

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2023/0065

BETWEEN:

WELLINGTON STAFFORD

Claimant

AND

CORNELIUS JOHN

Defendant

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

High Court Judge

Appearances:

Mr. Cecil 'Blazer' Williams of Counsel for the Claimant

Mrs. Kay Bacchus-Baptiste of Counsel for the Defendant

2025: March 18 (Trial Date)

April 30; May 27 (Submissions)

July 29 (Decision)

JUDGMENT

Introduction

[1] **THOM J (Ag):** Mr. Wellington Stafford (the Claimant) claims he is the owner of a parcel of land at Belvedere measuring approximately 2 acres. He contends that Mr. Cornelius John (the Defendant) is trespassing on the said land (the disputed land).

- [2] The Claimant alleges in his statement of claim that he became the owner of the disputed land by Deed of Gift No. 1018 of 2021 which is dated 25th March 2012. He permitted one Mr. Matthew to cultivate the disputed land. Subsequently, in 2012 Mr. Matthew introduced him to the Defendant and requested him to permit the Defendant to take over cultivation of the land.
- [3] In 2016 he decided to sell the disputed land. The Defendant expressed an interest in purchasing the disputed land, but no written offer was made. He caused his Attorney to serve a notice to quit on the Defendant on 6th October 2021. The Defendant having refused to vacate the disputed land he instituted these proceedings in which he seeks the following Orders:
1. An Order that the Defendant ceases trespassing on the two acres more or less of land situate at Belvedere owned by the Claimant by virtue of Deed of Gift Number 1081 of 2021 dated the 25th day of March 2012.
 2. An Order that the Defendant ceases cultivating, cutting trees, excavating, constructing or interfering in any way with the Claimant's ownership, use and enjoyment of the said land.
 3. An Order that the Defendant pays the Claimant mesne profits in the amount of \$20,000.00 for the period 2016 to the hearing of this matter.
 4. Such further and or other relief as the Court determines just and costs.
- [4] The Defendant in his defence contended that the Claimant is not the owner of the disputed land. One Mr. Sonny George Boatswain is the owner. He died in or about 2011. He did not divest himself of his land by Deed of Gift No. 1081 of 2021. He has been cultivating the disputed land with one Norman Matthews from around 2002. Around 2005, Norman Matthews became ill and was unable to continue to work on the disputed land, and Norman Matthews permitted him to work the entire portion of the disputed land. He continued to work the disputed land uninterrupted. He paid rent to no one. He never met Mr. Boatswain nor the Claimant. Further, the Claimant has lived outside of St. Vincent and the Grenadines for over fifty (50) years. He is not aware of Deed No. 1018 of 2021.
- [5] The Defendant further denied that in 2020 a "For Sale" sign was placed on the disputed land. He also denied that he made an offer to purchase the said land. He, however, did indicate to Mr. Don Providence that he was interested in purchasing the adjoining portion of land owned by Noreen Stafford and the Claimant. He denied that WS-2-a plan, refers to the disputed land.
- [6] In his counterclaim, the Defendant alleges that the Claimant is not the legal owner of the disputed land and any paper title he had has been extinguished pursuant to the Limitation Act.

He seeks orders that the Claim be dismissed, that deed No. 1081/2021 be cancelled, that he be declared the owner of the land; that the Registrar register a possessory title of the disputed land in his name and costs.

- [7] In his reply to the defence the Claimant contended that Mr. Boatswain died on the 29th day of December 2013. He denied that the Defendant cultivated the disputed land with Mr. Matthews before 2012 and alleged that Mr. Grafton Mc Lean and his son Carlisle Mc Lean had cultivated part of the disputed land.
- [8] Mr. Norman Matthews introduced him to the Defendant between 2011-2012 and he agreed to permit the Defendant to cultivate the disputed land. On 22nd April 2020, the Defendant's wife by text messages offered on behalf of the Defendant to purchase the disputed land.
- [10] In his defence to the counterclaim, the Claimant denied that the Defendant has been in possession of the disputed land for a period of twelve years and his claim is extinguished by the Limitation Act.

Issues

- [11] The issues to be determined by the Court are firstly whether the Claimant is the paper title owner of the disputed land and secondly, if the Claimant is the paper title owner of the disputed land, whether his right to recover possession of the disputed land has been extinguished pursuant to section 17(1) of the Limitation Act.

Evidence

- [12] The Claimant gave evidence and called three witnesses being: Kenneth Lynch, Carlisle Mc Lean and Don Providence.

The Defendant gave evidence and called one witness, Ms. Monica Simon.

Wellington Stafford

- [13] Wellington Stafford testified that he is from Belvedere but he currently resides in the United States of America. He is the owner of approximately two acres of land situate at Belvedere by Deed No. 1081 of 2021 and dated March 25, 2012 (the disputed land). The disputed land was

gifted to him by his uncle George Warren Boatswain who died on 29th December 2013. A copy of the death certificate was exhibited and admitted into evidence (WSI).

- [14] He requested Mr. Norman Matthews to work the land for him and reduce unwanted overgrown vegetation. Around 2011-2012 Mr. Matthews introduced him and his sister Noreen Stafford to the Defendant by telephone. At the request of Mr. Matthews who wanted to retire because of ill health, he permitted the Defendant to take over the cultivation of part of the land. Some years earlier, he had permitted Mr. Grafton Mc Lean to cultivate the top half of the land. He subsequently gifted 5000 sq.ft. of the disputed land to Mr. Mc Lean's son, Carlisle Mc Lean.
- [15] During 2016, he learnt that the Defendant had built structures on the land which is owned by himself and his sister Noreen Stafford. No permission was given to the Defendant do so. He caused Mr. Don Providence to put a "For Sale" notice in the newspapers in relation to the disputed land. The Defendant expressed to Mr. Providence his interest in purchasing the land.
- [16] On 22nd April, 2020 he received a text message from the Defendant's wife. The text message was exhibited. It reads: "Cornie will like to know the overall cost of the land how much it is and also a copy of the land plan and letter stated that you are going to sell him the land to take to the bank."
- [17] The Claimant further testified that he caused his Attorney Mr. Cecil A Blazer Williams to send a Notice to Quit dated 6th October 2021 to the Defendant. The Defendant refused to deliver up possession.
- [18] Under Cross Examination, Mr. Stafford testified that he migrated from St. Vincent and the Grenadines to Canada and then to the USA in September 1969. He has lived in the USA continuously to the present. He has made several trips back to St. Vincent. The last time he visited was around 2005-2007. Mr. Boatswain was his grandfather. He also knew Mr. Norman Matthews. George Warren Boatswain was his uncle. He did not know George Boatswain gave Norman Matthews a power of attorney, but he heard him speak about a power of attorney, but he has not seen the power of attorney.
- [19] He was in New York when he received the Deed. He agreed that his uncle was ill in 2012, but he emphasized that his uncle never lost consciousness. He was able to sign the deed. Although he got the deed in 2012, he did not register the deed until 2021 because he did not have the required sum of money to register the deed.

(20) Mr. Stafford further testified that he is not claiming any money from Mr. John. He simply wants the Claimant to vacate his property.

[21] Prior to 2012 himself and his sister were dealing with Mr. Matthews. He met Mr. Matthews around 2005-2006. The Defendant however did not start working the land until 2011-2012 when Mr. Matthews requested that Mr. John should take over working the land.

[22] He denied knowledge of any excavation or the burning of coals on the disputed land. He acknowledged that the Defendant never paid him any rent, nor did anyone who worked the disputed land. The disputed land originally belonged to his grandfather. He worked on the disputed land. His uncle became the owner of the disputed land around 1973. His Uncle permitted Mr. Matthews to work the land. His agent put the "For Sale" Notice in the newspapers around 2018-2020. He however agreed that he did not see the notice in the newspapers. He reiterated that he received the text from the lady who lives with the Claimant. He gave his agent Mr. Don Providence the deed for the notice to be placed in the newspapers. He did so around 2018-2020. This was prior to the deed being registered.

Kenneth Lynch

[23] Mr. Lynch testified that he knows the Claimant and his sister Noreen Stafford. He lives in Belvedere which is close to where the Claimant has a parcel of land. Sometime in 2012 the Defendant began to work the bottom portion of the land belonging to Mr. Stafford after Mr. Norman Mathew who worked the land became ill and subsequently died.

(24) Under cross-examination Mr. Lynch testified that he lives at Revierre. It was a long time ago he saw the Claimant in St. Vincent. They spoke on the phone. His land abounds the disputed land. He knows the Defendant. He never spoke to the Defendant. He recalled an incident when the Defendant burned trees on the disputed land and the fire spread to his land. He reported the matter to the Police. He saw the Defendant plant crops on the land, but he did not see him excavate the land.

[25] Mr. Lynch acknowledged that he travelled for several years, but the longest period he spent away from St. Vincent was six (6) months. He agreed Mr. Norman Matthews also cultivated the disputed land and Mr. Norman Mathews brought the Defendant to cultivate the land.

Mr. Carlisle Mc Lean

- [26] Mr. Mc Lean testified that he knows the Claimant from his childhood. He lives close to the land. His father was working the top part of the land for over 38 years. The Claimant agreed to give his father 5,000 sq.ft of the land. He also knew Mr. Norman Matthews. He worked the bottom part of the land. Mr. Matthews became ill around 2012 and he stopped working on the land. He died on 30th October, 2014.
- [27] The Defendant commenced working the bottom portion of the land after Mr. Matthews became ill.
- [28] Under cross-examination Mr. Mc Lean testified that he knows the Claimant returned to St. Vincent, but could not give any specific time. He does not know when the Defendant commenced cultivation of the disputed land.
- [29] Under re-examination Mr. Mc Lean testified that the Defendant worked the bottom portion of the land while his father worked the top portion of the land.

Mr. Don Providence

- [30] Mr. Providence testified that he is a real estate agent. He knows both the Claimant and the Defendant. He knew the Claimant owns a parcel of land at Belvedere. In 2016 the Claimant requested him to arrange the sale of the land. He had a Deed dated 25th March 2012. He spoke to the Defendant who was cultivating part of the land. He told the Defendant that the land was for sale and enquired whether he was interested in purchasing the land. The Defendant indicated he should be given first preference to purchase the land. A notice was placed in the newspapers, and the land was surveyed. The top portion of the land was being cultivated by one Grafton Mc Lean. The Defendant and his wife visited him. The wife went into his office while the Defendant remained in his truck. He gave her a copy of the Deed. Sometime later the Defendant visited him and claimed that the land did not belong to the Claimant.
- [31] Under cross-examination, Mr. Providence testified that he has been a real estate agent for several years. The Claimant called him about the sale of the land. He met the Claimant in New York. The fact that the deed was not registered was not a hindrance to the notice of sale being made. He had done so on previous occasions.

[32] Mr. Providence acknowledged that the Claimant and his sister Noreen Stafford owned the adjoining land on which he saw the Defendant operating a block making business. Mr. Providence was not certain which parcel of land the Defendant wanted to purchase. The Defendant did not specify. The Defendant and his wife only visited him twice in relation to the sale of land. He could not confirm whether Mr. Grafton Mc Lean was one of the persons who worked on the disputed land. He recalled speaking to Mr. Mc Lean as he visited the boundaries of the site.

Defendants' Evidence

[33] **Mr.** Cornelius John testified that he knows the paper title owner of the disputed land is one Sonny George Boatswain who died around 2011 without divesting himself of the disputed land.

[34] In 2003 by Power of Attorney No.164/2003 George Warren gave Mr. Matthews the authority to deal with the disputed land. Around 2002 a trespasser had built a building on the land and the power of attorney was given to Matthews to get the trespasser off the land. The power of attorney included power to:

"(i) Take possession of my two (2) acres of land more or less situate at Belvedere in the State of Saint Vincent and the Grenadines, the subject matter of Deed Number 1214 of 1973 at such rents and upon such terms as he shall think fit and let any such person into possession thereof.

(ii) Sign and give notices to tenants and occupiers of my said land to quit or to abate a nuisance or to remedy a breach of covenant or for any other purpose whatsoever."

[35] The Defendant testified that he began working the land in 2003. The land had several large trees such as cedar, and almond trees. He cut down the trees and began planting crops. He also excavated the roots at a cost of \$2,500.00. While clearing the land he planted crops such as corn and pumpkin. Later he also planted plantains, fruit trees, peas, coconuts and other crops. He also burned coal pits and sold coals to market vendors. He never paid rent to anyone or accounted to anyone for the proceeds from the crops. He kept the proceeds for himself.

[36] In 2006 Norman Matthews stopped farming the land as he was ailing. Thereafter he alone cultivated the land to date. He never met Mr. Boatswain or the Claimant. The Claimant has been living outside of St. Vincent for over fifty (50) years. He was never introduced to the Claimant.

- [37] In 2020 a "For Sale" sign was placed on the adjoining land where he is conducting a "block making" business. Mr. Don Providence spoke to him about the Sale of that parcel of land and he indicated he was willing to purchase the land. At no time did he agree to purchase the land in dispute. He never knew the Claimant to be the owner of the disputed land. His wife went to the office of Mr. Don Providence to get a letter and a survey plan for the land on which the block making business is situate. He has been in uninterrupted possession of the land since 2006.
- [38] Under cross-examination the Defendant testified that he resides at Diamond. He has been living there since 1995. He knew Mr. Norman Matthews was in charge of 3 acres belonging to the Mapp family, 2 acres belonging to the Staffords and 2 acres belonging to Mr. Boatswain. Mr. Matthews showed him the land belonging to the Staffords, and the land belonging to Mr. Boatswain. He started going on the disputed land in 2002. In 2003-2005 Mr. Matthews told him he was losing strength and he asked him to work the land. Mr. Matthews took ill in 2010 and was hospitalised. He denied that it was when Mr. Matthew took ill he commenced cultivating the disputed land. He agreed that Mr. Matthews died in 2014.
- [39] He further testified that when he worked on the disputed land, he farmed the area where Mr. Matthews was working. He knew Mr. Grafton Mc Lean. Mr. Mc Lean was working the top portion of the land belonging to Noreen and Wellington Stafford. He never saw Mr. Mc Lean working any portion of the disputed land. He started working the top portion of the land five years after he started working the disputed land.
- [40] The Defendant further testified that the Claimant spoke to him about 2014-2015 in relation to the top portion of the land belonging to Noreen Stafford and the Claimant. At the time he was building on the land. He denied the Claimant ever spoke to him about the disputed land. The Claimant never told him he was going to sell the disputed land. When Mr. Providence came to the land he was on the land owned by Noreen Stafford and the Claimant. Mr. Providence spoke to him about the sale of that land only. He knew the Claimant had a deed for the disputed land in 2021. He denied that the Claimant was the owner of the disputed land. Mr. Matthews gave him the power of Attorney and the deed when he gave him the disputed land to work.

Monica Simon

- [41] Ms. Simon testified that she has known the Defendant for over 25 years. She resides at Diamond and she can see the disputed land from her home. She knew that Norman Matthews was in charge of the land and that around 2005-2006 he gave the land to the Defendant to work. The Defendant planted corn, plantains, bananas, peas and fruit trees on the land. He also made coal pits on the land. She knows nothing of the Claimant's ownership of the land.
- [42] Under cross-examination Ms. Simon testified that she built her home between 2001-2002. She started hairdressing between 2005-2006. She knew Mr. Matthews. He lived at Belvedere, but she never saw him in her area. Around 2006-2007 she saw the Defendant cleared the land and planted peas and corn on the land. She does not know Grafton Mc Lean, Carlisle Mc Lean, or Wellington Stafford. She never saw Mr. Matthews on the land. Indeed she has never seen anyone else on the land other than the Defendant. The Defendant worked the entire parcel of land from the bottom to the top.

Finding Of Facts

- [43] Having seen and heard the witnesses and having reviewed their evidence and the submissions of Counsel, I find the following facts to not be in dispute:
- (a) The disputed land was originally owned by the grandfather of the Claimant, then by his son George Warren Boatswain who is the uncle of the Claimant.
 - (b) In 2003 George Warren Boatswain gave a Power of Attorney to Mr. Norman Matthews which gave Mr. Matthews wide powers to deal with the disputed land.
 - (c) Mr. Norman Matthews worked the disputed land.
 - (d) The Defendant worked the disputed land.
 - (e) The Claimant and his sister are the owners of land abounding the disputed land.
 - (D) The Defendant planted various crops on the disputed land.
 - (g) No rent was paid by Mr. Matthews to anyone, including the Claimant. Similarly, no rent was paid to anyone by the Defendant.
 - (h) The Defendant did not share his crops with Mr. Boatswain or the Claimant.
 - (i) Notice to quit was given to the Claimant by the Defendant in 2022.
 - U) Mr. George Boatswain died on 20th December, 2013.
 - (k) Mr. Norman Matthews died on 30th October, 2014.

[44] I also find that the Claimant was a credible and reliable witness. His evidence was not contradicted in spite of intense cross-examination. His testimony was very clear. He has resided in the USA for several years and the last time he visited St. Vincent was around 2007-2005. He readily agreed he could not recall the exact date. He worked on the disputed land prior to migrating to the USA. He does not know the Defendant. His dealings were with Mr. Matthews who was working the land since 2003. His witnesses did not contradict his testimony, rather they supported it. Mr. Kenneth Lynch whose land abounds the disputed land supports his testimony that Norman Matthews became ill around 2012 and that he died in 2014. Also that Grafton Mc Lean worked part of the disputed land for several years. He agreed under cross-examination that it was Norman Matthews who brought the Defendant to work on the disputed land, but he could not recall exactly when the Defendant began to work on the disputed land and testified that he did not think it was as early as suggested by Mrs. Bacchus-Baptiste.

[45] The witness Carlisle Mc Lean, did agree under cross-examination that the Claimant promised to give his family 5,000 sf. ft. of the land and he would benefit. In spite of his interest in the matter, I found him to be a credible witness. He readily agreed that while he knew the Claimant from childhood, he could not recall when he returned to St. Vincent. He does not know if he ever worked the land. In short, his evidence did not advance the Claimant's case nor did he contradict the testimony of the Claimant. Similarly, the witness Mr. Don Providence, a real estate agent did not contradict the evidence of the Claimant. He supported the Claimant's evidence that the Claimant made arrangements to sell the disputed land. The Deed which Mr. Providence testified he had in his possession was in relation to the land owned by Mr. Stafford. However, I agree his evidence was confusing as to which portion of land the Defendant was interested in purchasing, the Claimant's land or the neighbouring land belonging to the Claimant and his sister Noreen Stafford.

[46] In relation to the Defendant's testimony, I do not find him to be a reliable witness. He testified that he spoke to the Claimant but that was in 2014-2015 when he commenced building on the parcel held by the Claimant and Noreen Stafford. When Mr. Providence spoke to him about the land being for sale it was in relation to the parcel held by Noreen Stafford and the Claimant. Mr. Providence did not tell him the disputed land was for sale. I do not believe that Mr. Providence did not tell him that the disputed land was for sale. Mr. Providence had the deed for the disputed land. His wife collected the deed. However, a key element of the Defendant's testimony is outlined in paragraph 5 of his witness statement, it reads:

"After all clearing I began planting other crops like corn, plantains and fruit trees, peas, coconuts, wax apples, mangoes which are still on the land to date. About 2005 Norma Matthews began to lose strength and he allowed me to work the entire portion of land for myself."

- [47] He reiterated this under cross-examination. Mr. Matthews gave him the power of Attorney and the deed for the land. He gave him the land to work. Mr. Matthews was his friend.

Submissions

- [48] Issue 1: Whether the Claimant is the Paper Title Owner of the disputed land i.e. whether Deed No. 1081 of 2021 is a valid Deed.

Claimant's Submissions

Learned Counsel Mr. Williams for the Claimant submitted that for a deed to be valid there must be due execution of the deed and attestation. Mr. Williams referred to the following passage from Adrian Keanne-The Modern Law of Evidence.

"Proof of due execution of a private document usually involves showing that it was written or signed by the person by whom it purports to have been written or signed. For these purposes direct oral evidence that the signatory signed in a particular name may be given by the signatory himself or by any other person who witnessed the execution of the document. Proof may also be effected by admissible hearsay assertions to the same effect, or by the opinion evidence of someone who although not a witness to the execution of the document is acquainted with the handwriting of the person in question. In Doe d Mudd v Suckermore (1837) 5 Ad & El 703 Coleridge J said:

. either the witness has seen the party write on some other occasion, or he has corresponded with him, and transactions have taken place between them, upon the faith that letters purporting to have been written or signed by him have been so written or signed."

- [49] Learned Counsel Mr. Williams submitted that there was no evidence from a handwriting expert, or person familiar with Mr. Boatswain's signature, indicating that the signature on Deed 1081 of 2021 was not the signature of Mr. Boatswain.

[50] In relation to attestation, Mr. Williams submitted that the signature of Mr. Boatswain was attested to by a Notary Public in New York on the 12th March, 2012, the date of the Deed. Learned Counsel further submitted that the fact that the Deed was not registered until 2021 does not affect its validity. Learned Counsel again referred to Modern Law of Evidence at paragraph 4 p.187 which reads:

"A document which is more than 20 years old and comes from proper custody is presumed to have been duly executed. Although proper custody, for these purposes, does not mean that the document should be found in the best and most proper place of deposit; if the document is found in some other place, the Court must be satisfied that such custody was "reasonable and natural" in the circumstance of the case."

[51] Mr. Williams submitted that the circumstances of the case are such that while the Claimant kept the deed until 2021 then registered it, the late registration does not invalidate the deed that was duly executed. In view of the authorities, the claim ought to succeed.

Submissions of the Defendant

[52] Learned Counsel Mrs. Bacchus-Baptiste submitted that by virtue of Section 5 of the Registration of Documents Act, a Deed operates both at law and in equity on registration. The registration of a Deed is deemed due notice of its contents to all persons claiming an estate or interest in the land. The Claimant did not register his deed until fifteen (15) years after the Defendant was in uninterrupted possession of the land.

[53] Learned Counsel Mrs. Browne submits that the evidence shows that the last time the Claimant was in St. Vincent was in 2005. The Defendant has been in sole possession of the land since 2006. He was planting and reaping crops and burning coals and accounting to no one. Learned Counsel submitted that the Claimant's statement in paragraph 6 of his witness statement is contrived. Counsel asked "why would the Claimant ask Mr. Matthews to work the land around 2012?" I pause to state that this is clearly a misreading of paragraph 6 of the Claimant's witness statement which reads:

"I asked Mr. Norman Matthews to work the said parcel of land to reduce unwanted weeds and overgrown vegetation. Mr. Matthews introduced me and my sister Noreen Stafford to the Defendant around 2011 or 2012 by telephone. Mr. Matthews wanted to retire and asked us to permit the Defendant to take over the care of the land. It was

then that I agree to permit the Defendant to work the land solely owned by me which is the subject of this action."

[54] A careful reading of the paragraph shows the Claimant did not state when he asked Mr. Matthews to work the parcel of land, but he was saying Mr. Matthews wanted to stop working the land around 2011-2012 so Mr. Matthews introduced himself and his sister to the Defendant by telephone and requested him to permit the Defendant to work the land owned by himself and his sister and at that same time he agreed to permit the Defendant to work the disputed land.

[55] Learned Counsel Mrs. Baptiste also submitted that the evidence of the Defendant and his witness should be preferred to the evidence of the Claimant and his witness. Further, based on the evidence, the Claimant has failed to prove that he owned the land in 2011 when he alleged he spoke to the Defendant, and that the Defendant was not in occupation from 2005 to 2023.

[56] In my opinion the Claimant's evidence that his uncle Mr. George Boatwain signed the Deed and it was attested by a Notary Public in New York on the same day was not contradicted by any witness or any documentary evidence.

[57] Registration of Deeds is governed by the Registration of Deeds Act. There is no provision in the Act which prohibits late registration of a deed, or which invalidates a deed if it is not registered within a specified time. I find Deed 1081/2021 to be a valid Deed which vests title to the disputed land in the Claimant.

[58] Issue 2: Whether the Claimant's title has been extinguished by virtue of the Limitation Act.

Learned Counsel Mr. Williams referred to Section 17 (1) of the Limitation Act and Part 11 of the Schedule to the Act and submitted that the Claimant was never dispossessed by the Defendant. There was no continuous uninterrupted possession of the disputed land, therefore time did not commence to run against the Claimant. In support of his submission, Learned Counsel referred to the text Adverse Possession by Stephen Jordan at paragraph 5.22. It reads as follows:

"If a squatter is not in adverse possession, time will not run against the true owner. If a squatter is in adverse possession, then the true owner cannot be in possession, because possession is single and exclusive. If the squatter's possession is not adverse, then time will not run against the true owner. But if the squatter is in adverse

possession then time will run against the true owner, but only from the date when the squatter took adverse possession."

[59] Mr. Williams also relied on the following passage in **Powell v McFarlane** (1977) 38P & CR 452 ChD where Slade J stated:

"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of land, as being the person with the prima facie right of possession. The law will thus without reluctance, ascribe possession either to the paper owner or the 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 position (sic) to possess."

[60] Learned Counsel Mr. Williams submitted that the Defendant was not in adverse possession from 2006 because if he was as he alleges, he did so with the permission of Mr. Norman Matthews who he recognised as having a power of attorney from the owner Mr. George Boatswain who died in 2013. Title to the land was passed to the Claimant in 2012 and the Claimant instituted these proceedings in 2023.

[61] Learned Counsel also submitted that the Defendant inquired of Mr. Providence to purchase the land from the Claimant.

[62] Learned Counsel Mrs. Baptiste in response also referred to Section 17 (1) of the Limitation Act and the cases of **Winston Molyneux v Hugh Smith and Ors** BVIHCVAP 2009/0027, **Powell v McFarlane**.

[63] Mrs. Baptiste submitted that the Defendant has been in uninterrupted factual possession of the land from 2006-2023, with the requisite intention to own the land. These proceedings were only instituted in 2023, long after the Claimant's title would have extinguished pursuant to Section 17 (11) of the Limitation Act.

[64] Learned Counsel further submitted that in relation to the claim for the Defendant to pay the Claimant \$20,000.00 mesne profit, the Claimant in his evidence stated clearly that he does not wish to receive any sum of money from the Defendant he simply wanted to receive possession of his land.

Discussion

[65] The relevant legal provisions are Section 17 (1) of the Limitation Act and 8 (1) of Part 11 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.

18. (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession"); and where the preceding provisions of this schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land."

[66] In order for the paper title 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 ("animuspossidendi").
- (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 realise 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."

[67] In order for the Claimant's claim to possession of the disputed land to be extinguished, the Defendant had to be in adverse possession of the land. While I accept the Claimant's evidence that the Defendant went into occupation with permission around 2012 when Mr. Matthews fell ill, the Defendant's evidence shows that he was not in adverse possession of the land in 2005, rather he was there with the permission of Mr. Matthews when he was also given the power of attorney and the deed. The permission was not granted with any condition to pay rent or to account for crops, which is not unusual in St Vincent and the Grenadines. This permission

would have continued until 2013 when Mr. George Boatswain died in 2013, at which time the power of attorney which was given to Mr. Matthews would have come to an end. In any event, as I found earlier the land was transferred to the Claimant on 25th March 2012. At that time the power of attorney would have ceased to have effect.

- [68] The Defendant's possession would have been interrupted before the twelve (12) year period pursuant to section 17 (1) of the Limitation Act by the institution of these proceedings in 2023. The Claimant's claim to recover possession of the disputed land is therefore not statute barred.

Counterclaim

- [69] In view of my finding above, the counter claim must be dismissed. Learned Counsel Mrs. Bacchus-Baptiste acknowledged that even if the Claimant's claim was dismissed, the court could not grant the relief sought by the Defendant being the grant of Possessory title to the disputed land. The regime for the grant of possessory title is outlined in the Possessory Titles Act.

- [70] Learned Counsel Mrs. Bacchus-Browne also submitted that in relation to the claim for the Defendant to pay the Claimant \$20,000.00 being mesne profit, the Claimant in his evidence stated clearly that he does not wish to receive any sums of money from the Defendant, he simply wanted to receive possession of his land. I agree. The Claimant stated so very clearly in his evidence. Learned Counsel Mr. Williams did not pursue the claim for mesne profit in his submission and quite rightly so in view of the evidence of the Claimant.

Conclusion

- [71] In conclusion, I find that the Deed of gift No. 1081/2021 is valid. It was properly executed and attested by a Notary Public. The registration of the Deed approximately nine (9) years after it was made did not affect its validity. I also find that the Defendant having possessed the land with the permission of Mr. Matthews who had a valid power of attorney from the owner who died in 2013, on the Defendant's evidence was not in adverse possession of the land for a period of twelve (12) years.

Order

[72) It is ordered

1. Judgment is granted for the Claimant.
2. The Defendant shall deliver up vacant possession of the land described in Deed No. 1081/2021 to the Claimant on or before the 31st day of October 2025.
3. The Defendant's counterclaim is dismissed.
4. The Defendant shall pay the Claimant cost in the sum of \$10,000.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar