the dispute. Accordingly, counsel contended the claim should not proceed against the 2nd defendant. Counsel maintained that the 2nd defendant should be entitled to costs, as from December 6, 2011. Counsel for the Registrar had advanced that, as there were no allegations against the Registrar, she should not have been joined in the claim. Further that the Judge had then indicated that the Registrar should just watch the proceedings. Despite those indications however the claimant had persisted in her claim against the Registrar, which had caused the Registrar to have to file an affidavit and continue to be engaged in the matter.

[7] Initially counsel for the claimant sought to resist the submissions of counsel for the 2nd defendant, primarily on the basis that, as he contended the 2nd defendant had breached the provisions of s. 36 of the **ROTA**, by not requiring the 1st defendant to notify persons occupying the land other than the applicant, prior to proceeding with her application. However after further consideration, counsel relented and

indicated that the allegations against the 2nd defendant would not be pursued. Given the submissions advanced by counsel for the 2nd defendant, it is clear the 2nd defendant is entitled to her costs from the claimant up to the time of the concession made by counsel for the claimant.

PRELIMINARY POINT

The position of Donovan Thompson before the court.

[8] Before considering the substantive issues raised in this claim, it is important to address the status of Donovan Thompson, the brother of the claimant, before the court. Counsel for the claimant submitted that the 1st defendant is not entitled to proceed with her application for first registration without considering the interests of the claimant and Donovan Thompson in the subject property. Counsel for the 1st defendant on the other hand contended that Donovan Thompson only had a license to occupy the subject property but that, in any event, as there was no claim by him before the court, the court could not consider his position.

[9] Rule 2.4 of the **Civil Procedure Rules** (CPR) defines a claimant as a person who makes a claim. Part 8 of the CPR outlines what making a claim entails, including as in a case like this, filing a fixed date claim form, whether jointly or separate, in which is set out the claim, the remedy sought and the legal basis or bases supporting the claim. A claimant also needs to provide evidence so that a defendant knows the case (s)he has to meet, and if so inclined, seek to rebut it.

[10] Mr. Thompson has neither jointly nor separately filed a claim in this matter. No application was made during the proceedings to have him joined as a claimant. Mr. Thompson appeared and continued throughout these proceedings only in the capacity of a witness for the claimant. The claimant has made certain assertions on his behalf and his evidence is partly in support of these assertions. However, that is insufficient for him to obtain a remedy from the court, even if the analysis of the evidence points to his having an interest in the property, as he did not approach the court as a claimant seeking a remedy.

THE ISSUES

[11] The issues that arise for determination are:

(i) Whether either the claimant or the 1st defendant has established a good root of title?

(ii) If the 1st defendant has established a good root of title, whether the 1st defendant permitted the claimant to occupy two (2) of the four (4) rooms of Edna Lawrence's board house on the property?

(iii) Whether the claimant has acquired beneficial interests in the two (2) rooms occupied by her on the property through adverse possession?

(iv) Whether the 1st defendant failed to comply with s. 33 of **ROTA**?

THE EVIDENCE ON BEHALF OF THE CLAIMANT AND 1ST DEFENDANT

The Claimant's Evidence

[12] The claimant stated that she was informed by her grandmother Eveline Johnson and verily believed, that the subject property was originally owned by her mother, the claimant's great-grandmother Annie Mandro, who upon her death, left the land to her three daughters, Eveline Johnson, Maurdrina Kerr and Edna Lawrence. The claimant also stated that Edna Lawrence built a four (4) room board house on the property for which she used to pay tax. Ms. Lawrence had occupied two rooms and rented out the other two.

[13] The claimant indicated that Annie another daughter of Ms. Lawrence who resided in the United Kingdom, commenced construction of 2 concrete rooms and a bathroom attached to Ms Lawrence's house, but they were unfinished, having reached "bell course", when Ms. Lawrence later died.

[14] The claimant also outlined that when Ms. Lawrence fell ill, Eveline Johnson who lived nearby used to care for her. The claimant further stated that as a teenager

she used to go and sleep with Ms. Lawrence at nights. This she did for two years up to Ms. Lawrence's death. The claimant maintained that after the death of Ms. Lawrence, when she was about 19 years old, with the consent of her grandmother Ms. Johnson she moved into one of the rooms previously occupied by Ms. Lawrence and then she subsequently took over Ms. Lawrence's other room.

[15] The claimant also indicated that after Ms. Lawrence's death, her tenants remained and paid rent to Ms. Lawrence's grandsons, "Lampie" and "Eric" who are first cousins of the 1st defendant.

[16] The claimant stated that when Ms. Lawrence died the 1st defendant, who is the daughter of Ms. Lawrence's son "Brownie", was living in Lucea. Further, that it was about three years after the death of Ms. Lawrence that the 1st defendant came seeking to live at the premises. The claimant also indicated that despite objections from certain family members, after one of the tenants vacated one of the rooms that had been rented by Ms. Lawrence, the 1st defendant moved in.

[17] The claimant continued her narrative by stating that the 1st defendant did not remain long in Ms. Lawrence's house, but built a separate one room board house that she moved into. Then in about 2001 the 1st defendant converted that room into a two room concrete house, which her son Rodney further added to.

[18] The claimant also outlined that over the years a number of changes had taken place concerning occupation of and construction connected to Ms Lawrence's house as follows:

(1) After the 1st defendant moved out of Ms. Lawrence's house, Sheila Green who is married to the claimant's uncle, Derias Green, a son of Eveline Johnson, moved in;

(2) Having received permission from Eddie, Annie's son, the claimant's brother Donovan Thompson in about 1996, completed and moved into one of the

rooms that had been started by Annie. In about 2006 he added another room and bathroom next to that room;

(3) One year after Donovan Thompson started living in his room, Shauna Robinson, one of the 1st defendant's daughters completed the other of Annie's unfinished rooms and bathroom. Then, she later added another room, a hall, kitchen and verandah;

(4) In 2009, "Pops" one of the 1st defendant's sons took over Ms. Lawrence's original board room, which he converted into a concrete room next to Shauna Robinson's room;

(5) In 2009 the claimant demolished the 2 board rooms she occupied and converted them into two concrete rooms;

(6) Sheila Green remains in occupation of the last original board room.

[19] The claimant contended that she has been in sole undisturbed exclusive possession of the two rooms formerly occupied by Ms. Lawrence, from about 1984-85 approximately two years after the death of Ms. Lawrence. She also indicated that she has paid tax for the land for the year 2012-2013. She maintained that the 1st defendant had no greater right than her to be the registered proprietor of the property, or to extinguish her possessory rights to the property.

[20] In cross-examination she agreed that when she was growing up the 1st defendant used to live with Ms. Edna Lawrence. She denied that the 1st defendant gave her permission to occupy either of the two rooms, maintaining that the 1st defendant was not around when she took possession of the 1st room. She acknowledged that she had received a notice from the 1st defendant on the 16th August 1999, and that she was served with a summons. She however stated that she ignored the notice, did not go to court and has remained on the property because she knew it did not belong to the 1st defendant.

[21] She further indicated that she never heard her grandmother Ms. Johnson and Ms. Lawrence quarrelling over the land. She stated that everybody knew that the land had belonged to Annie Mandro. She denied knowing a Sandy Wilson or knowing Edna's father but testified that she heard from Eveline Johnson that her (Edna) father's name is Wilson. She maintained that the land did not belong to the 1st defendant's or her father but was family land.

[22] She admitted that Leeson Samuels, the 1st defendant's father, obtained a grant as Administrator of Ms. Lawrence's estate dated September 1, 2010. However, she maintained that neither he nor the 1st defendant owns the subject property, as it is '*family land'*. She maintained that the property belonged to Annie Mandro and that she was seeking to continue living on her great grandmother's land.

The Evidence of Donovan Thompson

[23] He indicated that he constructed 2 rooms on the property, rented one and stored personal possessions in the other.

[24] In cross-examination he stated that he did not live on the land now but that he had gotten permission to live on the land first from his grandmother and then from Eddy (understood to be the same person as 'Eddie' referred to by the claimant), Ms. Lawrence's grandson. He also indicated that it was he who finished one of the two rooms that had been unfinished on the subject property when Ms. Lawrence died. He further stated that when he started putting on a bathroom he got a Notice to Quit the premises that had the 1st defendant's name in it, from the Legal Aid Council. He contended that even though he got that notice, he continued to work on the property.

[25] He testified further that later he started an expansion after his cousin came from England and spoke to the 1st Defendant. He denied receiving a letter from Mr. Bryan Clarke, Attorney-at-Law on behalf of the 1st defendant advising him that he should not build any structure as it would be at his own risk. He maintained that he did not see building on the subject property as a risk, as he regarded all of the land

as “capture land”. In answer to the court he indicated that he lived on the land from 1997 to about 4 years before the time of trial.

The Evidence of the 1st Defendant

[26] In her affidavit in response to the claim, the 1st defendant indicated that Annie Mandro never had any legal or equitable interest in the subject property which was instead owned by Mr. Sandy Wilson, the father of Edna Lawrence. She further stated that the subject property was bequeathed to Ms. Lawrence by her father. She maintained therefore that Eveline Johnson, the claimant’s grandmother had no legal or equitable interest in the property. Accordingly, the subject property was listed on the tax roll as being owned by Edna Lawrence without any reference to any of her other sisters.

[27] The 1st defendant further indicated that the property was occupied by her grandmother Edna Lawrence who, when she became ill in 1979, gave the land to her son Leeson Samuels, the 1st defendant’s father.

[28] The 1st defendant also stated that Ms. Lawrence took her to live with her on the property from she was three months old up to Ms. Lawrence’s death on the 19th January 1983; from which time she has been in possession and control of the property and paying all the property taxes. Ms. Lawrence she maintained, was survived by Leeson Samuels and Merverly Haughton who died shortly after Ms. Lawrence, leaving Leeson as the only surviving child of Ms. Lawrence. She also indicated that from her personal knowledge Ms. Haughton’s children have no interest in the land and rarely visit Jamaica. She indicated that Eddie, was Ms. Haughton’s son and he lived in England.

[29] The 1st defendant also stated in her affidavit that in 1986 she allowed the claimant to reside in one of the rooms on the property and later gave permission for the claimant’s children to occupy an additional room. These permissions she said were given pending construction by the claimant of her dwelling home on 7 ½ acres of land at Mammie Hill, Sandy Bay owned by Eveline Johnson.

[30] The 1st defendant further stated that in 1999 the claimant sought her permission to add a concrete bathroom to her board dwelling. She refused on the basis that her occupation was temporary. The 1st defendant outlined that she subsequently asked the claimant to leave and issued her a Notice to Quit on the 19th August 1999 which was served on her by Steadman Bowen a District Constable. The claimant however refused to give up possession and the 1st defendant issued proceedings for recovery of possession in the Resident Magistrate's court. The notice and proceedings were however ignored by the claimant and the 1st defendant indicated that she was advised that she would need to obtain title to have the claimant evicted.

[31] The 1st defendant also outlined that about July 31, 2000 she lodged an application with the Registrar of Titles to register the property in her name to reflect her legal and equitable ownership.

[32] Concerning Donovan Thompson the 1st defendant stated that he was temporarily accommodated on the premises in or about March 1999 and when he started to build a concrete structure she verbally advised him to stop. He having ignored her, she obtained a Notice from the Legal Aid clinic and served it on him. She indicated that he stopped his construction and instead built a house on his grandmother (Eveline Johnson's) land at Mammie Hill.

[33] The 1st defendant contended that in 2006 while Donovan Thompson was still living at Mammie Hill, he returned to the property and started to build a concrete structure. She consulted her attorney-at-law Mr. Bryan Clarke and had a Notice served on Mr. Thompson which he ignored. She further went to the Lucea Parish Council which led to a "cease work notice' being given to Mr. Thompson on 6th May 2006 for him to show relevant proof of ownership and the relevant drawing. Nevertheless he completed construction and rented it to a tenant.

[34] The 1st defendant stated that on the 1st September 2010 her father Leeson Samuels obtained a Grant of Administration in Edna Lawrence's estate from the

Supreme Court. The 1st defendant stated that her father gave the property to her as she had been living with Ms. Lawrence from she was three months old up to Ms. Lawrence's death.

[35] In cross-examination she denied that Donovan Thompson finished a building started by Eddie, (also known as Eddy and Keith Haughton), maintaining it was another son of Ms. Haughton, Levi Haughton who had started it. She also stated that she did not know how Mr. Wilson gave the land to Ms. Lawrence, and admitted that apart from her saying so she had no documents to show that Mr. Wilson passed the land to Ms. Edna Lawrence, that Edna gave the land to Leeson or that Leeson gave the land to her. She later however sought to rely on the declaration of Leeson Samuels dated 1st June 2006 (Ex 2) which was filed in support of her application to register the land.

[36] She said before 1979 her father was living in Ocho Rios and then he moved to Braco, Sandy Bay and then back to Braco. At the time of trial she said he had been in the United States of America since 2009. She said her father "took possession" of the property by sending money to pay the taxes. She indicated she had tax receipts for the years 1979 – 1982. The tax receipts for 1979 were destroyed in Hurricane Gilbert, but she had all the tax receipts since 1989. She also indicated that she was "put in possession" as she was there taking care of Ms. Lawrence when she was sick.

[37] She indicated that she knew the land before 1969 and knew that in 1969 Eveline Johnson used to live on a separate tract of land topside Ms. Edna Lawrence's property.

[38] She further stated that when Edna died, she was occupying all four (4) board rooms. It was only her and Edna who lived at the home, she lived in one (1) room and Edna lived in another. There were items in the other two (2) rooms and it was after Edna's death that the house was rented. One of the claimant's uncle's, (Eveline Johnson's son, Dennis Nelson), collected the rent and gave it to one of

her bigger cousins, Doreen Johnson, (Merverlyn Haughton's daughter), whenever she came to Jamaica.

[39] She maintained that when Edna died it was she who was left on the property and that later in 1986 she gave permission to the claimant to live in the house. She maintained that from 1986 – 1992 she and the claimant shared the house; the claimant occupying two rooms, she the 1st defendant one room and the fourth room was tenanted. In 1992 she indicated that she started to construct a room on the property, and that she converted the board room to a wall room in 2004.

[40] She maintained that she gave the claimant permission to occupy the 1st room and later the 2nd room in the board house and that she was the one in charge of the property. She denied that the claimant was on the property from 1983 and in open peaceful possession of the rooms she occupied.

[41] She also denied that Edna Lawrence and Eveline Johnson were equally entitled to the property and that similarly the claimant, Donovan and herself, were all entitled to share in the property.

[42] Importantly during cross-examination using photographs entered into evidence by counsel for the claimant also established pictorially the two rooms that the claimant occupied, the room occupied by her brother beside it and the last surviving board room of Ms. Edna Lawrence occupied by Sheila Green, to the right of the rooms occupied by the claimant.

SUBMISSIONS

[43] Counsel for the claimant made submissions in writing and orally. Despite the concession made by counsel for the claimant in relation to the 2nd defendant the written submissions relating to the 2nd defendant have been summarised briefly to enable a full understanding of the claimant's contentions as a whole. Counsel submitted that:

(i) The claimant is in undisturbed adverse possession of two (2) rooms of a house situate on the property, for over twenty-four (24) years and has acquired equitable rights over the rooms occupied by her and the land on which those rooms are situated;

(ii) The claimant is just as entitled to share in the equitable ownership of the subject property as the 1st defendant, who has not established a greater right than the claimant to the house and property occupied by the claimant;

(iii) The 1st defendant is not entitled to proceed with her application for first registration without taking into account the interests of the claimant and her brother, Donovan Thompson, and to that extent, the claimant is entitled to the appropriate injunction against both defendants;

(iv) The 1st defendant is alleging ownership of the subject property without establishing any root of title. Further, despite disclosing the claimant's possession of the two (2) rooms for the twenty-four (24) years, she failed to disclose the occupation of the subject property by the claimant's brother, Donovan Thompson. The 1st and 2nd defendants therefore failed to comply with the provisions of **s. 36** of **ROTA.**

(v) There is no evidence that the 1st defendant stipulated in accordance with **s. 33** the persons who should be served with her application other than the adjoining occupants and the 2nd defendant did not in accordance with **s. 36** direct the 1st defendant to serve the claimant since the claimant had been identified by the 1st defendant in her application for first registration as one of the persons occupying the property;

(vi) The 1st defendant has failed to disclose whether she comes within the class of persons set out in **s. 28** of the **ROTA**, who are entitled to apply for a registered title;

(vii) Neither party has adduced any documentary evidence to establish a root of title; there is no root of title and accordingly the issue falls to be determined on the basis of possession, which is nine-tenths of the law; and

(viii) The payment of taxes by the 1st defendant in the name of Edna is not proof that Edna owned the land or was entitled to it.

[44] Counsel for the 1st defendant submitted in writing and orally, that:

(i) Neither party has provided any documentation in relation to their respective positions. However, there is no issue that Edna enjoyed sole, quiet, peaceful and undisturbed possession of the land for upwards of fifty (50) years. Therefore, her possession of the land had crystalized and passed to her heirs and successors;

(ii) The property having been in the possession of Edna for this considerable period of time, the claimant cannot obtain adverse possession in her, her heirs, administrators or assigns. Prior to the date of Edna's death, the claimant is not claiming entitlement by adverse possession and she is not claiming adverse possession against Edna;

(iii) The 1st defendant's payment of property taxes as evidenced by the receipts she produced, is not evidence of title but it shows consistency on the part of the 1st defendant and her father and supports the argument that the 1st defendant has always been in possession of the subject property;

(iv) Neither the claimant nor the 1st defendant provided any credible evidence which takes the land out of the possession of Edna;

(v) The claimant has failed to show that she dispossessed Edna, her heirs and successors of the title to the subject property. Thus, title in Edna has

not been defeated and the successors of Edna should therefore benefit from her estate. The claimant falls outside of this category of persons;

(vi) The claimant has admitted that she obtained permission to move unto the subject property and the only person who could grant permission for the claimant to be on the subject property would be the personal representative of Edna's estate;

(vii) The claimant and her brother entered the premises with permission and remained licensees throughout their occupation. The acts done under a license or permitted by the owner do not give the licensees a title under the **Limitation of Actions Act** (hereinafter referred to as the **LAA**) and the claimant has failed to provide evidence to satisfy the court as to when Donovan Thompson and her status changed from being licensees to squatters. In any event, there being no application by Donovan Thompson, the court cannot consider him;

(viii) As it relates to multiple occupation, the claimant has failed to provide credible evidence on which the court can rely to make a determination that that part of the building is capable of being possessed by the claimant, exclusive of others, and has therefore failed to discharge the onus which she bears;

(ix) The matter of adverse possession is one of credibility to be determined by the court;

(x) There can be no distribution of an estate without that person having the authority of a personal representative of the estate. The claimant asserted that Keith Haughton (Eddie/Eddy) gave her brother, Donovan Thompson, permission to do construction on the property. There is no evidence that Keith Haughton obtained a Grant of Letters of Administration (hereinafter referred to as a Grant) in respect of the estate and therefore cannot distribute the estate. Until a Grant is obtained, no

one can make a claim in relation to the property and no one can distribute the estate;

(xi) Further, the evidence adduced is that Keith Haughton gave Donovan Thompson, permission to go on the subject property; he did not purport to make a gift to him;

(xii) Leeson Samuels, (Edna's son and the 1st defendant's father) obtained a Grant in relation to Edna's estate on 1st September, 2010. Having obtained the Grant, and there is no application to revoke the Grant, the Grant stands and his authority to distribute the estate is indefeasible. He has given the estate to his daughter, the 1st defendant;

(xiii) It is the statutory duty of the personal representative to collect and get in the real and personal estate of a deceased and administer it according to the law; and

(xiv) The sole heir of Edna's estate is Leeson Samuels, and Merverlyn (also called Mervlyn, Mervalyn or Annie) Haughton's children would only have a beneficial interest in the estate. They are the only ones who have the locus standi in a claim regarding the distribution of the estate, that is, Leeson Samuels giving the estate to the 1st defendant.

ISSUE 1: WHETHER EITHER THE CLAIMANT OR THE 1ST DEFENDANT HAS ESTABLISHED A GOOD ROOT OF TITLE?

Analysis

[45] In **Williams on Vendor & Purchaser**, 4th Edition, at p. 124, on the question of what constitutes a good root of title it is stated that:

> It must be what is called a good root of title; that is to say, it must be an instrument of disposition dealing with or proving on the face of it without the aid of extrinsic evidence the ownership of the whole legal and equitable

> estate in the property sold containing a description by which the property can be identified and showing nothing to cast any doubt on the title of the disposing parties.

[46] A good root of title may therefore be evidenced in an instrument or document proving title, such as a will or a deed of gift. It is common ground that neither the claimant nor the 1st defendant, has provided any such evidence.

[47] Recognising that the root of title is not always evidenced in documentary form, the common law admits of other methods of establishing a good root of title. In ***Re Atkinson & Horsell's Contract*** (1912) 2 Ch 1, the Court of Appeal by a majority held that where a vendor contracts to give title commencing with a particular instrument, and subsequently cannot give such a title, but can give a good possessory title from a later date, the purchaser is required to accept that title.

[48] At page 14, Buckley LJ stated that:

> There is another consideration, and it is this. It is not the fact that the deeds prior to the date when adverse possession commenced are irrelevant. They are relevant. They may be relevant in various ways. They may be relevant to shew that at the date when the adverse possession commenced there was not a person under disability who could defeat the title by possession. They may be material under certain circumstances to shew what was the estate of which adverse possession was taken, as, for instance, that by statute there was some right against the land which would bind everybody into whose hands it might come. Early documents may be material, and it does not at all follow because the root of title is specified as being of a date prior to that at which the title by adverse possession commences that those deeds are necessarily irrelevant. Upon principle it seems to me that the vendor shewing a good title is entitled to say to the purchaser "You must take that; I have done that which I contracted with you that I would do. I have begun in 1838; I have shewn all the material facts from that time to the present. The date of commencement of title is named only so as to relieve me from going to an earlier date." That is what is meant by the root of the title. It is not meant that the named deed or will is the root of the title in the sense that that deed or will is an essential factor in establishing the title which is ultimately to be accepted.

[49] Therefore, a good root of title may be shown through adverse possession, granting the dispossessor and his heirs or assigns, a possessory title.[1] A possessory title is dependent primarily upon actual occupation of the land, or upon receipt of the rents and profits it yields, and not necessarily upon a documentary title. **See: Ruoff & Roper on the Law and Practice of Registered Conveyancing** by Theodore B. F. Ruoff, 1994, para. 5-05.

[50] It is clear therefore that the determination of whether the claimant is entitled to the two (2) rooms and the part of the subject property on which they are situate that she claims will partly depend on whether the court finds it established that she has obtained a possessory title to them, that cannot be defeated by any circumstance that existed prior to when she came into possession.

ISSUE 2: ***IF THE 1ST DEFENDANT HAS ESTABLISHED A GOOD ROOT OF TITLE, WHETHER SHE PERMITTED THE CLAIMANT TO OCCUPY TWO (2) OF THE FOUR (4) ROOMS OF EDNA LAWRENCE'S HOUSE ON THE SUBJECT PROPERTY***

Did the Claimant commence occupation of the property as a licensee of either Eveline Johnson or the 1st defendant?

[51] The claimant has argued that she first came to live on the property after the death of Ms. Lawrence through the permission of her grandmother Eveline Johnson and had established herself there prior to the 1st defendant coming to live there. The 1st defendant has advanced an alternative narrative. She contends that Ms. Edna Lawrence was the sole owner of the property who having gotten the property from her father Sandy Wilson, passed it to her son Leeson Samuels who in turn gave it to the 1st defendant, she having been with Ms. Edna Lawrence since she was three months old. The 1st defendant maintains that the claimant entered the property

[1] There is at least one other means of establishing a good root of title which is not relevant in this case. title to land at common law is not invariably derivative, for it is sometimes possible for an entirely fresh title to be created, conferring a new fee simple estate. See: **The Law of Real Property** by the Rt. Hon. Sir Robert Megarry and H.W.R. Wade, Fifth Edition, p. 103.

based on her permission and remained a licensee throughout her possession. A licensee who could not claim title by adverse possession as the license was never revoked.

[52] It is clear from the evidence coming from both sides, and this court accepts, that Ms. Edna Lawrence enjoyed sole occupation of the property for several years. Significantly the claimant, agreeing with the position of the 1st defendant indicated that she had always known Ms. Lawrence to live on the property, and that Ms. Lawrence raised the 1st defendant. It is equally clear that Eveline Johnson and Maudrina Kerr lived elsewhere. There is no evidence of where Bertha Johnson lived but there is no suggestion that she resided on the property.

[53] The 1st defendant maintained, and the court agrees that the property belonged solely to Edna Lawrence up to the time of her death. I have come to this conclusion whether the property initially belonged to Annie Mandro or Sandy Wilson, as through Ms. Lawrence's long, open, peaceful, sole occupation of the property (save for those persons she permitted to live there) for a period in excess of twelve (12) years she obtained a possessory title to the property.

[54] The fact that it was in excess of twelve years is evident from the evidence that the 1st defendant lived with Ms. Lawrence from she was three months old, an assertion that was never refuted by the claimant. The 1st defendant was born in 1961 and Ms. Lawrence died in 1983; twenty-two years later. The date of death of Ms. Lawrence is stated on a copy of a Property Tax Receipt received in evidence as the 19th January 1983, the same date reflected in the Grant of Administration issued September 1, 2010. It is also reasonable to infer that Ms. Lawrence was on the property for some time prior to the birth of the 1st defendant.

[55] Therefore, even if initially Ms. Lawrence's exclusive ownership of the property at the start of her occupation was not clearly established, by the time of her death that ownership was not in doubt. This is in a context where the claimant admitted that neither Eveline Johnson nor Maudrina Kerr ever tried to remove Edna from

the property. There was no evidence that Edna remained in occupation with their permission. Consequently, even if the claimant is correct that the land was initially owned by Annie Mandro and passed down to her daughters, the title of anyone else other than Edna Lawrence would have been extinguished by the time the claimant moved onto the land. Accordingly on the facts, even as posited by the claimant, Eveline Johnson would not have had any beneficial interests nor the capacity to permit the claimant to occupy the subject property, though if the claimant's narrative is true, both Ms. Johnson and the claimant would have been labouring under a mistaken view that Ms. Johnson had such interests and capacity.

[56] Since Ms. Lawrence acquired a possessory title and died without leaving a will, it is her beneficiaries who prima facie would have beneficial and/or equitable interests in the property flowing from her possession. Under section 4 of the **Intestates' Estate and Property Charges Act,** in the absence of a spouse Ms. Lawrence's children would be the principal beneficiaries of her estate. At the time of the filing of the claim Leeson Samuels, the sole surviving child of Ms. Lawrence had obtained a Grant of Administration and signed a declaration in support of his daughter the 1st defendant's application for first registration of the property indicating that he had passed the property onto her.

[57] That action would be subject to any claim that any issue of the other children of Ms. Lawrence would have to the property. The court has however not been invited to investigate any such interest, though the 1st defendant in her evidence has sought to remove any other contending interest having indicated that to her personal knowledge the children of Mervelyn Haughton have no interest in the property. The question for this court is whether as the 1st defendant contends she gave the claimant permission as a licensee to occupy the property when the claimant first moved into the property after the death of Ms. Lawrence.

[58] The resolution of this issue is central to the outcome of this case as in the Privy Council decision of ***Clarke v Swaby*** [2007] UKPC 1, Lord Walker at para. 11 stated that:

> [I]t is perfectly clear that under the law of Jamaica, as is the case in England, a person who is in occupation of land as a licensee cannot begin to obtain a title by adverse possession so long as his license has not been revoked. Unless and until it is revoked his occupation of the land is to be ascribed to a license and not to an adverse claim.

[59] A license therefore does not create any estate or legal or equitable interest in the property to which it relates. Consequently, if the claimant entered the premises as a licensee, for the period of her license, she would not have acquired any proprietary estate in the property, even if she had absolute control of the rooms and the part of the land on which they are situate, for at least twelve (12) years, with the intention to possess them. If she is a licensee, her occupancy can be terminated by the giving of reasonable notice. Therefore, to establish her claim to an equitable interest, she must prove that she has occupied the rooms with the intention to possess them and the part of land on which they are situated, for at least twelve (12) years, without the true owner's permission.

[60] The claimant in her evidence stated that she moved onto the property after the death of Ms. Lawrence, when she was about nineteen years old. Given her age at the time of swearing her first affidavit, the court was able to calculate that she would have been about nineteen in 1986, the same year the 1st defendant said she gave her permission to move onto the property.

[61] Is there any evidence that supports either the contention of the claimant or of the 1st defendant on the issue of whether the claimant moved onto the property with the 1st defendant's permission? The 1st defendant has maintained that she was given the land by her father Leeson Samuels. However the evidence does not indicate that he was ever in physical occupation of the property, with his "possession" being limited to sending money to pay taxes. In his declaration of June 2000 in support of the 1st defendant's application Leeson Samuels stated that he gave the land to the 1st defendant in 1982, the year before Ms. Lawrence died.

The Payment of Rent

[62] While that might be explainable as a simple error, though the 1st defendant never sought so to put forward any such explanation, there are other matters which touch and concern the question of the 1st defendant's control over the property. It was the 1st defendant's evidence that one of the claimant's uncle's, (Eveline Johnson's son, Dennis Nelson), collected the rent and gave it to one of her bigger cousins, Doreen Johnson, (Merverlyn Haughton's daughter), whenever she came to Jamaica. On the face of it that is inconsistent with the 1st defendant or her father, before her, having been in charge of the land. There is no assertion or record of rent having been paid by any of the occupants of the property to Leeson Samuels or to the 1st defendant.

[63] The payment of rent to Dennis Nelson for onward transmission to Doreen Johnson gives credence to the claimant's assertion that the house was rented before Ms. Lawrence's death. After Ms. Lawrence died, the rent was sent elsewhere, not to the 1st defendant. Does that suggest, as maintained by the claimant that the 1st defendant was initially not living on the land after Ms. Lawrence died and further that she had no claim greater than a number of other people to the property?

The Payment of Taxes

[64] Both the claimant and 1st defendant in seeking to bolster their respective contentions, have asserted that they have paid taxes for the subject property. They have also exhibited copies of tax receipts. The copy receipt exhibited by the claimant is dated July, 22, 2011 and reflects payment for the 2012-2013 tax year. The claim was filed a few months later. The claimant however maintained that this was not the first time she was paying the taxes. She stated that she usually gave the money to the 1st defendant. While she provided no evidence of this the 1st defendant did not challenge this assertion.

[65] The 1st defendant also exhibited several tax receipts which accounted for the years 1989 – 90, 2000 – 2001 and 2004 – 2005. She however stated that she had tax

receipts from 1979 – 1982 and from 1989 – 2013, though with the exception of the year 1989 – 1990 they were not exhibited. In respect of 1979 she explained that it was destroyed in Hurricane Gilbert in 1988.

[66] Both counsel agreed that the payment of taxes was not evidence of title. Nevertheless, counsel for the 1st defendant went further to say that payment does show consistency on the part of the 1st defendant. However as noted in ***Richardson v Lawrence*** (1966) 10 W.I.R 234, payment of taxes does not create an interest in land nor is it necessarily evidence of ownership of land, as it may be paid by anyone who desires so to do and the tax roll may actually be in the name of someone who has been dispossessed.

Conclusion

[67] Having carefully considered the circumstances of this case, given that the claimant stated that she was given permission to reside on the property by Eveline Johnson and rent was being collected from tenants by Eveline Johnson's son on behalf of a cousin (Mervelyn Haughton's daughter), it does appear that erroneously the view was held by more than one person, including the claimant that Eveline Johnson was capable of exercising some rights of ownership over the land. That body of evidence which I accept, is inconsistent with the 1st defendant having been the one to give the claimant permission to reside on the property. I accept that the claimant viewed the property as "family land" which she was entitled to occupy. The large number of family members who over the years have occupied and/or sought to improve the property or to exercise other rights of ownership over the property such as offering parts of the property for rent, supports the court's finding that the property was widely viewed as "family land".

[68] As I have found that Eveline Johnson who purported to give the claimant permission to occupy the property, did not have the capacity so to do, the claimant's position was one of a trespasser from 1986. Hence, even if Leeson Samuels the 1st defendant's father eventually became solely entitled to the

property after the death of Ms. Lawrence and sought thereafter to pass the property to the 1st defendant, as I have found that the 1st defendant did not give the claimant permission to occupy the property, the Notice to Quit of August 16, 1999, would not have terminated any license. Neither was the claimant a "tenant-at-will" as she was described in the Notice to Quit. See the cases of ***Ramnarace v Lutchman*** [2001] UKPC 25 and ***Sharon Burghardt and Harold Burghardt v Tracy Taylor*** [2012] JMSC Civ 126.

[69] Further, there was no evidence presented before this court indicating that the 1st defendant challenged or objected to the claimant's presence on the property prior to 1999. Actually she testified that they (the claimant and her brother) had been living there openly and it was not until 1999, she began having issues with them**.** By then thirteen (13) years had elapsed and based on her status as a trespasser, the claimant would have been in the position to claim and obtain title by possession, subject to her satisfying the requirements of the law on possessory title.

ISSUE 3: WHETHER THE CLAIMANT HAS ACQUIRED BENEFICIAL INTERESTS IN THE TWO (2) ROOMS OCCUPIED BY HER ON THE PROPERTY THROUGH ADVERSE POSSESSION?

Establishing title by possession

[70] Section 3 of the **LAA** provides that:

> No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time, at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.

[71] Section 4 of the **LAA** provides in part that:

> The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued on at such time as hereinafter is mentioned, that is to say–
>
> (a) …
>
> (b) When the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death;
>
> …
>
> (e) …

[72] Under the heading "Extinguishment of Right" section 30 provides that:

> At the determination of the period limited by this part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.

[73] It is well established that someone who acquires a possessory title may defeat the legal interests of the registered title owner. In the case of ***Charles Gardener and Inez Walker v Edward Lewis*** (1998) 53 WIR 236 PC Lord Browne-Wilkinson writing for the Board explained at page 238 that:

> The Registration of Titles Act provides for a Torrens system of land registration in Jamaica. Under section 28, a person claiming to be the owner of the fee simple either at law or in equity can apply to have the land brought under the operation of the Act. If he does so, the application is examined by a referee and, if given provisional approval, notice of the claim is advertised. On the successful conclusion of that process a certificate of title is registered and a copy of the registered certificate provided to the registered proprietor.
>
> The consequences of registration are laid down by sections 68, 70 and 71 of the Act…

[74] After setting out those sections, Lord Browne-Wilkinson continued at page 239 indicating that:

> The land certificate is conclusive as to the legal interests in the land. But that does not mean that the personal claims (eg for breach of contract to sell or to enforce trusts affecting the registered land against the trustee) cannot be enforced against the registered proprietor. In *Frazer v Walker* [1967] 1 AC 569 at page 585 Lord Wilberforce said:
>
> > '… their lordships have accepted the general principle that registration under the Land Transfer Act 1952, confers upon a registered proprietor a title to the interest in respect of which he is registered which is (under sections 62 and 63) immune from adverse claims, other than those specifically excepted. In doing so they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim *in personam*, founded in law or in equity, for such relief as a court acting *in personam* may grant. That this is so has frequently, and rightly, been recognised in the courts of New Zealand and of Australia; see, for example, *Boyd v Mayor, Etc, of Wellington* [1924] NZLR 1174 at page 1223 and *Tataurangi Tairuakena v Mua Carr* [1927] NZLR 688 at page 702.'
>
> In their lordships' view those principles are equally applicable to the Torrens system of land title applicable in Jamaica.

[75] Of course in the instant case, the subject property is unregistered land and accordingly, there is no registered title owner. Both the claimant and the 1st defendant have sought to establish their right to the property; the claimant arguing that neither of them has a greater right to the property and the 1st defendant maintaining in effect that her equitable right to the fee simple exists to the exclusion of any right in the claimant.

[76] The **LAA** prescribes that after twelve (12) years a person's failure to exercise his right in relation to land will give a dispossessor a complete defence to any claim brought subsequently. If such adverse possession can defeat a Registered Title then *a fortiori* it would be as effective in respect of unregistered property. Acquiring title by possession is characterized by open and peaceful occupation and includes both a factual possession and an intention to possess. It is important however, that the term adverse possession is not misunderstood.

[77] In **J A Pye (Oxford) Ltd v Graham** [2002] UKHL 30, Lord Wilkinson-Browne this time sitting in the House of Lords stated at para. 36 that:

> Many of the difficulties with these sections which I will have to consider are due to a conscious or subconscious feeling that in order for a squatter to gain title by lapse of time he has to act adversely to the paper title owner. It is said that he has to "oust" the true owner in order to dispossess him; that he has to intend to exclude the whole world including the true owner; that the squatter's use of the land has to be inconsistent with any present or future use by the true owner. In my judgment much confusion and complication would be avoided if reference to adverse possession were to be avoided so far as possible and effect given to the clear words of the Acts. The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner.

[78] At paragraph 37 Lord Wilkinson-Browne indicated that: "*the words 'possess' and 'dispossess' are to be given their ordinary meaning*." Then at paragraphs 39-40 in examining what constitutes 'possession' in the ordinary sense of the word, he referred to **Powell's case**, 38 P & CR 470 at p. 470, where Slade J stated:

> (1) in the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prime facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner. (2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi').

[79] At paragraph 38 Lord Wilkinson-Browne continued:

> There will be a "dispossession" of the paper owner in any case where (there being no discontinuance of possession by the paper owner) a squatter assumes possession in the ordinary sense of the word. Except in the case of joint possessors, possession is single and exclusive. Therefore, if the squatter is in possession the paper owner cannot be.

[80] Further, at paragraph 42 His lordship cited with approval Hoffman J's dicta in ***Moran's*** case (1988) 86 LGR 472, where at page 479 he pointed out that what is required is:

> [N]ot an intention to own or even an intention to acquire ownership but an intention to possess…once it is accepted that in the Limitation Acts, the

> word "possession" has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title.

[81] In ***Wills v Wills*** (2003) 64 WIR 176, Lord Walker of Gestingthrope writing for the Judicial Committee of the Privy Council reaffirmed and applied the law as stated in ***Pye***. At page 184 paragraphs 18 -19 he observed that:

> [18] [B]oth in England and in Jamaica the courts did, in the second half of the last century, display some tendency to give the expression (adverse possession) a more technical meaning and to require proof that the squatter used the land in a manner inconsistent with the owner's intentions. In England the beginning of the tendency can be seen in the decision of the Court of Appeal in Williams Brothers Direct Supply Ltd v Raftery [1958] 1 QB 159, [1957] 3 All ER 593. But the more important English case is the decision of the Court of Appeal in Wallis's Cayton Bay Holiday Camp Ltd v Shell Mex & BP Ltd [1975] QB 94, [1974] 3 All ER 575, in which the leading judgment was given by Lord Denning MR, with a strong dissent from Stamp LJ. In Jamaica the most important decision is that of the Court of Appeal in Archer v Georgiana Holdings Ltd (1974) 21 WIR 431. All three decisions relied heavily on the well-known but now controversial decision of the Court of Appeal in Leigh v Jack (1879) 5 Ex D 264, 44 JP 488.
>
> [19] All those decisions may have been correct on their special facts. All of them rightly stressed the importance, in cases of this sort, of the Court carefully considering the extent and character of the land in question, the use to which it has been put, and other uses to which it might be put. They also rightly stated that the Court should not be ready to infer possession from relatively trivial acts, and that fencing, although almost always significant, is not invariably either necessary or sufficient as evidence of possession. Nevertheless, the decisions must now be read in the light of the important decision of the Court of Appeal in Buckinghamshire County Council v Moran [1990] Ch 623, [1989] 2 All ER 225 and the even more important decision of the House of Lords in Pye". (Emphasis supplied)

[82] Lord Walker further observed that their lordships could see no reason why the decision of the Court of Appeal of Jamaica in ***Archer v Georgiana Holdings Ltd*** (1974) 21 WIR 431**,** ought not to be qualified, in future, by the clear guidance of the House of Lords in ***Pye***. In ***Archer*** (relied on by the 1st defendant), in a claim

of adverse possession by the plaintiff, the Court of Appeal followed the law as outlined in ***Leigh v Jack*** and stated at page 426 that "*the mere fact that the true owner does not make use of his land does not necessarily mean that he has discontinued possession of it… a stranger must prove occupation of and use of the land of a kind that is altogether inconsistent with the form of enjoyment which is available to the true owner."*

[83] As explained in ***Wills v Wills****,* that approach no longer represents the test to determine title by possession. The Board stressed that in determining whether title had been acquired by possession what was important were the acts and intention of the possessor and not the intention of the dispossessed owner.

[84] This led the Board to observe at paragraph 29 that:

> [29] In their Lordships' opinion the courts below reached that conclusion only because they proceeded on what Lord Browne-Wilkinson in *Pye* called the "heretical and wrong" supposition that it was Elma's state of mind, and not George's, which (together with George's actions) was decisive. Elma no doubt wished to maintain her claim to co-ownership, not least because she expected to outlive George and hoped to take by survivorship. But such an intention, however amply documented, cannot prevail over the plain fact of her total exclusion from the properties. After 1976 at the latest George occupied and used the former matrimonial home and enjoyed the rents from the rented properties as if he were the sole owner, except so far as he chose to share his occupation and enjoyment with Myra. The judge's conclusion was wrong in law, and the Court of Appeal was wrong to uphold it. Neither court had the benefit of the full and clear guidance which the House of Lords has since given in the *Pye* case. But that decision was not making new law; it was clarifying what has been the law in England since the 1833 Act, and in Jamaica since the Limitation of Actions Act of 1881.

[85] Locally, in ***Valerie Patricia Freckleton v Winston Earle Freckleton*** Claim No. 2005 HCV 01694, (jud. del. July 25, 2006), the issue was whether the claimant who had purchased two plots of land with her then husband, the defendant, as joint tenants, could have the titles to the lands solely registered in her name on the basis of his subsequent non-occupation and non-possession of these lands after

their divorce and his remarriage and migration. Sykes J, (as he then was), relied on the developments in the law between 1968 and 2003 in the Judicial Committee of the Privy Council, the House of Lords and the Court of Appeal of England. He identified the important decisions as ***Paradise Beach Transportation Company v Cyril Price Robinson*** [1968] A.C. 1072 PC ***("Paradise")***, ***Wills v Wills*** 64 W.I.R. 176 PC ***("Wills")***, ***J. A. Pye (Oxford) Ltd. v Graham*** [2003] 1 A.C. 419 HL ***("Pye")*** and ***Buckinghamshire County Council v Moran*** [1990] Ch 623 CA ***("Moran")***. He identified the ***Paradise*** and ***Wills*** cases as the critical ones for the determination of the Freckleton case as they focused on the dispossession of one co-owner by another.

[86] Examining the doctrine of non-adverse possession at paragraphs 10 - 11 of his judgment he found that:

> 10. When the limitation statute of James 1 (21 Jac 1, c 16) was passed the judges found it difficult to accept that a paper owner might lose his land by the simple fact of another person being in possession without any "hostile" act by the dispossessor.The judges engrafted on the statute that there must be something in the nature of an ouster of the paper owner by the person claiming title to the land by possession…from this judicial creation the law developed along the lines that the dispossessor must not just occupy the land with the animus possidendi, he must go further to actively bar the paper owner and he must use the land in such a manner that was clearly and obviously inconsistent with the title of the paper owner… this development became known as adverse possession. If there was possession plus animus possidendi but no hostile acts inconsistent with the paper owner's title showing that he was ousting the paper title owner, then that was non-adverse possession…
>
> 11. …[T]he effect of section 2 of the UK Act of 1833 (i.e. section 3 of the Jamaican Act) was to do away with the doctrine of non-adverse possession and the question becomes simply whether the number of years required has elapsed from the time the right of entry of the paper owner accrued, regardless of the nature of the possession of the person claiming title by extinction of the paper owner's title. In other words for the purpose of extinguishing title, the requirements are the same whether the dispossessor is a co-owner or a complete stranger. After 1833 English Law…did not create a title in the dispossessor. What it did was to prevent the paper owner from asserting his title after the lapse of the requisite

> period of time (see section 34 of UK Legislation and section 30 of the Jamaican legislation). This development in the law explains why we should no longer say that anyone gets title by adverse possession. The dispossessor is not conferred with a title. What he has is the ability to resist any attempt by the paper owner or his successor in title to asset his title after passage of the requisite time period. The paper owner's title is extinguished.

[87] At paragraphs 18 – 20 Sykes J concluded his analysis of the law thus:

> 18. The person who is claiming that the title of the paper owner has been extinguished has to establish that there was (a) occupation or physical control of the land and (b) an intention to possess. Intention to possess here means the statement of mind which says that the dispossessor has it in mind to possess the land in question in his own name or on his own behalf to exclude the world at large including the paper title owner so far as this is possible. An intention to own or even an intention to acquire ownership is not necessary but if present enhances the prospect of success.
>
> 19. The legal position now is that a registered owner of land or indeed any other owner may now have his title extinguished by his lack of vigilance. If the registered owner wishes to prevent this happening he simply needs to heed the advice of Slade J. in Powell, that is to say, do some "slight" acts either by himself or on his behalf so that it will negative the burgeoning "right" of the dispossessor. Whether that "slight" act will be sufficient depends on the facts of each case. There can be no catalogue of "slight" acts.
>
> 20. It is important to appreciate that whether the paper owner's title has been extinguished depends on factual possession and intention of the dispossessor **and not** the intention of the paper owner.

[88] More recently in ***Recreational Holdings (Jamaica) Ltd v Carl Lazarus and the Registrar of Titles*** [2014] JMCA Civ 34, Morrison JA, (as he then was), observed at paragraph 37 that the modern law on adverse possession is as represented in ***Pye*** and explicitly approved in ***Wills v Wills.*** He also referred to the case of ***Ofulue v Bossert*** [2008] 3 WLR 1253 where at paragraph [63] Arden LJ stated that:

> [W]hat emerges from Pye and Graham is that it is necessary only to show that the person who claims to acquire property by adverse possession was in possession without the consent of the paper owner and intended to

> possess. A person who wrongly believes he is a tenant can occupy property is such a way that he has possession, just as much as a squatter. He does not have to show that he had an intention to exclude the paper owner.

[89] Morrison JA further noted at paragraph 45 that:

> …The modern position is that the possession of one co-proprietor is not deemed to be the possession of the others, with the result that one co-proprietor can in a proper case establish a claim for adverse possession against the others. (see Paradise Beach & Transportation Co Ltd v Price-Robinson [1968] AC 1072 and Wills v Wills)…

Multiple occupancy and the acquisition of title by possession

[90] The situation in this matter is different from a number of other cases in which a claimant has sought to rely on the doctrine of "adverse" possession. Not only is there no paper title holder, as the relevant property is unregistered, the claimant is only seeking to establish through her possession an equitable interest in two rooms in a larger building on the property.

[91] Counsel for the claimant relying on the authority of ***Rosalind Ramroop v John Ishmael & Lall Heerasingh*** [2010] UKPC 14 submitted that it was possible to establish exclusive possession in part of a premises and that the claimant had demonstrated such by evidence called on her behalf. Counsel for the 1st defendant submitted to the contrary maintaining that the claimant had failed to provide credible evidence that she possessed the two (2) rooms, to the exclusion of others, and therefore had not discharged her burden.

[92] In ***Rosalind Ramroop***, the only issue on appeal was whether the appellant had obtained by adverse possession a title to all or a part of the relevant dwelling house. The evidence revealed that she lived at the house with her aunt and grandmother from she was eight (8) years old. The house was built by her aunt on rented premises and on her death, her aunt's daughters, Popo and Sonia purchased the freehold of the property in 1972 as joint tenants.

[93] The appellant contended that her aunt had promised in 1957 that if she worked well at cooking and washing, she would give her the property but her aunt did not keep her promise. The conflicting evidence given by the appellant at trial severely damaged her credibility and the judge concluded that she, along with others had become a tenant of Popo and Sonia living in the front house (downstairs portion of the main building) in the 1970s, paying rent until 1977, when Popo died. Popo shortly before her death had conveyed her interest to her partner John Ishmael in 1977, thereby severing the joint tenancy.

[94] Her sister Sonia challenged the validity of the conveyance and proceedings lasted from 1978 – 1993. Sonia died in 1991 with her appeal being dismissed in 1993. During these years, no rent was collected from the appellant. In 1994, the appellant brought a claim for possession of the property against John Ishmael. Lall Heerasingh was later joined to represent Sonia's estate. His lordship agreed with the court of first instance and the Court of Appeal that the appellant had not been in exclusive possession of the Marabella premises for sixteen (16) years or more and had not acquired a possessory title. The appeal was dismissed.

[95] One of the appellant's submissions was that the house was in multiple occupation and that she had obtained a possessory title to the part of the house which she occupied. In the Court of Appeal Hamel-Smith JA rejected that submission on the broad ground that "possessory title goes to the land". There was, he said, no authority to suggest that a person can acquire a possessory title that includes only the downstairs portion of a building. The Board however took the view that that was too wide a statement of principle.

[96] Lord Walker stated at paras 24-27, that:

> As a matter of principle land can be owned in horizontal layers, as every purpose-built block of residential flats illustrates. The important issue, in the context of adverse possession, is whether the claimant is in de facto possession of the property in question to the exclusion of other persons (except so far as those other persons are family, visitors or other licensees of the person in possession). The English Court of Appeal has accepted

> (Simpson v Fergus (2000) 79 P & CR 398, 401) that: "Possession of a flat with a front door that can be locked is obviously different from possession of part of an unfenced moor or hillside."
>
> The Board cannot therefore agree with the wide proposition accepted by the Court of Appeal. But if a claimant is to establish title by adverse possession to part only of a building, it is necessary that the pleadings should precisely define the part of the building claimed to have been in the possession of the claimant, and that there should be credible evidence that that part of the building was capable of being possessed by the claimant to the exclusion of others (apart from the claimant's licensees), and that the claimant did in fact enjoy such possession throughout the limitation period. A case of that sort might be relatively easy to plead and prove if the property in question was a self-contained residential flat in a purpose-built block. It might be much more difficult in a building which had slipped into informal multiple occupation with shared facilities.
>
> The appellant's claim met none of these requirements. Her pleadings never put forward (at all, still less with precision) an alternative case based on possession of part only of 22 Union Street. In her evidence she persisted, in the face of compelling evidence to the contrary, in asserting that Lystra Parfitt was not another non-paying tenant but was instead her licensee. There was no clear or detailed evidence as to the layout of the building (for instance, how occupants of the top floor went upstairs, and what if any kitchen or bathroom facilities were used in common).
>
> The appellant came from a humble background and had no educational advantages, as Sir Fenton pointed out. Courts will always try to show indulgence to litigants from such backgrounds, especially if they are acting as litigants in person. But in this case the appellant had the benefit of legal representation throughout. Moreover, she put before the Court a case which was, both in its original pleaded form and in the evidence which she gave at trial, false in several respects. It gradually attained more plausibility as its false elements were exposed and abandoned. If what Hamel-Smith JA aptly called her final attempt had been based on an amended pleading which put her reformulated case precisely, and her evidence had provided detailed and credible support to the amended pleading, her case based on multiple occupation, afterthought though it was, might have succeeded. But in fact a case on multiple occupation was neither pleaded not proved.

[97] Lord Walker therefore makes it clear that it is possible for a claimant to obtain possessory title in only a part of a building that has multiple occupants. However there needs to be specificity in the pleadings and credible evidence must be

adduced to prove the exclusive occupation of the part of the building claimed to be possessed by the claimant and his/her licensees to the exclusion of others throughout the limitation period. The observation is also noted that adverse possession of a part of a house may be harder to prove in a case, such as this, where Ms. Lawrence's house has fallen into informal multiple occupancies with possible shared facilities.

Analysis

[98] The review of the law has shown that the modern position of the law on the acquisition of title by possession in a situation of multiple occupancy requires that the claimant must prove 1) her factual exclusive possession (which necessarily involves a degree of physical control) of the two rooms she claims, for at least twelve (12) years, and 2) her intention to possess those two rooms. If this threshold is satisfied, the title of the owners, the beneficiaries of Ms. Lawrence's estate, would be extinguished, in so far as those two rooms are concerned.

[99] As the court has found that Eveline Johnson did not have the legal capacity to grant permission to the claimant to occupy the rooms on the property and that the 1st defendant did not give the claimant permission to reside on the property, the claimant entered the premises as a trespasser in 1986. Thereafter the evidence of both the claimant, her witness and the 1st defendant clearly reveals that she was in custody and control of the two (2) rooms.

[100] Through cross-examination of the 1st defendant using photographs entered into evidence, counsel for the claimant established the two rooms that the claimant occupied, the room occupied by her brother beside it and the last surviving board room of Ms. Edna Lawrence occupied by Sheila Green, to the right of the rooms occupied by the claimant. This is not in dispute. The claimant and her children lived openly occupying the two rooms. There is no evidence of this being challenged prior to the Notice to Quit being served on her at the instance of the 1st defendant in August 1999, thirteen years later. In the circumstances, it is manifest that the

claimant was in factual exclusive possession of the two rooms in respect of which she has sought to have her interest declared.

[101] The question then becomes whether the clamant intended to possess the two (2) rooms and the part of the land on which they are situated, that is to exercise custody and control on her own behalf, exclusively for her own benefit and the benefit of her licensees. As has been shown, without the requisite intention, in law there can be no possession and it is not the nature of the act done but the intention with which it is done that determines if the person is in possession. Intention if not spoken, is frequently deduced from the actions themselves.

[102] The presence of tenants as some of the occupants from time to time suggests that each occupant was in exclusive possession of their room(s), subject to the presence of their licensees. There was however no evidence adduced that addressed whether the parties shared amenities. It would not have been unusual if at some point the parties shared at least bathroom facilities given that the evidence revealed that over time both Donovan Thompson and Shauna Robinson added bathrooms to sections that they occupied.

[103] What is of particular significance is that the claimant ignored a Notice to Quit the premises and defied a summons to attend court both served on her at the instance of the 1st defendant because on her evidence, '*she knew the land did not belong to the 1st defendant'* and viewed the property as '*family land'*. What the court finds to be in furtherance of her intention to possess the rooms is her conversion of the board rooms into a concrete structure, prior to the filing of the claim. So she moved from occupation of one board room, to occupation of two board rooms then to converting them into a more permanent structure.

[104] Upon a careful review and consideration of the evidence and the particular circumstances of this case, I find that the claimant has proven, on a balance of probabilities, that she intended to possess the rooms. I am of the considered view that her actions over the years reflected those of an individual who perceived that

the property was family land with a house thereon containing four rooms, two of which she intended to possess. Accordingly I find that the claimant has established possession based on fact and intention that has extinguished any other right to those two rooms and the land on which they are situated, that might have been vested in the 1st defendant.

ISSUE 4: WHETHER THE 1ST DEFENDANT FAILED TO COMPLY WITH S. 33 OF ROTA

[105] Counsel for the claimant submitted that the 1st defendant failed to comply with **s. 33** of the **ROTA** as there was no evidence that in her application she stipulated the persons who should be served with her application other than the adjoining occupants. He further asserted that the 2nd defendant did not in accordance with **s. 36** direct the 1st defendant to serve the claimant, since the claimant had been identified by the 1st defendant in her application for first registration, by way of a supplemental declaration, as one of the persons occupying the property.

[106] The 2nd defendant in her affidavit acknowledged that the procedure by which and persons to whom notice of provisional approval of an application to bring land under the operation of the **ROTA** is regulated by **s. 33** of the said Act.

[107] **Sections 33 and 36** of the **ROTA** provide respectively, that:

> 33. When the Referee shall provisionally approve of the registration of any title as aforesaid, he shall communicate such provisional approval to the Registrar, and shall direct the Registrar to cause notification thereof to be given by advertisement or advertisements in the Gazette, or at least one newspaper published in the city of Kingston or circulating in the neighbourhood of the land, and to be served on any persons named by him, and all persons in possession or charge of the adjoining lands, and warning all such persons that, unless a caveat be lodged forbidding the same within such time as shall be appointed by the Referee (which shall not be less than two weeks or more than twelve months from the date of such advertisement or the first of such advertisements if more than one), the title will be registered in accordance with such provisional approval.
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> 36. Subject to the foregoing provisions the Registrar shall, under such directions as aforesaid, cause notice to be published, in such manner as

> by such direction may be prescribed, of such provisional approval as aforesaid, with such description or identification thereof as shall have been approved of as aforesaid, and shall cause a copy of such notice to be posted in a conspicuous place in the office, and shall send through the Post Office a registered letter, marked outside "Office of Titles, Jamaica", containing a copy of such notice, addressed to every person whom the Referee shall have directed to be served with notice, and to the persons stated in the application to be occupiers of the land (if other than the applicant) and to the occupiers and owners of the lands contiguous thereto.

[108] The affidavit of the 2nd defendant also outlined that the 1st defendant's application numbered 1117234, dated June 2, 2000, indicated that the land was occupied by the 1st defendant and it identified the names and addresses so far as known to the 1st defendant, of the occupants of the lands contiguous to the property in respect of which the application was being made. The application was supported by a Declaration of Hillary Samuels, also dated June 2, 2000 but neither document indicated that the land was occupied by the claimant, nor that she may have an interest therein and/or disputed the 1st defendant's ownership of the subject property.

[109] The 2nd defendant in her affidavit further noted that the supporting Declarations of Leeson Samuels and Egbert Ellis, both also dated June 2, 2000, stated that the declarants knew of "no one claiming any interest in or disputing the applicant's ownership of the said land". This was indeed the case, as evidenced by the documents exhibited. However the 2nd defendant's affidavit additionally revealed that subsequently, on October 5, 2001, the 1st defendant executed a supplemental declaration in which she indicated that the claimant occupied a dilapidated house on the property. In fact a perusal of the supplemental declaration shows that the 1st defendant indicated that were two (2) houses on the land, one occupied by her and the other, a dilapidated house previously occupied by Edna Lawrence and now occupied by the claimant and the 1st defendant's son Rodney. In the said declaration, she also made reference to a requisition of 22nd May, 2001.

[110] The 2nd defendant's affidavit continued by outlining that the Referee of Titles on 17th November, 2001, granted provisional approval of the 1st defendant's

application for title and directed that notice of the approval be advertised thrice in the Daily Observer and served upon owners and occupiers of the contiguous lands. This requirement is outlined in **s. 33** of the **ROTA.** By **s. 33** the Referee of Titles may also direct the Registrar to serve "any persons named by him".

[111] Under **s. 36** of **ROTA,** the Registrar is also required, to have served not only those whom the Referee of Titles must direct the Notice should be served on pursuant to **s. 33** of **ROTA**, (that is the owners and occupiers of the contiguous lands in the instant matter), but also persons other than the applicant occupying the land sought to be registered. This would have included the claimant. While therefore there is a discretion under **s. 33**, it is a requirement under **s. 36** that occupiers of land that is subject to an application for registration should be served notice of the application.

[112] The 2nd defendant in her affidavit did not assert that the claimant was served a copy of the notice. This is consistent with the evidence of the claimant who stated that she learnt of the application through Valda Kerr, one of the named occupants of lands contiguous to the subject property in the 1st defendant's declaration, sometime in the latter part of May 2011. It was after receiving this notification that the claimant lodged a caveat against the application for first registration as none of the occupants of the land received any notification of the application of the 1st defendant.

[113] The fact is therefore, that the claimant was not notified of the 1st defendant's application as contemplated by **s. 36** of **ROTA**. This may have resulted from the fact that the initial application did not mention the claimant and other occupants and the subsequent supplemental declaration may have been overlooked. Whatever the reason the claimant was not officially notified. However having become aware of the application through Ms. Kerr, apart from lodging the caveat previously mentioned she brought this action to protect her interest.

[114] Despite her initially failing to disclose the occupation of the claimant and others in her initial application, the 1st defendant had remedied that situation before the Notice of Provisional Approval of her application had been issued by the Referee of Titles. I therefore do not find that the 1st defendant was in breach of the **ROTA** in relation to the claimant at the time the Notice was issued, as by then the claimant's occupation of the property was disclosed and service of the application on the claimant should therefore have been required either by the Referee of Titles or the Registrar, pursuant to section(s) **33** and/or **36** of the **ROTA**.

[115] Given her interest as an occupier and in keeping with the legislative intent of the **ROTA** which requires that persons who may be affected by an application for registration of land should be notified of any such application, the claimant is entitled to receive official notification of the application pursuant to the **ROTA**.

DISPOSITION:

[116] In light of the above findings on the issues addressed the court makes the following orders:

i) The claim for a declaration that the claimant is entitled in equity to the ownership of two (2) rooms of Edna Lawrence's original board house, which rooms she converted into two (2) concrete rooms, and the part of the land on which they are situate, is granted;

ii) The claim for a declaration that she is a bona fide occupier of the property together with the 1st defendant and others is granted;

iii) The Registrar of Titles is directed to give statutory notice to the claimant and all others occupying the property, of the 1st defendant's application in accordance with **s. 36** of the **ROTA** before considering any final approval of the 1st defendant's application for first registration;

iv) While it was not necessary for the claimant to join the 2nd defendant, the 2nd defendant should have caused the claimant to be served with the 1st

defendant's application. Additionally the affidavit filed by the 2nd defendant was useful for the resolution of the matter. Accordingly, I will order that half of the costs occasioned by the claimant's joinder of the 2nd defendant in the claim up to April 9, 2013 should be paid by the claimant to the 2nd defendant, to be agreed or taxed; and

v) Costs to the claimant from the 1st defendant to be agreed or taxed.