

EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2019/0209

BETWEEN:

BIGGER CEMENT AND AGGREGATE INCORPORATED

Claimant

AND

THE GOVERNOR GENERAL

(Represented by the Attorney General of
St. Vincent and the Grenadines)

Defendant

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

High Court Judge

Appearances:

K.C. Mr. Stanley John and Mr. Akin John for the Claimant

Mrs. Cerepha Harper-Joseph and Ms. Moureeze Franklyn for the Defendant

2024: October 15, 16 and

December 4 (Trial)

2025: February 28 (Submissions)

September 24 (Decision)

JUDGMENT

Introduction

[1] **THOM J (Ag):** On 8th October 2019, The Governor-General caused the following notice to be published in the Gazette No.53 of Vol. 152:

NOTICE

SURVEY PLAN FOR CROWN BOUNDARY AT RABACCA.

In keeping with Section 8 of the Crown Lands Act, a copy of a registered Survey Plan C1842 depicting the boundary between Crown Land and Lot 6 on Plan C364 at Rabacca is hereby published. Any person who may consider himself aggrieved by this Plan may without prejudice to any application to the Governor- General, within two calendar months of the publication, apply by petition to a judge in chambers to review the survey. The Petition must state fully the objections to the survey and the Applicant's claim and reasons for the application.

- [2] The Notice having been published, the claimant instituted these proceedings alleging among other things, that he is the fee simple owner of the land referred to in the Notice and shown on the survey Plan C1842 as Lot 1 and Lot 2 (the disputed land) and that the land is not vested in the Crown by virtue of the Crown Lands Act or otherwise.
- [3] In his pleading, the claimant claims to be the fee simple owner of the lands on the following basis:
- (a) Deed of Conveyance No. 2857 of 2007 dated June 22nd, 2007 when the land was conveyed to him by Diana Baptiste aka Diana Baptiste-Edwards Administratrix of the Estate of James Thomas deceased.
 - (b) The doctrine of accretion and diluvion.
 - (c) The Limitation Act.
- [4] The claimant further alleged that the claimant being the legal owner of the land, the action of the Governor-General:
- (a) Is unreasonable, unfair and or ultra vires the Crown Lands Act;
 - (b) amounts to an unconstitutional entry on the Claimant's property, the Defendant's action was contrary to sections 6 and or 7 8(8) and or 8(10) of the Constitution Order 1979 of St. Vincent and the Grenadines.

[5] The Claimant sought the following reliefs:

- (1) A declaration that the survey of lands identified within the boundaries of Lot No.1 (admeasuring 3.5450 Acres) and Lot No.2 (admeasuring 5.4321 Acres) as shown on Survey Plan No. C1842 which was prepared by Alrick Williams licensed land surveyor at the instance of the Ministry of Transport & Works and was approved and lodged at the Lands and Surveys Department on 30th April 2019, does not depict Crown Land nor Crown Boundaries pursuant to the Crown Lands Act Cap 319 of the 2009 Revised Edition of the laws of St Vincent and the Grenadines or otherwise.
- (2) A declaration that the said survey was not performed pursuant to the Crown Lands Act Chapter 319 and was consequently illegal and/or irrational and/or unreasonable and /or unfair and /or an abuse of power and accordingly unlawful and void ab initio.
- (3) A declaration that all of the 3.550 Acres of land nearest to the Rabacca River and 5.4321 Acres nearest to the Lady Jane/Langley Park Dry River as shown on a survey plan or diagram prepared by Alrick Williams Licensed Land Surveyor and approved and lodged at the Lands and Surveys Department Kingstown on 30th April 2019 as Drawing No. C1842 are lands beneficially owned by the Claimant.
- (4) A declaration that all and any of the acts which the Defendant caused to be undertaken as part of the process of entering on the Claimant's land and procuring the Survey Plan No C1842 to be prepared approving same and publication of the Notice in the Government Gazette No. 53 Vol 152 dated the 8th October, 2019 purportedly on the basis of the Crown Lands Act amounted to the unconstitutional entry on the Claimants land which is shown on the said survey plan in that it was arbitrary and/or a curtailment of its interest therein without due process, contrary to sections 6 and/or 7 and/or 8(8) and/or 8(10) of the St. Vincent and the Grenadines Constitution Order 1979 and is an abuse of power and is null and void.
- (5) That all other necessary and consequential directions be given.
- (6) Costs certified fit for two Counsel.

[6] The Defendant in its defence contended:

- (a) that the Claimant is not the fee simple owner of the Lots 1 and 2 on Plan C1842 (the disputed land), rather the claimant's land is the land conveyed to the claimant by Deed 2857/2007 measuring five (5) acres and two (2) poles as shown on Plan No. C364 (the claimant's land) and which Plan was lodged at the Surveys Department on the 3rd day of March 1971.
- (b) the Claimant's land is not subject to riparian land rights.
- (c) The doctrine of accretion and diluvion does not apply.
- (d) The Crown being the owner of the Orange Hill and Langley Park Estates inclusive of the dry rivers, the disputed lands are Crown Land.
- (e) The Limitation Act is not applicable since the disputed land was not in existence for thirty (30) years.
- (f) Plan C1842 correctly depicts the boundaries of Crown lands and is not unreasonable, unfair or ultra vires the Crown Lands Act or any provisions or in breach of any of the provisions of the 1979 Constitution Order.

[7] Pursuant to an order of the Court dated the 24th day of June 2024 the parties filed a joint statement of agreed facts and issues. The facts agreed by the parties are as follows:

1. "That under and by virtue of the Land Acquisition Act 1946 the Crown acquired certain parcels of land at the Tourama Estate, the Waterloo Estate, the Orange Hill Estate, the Rabacca Estate and Lot Fourteen Estate, all situate in the Parish of Charlotte, for a public purpose and a compiled survey plan of these lands bearing number C681 was prepared and lodged on the 2nd day of April 1985 at the Lands and Surveys Department and subsequently published.
2. That prior to the said acquisition the Claimant's predecessor in title acquired the land to which the Claimant became the fee simple owner in possession in 1978 by a Deed of Conveyance dated 31st August, 1978 and made between Waterloo Estates Limited and Barclays Bank International Limited and James Thomas and registered at the Registry of Deeds as Deed No. 3430 of 1978.
3. Subsequently by virtue of Deed of Conveyance dated 22nd June, 2007 made between Diana Baptiste aka Diana Baptiste-Edwards (Administratrix of the Estate of James Thomas, deceased) and the Claimant and registered at the Registry of Deeds Kingstown as Deed No 2857 of 2007 the Claimant became the fee simple owner in possession of

the land described in the schedule thereto and depicted as Lot No. 6 on Plan C364 dated 3rd day of March 1971.

4. The Claimant's Managing Director was served with a notice that on Tuesday 26th February 2019, at 9 o'clock in the forenoon the Chief Surveyor would cause the survey which is in dispute to be carried out.
5. The Defendant caused the said survey to be carried out and Plan No. C1842 to be made depicting the result of the said survey in dispute arising out of which a Notice was published in the Government Gazette of St Vincent and the Grenadines (SVG) No. 53 Vol 152 on the 8th October, 2019 wherein it was stated as follows:

NOTICE

SURVEY PLAN FOR CROWN BOUNDARY AT RABBACA

In keeping with Section 6 of the Crown Lands Act, a copy of a registered Survey Plan C1842 depicting the boundary between Crown Land and Lot 6 on Plan C 364 at Rabacca is hereby published. Any person who may consider himself aggrieved by this Plan may, without prejudice to any application to the Governor General, within two calendar months of this publication, apply by petition to a judge in chambers to review the survey. The petition must state fully the objections to the survey and the Applicant's claim and reasons for the application.

6. The plan mentioned in the said Notice as Survey Plan No. C1842 was appended to the Notice endorsed as being a Plan of two portions of land bordered pink containing Three Hundred and Ninety-One Thousand and Forty Four square feet (8,977.1 Acres) of land at Rabacca in the State of Saint Vincent and the Grenadines. It was prepared by Alrick Williams licenced land surveyor at the instance of the Ministry of Transport & Works and was approved and lodged at the Lands & Survey's Department on 30th April 2019 (the "Survey Plan").
7. By letter dated the 30th October 2019, the Chief Surveyor wrote to the Claimant's Managing Director notifying that the Survey Plan was published in the Gazette and stating that, he may without prejudice to any application to the Governor-General apply to the judge for a review of same.
8. An outline of the boundaries of Lot #6 on Plan C364 as shown on the said Survey Plan, seems to suggest that the area of the land shown on the said Survey Plan, has been reduced, as shown on the Northeast corner of the Lot, shown in C1842.
9. Both the Lady Jane/Langley Park River and Rabacca Dry River are non-navigable, non-perennial and non-tidal rivers.

10. Before the impugned survey was conducted and Plan No. C1842 prepared in 2019, the Crown had transferred ownership of the lands acquired in 1985 including the Rabacca Estate and Langley Park Estate to the Rabacca Farms Limited by a Vesting Deed dated 21st March 1988 registered as No. 791 of 1988 and other portions thereof to assorted private owners.
11. Prior to July 2007 General Equipment and Services Corporation (GESCO) an agency of the Defendant entered into an arrangement with the Claimant's predecessor in title, the said Ms. Diana Baptiste, for the right of way over lands which were later conveyed by her to the Claimant under Deed 2857 of 2007, to access a mining area via a road which partially runs across Lot 2 on the disputed Survey Plan. In consideration, a licence fee of \$500.00 per month was agreed between the parties and paid to her. On 5th July 2007 and in April 2008 respectively, Ms. Baptiste received payments from GESCO in the sum of \$500.00 per month and receipts were duly issued stating that they were for "Entrance thru Property".
12. In or about 2004 the said Diana Baptiste Edwards entered into another agreement with relevant State authorities for a right of way via the said road which partially runs across Lot 2 on the Survey Plan. The basis for this arrangement was that the bridge over which the public customarily passed to gain access to their neighbouring lands had collapsed and the subject road was intended to be a temporary alternative route. The State also agreed to pay Ms. Baptiste Edwards the sum of \$500.00 per month for this right of way.
13. On or about the 2nd July, 2008 Bigger Trucking and Block Construction Company Limited (BTBC) an affiliated company of the Claimant, submitted an application for planning permission to the Secretary of the Physical Planning and Development Board for permission to conduct mining operations and block production at the Claimant's land. The application included an Environmental Impact Assessment and a Site Development Plan depicting 16 acres of land (inclusive of lands now delineated as Lot No 1 and Lot No. 2 on the Survey Plan) and laying out Phase One, Phase two, Phase Three and Phase Four of BTBC's proposed development, all of which are located within the boundaries of Lot No. 2 on the Survey Plan.
14. BTBC lodged an application with the Physical Planning and Development Board for mining works in Rabacca on 2nd January 2008 and the application was duly granted and issued with reference number GN/1/2008.

15. BTBC continued to mine and operate on the land for which it was granted approval until its operations were halted by the Physical Planning and Development Board in 2011 by order of the Defendant acting through a Minister of Government.
16. Up to and until June 2015 when the Chief Surveyor wrote to BTBC stating, among other things, that: "land now exists to the North and South of the lands purchased by you (lot # 6 on plan C364) is the allodial property of the Crown", the State authorities and in particular personnel at the Ministry of Housing, Informal Human Settlements, Lands & Surveys and the Physical Planning and Development Board, raised no claims that the land depicted in the Survey Plan No. C1842 was Crown Lands. Their primary concern related to access across the road which ran through the Claimant's land. This fact is confirmed in a letter by former Chief Engineer Mr. D. Brent Bailey to BTBC on 2nd February 2011, wherein he stated that:

"The Bower By-Pass Road which extends from Carib Coast in the vicinity of the Lady Jane Bridge, through your property and to lands in Bower is an estate road for the Orange Hill Estate and that any obstruction found will be removed to ensure continued access of all land owners along its route to their properties".

17. In a decision made the 24th of June 2020 after hearing an application by the Defendant to strike out the Claim for lack of jurisdiction to try the Claim, the court dismissed the application to strike out the claim and gave case management directions for the further conduct and hearing of this claim."

[8] The parties also agreed the following issues should be determined by the Court:

- (a) The main question which the Court must decide in the Claim is:

"Whether Survey Plan C1842 prepared by Alrick Williams licensed land surveyor at the instance of the Ministry of Transport & Works should be considered a survey of Crown Boundaries and if not whether the Notice published in the Government Gazette of SVG No. 53 Vol 152 on the 8th October, 2019 indicating that the boundaries between the areas depicted on Survey Plan C1842 as Lot No. 1 and Lot No. 2 and the land shown as Lot No. 6 on Plan C 364 are Crown Boundaries, is therefore null and void ab initio.

[9] The following are the issues which arise from the pleadings to be determined by the Court, namely:

- (1) What area of land does the Claimant's title deed convey, does it include the areas of land shown as Lot No.1 and lot No 2 on Survey Plan No. C1842?
- (2) Does the doctrine of accretion and diluvion apply so as to vest title in the lands shown as Lot No 1 and Lot No 2 on survey plan C1842 in the claimant? Or
- (3) Was the Crown at all material times the owner of the riverbeds of Rabacca Dry River and Lady Jane Dry River respectively and if so did any deposits and/or accrual amount to avulsion and does the Crown own the said land by virtue of its ownership of the riverbeds and Orange Hill Estate?
- (4) Alternatively, in the event the paper title to Lot No 1 and Lot No 2 of survey plan C1842 was at all material times vested in the Crown does the Limitation Act CAP 129 section 17(1) along with section 10 of Part 11 of the Schedule apply?
- (5) If Lot No 1 and No 2 on Plan C1842 was not at all material times Crown Land, have they been disproportionately expropriated and has the Claimant been deprived of its property by the State, without giving it a fair hearing nor paying it adequate compensation within a reasonable time, in accordance with its fundamental rights which are protected under section 6 of the Constitution and section 8 respectively of the Constitution of SVG?
- (6) What if any other necessary and consequential directions should be given?
- (7) Costs.

Evidence

[10] On application of the parties, leave was granted to both the Claimant and the defendant to adduce expert evidence. Expert reports were filed by both parties. The claimant filed expert reports of Mr. Arthur Robertson and Mr. Phillimore Isaacs, and the defendant filed the expert report of Mr. Lance Peters.

[11] The claimant called four witnesses being Mr. Leon Samuel, Mrs. Diana Baptiste-Edwards, Mr. Arthur Robertson and Mr. Phillimore Isaacs.

[12] The Defendant called two witnesses, being Mr. Lance Peters and Mr. Keith Francis.

[13] A visit was made to the locus at which Counsel for both parties and all witnesses were present. After the visit, Mr. Peters and Mr. Francis were recalled to be further examined.

Mr. Leon Samuel

- [14] Mr. Leon Samuel testified that he was employed by the claimant as its Managing Director from the inception of the Company. He is responsible for the overall management of the claimant's business. The claimant is the fee simple owner in possession of lands at Rabacca being Lot 6 which includes the disputed lands, as stated in Deed of Conveyance dated 22nd June, 2007 made between Diane Baptiste aka Diana Baptiste-Edwards and registered as Deed No. 2857 of 2007 (the Claimant's Deed). The Claimant's land is described in the Schedule of the Deed as follows:

"ALL THAT LOT PIECE OR PARCEL OF LAND situate at Rabacca in the state of Saint Vincent and the Grenadines admeasuring FIVE (5) Acres and TWO (2) Poles as shown on Plan No. C364 at the Lands and Surveys Department on the 3rd day of March 1971 and being abutted and bounded on the NORTH by the Rabacca DRY RIVER on the SOUTH by Langley Park Dry River on the East by lands occupied by Dennis Baptiste on the West by Estate Reserve or however otherwise the same may be abutted bounded known distinguished or described TOGETHER with all ways watercourses right lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto."

- [15] On or about 18th February 2019, he was served with a notice by the Chief Surveyor Mr. Keith Francis (Mr. Francis) notifying the claimant that on Tuesday 26th Feb 2019 at 9 a.m. he would commence a survey of the "the boundary between lands owned by the Crown (Rabacca and Langley Park Dry Rivers) and the following lands that is to say certain lands owned by you (Lot 6 C364-5A OR 2P), situate at Rabacca (Bower) in the parish of Charlotte and that he would commence such survey at a point to be determined. A copy of the notice was exhibited.
- [16] On 26th February 2019, Mr. Alrick Williams (Mr. Williams) the Senior Land Surveyor at the Ministry of Transport and Works (hereinafter referred to as Mr. Williams) did attend at the claimant's property at Rabacca accompanied by Police Officers.
- [17] As a result of the survey conducted by Mr. Williams a Plan C1842 was prepared which shows 8.971 acres of the Claimant's property being subdivided into Lot 1 and Lot 2 (the disputed land). A copy of the Survey Place was exhibited.

- [18] The survey plan was published on or about Tuesday 8th October 2019. On 30th October 2019, the Chief Surveyor wrote to him on behalf of the claimant notifying him that the survey Plan was published in the Gazette and informed him that without prejudice to any application to the Governor-General, he may within two calendar months apply by petition to a judge in Chambers to review the survey.
- [19] Mr. Samuel further testified that lots 1 and 2 are within the boundary of the Claimant's land as described by its Deed being bounded on the North by the Rabacca Dry River and the South by the Lady Jane Dry River. He has observed from aerial photographs and plans that since the survey of C364 was prepared in 1970 both the Lady Jane River and the Rabacca River have changed their course. Notwithstanding the rivers had changed their course, the Claimant and its' predecessor in title have occupied and treated as owner, all lands described in the Survey Plan C364 within the boundary of the Dry Rivers including the disputed land. This occupation has been for more than thirty (30) years.
- [20] The Claimant's predecessor in title acquired title to the land in 1978 by way of Deed of Conveyance dated 31st August 1978. A copy of the Deed was exhibited.
- [21] The Defendant by it's various corporations such as GESCO and later Bridges Roads and General Services Authority (BRAGSA) entered into arrangements with the Claimant's predecessor in title for use of a road over the Claimant's land to access a mining area. The road runs partially across Lot 2 of the disputed land. The Defendant's agents paid a licence fee of \$500.00 per month as agreed between the parties for use of the road. Mrs. Baptiste received \$500.00 license fee on 5th July 2007 and April 2008. A copy of the receipts which were exhibited stated for "Entrance thru Property." Further around 2004, Mrs. Baptiste entered into another agreement with the Roads Division of the North Windward Constituency for a right of way over the said road to allow farmers who could not access their lands because a bridge had collapsed. Mrs. Baptiste was paid \$500.00 per month.
- [22] In 2008 pursuant to an application of the Claimant's affiliate BTBC to the Physical Planning and Development Board, for permission to conduct mining operations and block production at the claimant's land which included the disputed land particularly Lot 2. The application was duly granted.
- [23] The Claimant carried out mining operation on the land until the operation was stopped by a Minister. It was only in 2015 that the Chief Surveyor wrote to BTBC claiming the disputed land is the allodial property of the Crown.

[24] Mr. Samuel also referred to the letter of the then Chief Engineer Mr. D. Brent Bailey to BTBC on 2nd February 2011 following efforts by the Claimant to secure its land to prevent unlawful trespass. The letter reads as follows:

“The Bower By-Pass Road which extends from Carib Coast Road in the vicinity of the Lady Jane Bridge, through your property and to lands in Bower is an estate road for the Orange Hill Estate and that any obstruction found will be removed to ensure continued access of all landowners along it to their properties.”

[25] Mr. Samuel further testified that the survey, his arrest in March 2015 and being charged with offences before the Magistrate Court were in breach of his constitutional right.

[26] Under cross-examination, Mr. Samuel testified that he did a survey in 2007 when the land was purchased. He agreed that the survey plan attached to his predecessor's title C364, is the same as shown in the plan of 1971. No survey plan showing Lot 6 to include Lots A and B was exhibited.

[27] Mr. Samuel agreed that when Lot 6 was purchased on 2007, the claimant was in possession from that time. Mr. Samuel further testified that the road passing through Lot 6 is a private road. It extends to the riverbed. Mr. Samuel also agreed that he was not present at the meeting of the Planning Committee and further the document he exhibited as the minutes was not signed nor was there any authenticating stamp affixed to the minutes. Mr. Samuel reiterated that the claimant and its predecessor in title was in occupation of the disputed land for over 35 years before the Crown laid claim to the land.

Diana Baptiste-Edwards

[28] Mrs. Baptiste-Edwards testified that from the age of six years she lived with James and Ruby Thomas who were the owners of 5 acres 0 roods and 10 poles of land at Rabacca. In 1978 Mr. James Thomas purchased the parcel of land described in the Deed of Conveyance dated 31st August 1978 with registration number 3430 of 1978. He occupied the land between the Lady Jane Dry River and Rabacca Dry River until his death on 5th September 1996. Having obtained Letters of Administration for the estate of James Thomas, she sold the land to the Claimant in 2007. Prior to the sale to the Claimant, she occupied the land. She agreed to permit GESCO a right of way over the land to access a mining area. She received \$500.00 per month pursuant to the agreement. Around 2004 she gave permission to Mr. Morris who was at the time employed

by the Government in the Roads Division of North Windward. She was paid a sum of \$500.00 per month. She collected this sum until she sold the land to the Claimant.

- [29] Under cross-examination Mrs. Baptiste-Edwards confirmed that she sold Lot 6 as described in C364 to the Claimant. She did so in her capacity as Administrator of the estate of James Thomas. The vouchers she produced are in relation to payments made by agents of the Government for use of the road. She further testified that she did not cause the land to be surveyed in 2007 when it was sold to the Claimant. Mrs. Baptiste Edwards agreed that the receipts stated that the payment was for "Entrance thru property". No description was made of the property to which the receipt referred. Mrs. Baptiste-Edwards also agreed that her name is not mentioned on the receipts, nor any signature, or Government stamp. She testified that she received the receipts from Mr. Samuel who got them from the Government after she had instructed him where and from whom she had received the payments.

McArthur Robinson

- [30] Mr. Robinson is a land surveyor. He received his Land Surveyor's licence in September 1980. In his expert report, Mr. Robertson referred to the survey Plan C364 which he explained was drawn in November 1970 by Mr. Stinson Campbell a Licensed Land Surveyor acting on the instructions of Mr. Martin Barnard of Orange Hill Estates. The Plan C364 was registered at the Land and Surveys Department on March 3rd 1971. At the time of the survey the land formed part of the Orange Hill Estate. Having outlined the boundaries of Lot 6 as stated on Plan C364, Mr. Robertson stated that there is no mention of any land being described as Crown Land reserve and since the land was sold, the new owners always considered respective rivers to be their Northern and Southern Boundaries. Plan C1842 has altered the boundaries of Lot 6. The northern and southern boundaries were the Rabacca and Lady Jane Dry rivers. The boundaries are now Lots 1 and 2 on the said Plan.
- [31] Mr. Robertson further opined that an outline of the boundaries of Lot 6 as shown on Plan C1842 seems to suggest that the area of land of Lot 6 has been reduced on the North Eastern corner. He opined that it can therefore be concluded that since a riparian owner is subject to losing land by erosion beyond his control, he should benefit from any addition to his land by accretion. Mr. Robertson noted that the State acquired the Orange Hill estate in 1985, however he emphasized that the Orange Hill Estate was never the northern or southern boundary of Lot 6. The northern and southern boundaries of Lot 6 are not fixed and should be considered riparian and subject to

change. It can therefore be concluded that the owner of Lot 6 is the riparian beneficiary of whatever lands are bounded by the Rabacca River and Lady Jane River.

- [32] Under cross-examination Mr. Robertson testified that the boundaries to Lot 6 are subject to change if the river changes. A riparian owner loses land due to erosion. He should therefore gain by the buildup of material.

Mr. Phillimore Isaacs

- [33] Mr. Isaacs holds a Bachelor of Science with Honors in Botany and Geography and a Master of Science. He is a Retired Chief Agricultural Officer. He also served as the National Coordinator Inter-American institute for Cooperation on Agriculture Saint Vincent and The Grenadines Office 2007 – 2008. Having dealt with the topography of the disputed land and Lot 6 in his expert report, Mr. Isaacs opined that the Crown had no land adjacent to or bounded with the disputed land. He described the changing landscape as follows:

“Orange Hill Estate extended along the east coast of St. Vincent from the Southern bank of the Rabacca Dry River in the South to the village of New Sandy Bay in the North and stretched in a westerly direction to the foothills of the Soufriere Volcano.”

- [35] Mr. Isaacs exhibited aerial photograph of the area in 1941, 1970 and 1972 and opined that the photographs indicate the shifting of the riverbeds. In particular the photographs of 1970 and 1972 show significant erosion on the southern bank of the Rabacca Dry River.
- [36] Mr. Isaacs also opined that the floods of 2010 and 2013 moved material along the riverbeds and deposited them towards the sea coast. These did not contribute to accretion on Lot 6. The fact that the vegetative cover shows signs of being over 25 years refutes any recent deposition.
- [37] In relation to man-made activities in the areas, Mr. Isaacs stated that there has been constant extraction of materials from the Rabacca Dry River and some riverbank extraction. These have not added to the deposits on the property in question, but have contributed to the gradual change in the course of the river bed, particularly of the Rabacca Dry River, thereby altering the configuration of the landscape.
- [38] Under cross-examination Mr. Isaacs testified that based on the 1971 plan the Crown had no lands adjacent to the Claimant's predecessor in title. He classified volcanic eruptions as

catastrophic events. He reiterated that man-made activities such as extraction of materials causes the river to shift its position as man-made channels are made for the river.

Defendant's Evidence

Mr. Keith Francis

- [39] Mr. Francis testified that he is the Chief Surveyor of the Lands and Surveys Department in the State of St. Vincent and the Grenadines, and his duties include conducting surveys of Crown Lands and Crown Boundaries upon the instructions of the Governor-General.
- [40] Mr. Francis further testified that several parcels of land formerly known as the Tourama Estate, the Waterloo Estate, the Rabacca Estate, the Orange Hill Estate and the Fourteen Estate situate in the Parish of Charlotte were acquired by and vested in the Crown on or around 30th April 1985. Copies of the First and Second Publications of the Declaration of Acquisition and the Second Publication of the Nature of Acquisition were exhibited. As a result of the acquisition a survey plan C681 was prepared by Clifford Williams using the information from several survey plans including survey plan C364 (the survey plan of Lot 6) which was approved and lodged on 3rd March 1971. The survey plan was exhibited.
- [41] The Claimant purchased the parcel of land as shown on survey plan C364.
- [42] The Governor-General caused a survey to be made of Crown Boundaries at Rabacca. Survey Plan C1842 depicts the result of the survey. Plan C1842 was exhibited and admitted into evidence.
- [43] Under cross-examination Mr. Francis testified that he has been serving as the Chief Surveyor for about 10 years. He was appointed in 2014. He could not recall the month. He agreed that his duties as Chief Surveyor as it relates to Crown lands is outlined in the Crown Lands Act. Mr. Francis could not recall whether he was a member of the Planning Board when the Claimant's application was considered. Having been shown the application, he noted it was for 14.9 acres and that it included Lot 6, and Lots 1 and 2. Mr. Francis was also shown the supporting documents in relation to the Claimant's application for mining but stated he could not recall reviewing the documents.
- [44] Mr. Francis confirmed that while the Crown had acquired neighboring lands in 1985. The land shown on plan C364 was not acquired by the Crown. The lands acquired by the Crown were

subsequently vested in Rabacca Farms by Deed 1789. Mr. Francis explained how plans were superimposed onto the aerial photographs which are the years 1941, 1970 and 1992. The same aerial images were exhibited by Mr. Isaacs.

- [45] After the visit to the locus, under further examination-in-chief, Mr. Francis testified that the 1971 survey plan C364 shows the original boundaries where the rivers were located. The rivers have since changed their course. Under further cross-examination Mr. Francis testified that the same road that is shown on plan C364 is the same road on plan C 1842. The 1971 plan shows the road which is the same road the farmers used to go to their land. The road leads to the Lady Jane Dry River. The boundary of Lot 6 is not far away from the road. Mr. Francis agreed that payments made to Mrs. Baptiste was in relation to use of this road.

Mr. Lance Peters

- [46] Mr. Peters states that he is a Geologist. He has a BSc. In Geology B.Eng. Geoscience (Hons) and Post Grad Geothermal Geology. Mr. Peters is currently the Head of the Energy Unit Ministry of Urban Development Energy. Mr. Peters outlined the following documents which he reviewed in arriving at his opinion being:

- (a) Survey Plans of the Orange Hill Estate C681
- (b) Survey Plans of the Langley Park Estate C165
- (c) Survey Plan of Lot 6 C364
- (d) Survey Plan C1842
- (e) Survey Plan C2641
- (f) Deed No 2857 of 2007
- (g) Aerial Photos of Survey Plan C1842 Rabacca year 1970. Grid Co-ordinates E494 680.90 and N 469 977.37
- (h) Cadastral Map showing lands to the South of Lot 6 between Lady Jane Dry River and lands to the north of Lot 6 between the Rabacca Dry Rivers.

- [47] Having also conducted a site visit, Mr. Peters in his expert report stated as follows:

“Perennial rivers are also known as permanent rivers. They flow throughout the year. It is indicated by the river channel which touches the water table throughout the year. These rivers work extensively by eroding and depositing sediments in the channel. Groundwater and inflow from groundwater also tends to contribute to a perennial river. These are usually found in regions with humid climate where evaporation rates are much lesser than the rainfall. They may show some seasonal fluctuations in the water level, but these fluctuations did not impact the flow much, and the stream flow still remains to be constant.”

[48] Mr. Peters explained that non-perennial rivers are those rivers which do not have a constant flow throughout the year. It mainly consists of those rivers which flow only during the rainy season. These are usually found in areas with arid climate where evaporation tends to be greater than precipitation. Usually, the stream flow declines on their course, and they dry on occasions. Many times, they are not even able to reach the sea.

[49] He also opined that non-perennial rivers can be further classified into semi-permanent, ephemeral, and episodic. Semi-permanent are those rivers which are deprived of the flow 1 to 25 percent of the time. Ephemerals are those rivers which possess no flow 26 to 75 percent of the time. Episodic rivers are those rivers which possess no flow at least 76 percent of the time. Therefore, perennial rivers are very important as they tend to support the activities dependent on the river throughout the year. They are of great importance to humans, plants, and animals. They are also used in irrigation and generation of hydroelectricity.

[50] The Rabacca Dry River and the Langley Park/Lady Jane Dry River are considered non-perennial semi-permanent rivers as listed in appendix C as Non-perennial Rivers. These rivers are considered non-perennial because they only flow like normal when there is heavy rainfall. This phenomena happens because the river was created by pyroclastic flows in the 1812 volcanic eruption of the La Soufriere volcano. Due to the deposition of this loosely unconsolidated material called “volcaniclastics” most of the surface water percolates through the volcaniclastics into the ground and stored as ground water.

[51] Mr. Peters explained accretion in the following manner:

“Accretion of land is of two types: one called “alluvion” where “sand and earth are washed up by the sea or a river so as to make an addition to existing land and the other called “dereliction” where land is left dry by the sea back below the usual high water mark or by the river changing its bed.”

- [52] The loss of land by the encroachment of water is called “diluvion” or sometimes “divulvation” and is the opposite of accretion. Land may also be lost by erosion.
- [53] Mr. Peters opined, that there is no substantial evidence to suggest that accretion in the form of alluvion is the main or dominant geological process taking place at the said location at the Lady Jane Dry River and the Rabacca Dry River. Due to the seasonality flows of these rivers, during the wet or rainy season when these rivers have more energy, a lot of volcanic materials are transported via one of these processes: (a) Traction – which transports large boulder or pebbles rolling along the riverbed; (b) Saltation – where the river transport small stones, pebbles and silt bouncing along the riverbed, (c) Suspension – where the river carries fine material such as clay and sediments and (d) Solutions – where dissolved minerals carried by the river. The transported material is then deposited when the river loses its energy and generally a river loses its energy when it interacts with the sea or extremely limited river flow.
- [54] Mr. Peters having referred to aerial photographs of the area extracted from Google Maps for the years 1970, 2014 and 2019 opined that; “The aerial photos extracted from Google Maps indicate widening of the Rabacca and the Lady Jane riverbanks. This is indicative of diluvion taking place. This can be attributed to the heavy torrential seasonal rainfall the area experiences on a yearly basis increasing the erosive capability of both rivers.
- [55] Having examined the Google maps for the years 2014 and 2019. Mr. Peters summarised his opinion as follows:
- “I confirm in my opinion that the doctrine of Accretion cannot be applied to this matter. The rate at which erosion has taken place over the years indicates more materials is being removed in those areas than what is being deposited.
- The Rabacca Dry River and the Lady Jane Dry River are non-Perennial or seasonal rivers. These rivers exhibit more surface flows during the wet/rainy seasons. Their surface flows are drastically reduced during the dry season as limited rainfall impedes these rivers’ ability to recharge. The gradual increase or build up of materials from the processes of accretion, to equate to the mention quantity of lands will not take many years but rather many hundreds of years as geological processes take hundreds, thousands, and millions of years to manifest themselves.”
- [56] Under cross-examination Mr. Peters confirmed that both the Lady Jane and the Rabacca rivers are non-perennial. He further testified that they are non-navigable during the dry season.

However, during the wet season if there is a large amount of water the river would be navigable. He has never seen a canoe sailing in the river, but he has seen persons in a tube. Mr. Peters also confirmed that the river is not used for the transportation of goods or persons. Between 2016 – 2021 he worked mainly in the Rabacca River.

[57] After the visit to the locus, Mr. Peters testified further in examination -in-chief that both the Rabacca and the Lady Jane rivers had no surface water at the time of the visit. He reiterated that they are non-perennial rivers.

[58] Under cross-examination, Mr. Peters reiterated that the Rabacca and the Lady Jane rivers are neighbors. He also reiterated that whether the rivers are navigable depends on the amount of rainfall.

[59] Based on the evidence of the witnesses and the agreed facts, it was not in dispute that the procedure and the conduct of the survey was done in accordance with the provisions of the Crown Lands Act as set out particularly in sections 6, 7 and 8, rather what was in dispute was whether the land was Crown land or the Claimant's land.

Claimant's Submissions

[60] Learned King's Counsel Mr. John for the Claimant submitted that the Claimant is the fee simple owner of the disputed land as a result of:

“(a) its Deed of Conveyance dated 22nd June 2007 and registered as No.2851 of 2007;

b) Accretion and diluvion and riparian ownership;

d) The Limitation Act;

Further the action of the Governor-General was unconstitutional, unlawful null and void.

Conveyance

[61] Learned King's Counsel Mr. John submitted that the Claimant is the fee simple owner of the disputed land by virtue of its Deed of conveyance dated 22nd June 2007 and registered as No. 2857 of 2007. The boundaries of the land conveyed as outlined in the conveyance are clear and unambiguous.

- [62] Learned King's Counsel submitted that in determining the boundaries to property in dispute, the Court is required to adopt the approach that once there is a clear description of the boundaries, extrinsic evidence is inadmissible to contradict or vary clear description of boundaries.
- [63] Mr. John K.C. referred to the decision of the English Court of Appeal in **Penrock & Anor. V Hodgson** 2010 EWCA where at paragraph 7 the Court referred to the following passage in the judgment of Lord Hoffman in **Allan Wiberly Limited v Insley** [1999] 1WLR 894 which reads:
- “7. The opinion of Lord Hoffman in **Allan Wiberly Ltd v Insley** is now regarded as the leading modern authority on the construction of the parcels in a conveyance. The rest of the Appellate Committee agreed with it. It discusses the status of an Ordinance Survey Plan attached to a conveyance “for the purposes of identification” and the inferences that may properly be drawn from physical factors in border disputes.
- [64] Mr. John K.C. also relied on the following passage in the case of **Eastwood v Ashton** [1915] A.C. 900 at 906 where Earle Loreburn stated:
- “We must look at the conveyance in the light of the circumstances which surrounded it in order to ascertain what was therein expressed as the intention of the parties.”
- [65] Mr. John K.C. also submitted that looking at the evidence of the actual physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand on the spot, in construing the conveyance the Court is permitted to construe the conveyance against the background of the surrounding circumstances which includes knowledge of the objective facts reasonable to the property at the relevant date. Although in a sense that approach takes the Court outside the terms of the conveyance, it is part and parcel of the process of contextual construction. The rejection of extrinsic evidence which contradicts the clear terms of a conveyance is consistent with this approach see **Partridge v Lawrence** [2004] EWCA Civ 1121; **Beale v Harvey** [2003] where the court related the conveyance plan to the features on the ground and concluded that, on the facts of that case, the dominant description of the boundary of the property conveyed was realigning in a single straight line on the plan. Also, **Ham v Phillip** [2003] EWCA Civ 1877 at paragraphs 9-13 where extrinsic evidence was not admissible to contradict the transfer with an amended plan, which clearly showed the boundary as a straight line and even contained a precise measurement of distance...”
- [66] Mr. John K.C. also referred to Paragraph 330-331 of Halsbury Laws 5th ed volume 4 where it is stated as follows:

“Primary evidence in the documents of title. Evidence of boundaries differs in kind and in degree. The title deeds of the parties concerned constitute the primary evidence and must be considered first; and the boundaries as indicated in the title deeds prevail if they are clear and unambiguous. The construction of a deed is a matter for the court, but extrinsic evidence may be admissible to assist the court. In the absence of clear evidence in the title deeds, the court may be guided by the applicable presumptions, if any; evidence may be brought to rebut those presumptions but, in the absence of evidence to displace them, those presumptions will apply.

As a general rule, where a deed refers to known physical and natural objects by means of which the boundaries of land conveyed are described, and also contains a statement of area, the former controls the latter in case of discrepancy; and if reference is made to some physical object not in existence at the time, and the parties subsequently erect some object intending it to conform to the deed, the boundary indicated by that object is binding or the acreage contained in the deed.

331. Conflicting descriptions in the deeds. Generally, all words and parts of a deed conveying property are relevant to the ascertainment of the property's boundaries but where a deed contains a sufficient and ascertained description of the property and also a false description, the false description is rejected as surplusage under the maxim *falsa demonstratio non nocet cum de corpore constat*. However, where the principal words of the description lack the certainty necessary for the rejection of the subordinate description as a *falsa demonstratio* and the subordinate description can be read as limiting the principal description, the deed will be construed accordingly. Thus if premises are described in general terms and a particular description is added, the latter controls the former.

If the description of the land intended to be conveyed is couched in such ambiguous terms that is doubtful what were intended to be the boundaries of the land, and the language of the description equally admits of two different constructions, the one of which would make the quantity conveyed agree with the quantity mentioned in the deed, while the other would make the quantity altogether different, the former construction must prevail.”

[67] Mr. John K.C. urged the Court to adopt the above approach when considering the Claimant's deed and the plan with the features on the ground at the date of transfer of the land to the

Claimant's predecessor, and also the evidence of the Claimant's expert witnesses. Learned King's Counsel submitted that in applying the above authorities, in construing the parcel clause in the 1978 and 2007 Deeds, the clause clearly state the boundaries at the north and south of the land as the two dry rivers.

- [68] Learned King's Counsel also submitted that the Crown does not own the disputed land by virtue of its ownership of the rivers and Orange Hill and Langley Park Estates. In support of this submission, Mr. John K.C. argued firstly, that the presumption of law applies, that the dry river beds were conveyed by the Deed of Conveyance to the Claimant as a riparian owner *ad medium filum*. In support of his submission Mr. John K.C. referred to the following passage in the case of **Tilbury v Silva** [1890] 45 Ch D 90 at 109:

"The general law as I have stated it, is not a law which relates to freehold property only. It is a law by which you ascertain, the parcel of a grant. It does not matter whether the land is copyhold, freehold or leasehold. If it be bounded by a river, and the grantor has the soil *ad medium filum* of the river, you presume, in the absence of evidence to the contrary, that the soil *ad medium filum* of the river passes by the grant. I hold that this is a law which applies to copyhold land just as much as to freehold."

- [69] Secondly, that there is no presumption of law that the Crown owned and controlled the riverbeds and/or Orange Hill and Langley Park Estates.

- [70] There is no presumption of law that the Crown owned the riverbed of a non-tidal river. Mr. John K.C. referred to the parties agreed statement of fact where it is agreed that both the Lady Jane and the Rabacca are non-tidal rivers. Learned King's Counsel referred to the following passage in Halsbury's Laws at paragraph 327:

"327. **Tidal and Non-Tidal Rivers.** Where land is said to be bounded by a river, a distinction must be made between tidal rivers and non-tidal rivers. In those parts of rivers where the tide flows and reflows, the soil between the medium high-water mark and medium low-water mark *prima facie* belongs to the Crown and therefore the boundaries between the bed of a tidal river and the adjoining land is, as a general rule, the line of medium high water mark. A tidal river is one where the water is subject to the ebb and flow of the tide whether the movement is lateral or vertical. The right of the Crown ceases at that point in the river where the tide ceases to ebb and flow.

In the case of non-tidal rivers, or streams, whether navigable or not the boundary is in general the line of mid-stream, because, in the absence of any evidence to the contrary, the beds of rivers and streams is presumed to belong to the riparian owners as far as the middle of the stream. Similarly, a conveyance of a property bounded by a stream normally includes the bed of the stream to the median line. Where the ordinary presumption is rebutted, and the bed of the river is the property of some person other than the riparian owner, the boundary is the water line when the river is in its normal state, without reference to the extraordinary of the winter or spring or the extra droughts of the summer or autumn."

- [71] Learned Counsel also referred to the following passage from the case of **Peace v Miller** (1802) 8QBD 626 at 629:

"The question what constitutes a tidal navigation river has been discussed in various cases, and in my judgment a river is not tidal, for this purpose, at the place in question by the fact that it may be affected by the tide as described in this case on the occasion of unusually hightides, when the action of the tide is reinforced by a stronger wind, or some such exceptional circumstance causes the tide to rise unusually high. In order that the river may be tidal at the spot in question, it may not be necessary that the water should be salt, but it seems to me that the spot must be one where the tide in the ordinary and regular course of things flows and reflows. There is no case which shows that because at exceptionally high tides some portion of the river is damned up and prevented from flowing down and so rises and falls with the tide that portion of the river can be called tidal..."

- [72] Learned Counsel submitted that the Lady Jane and Rabacca being non-tidal rivers there is no right of ownership of land covered by public navigable waters. The evidence of the Crown did not show that either of the rivers were non-tidal or non-navigable. The evidence of the Crown's witness Mr. Peters was that both the Lady Jane and the Rabacca are non-perennial, semi-permanent in that they only flow during the rainy season. Usually, the stream flow declines and many times they cannot reach the sea.

- [73] Learned King's Counsel also relied on the following evidence of Mr. Peters under cross-examination:

“...You will not visually observe water on the surface in these rivers for between ninety-five to ninety-eight percent of the time, unless there is heavy extreme rainfall you will not see water...flowing...”

- [74] Learned King's Counsel further submitted that the parties are bound by their agreed facts, that the dry rivers are non-tidal and non-navigible.
- [75] Learned King's Counsel submitted thirdly that the evidence on the record does not support the contention that at all material times title to Langley Park Estate and/or Orange Hill Estate was vested in the Crown. The Claimant's property was conveyed to its predecessor in 1978 before the Crown acquired the Orange Hill and the Langley Park estates in 1985. There could therefore be no presumption that the Crown is the owner of the lands conveyed to the Claimant's predecessor's and then to the Claimant in 2007. Further by 2019 when the survey was conducted, the Crown had already divested itself of the Orange Hill Estate to Rabacca Farms Ltd and several other private persons. The Crown has not proved that at all material times the land on both sides of the rivers were vested in the Crown.
- [76] The Claimant being the owner of the land bounded by both dry rivers, which are non-tidal the Court cannot determine how much of the disputed land is presumed to belong to the Crown. The Defendants have not discharged the evidential burden of establishing the presumption of Crown land. There is therefore no presumption for the Claimant to rebut. There is no presumption of ownership of the riverbeds in favour of the Crown.

Defendants Submissions

- [77] Learned Counsel Ms. Franklyn submitted that the Claimant's submission that it is a riparian owner by virtue of the description of the parcel of land in its Deed as being bounded by the Rabacca Dry River and the Lady Jane/Langley Park Dry River is wrong in law. The Claimant has failed to prove that its property is bounded by water. Learned Counsel referred to **Halsbury Laws** Vol. 100 (2024 ed) at paragraph 201 where a riparian owner is defined as an owner of land abutting on water. The presumption of ownership of the bed of a non-tidal river as follows:

“...the presumption of ownership of the bed of a non-tidal river or stream by riparian owners refers only to the origin of title, and the right to the bed of the stream is not inseparably bound up for ever with the right to the bank; an owner may retain one and part with the other. In rebuttal of the riparian presumption, ownership of the bed of a non-

tidal river may be proved by documentary evidence of title supported by possession or by possession sufficient to raise the presumption of a lost grant, or to give a statutory title; but the amount of acts of possession necessary to rebut the riparian presumption must vary according to the circumstances. The riparian presumption may also be rebutted by proof of ownership of a private or several fishery over the place in question.”

- [78] Learned Counsel also referred to the Canadian case of **North Shore Railway Company v Pion and Others J.C.** {1989} Vol. XIV where the House of Lords referred to its earlier statement in **Lyons v Fishmongers’ Company** where it stated:

“It is true that the bank of a tidal river, of which the foreshore is left bare at low water, is not always in contact with the flow of the stream; but it is such contact for a great part of every day in the ordinary and regular course of nature, which is an amply sufficient foundation for a natural riparian right.”

Further:

“The only distinction between a non-navigable river and a navigable or tidal river, forming at high water the boundary of riparian land was that in the case of a non-navigable river, the riparian owner is proprietor of the river bed *ad medium filium*, but in the case of a navigable river, belongs to the Crown.”

- [79] Learned Counsel also referred to the following passage in the case of **Lyon v Fishmongers**:

“It is of course necessary for the existence of a riparian that the land should be in contact with the flow of the stream; but lateral contact is as good, *jure naturae* as vertical; and not the only word “riparian”, but the best authorities state the doctrine in terms which point to lateral contact rather than vertical.”

- [80] Learned Counsel also relied on the following statement of Awich J in the Belize High Court of **National Fisherman Producers Co-Operative Society v Brown Sugar Market Ltd** as follows:

“Over the years, to commonly identified rights in the bundle of riparian rights have been these:

- (1) The right of the riparian owner of egress and regress from the water to the riparian land. It is separate from the public right of navigation that the riparian owner may enjoy together with the public - **William Lyon v The Fishmongers’** case.

- (2) The right to land and depart from his bank and pass and repass over the shore or bed at all times even if the shore or bed is not vested in the riparian owner. **Macey v Metropolitan Board of Works** (1864) 3 New Rep 669; **Marshall v Ulleswater Stream Navigation Company** (1871) 7QB166; and **Attorney-General of Southern Nigeria v John Holt and Company Ltd** [1915] A.C. 599;
- (3) The right to moor vessels adjacent to his land for such period as is necessary to load and unload, but the riparian owner must not interfere with the right of access of another riparian owner, or with the public right of navigation **Mercy v Metropolitan Board of Works case** and **Original Hartlepool Collieries Co. v Gabb** (1875) 5Ch.D.713. Furthermore, the riparian owner must not construct or put down anything which disturbs the foreshore or riverbed which he does not own, or which will interfere with the right of the public to navigation - **Iveagh (Earl) v Martin and Another** (1960) 2AER 664.
- (4) The right to have the water of the river flow in its natural state and flow without sensible diminution or increase, and further, the right to take and use the water that abuts on his land for ordinary use, and for restricted extraordinary use, subject to the same rights of other riparian owners.”

[81] Learned Counsel also relied on the following statement of Rand J in **Municipality of Queen's Country v Cooper** 1946 S.C.R., 584 at 590:

“What in fact is the position of a grantee of land along a river whose banks and shore and bed are to a degree, in a state of slow flux: Is he in effect, entitled to an implied grant or natural right to perpetual access regardless of natural changes? Or does he become the owner of land with horizontal dimensions, one boundary of which is fluid, which so long as the water contact remains carries certain rights related to the continuous waters, but which if in the course of nature, it ceases to be riparian, ipso facto no longer supports these rights? The answer is furnished by the rule of law applicable to avulsion or sudden reliction; the fluid boundary becomes fixed and the land ceases to be riparian.”

[82] Learned Counsel contends that the Claimant's property does not adjoin water for the following reasons:

- “(i) The dry nature of the rivers appears in their names, that is the Rabacca Dry River and the Lady Jane Dry River.

- (ii) No evidence has been provided by the Claimant to prove that Lot 6 had or has a water boundary. In fact, no mention of water being the boundary was made by it or its predecessor in title.
- (iii) The evidence from the experts show that the rivers are non-perennial semi-permanent rivers that only flow on the surface when there is sufficient rainfall to saturate their riverbeds - Expert Report of Mr. Lance Peters at paragraph 3.25; Expert Report of Mr. Isaacs paragraph 2.2.
- (iv) The aerial photographs relied on in the expert report of Mr. Philmore Isaacs from 1941 and 1970 show that water has never bounded the Claimant's land.
- (v) The absence of water which was observed during the site visit.

[83] Learned Counsel also relied on the following statement in **Lyon v Fishmongers Co.** 1871 1 App. Cos 662:

"It is of course necessary for the existence of a riparian right that the land should be in contact with the law of the stream."

[84] Learned Counsel further submitted the Claimant has not proven that his land did or does have contact with water. In fact, the evidence shows that there is and was no contact with the flow of a river. As a result, the Claimant cannot establish that it is a riparian owner. The rivers are dry rivers, as acknowledged by all experts, in an area typified by infrequent flood action, by volcanic eruption and otherwise not subject to what would be deemed the ordinary everyday ebb and flow of water as is described in the authorities. The Claimant has therefore failed to ground his Claim as a riparian owner.

[85] Learned Counsel also relied on the **Central Water and Sewage Authority Act** Cap, 403 which vests everybody of water in Saint Vincent and the Grenadines in the Government in trust for the people of Saint Vincent and the Grenadines. This provision Learned Counsel contends shows that the rivers and bodies of water are owned by the Crown.

[86] Learned Counsel further submitted that the Claimant and its predecessor in title Deed specifically described the boundaries of the land conveyed as: "On the North by the Rabacca Dry River, on the South by the Langley Park Dry River, on the East by the Lands occupied by Dennis Baptiste and on the West by an Estate reservation." There is no evidence before the Court that the Claimant's land was bounded by water. The Crown subsequently acquired the neighbouring estates and exercised acts of ownership over the riverbed of the Lady Jane Dry River and the

Rabacca Dry River. The Claimant sought permission from the Defendant to mine aggregate within the riverbed. This shows that the riverbed was the property of the Crown.

Discussion

- [87] In this case undoubtedly the eastern and western boundaries are not in dispute. The area of land stated in the conveyance is also clear and not in dispute. The northern and southern boundaries are in dispute. These boundaries are stated in the conveyance to be the Rabacca and the Lady Jane dry rivers.
- [88] It is also not disputed that over time the path of the water flow of the dry rivers changed. This has resulted in an area of land measuring approximately three thousand five hundred and forty-five (3,545) acres on the northern side of Lot 6 and five thousand four hundred and thirty two (5,432) acres on the southern side of Lot 6.
- [89] Lot 6 was conveyed to the Claimant's predecessor in title Mr. James Thomas on the 31st day of August, 1978 by Deed No. 3430 of 1978. The land conveyed to the Claimant by Deed No. 2857 of 2007 and dated the 22nd day of June 2007 is described in the Schedule to the Deed and is in the same terms as Deed 3430 of 1978 the Deed of its predecessor in title. The land conveyed is the land shown on Plan C364. Survey Plan C364 which was exhibited and is not in dispute, shows the boundary of the North and South as they existed in 1970 when Lot 6 was surveyed. The land conveyed in the Claimant's predecessor's Deed is described in the Schedule as follows:

"ALL THAT LOT PIECE OR PARCEL OF LAND situate at Sandy Bay in the Parish of Charlotte in the State of Saint Vincent being Lot No. 6 and admeasuring 5 acres 0 roods and 2 poles on a Plan C364 drawn by Stimson Campbell a Licensed Land Surveyor and approved and lodged in the Surveys Office in the State of Saint Vincent on the 3rd day of March, 1978 and being abutted and bounded on the North by Rabacca Dry River on the South by Langley Park on the East by lands of Clifton Medica being Lot No. 7 and partly by an Estate Road and on the West by remaining lands of Orange Hill Estate or howsoever otherwise the same may be abutted known distinguished or described Together with all water ways waters watercourses rights lights liberties privileges and all ...other easements and appurtenances thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant..."

- [90] Plan C364 which was drawn by Stinson Campbell shows the same boundary along the line shown in the aerial photograph of 1970. The impugned Survey Plan C1842 shows both the Rabacca Dry River and the Lady Jane River now in a different location beyond the disputed land. Mr. Samuel in his testimony stated that he had conducted a survey of the land at the time the Claimant purchased the land. He produced no such survey among his several documentary exhibits. Indeed the Stamp Duty declaration in relation to the conveyance of the Claimant shows the area of the land being conveyed to be 5 acres 2 poles. Stamp Duty was paid on 5 acres 2 poles. This in my view shows a clear intention of the parties to convey 5 acres 2 poles.
- [91] Applying the learning in the authorities relied on by Mr. John K.C. such as **Allan Wibberly Ltd v Insley; Eastwood v Ashton; and Partridge v Lawrence**; the terms of the deed is very clear and the plan is also clear. There is no dispute that the land between the boundaries as stated in the Deed and as shown on Plan C364 measure 5 acres 0 roods 2 poles and the land conveyed to the Claimant in 2007 is the same land that was conveyed to the Claimant's predecessor in title Mr. James Thomas by the Waterloo Estates Limited as shown on Plan C364 drawn by Mr. Stinson Campbell and which was approved and lodged on 3rd March, 1971. The boundaries as stated in the Deeds and shown on the Plan C364 do not include the disputed land as shown on Plan C1842. While the aerial photograph of 1992 shows a change in the path of the rivers, there was no aerial photographs of the area exhibited between 1970 and 1991 which shows any change in the path of the rivers. I therefore find that the disputed land was not conveyed to the Claimant by his Deed No 2857 of 2007. This however is not the end of the matter. The Claimant claims that the land which was conveyed to him was bounded by a dry river to the north and a dry river to the south. Being therefore a riparian owner, he was entitled to riparian rights and the doctrine of accretion and diluvion applied.

Accretion and Diluvion

- [92] Mr. John K.C submitted that the doctrine of accretion and diluvion apply to the disputed land. Learned King's Counsel referred to the following passage in the Privy Council decision in the case of **A-G of Southern Nigeria v John Holt & Co.** UKPC [1915] AC 599 at p.612:

"The whole of this question as applicable to lands de facto fronting a river but described by measurements which excluded its bed was anxiously discussed in the case of **City of London Tax Commissioners v Central London Railway**. The law with reference to river and street boundaries of property was there gathered together, and it need no

longer be a matter of doubt that the operation of the rule of adding to the ownership of riparian lands, the property of the soil *ad medium filum* is not interfered with on account of a specific or scheduled measurement of the land, a delineation or colouring on a plan, which measurement, delineation or colouring does not in fact include any part of the bed of the river or of the street. Similarly, in their Lordships opinion, properties scheduled or specifically measured but in fact abutting on the seashore are not excluded from the operation of the rule which adds to riparian lands the increment which is, caused by natural and gradual accretion from the sea.”

[93] Also, in **Southern Centre of Theosophy v South Australia** (Privy Council) [1982] 2 WLR 544, Lord Wilberforce stated:

“Before examining the authorities which are copious and, in their result, clear, their Lordship finds it advisable to consider briefly the nature of the doctrine of accretion. This is a doctrine which gives recognition to the fact that where land is bounded by water, the forces of nature are likely to cause changes in the boundary between the land and the water. Where those changes are gradual and imperceptible (a phrase considered further below), the law considers the title to the land as applicable to the land as it may be so changed from time to time. This may be said to be based on grounds of convenience and fairness. Except in cases where a substantial and recognisable change in boundary suddenly take place (to which the doctrine of accretion does not apply), it is manifestly convenient to continue to regard the boundary between land and water as being where it is from day to day or year to year. To do so is also fair. If part of an owner's land is taken from him by erosion or diluvion (i.e. advance of the water) it would be most inconvenient to regard the boundary as extending into the water. The landowner is treated as losing a portion of his land. So, if an addition is made to the land from what was previously water, it is only fair that the landowner's title should extend to it. The doctrine of accretion in other words is one which arises from the nature of land ownership from, in fact, the long term ownership of property inherently subject to gradual processes of change. When land is conveyed, it is conveyed subject to and with the benefits of such subtraction and additions (within the limits of the doctrine) as may take place over the years. It may of course be excluded in any particular case, if such is the intention of the parties. But if a rule so firmly founded in justice and convenience is to be excluded it is to be expected that the intention to do so should be plainly shown. The authorities have given recognition to this principle. They have firmly laid down that where land is

granted with a water boundary, the title of the grantee extends to that land as added to or detracted from by accretion, or diluvion, and that this is so whether or not the grant is accompanied by a map showing the boundaries or contain a parcel clause stating the area of land, and whether or not the original boundaries was identified.”

Defendant’s Submission

[94] Learned Counsel submitted that the Claimant is not a riparian owner and the doctrine of accretion does not apply.

[95] Learned Counsel referred to the following passage in the decision of the English Court of Appeal in **Southern Centre of Theosephy Inc v State of South Australia** [1982] 1AER 283 (288) which was relied on by the claimant, and also the Canadian case of **Clark v Canada (Attorney-General)** [1930] SCR 137 which discussed the ownership of a bench at a river bank. The bench was formed by the action of the water of the river in depositing substances against the bank or slope on the north side of the plaintiff’s land. It was found that the bench only being liable to be covered by water once or twice a year meant that it no longer formed part of the riverbed.

[96] The Court adopted the definition of accretion as outlined in **Southern Nigeria v John Hold & Co. (Liverpool) Ltd., R v Yarborough Brighton and Hare General Gas Company v Hare Bingalos Limited:**

“The term accretion denotes the increase which land bordering on a river or the sea undergoes through the silting up of soil, sand or other substances, or the permanent retinal of the waters. This increase must be formed by a process so slow and gradual as to be, in a practical sense, imperceptible, by which is meant that the addition cannot be observed in its actual progress from moment to moment or from hour to hour, although, after a certain period, it can be observed that there has been a fresh addition to the shore line. The increase must also result from the action of the water in the ordinary course of the operation of nature and not from some unusual or unnatural action by which a considerable quantity of soil is suddenly swept from the land of one man and deposited on, or annexed to the land of another.”

[97] The test is:

“Not the number of years it took the bench to form, nor yet whether an addition to the shore line may be apparent after each flood, but whether, taking into consideration all the incidents contributing to the addition, it properly comes within what was known to the Roman law as “alluvium”, which implies a gradual increment imperceptibly deposited, as distinguished from “avulsion” which implies a sudden and visible reversal of a quantity of soil from one man’s land to that of another, which may be followed and identified or the sudden alteration of the river’s channel.”

[98] In relation to the meaning of “imperceptible” in this context, the Court stated:

“Their Lordships do not find it necessary to discuss the exact meaning of the word “imperceptible” in the English rule which provides that all accretion must be gradual slow and imperceptible,” for assuming the applicability of the English rule, “slow” and “imperceptible” are only qualifications of the word “gradual”, and this word with its qualifications only defines a test relative to the conditions to which it is applied. In other words, the actual rate of progress necessary to satisfy the rule when used in connection with English rivers is not necessarily the same when applied to the rivers of India. The application of the rule is in their Lordship’s opinion, correctly laid down in the judgment of Ayling J in the present case when he says: “It seems to me, the recognition of title by alluvial accretion is largely formed by the fact that the accretion is due to the normal action of physical forces; and the conditions of Indian and English rivers differ so much that what would be abnormal and almost miraculous in the later is normal and common place in the former as pointed out by their Lordship of the Privy Council in **Srinath Roy v Dira Bandhu Sen** CLR 41 at 221.

[99] Learned Counsel submitted that the onus is on the Claimant to show affirmatively that the alluvium was gradual and imperceptible. Further, there is a lack of survey evidence as to the progress of any alluvium and there was no evidence that the Claimant’s land ever had a “water boundary” upon which the doctrine of accretion could be based.

[100] Learned Counsel further referred to the evidence of the expert Mr. Lance Peters in his Report at paragraph 5.3 which reads as follows:

"5.3. The gradual increase or buildup of materials from the processes of accretion to equate to the mentioned quantity of lands will not take many years but rather many hundred of years as geological processes take hundreds, thousands and millions of years to manifest themselves."

- [101] Further there is no evidence of accretion occurring naturally. There is no evidence of the accretion occurring in this case. Learned Counsel relied on the following statement in the case of **Clarke v Canada**:

"Natural process" such as by the gradual build up of soil sediment, or by gradual retreat of the bordering body of water, have historically referred to the movement of water against land, but this key condition of the doctrine has been extended through analogy to include another natural force, the wind. Robust changes to the boundary water line brought about by accretion caused by the deposition of windswept and are now recognized as falling within the orbit of the doctrine of accretion. The non-natural buildup of soil, such as land reclamation by the dumping of soil, is explicitly excluded from the doctrine."

- [102] Learned Counsel submitted that the nature of the works undertaken by the Claimant and others in the dry river means that the resulting change to the land would be deemed unnatural. Such change could not be considered to be because of accretion as they were not natural and must be excluded.

- [103] Learned Counsel referred to the expert report of the Claimant's witness Mr. Isaacs at 11.1 and 2 where he stated:

"There has been constant extraction of materials from the bed of the Rabacca Dry River and some river bank extraction (see figure 1). These have not added to the deposits on the property in question, but have contributed to a gradual change in the course of the river bed, particularly of the Rabacca Dry River, thereby altering the configuration of the landscape."

- [104] Learned Counsel concluded that the Claimant's property not having a water boundary, and the claimant did not adduce any evidence to show that the process was natural and gradual, the doctrine of accretion does not apply.

Discussion

[105] Having considered the submissions of Counsel on both sides, and the cases referred to, I agree that the authorities clearly outline the doctrine of accretion. The doctrine was also explained in the following way in the Canadian case of **D'Amico v Atkinson** 2024 BCCA 330 as follows:

“A natural boundary typically runs with the high-water mark of the lake. The Crown owns the foreshore and the bed adjoining the body of the water. Overtime, the high-water mark may shift due to a process known as accretion: the gradual and imperceptible addition of land to the upland property through natural deposition of soil sand or other substance. The upland property owner acquires ownership of the accreted land. Where accretion occurs the plan on the registered title to the property may not accurately depict the extent of ownership.”

[106] In my view the following principles emanate from the cases as it relates to accretion:

- (a) The land must be bounded by a river or stream, or sea, in other words, the land must have a water boundary.
- (b) The increase (build up) of land which changes the boundary must be natural and gradual.

[107] There is no dispute as it relates to the principles of law. The dispute relates to whether the doctrine is applicable in this case.

[108] Lands with a water boundary are referred to as riparian lands and the owner of such lands are entitled to certain riparian rights such as access and use of the water, fishing, navigation and includes ownership of land formed by accretion between the original boundary (riverbank or shoreline) and the new riverbank or shoreline. In other words, accreted lands vest in a riparian owner by operation of law. Thus, if the doctrine is applicable the Claimant would be entitled to the disputed land even though the plan and the area as stated in his Deed show otherwise.

[109] Both parties led evidence from expert witnesses in relation to the doctrine of accretion and diluvion and its application. The legal principles on how a Court should approach expert evidence is succinctly outlined in the case of **AB V BG and Others 2009 EWCA**. There the Court determined that the weight to be given to the expert evidence depends on how the expert evidence is assessed in the context of all the other evidence. The Court further stated:

“It is of course, axiomatic that judges are entitled to disagree with an expert witness. But this proposition also has an equally obvious corollary. There must be material upon

which the judge in question can safely ground his or her disagreement, and he or she must fully explain the reasons for rejecting the expert's evidence."

(77) Also, in **Pacific Recreation Pte Ltd v Sy Technology Inc [2008] SGCA**. The Court emphasized that Courts should look at the expert's reasoning. An expert must show the analytical process by which they reached the conclusion.

(78) The above authorities and authorities such as **Jacto Transport Ltd v Derek Hall 2005 EWCA 1527** emphasize that expert evidence does not trump all evidence, Judges are entitled to disagree with an expert witness.

[110] A review of the evidence shows that while Lot 6 is bounded on the north by the Rabaca dry river and on the south by the Lady Jane dry river, these rivers as their name state are "Dry Rivers". They are not rivers with a constant flow of water. The parties in their Statement of Agreed facts stated:

"Both the Lady Jane/Langley Park River and the Rabacca Dry River are non-navigable, non-perennial and non-tidal rivers".

[111] Mr. Peters, the defendant's expert witness stated in his report (paragraph 3.25) that both rivers are non-perennial, semi-permanent rivers and he explained that they are so considered because they only flow like a normal river when there is a heavy rainfall. Under cross-examination by Mr. John K.C., Mr. Peters testified that the Rabaca and the Lady Jane Rivers do not have a water flow for about 95% to 98% of the time in a year and only when there is heavy rainfall. Neither of the expert witnesses called by the Claimant, Mr. Robertson nor Mr. Isaacs gave a contradictory opinion. In my view the claimant has failed to cross this hurdle. The evidence does not show that Lot 6 ever had a water boundary. The rivers are dry rivers. All of the authorities referred to by Counsel were lands bounded by water. Neither the Claimant nor his predecessor in title were riparian owners and therefore entitled to exercise any riparian rights. Even if the dry rivers are considered to be water boundaries, the Claimant had to satisfy the second requirement.

[112] The authorities referred to by the parties have clearly stated that for the doctrine to apply the change must be natural, gradual and imperceptible.

[113] Mr. Isaacs the expert witness for the claimant in paragraph 8 of his expert report explained that between 1941-1970 the land has been shaped and reshaped and opined that this was due to a gradual accumulation of material as a result of volcanic eruptions from the 1700s. Mr. Isaacs however did not exhibit aerial photographs between 1941 and 1970. What was exhibited was

an aerial photograph of 1941 and 1970. The aerial photograph of 1970 shows the dry rivers in the same position as on the survey plan C364 of Mr. Stinson Campbell. Lot 6 was surveyed by Mr. Stinson Campbell in November 1970 and the survey Plan 364 was approved and lodged on 3rd day of March 1971. That survey plan shows the northern and southern boundaries of Lot 6 as the Rabacca and Lady Jane Dry Rivers and the area of land being 5 acres and 2 poles. Indeed, the aerial photograph of 1992 shows the dry rivers to have changed their position. Lot 6 was conveyed to the Claimant's predecessor in 1978, however no aerial photographs were exhibited for the period 1971- 1991 which show any change in the rivers between 1971 and 1978 or indeed 1991. In **Kennedy v Cordia [2016] UKSC** the Court stated at paragraph 48 – 49 as follows:

“ An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or “bare ipse dixit” carries little weight, as the Lord President (Cooper) famously stated in **Davie v Magistrates of Edinburg** 1953 SC 34,40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in **Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft fur Schadlingsbekampfung mbH** 1976 (3) SA352, 371:

“An expert's opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert”

As Lord Prosser pithily stated in **Dingley v Chief Constable, Strathclyde Police** 1998 SC 548, 604: “As with judicial or other opinion, what carries weight is the reasoning, not the conclusion.

49. In **Davie** the Lord President at p 40 observed that expert witnesses cannot usurp the functions of the jury or the Judge sitting as a jury. Recently, in **Pora v The Queen [2015] UKPC** para 24, the Judicial Committee of the Privy Council in an appeal from New Zealand, stated:

“ It is the duty of an expert witness to provide material on which a court can form its own conclusions on relevant issues. On occasions that may involve the witness expressing an opinion about whether for instance, an individual suffered from a particular condition or vulnerability. The expert witness should be careful to recognize, however, the need to avoid

supplanting the court's role as the ultimate decision-maker on matters that are central to the outcome of the case."

- [114] The evidence of Mrs. Diana Baptiste-Edwards is that she resided with James Thomas and his family since she was six years old. She did not state her current age or when she was born. She further testified that James Thomas occupied the land between the two dry rivers until he died in September 1996 and she also occupied the said land and sold the land to the Claimant who occupied the said land. If Mrs. Baptiste-Edwards is believed it means that the lands shown on Plan C2842 as Lot 1 and 2 measuring 3.5450 acres and 5.4321 would have been formed between 1971 - 1978.
- [115] Mr. Robinson also opined that the floods in St. Vincent of 2010 and 2013 did not contribute to accretion on Lot #6. Mr. Robinson further opined that the vegetation shows signs of being over 25 years. This suggests that the deposits were not recent. Mr. Robinson did not state what those signs were, nor did he explain how those signs relate to the age of the vegetation.
- [116] Mr. Robinson also opined that constant extraction of material from the riverbed and the riverbank have not added deposits to the property but rather contributed to gradual change of the riverbed thereby altering the landscape. Based on the authorities relied on by both Counsel, the doctrine of accretion does not apply where changes occur because of manmade activities, but must be as a result of natural process.
- [117] Having reviewed the evidence, I am of the view that the claimant has not shown on a balance of probability that he or his predecessor in title was a riparian land owner and therefore enjoyed riparian rights, nor did the claimant's evidence show that the disputed land an area of 3.5450 acres and 5.4321 acres was formed by accretion, a gradual and natural process. Bearing in mind that the rivers are dry rivers and the water only flow between 5% to 3% in a year. The onus was on the claimant to show that his property is riparian lands and that the disputed land was formed by accretion. The claimant on his evidence failed to do so.

Limitation

- [118] Mr. John K.C. submitted that even if the disputed land is found to be Crown Land, the Crown's title to the disputed land has been extinguished pursuant to the Limitation Act, since the Claimant and its predecessor in title have been in adverse possession of the disputed land for a period in excess of thirty (30) years since 1978.

- [119] Further, the Crown acknowledged the Claimant's ownership of the disputed land when prior to 2007, GESCO whose role has now been taken over by BRAGSA entered into arrangement with the Claimant's predecessor in title for a right of way over the claimant's land to be able to access a mining area via a road which partially runs across part of the disputed land (lot 2) at a license fee of \$500.00 per month. This sum was paid to the Claimant's predecessor in title on the 5th day of July 2007 and April 2008 and receipts were duly issued. Also, around 2004 the Roads division of the North Windward Constituency agreed to pay the Claimant's predecessor \$500.00 for farmers to access neighboring lands using the road on the Claimant's land.
- [120] Learned Counsel further submitted that around 2nd July 2008 an affiliate of the Claimant "BTBC" made application for planning permission to conduct mining operation on the Claimant's land including the disputed land. The application was approved. The Claimant continued to mine until the operation was stopped by the Board in 2011. It was not until 2015 that the Crown through the Chief Surveyor sought to lay claim to the disputed land at which time the Crown's right to recover possession of the land had been extinguished by virtue of the Limitation Act.
- [121] Learned Counsel for the Crown submitted that neither the Claimant nor its predecessor in title was in possession of the disputed land for a period of 30 years. The Survey plan shows a road that is partially on the Claimant's land Lot 6. Therefore, any payment made to the Claimant was evidence of acknowledgement that the Claimant and his predecessor in title were the owner of Lot 6.
- [122] Learned Counsel also referred to the decision of the Court of Appeal in **Arnold Celestine v Carlton Baptiste** GPTHCVAP 2008/011; where the Court of Appeal found that adverse possession can only arise where it is recognized by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has disposed the paper owner. As such, it was inconsistent for the respondent in that case. Mr. Baptiste, to claim to be in possession of the land as of right whilst at the same time claiming to be in adverse possession. Learned Counsel submit that the Claimant's case of adverse possession of the disputed land is inconsistent with its claim of ownership of the disputed land.

Discussion

- [123] The short answer to this issue is that this court is bound by the decision of the Court of Appeal in **Arnold v Celestine**.

[124] In any event, the onus was on the claimant to satisfy the provisions of the Limitation Act.

[125] The relevant provisions are section 17 (1) and of the Limitation Act and section 10 of Part II of the schedule. They read as follows:

“17. Time Limit for actions to recover land

(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if it first accrued to some person through whom he claims, to that person.

10. Subject to paragraph 11, section 17(1) shall apply to the bringing of an action to recover any land by the Crown with the substitution for the reference to twelve years of a reference to thirty years.”

[126] In order for the paper owner's right to recover possession to be extinguished pursuant to section 17 (1) of the Limitation Act, the Defendant must have been in adverse possession of the disputed land. What amounts to adverse possession has been outlined in the well-known case of **Powell v McFarlane** which was approved by the House of Lords in **JA Pye (Oxford Ltd) v Graham and Ors**. In **JA Pye** Lord Brown-Wilkinson outlined adverse possession as follows:

- (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 prima 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”).
- (3) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus, an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. In the case of open land absolute physical control is normally impracticable; if only because it is generally

impossible to secure every part of a border to prevent intrusion. "What is sufficient degree of sole possession and user must be measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the Claimants."; **West Bank Estates Ltd v Arthur**, per Lord Wilberforce.

- (4) The animus possidendi, which is also necessary to constitute possession, was defined by Lindley M.R, in **Littledale v Liverpool College** (a case involving an alleged adverse possession) as "the intention of excluding the owner as well as other people." This concept is to some extent an artificial one, because in the ordinary case the squatter on property such as agricultural land will realize that, at least until he acquires a statutory title by long possession and thus can invoke the processes of the law to exclude the owner with the paper title, he will not for practical purposes be in a position to exclude him. What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

[127] The claimant's deed is dated 22nd day of 2007. The evidence of the claimant and its predecessor in title of occupation of the disputed land, is the evidence of Mr. Samuel and Ms. Baptiste.

[128] Mr. Samuel's evidence on this issue is that the Claimant and its predecessors in title were successively in occupation and possession of lot 6 and the disputed land. The Claimant's immediate predecessor in title acquired title to the lands in 1978. The Crown at all material times acknowledged the Claimant's possession of the disputed land. The instances of possession outlined by Mr. Samuel are:

- (a) Prior to 2004 rent was paid by Government Agents BRAGSA and its predecessor GESCO to the Claimant for use of a road on the Claimant's land. The road was on Lot 6 and partially on Lot 2.
- (b) In 2008 the Government granted the Claimant's application for planning permission to conduct mining operation over land which included lots 1 and 2. Mining was undertaken on the land until the permission was withdrawn. A letter from the Planning Board terminating the permission was exhibited.

- [129] Mr. Samuel further testified that it was not until June 2015 that the Defendant sought to claim ownership of the disputed land.
- [130] Mrs. Baptiste in a vague way stated that she had taken up occupation of the disputed land after the death of Mr. Thomas in 1996. Mr. James Thomas purchased the land in 1978 and he occupied the land included the disputed land.
- [131] The disputed area is in excess of 8 acres of land with a rough terrain. There is no evidence of any use made by Mrs. Baptiste of the land or the use made of the land by Mr. James Thomas. Mrs. Baptiste also testified that she collected \$500 rent from the Government for use of a road which runs on Lot 2 in 2004 and in 2005 and 2007. She exhibited receipts from the Government. It is however not in dispute that the road is on Lot 6 the Claimant's land and partially on Lot 2 (part of the disputed land). Indeed, the parties and their Counsel and the Court walked on the road. Critically, neither Mrs. Baptiste nor Mr. Samuel testified of any specific acts of factual possession of the Claimant's predecessor in title prior to 2000.
- [132] In my view the evidence of Mr. Samuel and Mrs. Baptiste fall short of establishing adverse possession for a period of 30 years.

Unconstitutionality

- [133] Learned Counsel submitted that in so far as the Crown contends that the disputed land is Crown land, such claim is tantamount to an unconstitutional deprivation of the Claimant's property and a disproportionate expropriation of the Claimant's land. Learned King's Counsel referred to section 6 and 8 (8) of the Constitution and the case of **Randolph Toussaint v The Attorney General** a decision of the High Court of St. Vincent.
- [134] Learned King's Counsel submitted that the establishment of the boundaries and the publication of Notice in the Gazette that the lands were Crown lands, the Crown denied the Claimant a right to be heard or adequate compensation in accordance with the provisions of the Constitution. The Court should therefore award the Claimant damages. In support of his submissions Learned King's Counsel referred to the following passage in the decision of the Privy Council in **Attorney-General of Trinidad and Tobago v Ramanooop**

"The Constitution recognized and affirmed the Court's power to award remedies for contravention of human rights and fundamental freedoms; that jurisdiction was an integral part of the privilege conferred on the citizens of Trinidad and Tobago and was

essential in the protection intended to be afforded by the Constitution against misuse of State power; that section presupposed that by the exercise of the jurisdiction, the court would be able to grant the wronged citizen effective relief for the State's violation of a constitutional right; that the constitutional jurisdiction was separate from and additional to all other remedial jurisdiction of the court and its purpose was to uphold or vindicate the constitutional rights which had been contravened; that a declaration by the Court would articulate the fact of the violation, but in most cases more would be required than words; that if the person wronged had suffered damages, the court might award him damages which might go towards vindicating the constitutional right, but an additional award, not necessarily of substantial sum might be needed to reflect the sense of public outrage to emphasize the importance of the Constitutional right and the gravity of the breach, and to deter further breaches, that redress in the section was apt to encompass such an additional award, if the Court considered that in all the circumstances it was required."

- [135] Learned King's Counsel submitted that the court should grant the declarations prayed for and make an award of damages to the claimant.

Defendant Submissions

- [136] Learned Counsel Ms. Franklyn submitted that the pleadings of the claimant did not state how the Crown's actions amounted to a deprivation of property in contravention of Sections 6 and 8 (8) or 8 (10) of the Constitution. There is no merit in the submissions of the Claimant.

Discussion

- [137] The provisions of the Constitution on which the Claimant based its case are Sections 6 and 8(8) and (10) of the Constitution. They read as follows:

"6. Protection from deprivation of property.

- (1) No property of any description shall be compulsorily taken possession of and no interests in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a

law applicable to that taking of possession or acquisition for the payment within a reasonable time of adequate compensation.

- (2) Every person having an interest in or right over property that is compulsorily taken possession of or where interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for –
 - (a) Determining the nature and extent of rights;
 - (b) Determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorizing the taking of possession or acquisition;
 - (c) Determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition;
 - (d) Obtaining that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

8. Provisions to secure protection of law.

- (8) Any Court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial and where proceedings for such a determination are instituted by any person before such court or other authority, the case shall be given a fair hearing within a reasonable time.
- (10) Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority including the announcement of the decision of the court or other authority, shall be held in public.”

[138] In view of my earlier finding that the disputed land is not the property of the Claimant, it cannot be said that the Claimant's property has been disproportionately expropriated. There has been no deprivation or disproportionate expropriation of the Claimants property by the Crown. Likewise, there is no evidence of any breach of the provisions of sections 6, 8 (8) or (10) of the Constitution. In short sections 6 and 8 (8) and (10) of the Constitution were not engaged.

[139] In conclusion, for the reasons stated above the Claimant's case is dismissed.

Order

[140] It Is Ordered that;

- (1) The Claimant's claim is dismissed.
- (2) By consent, each party shall bear their own costs.

The Court deeply regrets the delay in the delivery of this judgment which was due to circumstances beyond the control of the Court.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar