

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2019/0569

BETWEEN:

JOSEPH RUFUS FRANCOIS

Claimant

and

1. RAPHAEL XAVIER
2. EDICIA XAVIER

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Maureen John-Xavier for the Claimant

Mr. Huggins Nicholas for the Defendants

2023: June 14;	(Trial)
July 31,	(Closing Submissions)
2026: February 26.	(Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** By this claim, the claimant, Mr. Joseph Rufus Francois ("Mr. Francois") seeks orders for (i) possession of a parcel of land situate at Belle Vue in Choiseul and registered as Block and Parcel 0225B 120 ("the Land"), (ii) mesne profits for use and occupation of the Property, (iii) further or other relief and (iv) costs, against the defendants, Mr. Raphael Xavier ("Mr. Xavier") and Ms. Edicia Xavier ("Ms. Xavier"), (together "the defendants").

[2] Mr. Francis is the registered proprietor of the Land consequent upon the partition of a parcel of land (Parcel 0225B 74) held in the names of the claimant and John Denis Donacien as administrator of the Estate of

Hilda Donacien.¹ The defendants were in occupation and built a concrete structure on the Land prior to Mr. Francois being the proprietor.

- [3] In about May 2018, Mr. Francois would have visited the defendants on the Land and informed them of his ownership and inviting suggestions as to how the situation of their occupation could be addressed. The defendants claimed that Land was theirs.
- [4] On 15th May 2018, the defendants' lawyer wrote to Mr. Francois' lawyer informing among other things that the defendants were amenable to having discussions.² Mr. Francois made several attempts to resolve the matter amicably without success.
- [5] Mr. Francois' evidence is that after he had acquired the Land, the defendants indicated they did not wish to buy but wanted to do an exchange with him for lands which had been purchased from John Denis Donacien. They however could not produce the title documents for those lands.
- [6] Mr. Francois testified that prior to filing of this claim in about January 2019, Mr. Xavier had an old wooden house on the Land. When he noticed that Mr. Xavier was bringing materials on to the Land to build, he sent him and Ms. Xavier a Notice to Quit dated 4th February 2019. The notice required the defendants to give up vacant possession of the Land by 1st May 2019.³
- [7] The defendants did not comply and remained on the Land. Mr. Xavier actually continued and built a wooden house on the Land. Mr. Francois alleges that the defendants are squatters and trespassers and occupy the Land in bad faith. It is Mr. Francois' case that he has been deprived

¹ pp 1-2 of Trial Bundle (TB) 3.

² p 3 of TB 3.

³ p 4 of TB 3.

of the use and enjoyment of the Land and gives its annual rental value of \$2,500.00 but does not provide any evidence to support this value.

[8] Ms. Xavier and Mr. Xavier filed separate defences. Mr. Xavier in response to Mr. Francois' claim says that the Land on which his house stands is part of the undivided one-half share previously owned by his grandfather Emmanuel Xavier and which was registered as Block and Parcel 0225 74 ("Parcel 74"). Parcel 74 was partitioned and the Land in question is a portion of that larger parcel.

[9] Mr. Xavier claims that he has been living on the Land from his birth prior to and after the first registration under the process of Land Adjudication. He claims that he has acquired an overriding interest pursuant to section 28 of the **Land Registration Act**⁴ ("LRA") as he has been in actual occupation of the Land. Since the partition was conducted while he was in actual occupation, his occupation ought to have been reflected since it was known to Mr. Francois.

[10] He further alleges that the property where his concrete house is situated was given to his father Emmanus Xavier by his father Emmanuel Xavier.

[11] Mr. Xavier denies that Mr. Francois has ever made attempts or invited them to resolve the issue of their occupation of the Land but instead he had made threats to him that if he did not vacate the Land he would be removed.

[12] Mr. Xavier in his defence states "And the first defendant counterclaims:-" and then lists several orders which he seeks including setting aside the grant of extension of time to administer the estate of Hilda Xavier, cancellation of Deed of Partition; rectification of the land register for Parcel 120 to remove Mr. Francois' name as proprietor, setting aside of the Vesting Assent in favour of Mr. Francois, rectification of the land register to reflect his overriding interest and to register him as proprietor,

4

Cap 5.01 of the Revised Laws of Saint Lucia 2020.

and an injunction to restrain Mr. Francois from continuing to deal with Parcel 120. However, I note that there are no pleadings in relation to the relief sought. I return to this later.

[13] Mr. Francois denies that Mr. Xavier acquired any overriding interest in Parcel 74. He claims that he always recognised Mr. Xavier's occupation and in the spirit of compromise he made without prejudice offers to compensate them.

[14] Ms. Xavier claims that she acquired Parcel 74 in several ways: (a) that she purchased three (3) acres of an undivided one half share (1/2) in Parcel 74 from the registered proprietor John Denis Donacien for \$20,000.00 on 22nd September 2015, (b) she has acquired an overriding interest under section 28 of the LRA in the three (3) acres since she has lived on the property for sixty five (65) years and she has a wall structure on it with the knowledge of John Denis Donacien and (c) she has acquired a beneficial interest consequent upon her payment of the purchase price to John Denis Donacien and Mr. Francois holds the land on trust for her.

[15] She claims that Mr. Francois is not entitled to possession and enjoyment of the three (3) acres which she purchased. Ms. Xavier claims that she is unable to register the Deed of Sale for her purchase of the three (3) acres of Parcel 74.

[16] She claims that she lived on the property all her life and that her occupation was with the approval and acquiescence of the lawful owner John Denis Donacien. She claims that Mr. Francois had actual and constructive notice of her interest in the property and knew that he would hold the property subject to her interest.

[17] According to Ms. Xavier she has both an overriding interest and an equitable interest in the property and is not a trespasser.

- [18] Ms. Xavier does not make a counterclaim, but she makes certain allegations of fraud, bad faith, lack of mental capacity in relation to various documents but seeks no relief in relation to these allegations.

Pleadings

- [19] It is trite that a party is required to set out his case in the pleadings. The function of pleadings is to give fair notice of the case which has to be met.⁵ The Court in **Shankeil Myland v Commissioner of Police et al**⁶ stated at paragraph 37 that the pleadings are important so that the opposing party may direct its evidence to the issues disclosed. In that case the Court looked at the requirements of Part 8 of the **Civil Procedure Rules** which set out the claimant's duty to set out his case and what that entails and pointed out that a defendant must plead any matter on which he intends to rely to defeat the claim. In other words, a defendant has the same duty to set out his case.

Documentary evidence

- [20] I will take a look at some of the documentary evidence which is important to this matter.

(a) The land register for Parcel 74 shows the following proprietors

- (i) In 2000-Peter Xavier- ½ share; Hilda Donacien- ½ share
- (ii) In 2001-Winifred Crafton as administrator of the estate of Peter Xavier was registered as to ½ share. This ½ share was sold by Winifred Crafton as administrator to Petronilla Francois and Joseph Rufus Francois each having a ¼ share⁷
- (iii) In 2012-Joseph Francois was registered as the administrator for the estate of Petronilla Francois as to ¼ share.

(b) The proprietorship as at the end of 2015 and the dates of the entries were:

- (i) Joseph Rufus Francois- ¼ share (2001)

⁵ Frederick Henry v Marie Ketra Albert, SLUHCVP2023/0012, (delivered 20th August 2024), unreported.

⁶ GDAHCV2021/0045, (delivered 9th May 2014), unreported.

⁷ p 14 of TB 3.

- (ii) Joseph Francois as executor for the estate of Petronilla Francois- ¼ share (2012)
- (iii) John Denis Donacien as administrator of the estate of Hilda Donacien- ½ share (2015)

[21] In her Last Will and Testament dated 24th February 2007, Petronilla Francois, the mother of Mr. Francois appointed him as executor and also bequeathed her ¼ share in Parcel 74 to Mr. Francois.⁸ The Will was admitted to probate on 30th July 2012.⁹ By a vesting deed executed on 15th February 2015, Petronilla's ¼ share was vested in Mr. Francois. He therefore now had a ½ share in Parcel 74.

[22] After 2015, the proprietorship of Parcel 74 was Mr. Francois as to ½ share and John Denis Donacien as administrator of the estate of Hilda Donacien as to ½ share. In 2017, the two co-proprietors agreed to a partition of Parcel 74 and by a vesting deed, Mr. Francois was allotted Parcel 120 and Mr. John Denis Donacien was allotted Parcels 121 and 122. These three parcels were the result of the mutation of Parcel 74.

[23] In 2015, John Denis Donacien would have signed a Deed of Sale dated 22nd September 2015 purportedly selling three (3) acres of an undivided ½ share of Parcel 74 for \$20,000.00 to Ms. Xavier.

Issues for determination

- [24] The following issues arise based on the pleadings:
1. Whether Mr. Francois is entitled to possession of the Land?
 2. Whether John Denis Donacien was at any time a proprietor of any land or any portion of it in his personal capacity? (Capacity Issue)
 3. Whether the defendants have acquired an overriding interest in the Land (Parcel 120) by virtue of (a) being in actual occupation of the Land for over sixty-five years and (b) on the basis of the unregistered

⁸ p 9 of TB 3.

⁹ p 8 of TB 3.

Deed of Sale from John Denis Donacien dated 22nd September 2015? (Overriding Interest Issue)

Overriding Interest Issue

- [25] In his defence, Mr. Xavier claims that he has overriding interest pursuant to section 28 of the LRA by virtue of the fact that he has been living on the Land from his birth before and after first registration under the LRTP. His claim is that he has been in actual occupation.
- [26] Section 28 of the LRA lists the matters which are considered to be overriding interests:

“28. Overriding interests

servitudes subsisting at the time of first registration under this Act;
(b) servitudes which arise from the situation of the property or which have been established by law;

(c) rights of compulsory acquisition, user or limitation of user conferred by any other law;

(d) leases or agreements for leases for a term not exceeding 2 years;

(e) any unpaid money which, without reference to registration under this Act, are expressly declared by any law to be a charge upon land;

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

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

(h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, wires and dams erected, constructed or laid under any power conferred by any law;

(i) community property as described in article 1188 et seq. of the Civil Code; (my emphasis)

- [27] I start with the dicta of the Court of Appeal in **Zinna Zimbanni (As Personal Representative of the Estate of Adelaide Joseph, deceased) v Computron Limited**.¹⁰ In that case Henry JA stated:

“Section 28(g) of the LRA protects the rights of a person in actual occupation. It does not however protect the actual occupation of the land itself, as **it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, for the treatment of the right as an overriding interest.** In this case, Ms. Joseph relied on the actual occupation of the disputed land to ground the overriding interest

¹⁰ SLUHCVP2019/0017, (delivered 10th January 2022), unreported.

claimed under section 28 of the LRA and failed to state in her counterclaim what rights if any, she was asserting under section 28(g)."

[28] In **Spiricor of St Lucia Ltd v Attorney General of Saint Lucia and Another**¹¹ the Court pointed out that what is protected under section 28(g) are 'rights' and not the actual occupation. Byron CJ stated:¹²

"A careful perusal of the words of section 28(g) would indicate that the 'actual occupation' is not the protected interest. What is protected are the 'rights' of a person in actual occupation. The word 'rights' is not limited by any definition. In my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation. This has been the construction given to similar provisions in the English land registration legislation. See for example Lord Oliver of Aylmerton in *Abbey National Building Society v Cann* [1990] 1 ALL ER 1085 at page 1098:

'... it is not the actual occupation which gives rise to the right or determines its existence. Actual occupation merely operates as the trigger, as it were, for the treatment of the right as an overriding interest. Nor does the additional quality of the right as an overriding interest alter the nature or the quality of the right itself. If it is an equitable right it remains an equitable right.'" (my emphasis)

[29] The Caribbean Court of Justice in the appeal decision of **David Phillip v Joseph Phillip**¹³ quoted Ward JA in the Court of Appeal decision of **David Phillip v Joseph Phillip**,¹⁴ 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 was extinguished. The appellant therefore had no right that he could couple with his occupation.

[30] Mr. Xavier does not identify which of the sub-paragraphs of section 28 he is relying on but from his defence it would appear to be rights of a person in

¹¹ (1997) 55 WIR 123.

¹² At p 132.

¹³ [2024] CCJ 21 (AJ) LC.

¹⁴ SLUHCVP2022/0003, (delivered 27th July 2023), unreported.

actual occupation. In his witness statement, it appears that Mr. Xavier now realised that actual occupation alone does not give rise to an overriding interest and so for the first time in his witness statement he gives a whole expose on his family tree and history, and now suggests that he has rights and interest entitling him to share in the succession of the estate of Emmanuel Xavier and Emmanus Xavier who is his father. There was no such pleading in his defence and Mr. Xavier cannot simply introduce things which ought to have been foreshadowed in his pleadings. Consequently, I decline to treat with any of the matters raised in the witness statement which were not part of his pleadings.

[31] In addition, when Mr. Xavier was served with the notice to quit he never raised the fact that he was an heir and had any interest in the Land. According to Mr. Francois, the defendants had said they wished to exchange land with him but could not produce any title documents. The goalpost keeps shifting.

[32] Mr. Xavier failed to plead any interest or right by way of prescription or inheritance. Consequently, his occupation alone cannot amount to an overriding interest.

[33] In relation to Ms. Xavier, her pleadings are wholly inconsistent with her evidence. It will be recalled that in her evidence she alleged that she had acquired title to the Land (i) by virtue of her being a bona fide purchaser of three (3) acres of the Land from John Denis Donacien; (ii) by her occupation of the Land on which a wall structure is affixed with the knowledge of John Denis Donacien for over 65 years; and (iii) that she had acquired an overriding interest by virtue of her paying the purchase price to John Denis Donacien.

[34] Like Mr. Xavier, Ms. Xavier's witness statement was an attack on John Denis Donacien's title which she claims was perpetuated by fraud. I note that Ms. Xavier's pleadings have no allegations of fraud save for an allegation relating to the petition for an extension of time to administer the estate being procured by fraud and bad faith. However, there are no particulars of fraud pleaded and there is no proper counterclaim on the pleadings.

[35] I note in her witness statement, she in similar fashion to Mr. Xavier states that she is in occupation of the Land belonging to Emmanuel Xavier and she has rights and interest entitling her to a proprietary interest as an heir. That is the basis for her overriding interest in her witness statement which is totally different to her pleadings. She says her rights and interest arise from the fact that her father Emmanus Xavier and her aunt Magdalene Xavier are persons through whom she has a proprietary right in the Land which has matured into an overriding interest as she was living on that property since she was born and is still living there. All of this features in the witness statement and is not at all pleaded in her defence. It also appears that Ms. Xavier is relying on her occupation of the Land to ground her overriding interest which as discussed above cannot by itself sustain an overriding interest.

[36] It is unclear what the basis for the defendants' overriding interest really is, but one thing is clear, occupation alone without assertion of a right cannot assist the defendants.

[37] I must comment on the manner in which the defendants have conducted their defence in this matter. The pleadings and evidence are contrary to each other and has sent this Court and it would seem the claimant all over the place. The evidence has introduced a whole new case and seeks to flesh out the relief sought in the defences when no counterclaim was filed. This approach is very concerning.

Capacity Issue

[38] Section 37 of the LRA recognises the contractual relations between parties where there is an unregistered instrument post the LPTP. In **Raoul Odlum v Catherina Jean Jacques nee Antoine et al**¹⁵ the court held that despite a deed of sale to the claimant being unregistered, the first defendant had divested herself of her interest in the land and could not thereafter lawfully transfer the land by deed of donation to anyone else. The court rightly

¹⁵ SLUHCV2007/0015, delivered 12th August 2011, unreported.

accepted that the deed of sale was valid though not registered. The first defendant had no equitable title to transfer at the stage of the donation to the second defendant and in accordance section 37 of the LRA, the claimant was allowed to seek to enforce his contractual rights by virtue of the unregistered deed of sale as between himself and the vendor.

- [39] Without a registered deed of sale, Ms Xavier did not acquire legal title regardless of the fact that she paid the full purchase price. Ms. Xavier accepts that her deed of sale was not registered. The circumstances of this case while they appear similar to **Raoul Odlum** present one striking difference. It is clear from the unregistered deed of sale dated 22nd September 2015 exhibited by Ms. Xavier that John Denis Donacien purports to sell to her as the owner of the undivided half share of Parcel 74 in his personal capacity. However, at the date shown on the unregistered document, Mr. Donacien was the administrator of Hilda Donacien's estate and could have only been capable of selling to her in that capacity. In his personal capacity he could not sell to Ms. Xavier what he did not own. The unregistered deed of sale would have been incapable of transferring any title to Ms. Xavier and perhaps this is why it was never registered. Therefore, that unregistered deed cannot along with Ms. Xavier's actual occupation give rise to an overriding interest.

Cross-examination-Analysis

- [40] In cross-examination, Mr. Xavier admitted that he received the notice to quit in 2019. He acknowledged that his sister's house was built after the notice to quit was received by him. He remembers the surveyor coming on the Land and said he had said he was doing a perimeter survey. He admits in cross-examination that he spoke to Mr. Francois about where he was living. He said Mr. Francois told him that he now owned the Land they were occupying, and they said okay. Mr. Xavier said they knew it was their grandfather's land and his sister had recently bought land so he proposed that they just swap the land with his sister's. He said he was not sure if his sister (referring to Ms. Xavier) was able to register the land. He knew she bought it but for whatever reason, it could not be registered. This actually corroborates Mr. Francois' testimony.

- [41] Ms. Xavier in cross-examination said that the surveyor told her what he had come to do. She admitted that she raised no objections with Mr. Francois or Mr. Donacien at the time of the survey even though she had said in her evidence that Mr. Donacien had given her permission to occupy the Land. She also said that she had told the surveyor about her purchase of the three (3) acres from Mr. Donacien. She claims not to have been present when the discussion about the swap of land took place. Ms. Xavier did not produce any evidence of the payment of the \$20,00.00 to Mr. Donacien although she said she had receipts. She agreed that Mr. Donacien was only registered as proprietor (in his capacity as administrator) on 4th September 2015 and prior to that he was not recorded as a proprietor.
- [42] Although in her witness statement Ms. Xavier had said that she acquired the property three ways one of them being that she lived on the Land with Mr. Donacien's permission, in cross-examination she admitted that she did not have his permission to build on the Land. She said she did not seek any permission to build. What she knew was that she bought from him. When asked whether she knew she was not the owner of Parcel 74, she said she was not sure.
- [43] Ms. Xavier admitted to receiving the notice to quit from Mr. Francois. Ms. Xavier's cross-examination was very confusing. When she was questioned about the fact that the basis for her asserting a right to the Land in her defence was different to that in her witness statement, she was very unclear in her response. She said she was claiming through her father Emmanus and her aunt Madeleine but that is different to her pleaded case.
- [44] At the conclusion of her cross-examination, Counsel for the claimant said to Ms. Xavier that if she had no rights to the land then she could not be claiming an overriding interest. Ms. Xavier appears to have accepted this to be the case when she said 'According to what I see, it looks so'.

Conclusion

- [45] The claimant has proven that he is the owner of the Land registered as Block and Parcel 0225B 120. The evidence reveals that there are two other parcels of land registered as Block and Parcel 0025B 121 and 122 which were allotted to John Denis Donacien as administrator of the estate of Hilda Donacien when the partition was done in 2017.
- [46] The defendants' submissions caused me to pause to wonder whether I had read the wrong defence. The submissions like the witness statements are based on a wholly different pleaded case. The Court declines to entertain matters conducted in this manner.
- [47] On the evidence and their pleaded cases, I find that Mr. Xavier and Ms. Xavier have failed to demonstrate that they have any legal rights to the Land or that they have any rights which are capable of being an overriding interest. I have not considered the defendant's evidence based on allegations of fraud and claims to interest in the Land by virtue of inheritance as this was not the defendants' pleaded cases. The Court will not countenance a party filing one case and then filing evidence to support a totally different case altogether.
- [48] In the circumstances, Mr. Francois has proven that he is entitled to possession of the Land. I therefore make the following Order.

Order:

- [49] The Order is as follows:
1. The defendants shall deliver vacant possession of the Land registered as Block and Parcel 02025B 120 to the claimant within two months of the date of this judgment.
 2. The defendants shall pay prescribed costs to the claimant in the sum of \$7,500.00 being the applicable costs at the date of the trial, the matter having been heard prior to the coming into force of the **2023 Revised Civil Procedure Rules**.

[50] I thank Counsel and the parties for their patience in awaiting this decision.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar