

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SLUHCV2021/0484

BETWEEN:

**GODFREY BIDEAU
QUA EXECUTOR OF THE ESTATE OF MARIE BIDEAU**

Claimant

and

IDA FONTIUS

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Dexter Theodore KC for the Claimant

Mr. Horace Fraser for the Defendant

2023: May 10;	(Trial)
May 31;	(Claimant's submissions)
June 1;	(Defendant's submissions)
2026: February 20.	(Decision)

JUDGMENT

- [1] This claim involves all too familiar issues in the legal landscape of Saint Lucia's property law and which have engaged the courts at all levels including the highest appellate courts.
- [2] For the purposes of this judgment and not meaning any disrespect, I will refer to the parties and witnesses by their first names to avoid any confusion as many of them share the same surnames. This claim concerns the very common situation of two persons each claiming to have rights to a particular piece of land.

Summary of case

- [3] The claimant, Mr. Godfrey Bideau (“Godfrey”) filed a claim in his capacity as executor of the estate of Marie Bideau, his mother (“Marie”). Marie, he alleges was the owner in possession of a parcel of land registered as Block and Parcel 1425B 227 (“the Property”) situate at Desruisseaux in the quarter of Micoud, having been adjudged to be the owner by a judgment of the High Court in Claim No. SLUHCV1985/0099 (“the 1985 claim”) delivered in 2002. Godfrey alleges that the defendant, Ida Fontius (“Ida”) is a trespasser on the Property.
- [4] Godfrey seeks the following relief in his claim:
- (a) possession of the Property;
 - (b) an order that the defendant be restrained whether by herself, her contractors, servants and/or agents, from entering on or remaining on the Property;
 - (c) an order that the defendant be restrained whether by herself, her contractors, servants and/or agents, from building or continuing to build a concrete structure on the Property;
 - (d) an order that the defendant remove and demolish all structures constructed on the Property;
 - (e) an order that the defendant remove all debris arising from the removal of the said structures on the Property;
 - (f) An order that the land register for the Property be rectified to reflect the Heirs of Marie Bideau as the registered proprietors;
 - (g) Damages for use and occupation of the Property from 1st May 2004 to the date of delivery of possession by the defendant;
 - (h) An order that the defendant make good and restore the Property to its original condition before the construction of the structures on the said parcel of land;
 - (i) Damages, (j) Interest and (k) Costs.
- [5] The defendant, Ida Fontius (“Ida”) is the wife of Harold Fontius (“Harold”) who was one of the claimants in the 1985 claim. In response to Godfrey’s claim, Ida alleges that she has been in occupation of the Property from 1955 and relies

on article 2103 of the **Civil Code of Saint Lucia**¹ (“the Code”) and contends that the claimant’s rights to the Property have been extinguished. She also claims that she has acquired an overriding interest in the Property. Ida says that Godfrey is not entitled to the relief which he seeks and asks that the claim be dismissed with costs awarded to her.

- [6] In relation to paragraph 4(f) above of the relief sought by the claimant, this relief was already granted by the Court. By Order dated 22nd March 2022, the Court ordered the removal of the restriction which had been registered against the Property and directed that the name of the claimant, Godfrey Bideau qua executor of the estate of Marie Bideau be inserted as the proprietor on the land register for the Property, having regard to the outcome of the 1985 claim.
- [7] By Order dated 15th February 2022, the Court granted an injunction against Ida restraining her, her servants or agents from continuing to undertake any construction of any building or concrete structure on the Property pending the hearing and determination of the claim save that permission was given to do some specific things on the house pertaining to the septic tank.
- [8] The evidence for the claimant in this matter was given by Godfrey, Marie Bideau (“Ms. Bideau”) and Dorothy Bideau (“Dorothy”). The claimant also issued a witness summons for Michael Fontius (“Michael”). For the defendant, Ida, Donata Francis (“Donata”) and Pius Fontius (“Pius”) gave evidence. All of the witnesses were cross-examined except Pius whose witness statement was admitted into evidence with the consent of Counsel for the claimant who indicated that he did not have need to cross-examine this witness.

Facts not disputed

- [9] The following facts are not disputed:
- (a) that the Property belongs to the claimant;
 - (b) Harold and Ida were living on the Property before the 1985 claim was filed.
 - (c) after Harold’s death in 2011, Ida continued to live on the Property with her children.

¹ Cap 4.01 of the Revised Laws of Saint Lucia 2020.

(d) Ida was served with a notice to quit dated 6th July 2021.

- [10] The issues for determination in this claim are as follows:
- A. Whether the defendant can successfully raise the defence of prescription to defeat the claimant's claim for possession of the Property, i.e. Block and Parcel No. 1425B 227? (The negative prescription issue).
 - B. Whether the claimant's claim is prescribed?
 - C. Whether the defendant has trespassed on the Property?
 - D. Whether the claimant is entitled to possession of the Property and the relief sought?

Analysis of the Evidence

- [11] This is a summary of Godfrey's evidence.
- [12] When Harold built his wooden shack on the Property, Marie owned and was in possession of the Property and Ida was not living there yet.
- [13] Marie died in 1982. On 9th April 1985, Harold and his brother, Lennox Fontius (Lennox") filed the 1985 claim against Marie alleging that they were the owners in possession of two portions of land which formed part of Duchon Estate and that she had been encroaching on their lands. In 1989, Godfrey and his brother Morris Bideau ("Morris") were appointed as personal representatives for Marie so that the claim could continue. Godfrey and Morris denied that Marie was encroaching on the Fontius' lands and instead alleged that it was the Fontius' who had encroached on her land and had failed to vacate the land despite being served with notices to do so.
- [14] Around the time when the 1985 claim was filed, the Land Registration and Titling Project "(LRTP")² was in progress and the parties to the 1985 claim would have agreed to allow the Court to determine the issue of title to the

² See the cases of *Moses Joseph et al v Alicia Francois consolidated with St. Torrence Matty et al v Alicia Francois (CA)*; *Francis Chitolie et al v Saint Lucia National Housing Corporation (HC) (COA)* and *(PC)* for a complete exposition on the LRTP.

lands which were the subject matter of the claim. As a result, the Property was recorded as Crown pending the court's decision.³

- [15] The judgment in the 1985 claim was delivered on 5th July 2002 ("the 2002 judgment") and the learned judge held that the property which was the subject matter of the claim belonged to Marie's family, the Bideau's. The court therefore dismissed the 1985 claim and ordered costs to be paid by the claimants, Harold and now Catherine who had been substituted for Lennox who had passed away by then.
- [16] Godfrey's evidence is that after the judgment was delivered, Harold and Catherine continued to reside on the Property in a wooden house. Harold was served with a notice to quit dated 16th December 2003⁴ served on him about 28th December 2003. On about 3rd February 2004, Harold's lawyer responded to the notice to quit indicating that Harold was willing to purchase the Property as his occupation was one of 'ancient mistake'.⁵
- [17] In response, by letter dated 6th April 2004, Godfrey through his lawyer indicated that he was not willing to sell the Property and that Harold was to vacate the Property before 1st May 2004.⁶ By a letter dated 3rd December 2007, Godfrey through his lawyer wrote to the Registrar of Lands requesting that the restriction placed on the Property be removed and that the names Godfrey and Morris Bideau be inserted as the proprietors of the Property, of course as representatives of Marie's estate. Godfrey does not indicate what happened with this request, but the record shows that Godfrey as executor of Marie's estate was only recorded as proprietor after this Court's Order in 2022.
- [18] Prior to Harold's death in 2011, he commenced construction of a concrete structure on the Property about 150 (in Godfrey's witness statement he says 50) feet from his wooden house. Godfrey asked that Harold cease all construction on the Property and Harold abandoned the construction leaving

³ Land Register at p 25 of Trial Bundle (TB) 3.

⁴ p 13 of TB 3.

⁵ pp 14-15 of TB 3.

⁶ p 16 of TB 3.

the concrete foundation and concrete walls still standing. These remain on the Property. After Harold died, Ida continued to occupy the wooden structure on the Property in which she had lived with Harold along with her children.

[19] According to Godfrey's evidence, after Harold died, he was prepared to change his mind about not selling and he spoke to Ida and she agreed to buy the Property. He and Morris went to measure the area she was occupying. Godfrey went to Ida twice and she told him, 'don't worry, he would get his money'. According to him, Ida never showed up for the appointment at the lawyer's office, and he did not hear from her again.

[20] In about February 2021, Ida without Godfrey's permission or any authority began stockpiling concrete blocks, sand and stones and other building materials on the Property and then later commenced construction of a concrete structure on the Property.

[21] On about 6th July 2021, Godfrey's lawyer wrote a letter to Ida asking that she cease all construction on the Property and to vacate the land by 31st October 2021.⁷ Despite this Ida continued to build and continued to unlawfully occupy the Property.

[22] Godfrey testifies that in December 2021, Ida's son, Mikey (Michael Fontius) came to his home and pleaded with him to sell the spot to his mother or to consider exchanging the spot for land owned by the Fontius family. Mikey told him he knew his mother was wrong and that it was his two sisters responsible for the construction on the Bideau land. Mikey also told him that his mother not proceeding with the purchase after Godfrey had measured the spot for her was because of financial issues. In cross examination, Godfrey said he could not say whether Mikey was acting on his own or on behalf of his mother.

[23] It is Godfrey's evidence that the Fontius family knew from 2002 that the Property was not theirs and that it belonged to Marie.

⁷ pp 22-23 of TB 3.

[24] Apart from Godfrey's admission that he really did not know when Ida started living on the Property, his evidence was unshaken in cross-examination. I found him to be a credible witness.

Marie Bideau ("Ms. Bideau")

[25] She is her mother Marie's namesake and Godfrey's sister. Her evidence is very critical to the Court's determination of Ida's occupation of the Property.

[26] Ms. Bideau testified that she was born in 1952 on the Property. She recalls when she was about 7 or 8 years old going with her mother to plant potatoes near where Harold's house was, Ida was not living there yet. From her account this would have been in 1959 or 1960.

[27] According to Ms. Bideau, she would often go to pick cashews and mangoes where Harold had his wooden shack, and she recalls when she was 12 or 13 years old (that would be about 1964 or 1965), Harold told them not to come around his house. Her parents went to Harold and asked him why he would say that when the land was not his. It was around that time that Ida came to live with Harold in the little wooden house.

[28] Ms. Bideau left Saint Lucia in 1969 and lived in various places until she returned to live in Saint Lucia in 2018. That is when she realised that Ida was extending her wooden house. According to her, she spoke to Mikey and he indicated that the extension was being undertaken by his mother and his two sisters and not him. Ms. Bideau's evidence is that she told Mikey to tell them to stop but they did not stop. Ms. Bideau testified that after this claim was filed Mikey came to her and pleaded with her to sell the spot to his mother or exchange where his mother lived for land of theirs. She told him to come back, and they would speak about the proposal.

[29] Ms. Bideau's evidence remained unshaken in cross-examination and I believe her evidence.

Dorothy Bideau ("Dorothy")

[30] Dorothy was Marie's sister and is Godfrey's aunt. She was born in 1934 and now lives in St. Croix. She was born on the Property and lived with her parents until she was twenty-three (23) years old. She then built her house about 20 yards from her parents' house and according to her, at that time Harold was not living in the wooden shack as yet. That would have been about 1957. Harold used to come and go, and Ida was not in the picture at all then.

[31] Her parents' house was about 40-50 yards from Harold's wooden shack which he built without permission. According to Dorothy, her father had told Harold that he was trespassing, and he should remove the shack on his land. Harold responded that it would not be a problem as he had built the shack just to shelter from the rain whilst he was grazing his cows. Despite her father insisting that he moved the shack, Harold did not. It is Dorothy's evidence that Harold did not live in the shack at first.

[32] She knew Ida who was about five years younger than her. Around 1960, Harold like most other people in Desruisseaux at the time started cultivating bananas. In the early 1960's she first noticed that Harold started living in the shack on his own.

[33] Ida started working with Harold in the banana cultivation, but she still lived at her mother's house. After some time, Dorothy noticed that Harold and Ida were living together in the wooden shack which she could clearly see from her house. According to Dorothy, it is not true that Ida started living on the land in 1955. She only started living there in the early 1960's. Dorothy would have gone to live in St. Croix in 1966.

[34] In cross-examination, although Dorothy could not say exactly when Harold started living on the land, her evidence remained unchallenged.

Michael ("Michael/Mikey) Fontius (should be Francis)

[35] This witness was summoned by the claimant. He is Ida's first child. A witness summary was filed on his behalf, however in cross-examination, Mikey said he

was not aware of the majority of what was stated in the witness summary including that his surname was Francis and not Fontius.

[36] He said he was not aware that there was a survey showing the boundaries of his father's land and the Property. He denied that he vacated the Property because he knew it was not his family's and said it was because the area was dry and his bananas were not doing well.

[37] Mikey denied that it was his sisters who lived overseas who were sending money to build on the Property and he told them they could not do that, or that he had warned his sisters not to build there because the land did not belong to them.

[38] In relation to Godfrey's evidence that he had approached him to sell the spot his mother occupied or exchange land of theirs for it, Mikey in cross-examination denied that he said this to Godfrey. However, he did not deny that he went to Godfrey's home. Despite having made this denial, Mikey when asked whether he had that conversation with Godfrey but of his own volition and not on behalf of his mother, he responded 'Nobody knew I went there. I went there on my own. I know Mr. Godfrey. He is a man I can talk to.'

[39] According to Mikey he went to Godfrey to keep the peace, but Godfrey told him the matter was in court so there was nothing he could do. He again denied that he asked Godfrey to sell or exchange land as according to him Godfrey told him he could do nothing for him, so he left. He denied having spoken to Sarah Bideau or Ms. Bideau about selling or exchanging land and says he is not aware of any of this.

[40] I found Mikey to be rather evasive with his responses. It was very clear to me that he and Godfrey did have a conversation, and I believe Godfrey that Mikey came to him about selling the Property to his mother or doing an exchange. I do however believe Mikey when he says he went to Godfrey on his own and nobody knew.

Ida Fontius

- [41] This is a summary of Ida's evidence. Ida was born in 1937 and has lived on the land for over 60 years. According to her she has been occupying the portion of the Property where her house is situated from 1st January 1955 when she was eighteen (18) years old. She was eighty-five (85) years at the date of her witness statement.
- [42] Ida was aware of the 1985 claim but says she was not a party to the claim and was never made a party. In addition, the court in the 1985 claim made no order requiring Lennox or Harold to vacate the Property. She says she never personally possessed or occupied the entirety of the Property save for the area where her house is located and its immediate vicinity.
- [43] Ida's evidence is that she has no knowledge of the letters to which Godfrey refers as they were not written on her instruction. Prior to the 1985 claim, Ida claims she had had no confrontation of any kind with the claimant, and no one ever asked her to vacate the Property or initiated any court action against her.
- [44] Ida's evidence is that the concrete structure erected on the part of the Property occupied by her was not commenced by Harold but by his children. When that structure was erected according to Ida, Harold was long past retirement age and was not actively engaged in any serious form of employment save for sporadic farming.
- [45] In her witness statement she explained that she and Harold built a wooden house on a concrete platform on the Property in which they lived until Harold retired. Their children then erected a concrete structure on the Property in place of the wooden structure which was abandoned.
- [46] Contrary to Godfrey's evidence that this structure had been abandoned because he had spoken to Harold and asked him to stop, Ida's evidence is that the house was abandoned because of the continuous harassment by the Planning Department whose officers made frequent visits to the construction site, demanding a house plan and approvals for the construction. They

threatened legal action to seek the demolition of the structure if the house proceeded without planning permission.

[47] According to Ida, when their children sought to continue the construction in about a year ago which would have been in 2021,⁸ the contractors advised that the years of exposure to the elements had rendered the unfinished structure brittle and unsound, and it would be unwise to continue with it in its weakened state. Their suggestion was that the structure be demolished and a fresh structure erected instead.

[48] Ida in her defence pleaded that her wooden house was erected upon a concrete platform and it has been in that position for many years; she commenced replacing the wooden structure with concrete in 2020 and not in Feb 2021 as Godfrey asserts and that she did not require Godfrey's permission or authorisation to erect her concrete dwelling house on the part of the Property she has been occupying for more than 66 years.

[49] In her witness statement she had said that she was occupying the Property for over 60 years as opposed to over 66 years as she had alleged in her defence. It is also noted that whilst Ida avers in her defence that the replacing of the wooden structure with concrete started in 2020 and not in 2021 as alleged by Godfrey, in her witness statement filed in 2022, she says the children had sought to renovate 'about a year ago' which would be in 2021.

[50] Ida says that Godfrey never addressed any notice to quit to her, neither has he or his predecessors initiated any Court proceedings against her at any time. She denies that she occupied the Property unlawfully and claims that she would have prescribed against it from 1st January 1955. Ida also testifies that during her occupation of the Property, Godfrey never came on that area of the Property which was occupied exclusively by her and her family.

[51] Ida says she does not know whether any notice to quit was served on Harold in respect of the wooden house and if it was the case, it was never addressed

⁸ The defence and witness statement were filed in 2022. Therefore 'about a year ago' would be in 2021.

to her. In cross-examination, Ida testified that after the judgment in 2002, Harold was ill and so she would have been the one to get any notices, but she got none. She said she knew that Harold went to see his lawyer Sir John Compton after he lost the case, but she did not go with him. She says he did not go to Sir John about the notice but about the case. She claimed she did not recall that Godfrey had told Sir John that they would not sell the land to Harold but then said they would sell to her now.

[52] According to Ida, the only communication ever addressed to her from Godfrey was the 6th July 2001 letter. That letter did not affect her rights, because by that date the period for acquiring long possession had accrued more than twice and the title of the claimant had been extinguished.

[53] In cross-examination, Ida recalled that they came to measure by her house. She did not see them herself, but her children told her, Vern and Dawn. Asked whether she had agreed to buy the land, she said she did not know what to say. When the question was asked again, she hesitatingly said yes. She however said she knew nothing about Mikey going to Godfrey or Ms. Bideau about selling the Property to her.

Donata Francis (“Donata”)

[54] She is the daughter of Harold and Ida. She was born on 17th May 1978 and raised on the Property. From her cross-examination, she knew about the 1985 claim but did not know that Harold had lost the case or that he had received notices to quit; she had never seen the 2002 judgment. Donata’s most telling statement in cross-examination was that she had literally come to the trial to support her mother.

[55] Donata did not respond when she was asked whether she understood that Harold had no right to be on the land. She was asked whether she was present when Godfrey and Morris came to measure the area her mother wanted to buy and her response was that she did not know that this ever took place and was hearing this for the first time. She confirmed that she is called

Dawn and Vern is her sister. When she was told what her mother said about the day of the measurements, she said perhaps she did not remember.

- [56] I found this witness to not be truthful and it is clear that she gave evidence solely to support her mother but did not know anything much about the matter which would have been of assistance.

Pius Bastien (“Pius”)

- [57] Pius is Ida’s nephew. Pius’ only evidence which may be of some utility is that he has known Ida to always occupy and has lived on the same spot for over 60 years undisturbed.

Discussion and Analysis

- [58] The following issues are identified for determination:
- (i) Issue A-Whether the defendant can successfully raise the defence of prescription to defeat the claimant’s claim for possession of the Property, i.e. Block and Parcel No. 1425B 227? (The negative prescription issue). In short, whether the defendant’s possession is continuous, uninterrupted, public, peaceable, unequivocal and as proprietor for thirty (30) years.
 - (ii) Issue B-Whether the claimant’s claim is prescribed?
 - (iii) Issue C-Whether the defendant acquired an overriding interest over the Property?
 - (iv) Issue D-Whether the defendant has trespassed on the claimant’s Property?
 - (v) Issue E-Whether the claimant is entitled to the relief sought?
- I will address Issues A, B and C together.

The Law

- [59] The law relating to prescription is to be found in the **Civil Code of Saint Lucia**⁹ (“the Code”) and the **Land Registration Act**¹⁰ (“the LRA”).

⁹ Cap. 4.01, Revised Laws of Saint Lucia 2013.

¹⁰ Cap. 5.01, Revised Laws of Saint Lucia.

(i) Requirements necessary for positive and negative prescription

[60] The Code confirms that prescription can be positive or negative¹¹. As a starting point, it must be noted that the Court of Appeal in the case of **Moses Joseph et al v Alicia Francois consolidated with St. Torrence Matty et al v Alicia Francois**¹² held that the same elements required for establishing positive prescription apply equally in a case where negative prescription is being set up as a bar to the claim.

[61] In submissions filed on 1st June 2023, Mr. Horace Fraser (“Mr. Fraser”), Counsel for Ida argued that **Moses Joseph** was wrongly decided and that it was only the requirement of thirty years which must be satisfied in relation to where prescription was raised as a defence. There was no need for all the other elements to be satisfied. Mr. Fraser submitted that the overarching question to be decided by the Court on a plea of a defence of extinctive or negative prescription is whether the claim is extinguished as opposed to the quality or nature of the occupation. That exercise he said is purely arithmetical in nature regarding the quantification of the number of years of occupation of the land. Subsequent to the filing of these submissions, Mr. Fraser would have raised the very same arguments in relation to **Moses Joseph** and the learned Chief Justice’s pronouncements in relation to negative and positive prescription before the Caribbean Court of Justice in 2024 in the case of **David Phillip v Joseph Phillip**.¹³

[62] In relation to this argument raised, the CCJ at paragraph 22 held that there was no merit to the appellant’s argument that the court failed to distinguish between positive and negative prescription because the court specifically decided that either type of prescription was extinguished for failure to claim the right to prescription. Ward JA in **Phillip** made the point that the appellant was required to not only plead the defence of prescription but to prove it by leading evidence to satisfy article 2057 (discussed below).

¹¹ Article 2074 of the Code.

¹² SLUHCVP2011/0025 consolidated with SLUHCVP2012/0037, delivered 15th April 2015 with written reasons delivered 21st August 2015.

¹³ [2024] CCJ 21 (AJ) LC.

[63] Mr. Fraser's argument cannot be sustained when one looks at the provisions of the Code. Article 2047 speaks to the types of prescription being positive and negative prescription. And then article 2057 provides as follows:

“For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.”

[64] Article 2057 does not specify whether it refers to positive or negative prescription. It would be very strange if for positive prescription one had to prove all these elements and then for negative prescription, the defence would be satisfied once possession for thirty years was proven without any of the other elements. Prescription in the context of the Code is not the same as limitation which only requires the time element to be satisfied.

(ii) What is required to prove prescription

[65] In order to establish prescription, articles 2103A and 2057 (stated above) of the Code clearly establish that user of the land must be *nec vi, nec clam, nec precario* or as Lord Hoffman put it ‘not by force, nor stealth, nor the licence of the owner’.¹⁴ Article 2103A requires *sole and undisturbed possession for 30 years*. Article 2057 as seen above requires that possession to be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.”

(iii) The time from which prescription is reckoned

[66] In **Moses Joseph**, the learned Chief Justice Pereira examined the effect of the Land Registration and Titling Project (LRTP) on prescription. In **Moses Joseph**¹⁵ and judgments which followed the Court looked at the LRTP and its components and concluded that the appellant's possession was interrupted by first registration and that the period of possession post first registration fell short of the required thirty years. The relevant period for the purposes of prescription operating as a bar to a claim must be reckoned not from some time prior to LRTP, but as commencing from the time the registered proprietor was recorded on the register.

¹⁴ R. v. Oxfordshire County Council ex p. Sunningwell Parish Council [2000] 1 AC 335 at 350.

¹⁵ At paras 25-27.

[67] The learned Chief Justice in **Moses Joseph** where Counsel for the defendant in this claim was Counsel for the appellants, dealt with his reliance on articles 1978, 2084 and 2085 and found that these articles did not fit into the **Land Adjudication Act**¹⁶ (“LAA”) and **Land Registration Act**¹⁷ (“LRA”) scheme which came into operation in the State of Saint Lucia notwithstanding the **Civil Code**. The Chief Justice found that the Articles of the Code prayed in aid by Counsel for the appellants were simply inapplicable to the prescription defence which they relied on.

[68] Counsel, Mr. Fraser in what I prefer to call a scholarly article rather than submissions, raised the very same arguments which he raised in **Moses Joseph** which were to my mind adequately answered by the Court of Appeal in that case. Subsequent to **Moses Joseph**, the cases of **Francis Chitolie v St. Lucia National Housing Corporation** and **Phillip** were decided by the Privy Council and the CCJ respectively. I will now examine these cases which have clarified and laid to rest some of the misgivings of Counsel surrounding **Moses Joseph**.

[69] In **Chitolie**, the Privy Council held that ‘as regards past possession, if no claim was made during the LRTP, the slate is wiped clean.’ This supports the learning in **Moses Joseph** which was applied by the High Court and Court of Appeal in their respective **Chitolie** judgments.

[70] The Board gave its reasons for upholding the decision of the lower court. At paragraphs 23-26, 28 and 33, the Board stated:

“23. It is not in dispute that a person who had an accrued interest in land by documentary title (ie title by deed) or because that person had been in possession of land for 30 years (ie a title by prescription), was required to make a claim. Subject to the discretionary safety-net in section 9(1), if they made no such claim their title would be extinguished if someone else made a claim to the land and was registered as having title.

¹⁶ Cap 5.04, Revised Laws of Saint Lucia 2020.

¹⁷ Cap 5.01, Revised Laws of Saint Lucia 2020.

24. The registered title is also subject to any effect section 28 of the LRA might have, which is what is in issue on this appeal. But section 28 does not remove the obligation, pursuant to section 6(1)(c) and section 8(1) of the LAA, on a person claiming to have an interest in land to make such a claim in the course of the LRTP. ...

25. An analogous approach applies to those who, at the time the new system was taking effect, had been in continuous possession of land but for less than 30 years. Such a person was “in course of acquiring a title under ... any law relating to prescription” under section 16(1)(a)(ii) of the LAA. The Board agrees with the submission of V Dexter Theodore KC, counsel for the respondent, that, applying section 16(1)(d) of the LAA, the Recording Officer could record that person as having provisional title to the property and the date on which the possession of that person was considered to have begun. Sections 9(2), 24 and 29 of the LRA confirm this. ... Since an interest of that kind could be recorded in that way, it follows that such a person had an “interest in land”, under the definition in section 2 of the LAA (“any right or other interest in or over land which is capable of being recorded under the provisions of the Act”) and that person was therefore required to make a claim under sections 6 and 8 of the LAA, as explained above. ...

26. This interpretation of the LAA does not of course deny that relevant possession beginning after 1987 would count as an overriding interest under section 28(f) of the LRA. Where that possession has been for a period of less than 30 years, it would be an overriding interest because that subsection includes rights “in process of being acquired” by prescription. Put another way, it is clear that, under section 28(f) of the LRA, possession beginning after first registration is recognised despite non-registration.

28. It can therefore be seen that, read together, the LAA and the LRA have produced a clear, coherent and comprehensive Torrens scheme; and that rights in the course, or process, of being acquired by prescription *after but not before* 1987 are overriding interests.

...

33. It is of course true that, by reason of section 28 of the LRA, overriding interests constitute exceptions to the certainty of the title as registered. But, as far as relevant possession is concerned, section 28(f) is an exception only once the system is up and running. As regards **past possession, if no claim was made during the LRTP, the slate is wiped clean.** (my emphasis)

[71] Mr. Fraser relies on the Privy Council case of **Graham-Davis and Another v Charles and Others**¹⁸ in support of his submissions. However, without going

¹⁸ [1994] UKPC 5.

into any detail about the case, I would simply point out that the Board agreed with both the lower courts that **Graham-Davis** is distinguishable because the relevant provisions in Antigua and Barbuda are significantly different from those in Saint Lucia. This case does not assist the defendant.

[72] The CCJ in **Phillip** upheld the decision of our Court of Appeal. They found that the Court of Appeal was correct that first registration interrupted prescription and referred to the statement by Ward JA at paragraph 41 of the Court of Appeal's decision where he stated that '... upon [first] registration the clock is reset and time for the purpose of prescription commences from some time after the date of interruption'.

[73] The CCJ confirmed what had been stated by Pereira CJ from as far back as **Moses Joseph**-first registration interrupts prescription. The CCJ's statement at paragraph 8 of its decision is an apt position on the state of the law. The Court stated:

"The essence of the contribution that the Privy Council made in its upholding of the Court of Appeal in Chitolie was its unstinting vindication of the previous decisions of the Eastern Caribbean Supreme Court ('ECSC'). That approach makes it fitting for this Court to rest its determination in the instant case on the decision of the Privy Council in Chitolie. Therefore, this Court hardly needs to do more than follow in the footsteps of the Privy Council which followed the jurisprudence of the ECSC."

Discussion and Analysis

[74] With the above principles and exposition of the current state of the law following the pronouncements of Saint Lucia's highest appellate Courts at the relevant time, I will now address this claim.

[75] It is the case that Ida has raised prescription as a bar to Godfrey's claim (negative prescription). Ida therefore must show that she has been in continuous, interrupted possession for 30 years. I think it is important to state from the outset that from Ida's pleadings, it is clear that her claim of prescription of the Property solely relates to that portion of the Property which

she currently occupies. The starting point is to determine when Ida began to occupy the Property.

(iv) When did Ida begin to occupy the Property?

- [76] Godfrey's evidence was not helpful as he could not say exactly when Ida came to live on the Property. From Ms. Bideau's evidence, she was 7 or 8 years old in 1959/1960 and Ida was not living on the Property. According to her Ida came to live with Harold in the little wooden house around 1964/1965 when she was about 12 or 13 years old.
- [77] According to Dorothy, when she built her house in 1957, Ida was nowhere around. Her evidence is that Ida started working bananas with Harold in about 1960 but she was still living at her mother's home. Harold started living on the land in the early 1960's alone and after some time she noticed that Ida and Harold were living in the wooden shack together.
- [78] Ida claims that she started living on the land when she was 18 years old from 1st January 1955. In her witness statement that she had lived on the land for over 60 years which places the start date of her occupation at 1962. In her defence she says she had been living on the land for over 66 years which then puts her start of occupation at 1956. It is noteworthy that Ida's witness, Pius also said she lived on the Property for over 60 years.
- [79] In cross-examination, Ida said she left her mother's home at 18 years which would have been in 1955 given that she was born in 1937. She said she got married approximately six years later although she could not remember the year. Six years later would have been 1961. Ida's evidence that she started occupying the Property in 1955 takes her straight to the 30-year mark in 1985 when Harold's 1985 claim was filed and appears rather coincidental. I also note that Ida said in cross-examination that Harold showed her two title deeds for the Property which showed that Harold and his family owned the land. At the time Harold introduced her to the land she was still living at her mother's home. The title deeds are dated 17th May 1956 and 9th June 1960. Based on

those dates, I find that Ida could not have started occupying the Property in 1955 and that she must have started her occupation after 1960.

[80] I do not accept the submissions of Counsel for the claimant, Mr. Dexter Theodore KC ("Mr. Theodore KC") that since Ida said that when she started to live with Harold, he was selling bananas to St. Lucia Banana Growers Association (SLBGA), and SLBGA was established in 1967, then she met Harold after 1967. There is no evidence of when SLBGA was established save for what is submitted by Counsel.

[81] When I assess the evidence, I do not accept Ida's evidence that she started living on the Property in 1955. I believe that she came to live on the Property after she started working bananas with Harold in 1960 or thereabout. At the earliest, based on the evidence, Ida would have started occupying the Property in about 1961. This accords better with Ida's own evidence in cross-examination and the evidence of Ms. Bideau and Dorothy.

(v) Whether Ida has occupied the Property for 30 years?

[82] During the LRTP, it appears that both Harold and Lennox on the one hand and the Bideaus on the other hand thought they had rights to the Property. There clearly was a dispute raised with the filing of the 1985 claim. As a result, a note was made on the adjudication record and on the land register stating 'No dealings pending decision of the High Court'.

[83] The date of first registration is recorded on the land register as 27th May 1987 and shows that the Property is stated as being Crown rather than private. It appears that since there was no proprietor recorded, the Property was recorded as Crown. It must be remembered that all land was adjudicated and where there was no proprietor, the land was recorded as Crown.

[84] Based on the learning in **Moses Joseph** and upheld in both **Chitolie** and **Phillip**, as at 27th May 1987, Ida would have been occupying the Property for twenty-six (26) years and not thirty (30) years. Her period of possession would have been interrupted by first registration. Ida did not make a claim to record

her interest in the Property and therefore the period of her possession prior to first registration is wiped clean. Any period of possession for the purposes of prescription would have to start after 1987 or some later date.

(vi) Overriding Interest

- [85] Ida's claim is that by the time the 1985 claim was filed she had already acquired an overriding interest in the area of land occupied by her dwelling house and its surroundings by virtue of section 28(f) and (g) of the LRA. Section 28 of the LRA states:

"28. Overriding interests

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

...

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed;

..."

- [86] At the date of first registration, Ida had occupied the Property for twenty-six years. The CCJ in **Phillip** referring to dicta of the Privy Council in **Chitolie** said: "...s 28 did not remove the obligation, pursuant to ss 6 and 8 of the LAA, on a person claiming to have an interest in land to make such a claim during the titling project." At paragraph 15 of **Phillip**, the CCJ stated that:

"Prescriptive rights being acquired or already acquired could be brought on to the register. If so brought, they had full effect. But, if not brought on to the register at the time of first registration, they were wiped out. This was the fate also of a person with full, formal title by deed at the time of first registration who did not register their title."

- [87] The CCJ went on to quote Ward JA in the Court of Appeal decision of **David Phillip v Joseph Phillip**,¹⁹ where he stated that an overriding interest consists of having some right to the land coupled with actual occupation. Ward JA said that the appellant did not have the right of prescription or any prescriptive right over the land because he had not registered the alleged prescription, and it

¹⁹ SLUHCVP2022/0003, (delivered 27th July 2023), unreported.

was extinguished. The appellant therefore had no right that he could couple with his occupation.

- [88] It is the case that Ida did not register her interest in the Property during the LRTP and as a result any prescriptive rights which may have acquired prior to first registration would have been wiped clean and she could have no right which could be coupled with occupation. In the circumstances, Ida had not acquired any overriding interest in the Property at the date of first registration.

(vii) Prescription against Harold?

- [89] It is not even clear how Ida could be claiming prescription during the twenty-six years prior to first registration under the LRTP. Firstly, Ida in cross-examination said that Harold and Lennox said they had rights to the land and she spoke of papers which Harold had shown her which was their title to the land. From this, it would appear that Harold was not claiming title to the land by prescription. He was claiming as owner which is supported by the 1985 claim in which he and Lennox asserted that they were the owners of the Property.

- [90] If it is that Harold had title deeds and claimed to be the owner of the Property then it meant that Ida was prescribing against him. That however does not accord with Ida's evidence which clearly shows that she was occupying the Property with Harold and not as owner or possessor in her own right. In cross-examination, this is what she said:

“Q. When Harold brought you on the land you did not believe yourself to have any right to the land?

A. Where he brought me that is where I had to go.

Q. And you did not believe that you had any rights apart from as his wife?

A. Wherever he tell me to go I had to go. ...”

- [91] The above exchange does not resemble someone who is claiming possession as owner. She was following her husband. I entertain serious doubt that Ida's occupation would have satisfied the article 2057 requirements. In any event, Ida's possession, if it qualified as such would have only been for twenty-six (26) years at the date of first registration and that period would not count. The slate would have been wiped clean, and time would have started to run again.

(viii) Prescription against the Crown?

[92] Post first registration and the wiping clean of the possession slate, Ida faced one issue. The Property was recorded as Crown given that the 1985 claim was pending. Therefore, Ida could not prescribe against the Crown. Articles 2076 and 2077 of the Code is clear and states that the rights of the Crown are imprescriptible. The period between 1987, first registration and the date of the judgment in the pending claim could not have been possession which counted towards prescription.

(ix) The judgment in the 1985 claim

[93] On 5th July 2002, the High Court would have decided that the Bideau's were entitled to the Property and dismissed the claim which had been brought by Harold and Lennox ("the 2002 judgment"). The 2002 judgment decided title to the Property and therefore the claimant was entitled to be recorded on the land register as proprietor. Time in relation to establishing the period required to claim prescription could only begin to run against the claimant as proprietor from the date of the judgment.

[94] Ida argues that at the date of the judgment she had already acquired an overriding interest but as discussed above that is not the case. In submissions, Counsel, Mr. Fraser contends that Ida was not a party to the 1985 claim and no order was made against her. Therefore, the judgment did not affect her occupation of the land.

[95] Counsel, Mr. Theodore KC counters this and submits that the 2002 judgment is a judgment in rem as it pertains to ownership of Property. Therefore, the judgment applies to Ida whether she was a party to the claim or not.

[96] I accept as correct the submissions of Mr. Theodore KC. A judgment in rem upholds a right over property as against the whole world and is therefore enforceable against the whole world.²⁰ Therefore, Ida cannot simply say that

²⁰ Ward v Savill [2021] EWCA Civ 1378.

she was not a party to the claim and therefore the 2002 judgment does not affect her.

[97] The actions of Harold and later Ida show that they accepted and acknowledged the 2002 judgment. The evidence shows that after the judgment was delivered, a letter was written to Counsel, Mr. Theodore dated 3rd February 2004 on behalf of Harold. The letter was in response to a notice to quit dated 16th December 2003. In that letter, it says:

“Mr. Harold Fontius has asked me to reply to the Notice to Quit sent from your chambers relating to a portion of land ...which he has been occupying for over 50 years believing the same to be his.

The recent judgment of the High Court has found otherwise and this judgment, however reluctantly Mr. Fontius has been advised to accept.”

[98] The letter went on to say that Harold was willing to purchase the area which he occupies as the circumstances show that his occupation is one of “an ancient mistake”. This letter clearly shows that Harold was fully aware of the judgment and its terms. A response to Harold’s letter dated 6th April 2004 revealed that Godfrey and Morris did not wish to sell and asked that Harold vacate the Property by a date stated.

[99] After Harold died in 2011, the evidence shows that even Ida also accepted that she did not own the land when she agreed for the spot where she occupies to be measured with a view to it being sold to her.

[100] It is antithetical to raising prescription as a bar to a claim that one would wish to purchase the very same Property because the latter clearly shows an acceptance that one does not own or have any interest in the Property.

(x) Prescription post the 2002 judgment

[101] The evidence is that the Bideau’s were declared to be the owners of the Property in 2002. This means that Ida could only prescribe against them from that date. With that in mind, Ida would have been in occupation for a total of

nineteen years when the claim was filed in 2021. That would be eleven (11) years shy of the thirty years required for prescription.

[102] In addition to prescription being interrupted by first registration under the LRTP, the Code provides in article 2085 that:

“2085. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.”

[103] In **David Sweetnam et al v The Government of Saint Lucia et al**,²¹ Justice of Appeal Gordon said this in relation to the proper interpretation of article 2085 of the Code:

” The law in St. Lucia has never been amended to harmonise with either the Quebec or Louisiana laws as amended. It must therefore follow that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt. This conforms absolutely with plain ordinary meaning of the language of article 2085.”

[104] It therefore means that when this claim was filed and served by the claimant in 2021, it interrupted prescription and the clock was reset. Any possession for the purposes of prescription would then start to run from 2021.

[105] The conclusion of the above discussion is that the claimant’s claim is not prescribed as importantly, Ida has failed to prove that she has been in possession of the Property for thirty (30) years which is the starting point. It is therefore not necessary to consider the other elements required to be satisfied for prescription as discussed above.

[106] Applying the cases and having analysed the evidence, Ida has failed to prove her defence of negative prescription against the claim. These are the conclusions which I have come to:

(a) Ida started occupying the Property at the earliest in 1961;

²¹ SLUHCVP 2005/0042 (delivered 28th October 2005 at para 11).

- (b) At the date of first registration, 27th May 1987, Ida had not been occupying the Property for thirty (30) years and was only occupying for twenty-six (26) years.
- (c) Ida did not acquire any overriding interest in the Property at the date of first registration or at the date of filing of the 1985 claim;
- (d) Ida could not have prescribed against the Crown between 1987 and 2002 when the Bideau's were declared as the rightful owners of the Property;
- (e) The 2002 judgment in the 1985 claim was a judgment in rem and applied to the defendant even though she was not a party to the claim.
- (f) Both Ida and Harold by their actions acknowledged the effect of the 2002 judgment.
- (g) Post the 2002 judgment, Ida would only have been in occupation for nineteen (19) years to the date of filing of this claim and could not have prescribed against the claimant as the filing of this claim in 2021 would have interrupted prescription.

Issue D-Trespass

- [107] I now go on to consider Issue D, whether the defendant has trespassed on the claimant's Property. Trespass to land consists of any unjustifiable intrusion by one person upon land in the possession of another. Proof of trespass gives rise to a continuing action for damages for as long as the trespass persists. A successful claimant is entitled to recover possession of his property and damages from the trespasser. If he establishes that there is a strong likelihood that he will suffer grave damage in the future for which an award of damages will be an inadequate remedy, he may be granted a permanent injunction restraining further trespass.
- [108] From 2002, the claimant was declared to be the owner of the Property. The evidence shows that in December 2003, the claimant would have served a notice to quit on Harold to which he responded with a proposal for the sale of the part of the land he was occupying to him (letter dated 3rd February 2004). Godfrey through this lawyer would have responded, indicated his unwillingness to sell and asking that Harold vacate the Property by 1st May 2004 (letter dated 6th April 2004). Harold did not vacate and remained on the Property.

- [109] Harold passed away in 2011, and Ida continued to occupy the Property without permission of the claimant. At some point there was talk about the part of the Property she was occupying being sold to her, but nothing happened in this regard, and she remained on the Property.
- [110] By letter dated 6th July 2021 Ida was given notice to forthwith vacate the land, remove her house including the concrete extension that she built no later than 31st October 2021. Ida did not comply and therefore this claim was filed.
- [111] It is the case that Ida is aware that the Property does not belong to her. She has no right or permission to remain on the Property and is therefore trespassing on the claimant's Property. Where a defendant has trespassed on property belonging to a claimant, the claimant is entitled to recover damages even if he has suffered no actual loss. There is no need for the claimant to prove any actual damage in order to be able to sustain an action for trespass.
- [112] In determining the measure of damages to be awarded the Court must consider the loss suffered. Where the defendant has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use.²² The claimant has not provided any evidence of the rental value of the Property and the extent of Ida's occupation to assist the Court to quantify the loss suffered. In the circumstances, the Court will award nominal damages in the sum of \$2,000.00.

Whether the claimant is entitled to a demolition order

- [113] In the case of **Patricia Willard Hurst et al v Paragon et al**²³ the court refrained from granting a demolition order where it found that an error on the part of the defendants caused the offending action and not a wilful trespass.

²² Halsbury's Laws of England/Tort (Volume 97 (2015))/5. Torts to Land/(1) Trespass to Land/(v) Remedies for Trespass to Land/591. Damages for trespass to land.

²³ AXAHCV2006/0088, delivered 21st June 2012, unreported.

[114] Blenman J in deciding whether to grant a demolition order said that “[t]he Court has to examine the entire matter in the round and seek to do justice between the parties.”²⁴ Her Ladyship also remarked that: “... the financial costs to demolish the building have not been provided. These are all relevant factors to the Court’s determination of the appropriate remedies that should be awarded.”²⁵ The court in that case was of the view that the defendants’ infractions were not so serious as to warrant the ultimate sanction of demolition. The court went on to say that this in no way condoned the defendants’ wrongdoing, and it does not sanction a person trespassing on another’s property and thereby infringing another person’s rights. While Blenman J was of the view that though demolition orders are routinely granted by the court in deserving cases, she had no doubt that an award of damages would be very adequate and appropriate to compensate Mr. and Mrs. Willard for the inconvenience and losses they had suffered as a consequence of the defendants’ unlawful act.

[115] In the Court of Appeal decision of **Cendra Charles v Justin Surage et al**,²⁶ the sole issue was whether the learned trial judge had properly exercised her discretion in granting the mandatory injunction. Gordon JA at paragraph 6 said that ‘the power of granting mandatory injunctions must be exercised with the greatest possible care and that the granting of a mandatory injunction is always at the discretion of the court and cannot be ‘as of course’.’ Gordon JA referred to the case of **Redland Bricks Ltd v Morris**²⁷ and quoted from Lord Upjohn certain general principles for the guidance of courts in the exercise of its discretion:

“ ...

- iii. Unlike the case where a negative injunction is sought to restrain the defendant from continuing or repeating a wrongful act, **the cost to the defendant of compliance with a mandatory injunction must be taken into account;**
 - a. **where the defendant has acted without regard to his neighbour’s rights, or has tried to steal a march on**

²⁴ At paragraph 109.

²⁵ Ibid.

²⁶ SLUHCVP2003/0033, (delivered 27th October 2005), unreported.

²⁷ 1970] A.C. 652 at pages 665 to 666.

him or has tried to evade the jurisdiction of the court, or has acted wantonly and quite unreasonably in relation to his neighbour he may be ordered to repair his wanton and unreasonable acts by doing positive work to restore the status quo even if the expense to him is out of all proportion to the advantage thereby accruing to the plaintiff;" (my emphasis)

[116] It is clear that when Ida and Harold initially occupied the land, Harold was of the view that the Property was his. However, he and Ida would have been aware of the 2002 judgment and by that time, of the fact that the Property did not belong to Harold. From the evidence, Harold at one point and then Ida later would have taken steps to purchase where they occupied on the Property, but this did not materialise, clearly demonstrating that they knew the Property was not theirs.

[117] Despite this, we see that they would have started construction in concrete even in the face of that knowledge sometime prior to Harold's death. Although Ida said that the construction was stopped because of the warnings from the Planning Department, based on my assessment of the evidence from Godfrey and Ms. Bideau, I believe that Harold was told to stop the construction. Having stopped the construction and armed with the knowledge of the true owner of the Property, Ida would again start construction in 2021 until she was stopped by an injunction preventing further construction. The Court cannot countenance persons simply ignoring the rights of lawful proprietors.

[118] I also consider the claimant's conduct in relation to this trespass. The claimant wrote to Harold in 2003 asking him to vacate the Property and he did not. Godfrey took no action against Harold then. Nothing was done in relation to Ida's occupation until 6th July 2021 when the claimant would have given Ida notice to vacate the Property. That was eighteen (18) years later. An injunction was granted to restrain further construction on the Property by Ida and there is nothing to suggest that the Order was not complied with.

[119] The claimant sat by and allowed eighteen (18) more years to roll by without taking any action against or writing to Ida. Even in terms of recording the

claimant as proprietor on the land register for the Property in keeping with the 2002 judgment, there was an attempt to do so in 2007, and nothing was done for the next fourteen (14) years.

[120] Applying the principles as espoused in the cases above, the defendant has provided no evidence of the financial costs involved in demolishing the structures constructed on the Property. However, given the fact that Ida was aware of the claimant's ownership of the Property, the fact that she was at one point exploring purchasing from the claimant, and the steps taken by Ida to construct a concrete structure on Property which she knows is not hers, the Court is of the view that the defendant ought to be made to remove the structures from the Property.

[121] Whilst Ida is trespassing on the Property and I think that ordering demolition is appropriate in the circumstances of this case, given the historical background and the fact that the claimant has not evinced a clear willingness to sell to the defendant, I have considered the justice of the case and think that adequate time needs to be given for compliance with any order the Court makes. This approach is not in any way to condone the defendant's trespass but simply to balance the scales of justice.

Conclusion

[122] Given the foregoing discussion, I am of view that the justice of the case requires the Court to make an order which can serve the interests of both parties adequately.

Issue E-Whether the claimant is entitled to the relief sought?

[123] Having considered the evidence and submissions of the parties and the applicable legal principles, I consider that the claimant is entitled to possession of the Property. I therefore make the following Orders on the claim:

1. Judgment is entered for the claimant.

2. The defendant shall pay the claimant damages for trespass in the sum of \$2,000.00.
3. The defendant shall deliver up vacant possession of the land registered as Block and Parcel 1425B 227 situate at Desruisseaux, in the quarter of Micoud ("the Property") to the claimant and at her own expense shall demolish and remove all structures constructed on the Property and all debris arising from the demolition and removal on or before 30th November 2026.
4. The defendant is restrained whether by herself, her servants or agents from building or continuing to build on the Property and shall not undertake any construction on the Property whatsoever.
5. Unless granted an extension of time to comply with this Order, the defendant is restrained whether by herself, her servants or agents from entering or remaining on the Property after 30th November 2026.
6. The defendant shall pay the claimant prescribed costs on the claim in accordance with CPR 65.5 of the Civil Procedure Rules 2000 which would have been the applicable rules at the date of trial.

[124] In the meantime, the parties are strongly encouraged to renew discussions with each other regarding sale of the portion of the Property occupied by the defendant to her given the history of the matter.

[125] I sincerely apologise to Counsel and the parties for the delay in delivering this judgment and for any inconvenience caused by the delay.

**Kimberly Cenac-Phulgence
High Court Judge**



By the Court

Registrar