

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2024/0121

BETWEEN:

FRANCIS KENTISH AS ATTORNEY FOR GERALDINE KENTISH
(BENEFICIARY OF THE ESTATE OF JOSEPH BENJAMIN O'GARRO AKA
BENJAMIN O'GARRO, DECEASED)

Claimant

and

ELIZABETH EDWARDS AND ARTHUR EDWARDS
(PERSONAL REPRESENTATIVES OF IVAN EDWARDS, DECEASED)

Defendants

Appearances:

Ms. Rose-Mary Reynolds, Counsel for the Claimant
Mr. Jarid Hewlett, Counsel for the 2nd Defendant

2025: April 10th;
August 25th.

DECISION

- [1] **MICHEL, M.:** This is the Court's decision on an application by the 2nd defendant, Arthur Edwards, for summary judgment.

Background

- [2] The Claimant is the son and Attorney for Gerladine Kentish, daughter and beneficiary of the Estate of Joseph Benjamin O'Garro, deceased and the personal representative of Joseph Benjamin O'Garro, deceased. The defendants, Elizabeth Edwards, deceased and Arthur Edwards were at all material times the personal representatives of Ivan Edwards, deceased and registered proprietors of the property more particularly described in the Land Registry as Registration Section: Falmouth & Bethesda, Block No. 34 2482B; Parcel No. 5. ("**Parcel 5**").

The Claimant's Claim

- [3] The Claimant commenced these proceedings against the Defendants by way of fixed date claim form together with an affidavit in support, seeking a declaration that the registration of the Defendants on Parcel 5 on 6th December, 1993 is a mistake and an order for the rectification of the said Parcel 5 by cancelling the said registration of the Defendants and apportioning the conveyed plot to the Estate of Joseph Benjamin O'Garro a.k.a Benjamin O'Garro as the registered proprietor pursuant to section 140 of the **Registered Land Act**.¹ A judge subsequently directed that the claim proceed as if commenced by claim form instead of fixed date claim and directed that the Claimant file a statement of claim in place of the affidavit previously filed with the fixed date claim form and the matter be listed before the master for case management.
- [4] The Claimant filed a statement of claim on 23rd July, 2024. In his statement of claim, he averred that on searching the National Archives regarding the estate of his mother's parents, he obtained a copy of a Conveyance Indenture dated 10th April, 1959 between Arthur Grainger Edwards to his grandfather, Joseph Benjamin O'Garro aka Benjamin O'Garro, for a two-acre parcel of land in Hill Side, St. Paul, Antigua. He alleged that the parcel conveyed to Benjamin O'Garro was described as being bound by lands belonging to the Estate of Sarah Brown, the Claimant's grandmother, and Ethel Edwards. The Claimant averred that he also obtained a copy of an Indenture of Conveyance of land from Arthur Grainger Edwards to Ethel Edwards dated 10th April, 1959 which mentioned the lands of Benjamin O'Garro.
- [5] The Claimant averred that the **Land Adjudication Act**² sought to bring the registration of all lands in Antigua under the Cadastral Survey and the process required an Adjudication Officer to prepare an Adjudication Record determining the individual who possessed an interest in land. He averred that the Adjudication Record as it relates to Parcel 5 was completed and dated 28th April, 1977 and the recording officer indicated that the land remained unclaimed and belonged to "relations of Arthur Grainger Edwards, probably Personal Representatives of Ivan Edwards".
- [6] The Claimant alleged that on a further search at the National Archives, he obtained a copy of a Conveyance from Arthur Grainger Edwards to Walter Edwards, Rolston Edwards, Ivan Edwards, Thelma Edwards and Marjorie Abbot nee Edwards dated 20th December, 1966 for parcels of land situated at Hillside in the Parish of St. Paul estimated at 12 acres more or less.

¹ Cap. 374, Laws of Antigua and Barbuda.

² Cap. 234, Laws of Antigua and Barbuda.

- [7] The Claimant alleged that Arthur Grainger Edwards' conveyance of 1966 could not have included the two-acre parcel that had been previously conveyed to Benjamin O'Garro, seven years prior in 1959 as Arthur Grainger Edwards no longer owned that portion of land. He averred that the two-acre parcel was erroneously and mistakenly included in the 3 $\frac{3}{4}$ acres particularly described in the Land Registry as Registration Section: Falmouth & Bethesda; Block No: 34 2482B; Parcel No: 5 and should not have been registered in the Estate of Ivan Edwards.
- [8] In light of the above, at paragraph 12 of his statement of claim, the Claimant prayed that the Court orders a rectification of the Land Registrar and that the two-acre parcel that was purchased and conveyed to Benjamin O'Garro be registered in his name.

The 2nd Defendant's Defence

- [9] The 2nd Defendant filed a defence to the Claimant's claim putting the Claimant to strict proof of several of the averments made in his claim. The 2nd Defendant denied that the alleged two-acre parcel of land was erroneously and mistakenly included in the 3 $\frac{3}{4}$ acres comprising Parcel 5 and should not have been registered in the Estate of Ivan Edwards. He averred however that if there was an error, that issue would have been raised years ago and that no such allegation has ever been made until now, many years after Mr. Edwards' death.
- [10] The 2nd Defendant further averred that the relief sought by the Claimant in paragraph 12 of the statement of claim is statute barred. He averred that section 17 of the **Limitation Act 1997**³ bars action to recover any land after the expiry of 12 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. He averred that, according to the Claimant's statement of claim, he is bringing this action in relation to a transfer/conveyance that took place in 1993, thirty years ago, and he is also challenging the legitimacy of a conveyance which took place in 1959, sixty-four years ago. Thus, the 2nd Defendant contended, these actions cannot be brought against the 2nd Defendant now.
- [11] The parties were issued case management directions on 21st October, 2024 for the trial of the claim. On 5th February, 2025 the 2nd Defendant filed a notice of application for summary judgment. The 2nd Defendant's notice of application stated that he was applying for an order that the Claimant's claim is statute barred and therefore dismissed and for prescribed costs. An affidavit was filed in support of the application.

³ No. 8 of 1997.

The 2nd Defendant's Summary Judgment Application

[12] The 2nd Defendant's summary judgment application was made on the following six grounds:-

1. The Claimant has no real prospect of successfully prosecuting his claim against the 2nd Defendant.
2. The cause of action arose out of a conveyance which took place in 1966, some 58 years before the filing of the claim;
3. Section 17(1) of the **Limitation Act 1997** states that no action shall be brought by a person to recover land after the expiration of 12 years from the date on which the right of action accrued to him or if it first accrued to some other person through whom he claims, to that person.
4. Section 32 (1) of the **Limitation Act 1997** states that subject to subsection 3 where in the case of any action for which a period of limitation is prescribed by this Act, either - ... (c) the action is for relief from the consequences of a mistake; the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
5. With reasonable diligence, the Claimant's predecessors, under whom the Claimant derives his authority for the present action, could have discovered the mistake since at least since 1975 when the Cadastral Survey was done and the Registered Land Act was brought into force. The fact that the Claimant did not in fact discover the alleged mistake until 2022 does not absolve him of the requirements of section 32 of the **Limitation Act 1997**.
6. The conveyance, transfer and land register were all publicly available documents, and the Claimant is statute barred from bringing an action decades after the 12 year limitation period has expired.

[13] The 2nd Defendant further stated in his notice of application for summary judgment that the issue that he proposes that the Court should deal with at the hearing of the application for summary judgment is whether or not the Claimant is statute barred from bringing the present action against the 2nd Defendant.

[14] The Claimant filed a notice of opposition to the 2nd Defendant's summary judgment application opposing it on the following grounds:-

1. The Claimant's claim pursuant to section 140 of the **Registered Land Act** for rectification due to mistake is not statute barred and has a reasonable prospect of success.
2. The Claimant's claim is not statute barred pursuant to section 31(1)(c) of the **Limitation Act 1997**, as the relief claimed is a direct

consequence of a mistake and it could have only been discovered by the Claimant on or around 2021.

- [15] The Claimant did not file an affidavit in response to the 2nd Defendant's application in accordance with CPR 11.12 and 15.5(2). Neither party filed their witness statements as directed by the Court on 21st October, 2024; accordingly, the 2nd Defendant's summary judgment application proceeded based on the evidence of the 2nd Defendant and the applicable law.

The Law on Summary Judgment

- [16] In **Myett's Enterprises Limited v Kimberley Cook Leigh et al**,⁴ Pereira CJ, citing the well-known judgment of **Saint Lucia Motor and General Insurance v Peterson Modeste**⁵ which has been submitted to the Court by both Parties, explained the approach of the Court to an application for summary judgment:-

"[14] The proper approach of the court to these applications is well-established. In determining whether the claimant or defendant has a real prospect of success, the judge or master must critically examine the pleadings and such evidence which has been adduced by the parties. However, he or she must refrain from conducting a mini-trial and making factual findings on important issues. In *Saint Lucia Motor and General Insurance Co. Ltd. v Peterson Modeste*,⁷ [ECSCJ No. 8 (delivered 11th January 2010)] this Court explained the proper approach as follows:

"...Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or the defence has no "real" (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the

⁴ BVIHCVAP2020/0005 (delivered 19th May 2021, unreported) at para. 14 to 15.

⁵ SLUHCVP2009/0008 (delivered 11th January 2010, unreported).

court arrives at the view that it would be difficult to see how the Claimant or the Defendant could establish its case then it is open to the court to enter summary judgment.”⁸ [*Ibid at para. 21.*].

- [15] At the outset, the judge or master should identify from the pleadings the real issues in the claim and thereafter determine whether, on the pleadings and the evidence provided, these issues can properly be disposed of summarily. It is only those issues which disclose no real prospect of success that ought to be disposed of using the summary procedure under Part 15 of the CPR.”
- [17] With the above principles in mind, I will consider the 2nd Defendant’s application for summary judgment.
- [18] The 2nd Defendant’s evidence in support of his application for summary judgment is set out in the short affidavit of Annie Bowen, Senior Legal Clerk in the Chambers of Watt, Dorsett, Hewlett Law, legal practitioners for the 2nd Defendant. Ms. Bowen’s affidavit essentially evidences the 2nd Defendant’s contentions in his defence. Ms. Bowen deposed that the Claimant avers in his claim that he discovered a mistake concerning a “conveyance indenture”, that is, a transfer of land which took place in 1959 from Arthur Grainger Edwards to his grandfather Benjamin O’Garro. She stated that the Claimant takes issue with a second transfer of land which took place in 1966 from Arthur Grainger Edwards to Walter, Rolston, Ivan and Thelma Edwards and Marjorie Abbott nee Edwards on the basis that the property which formed part of the earlier conveyance venture could not form part of this second transfer.
- [19] Ms. Bowen deposed that it is the 2nd Defendant’s contention that any mistake in the transfer of property with due diligence could have been discovered by Benjamin O’Garro and his successors within the 12-year limitation period set out by the **Limitation Act 1997**. She stated that the transfer documents were all a matter of public record and have been available to Benjamin O’Garro and his successors since at least the cadastral survey which took place in the 1970s and the adjudication record which was completed in 1977. She further deposed that disputing a transfer of land which took place in 1966, some 58 years ago is egregiously outside the statute of limitations set out in the **Registered Land Act** and as such the Claimant’s claim is statute barred.
- [20] As I previously noted, the Claimant did not file an affidavit in response to that of Ms. Bowen filed on behalf of the 2nd Defendant.

The 2nd Defendant's Submissions

[21] In the case at bar, the 2nd Defendant has asked the Court to deal with the issue of whether or not the Claimant is statute barred from bringing the present action against the 2nd Defendant.

[22] The 2nd Defendant relied on section 17 and section 19 and 32 of the **Limitation Act 1997** in his submissions to the Court. Section 17 of the **Limitation Act 1997** provides:-

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.

[23] Section 19 provides:-

“Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

[24] Section 32 provides:-

“32. (1) Subject to subsection (3), where in the case of any action for which a period of limitation is prescribed by this Act, either –

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiffs right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

[25] In his written and oral submissions, Mr. Jarid Hewlett, learned counsel for 2nd Defendant, submitted that as the Attorney for Geraldine Kentish, the personal representative of the Estate of Geraldine O'Garro (deceased), who was the personal representative for the Estate of Joseph Benjamin O'Garro (deceased), the Claimant's right of action accrues at the date when that right of action would have accrued to the person "through whom he claims", i.e. Joseph Benjamin

O'Garro. He submitted that the right of action in the case at bar would have accrued to Joseph Benjamin O'Garro on 20th December, 1966 when Arthur Grainger Edwards obtained a land transfer transferring lands including lands which allegedly should have belonged to Benjamin O'Garro. Mr. Hewlett noted that the time between the date when the right of action accrued to Benjamin O'Garro and by extension, the Claimant; and the date of filing of the claim at bar on the 2nd day of April, 2024; is 57 years, 3 months and 14 days.

[26] Mr. Hewlett submitted that in light of sections 17 and 19 of the **Limitation Act 1997**, it is clear that twelve years after 20th December, 1966 when the land was transferred to other persons, or, in the alternative, 6th December, 1993 when the Land Certificate was issued with the mistaken registered proprietor, Joseph Benjamin O'Garro's title to Parcel: 5 would have expired. This, he submitted, necessarily means that the Claimant now has no title to the property claimed, and therefore no locus standi before the Court.

[27] As it relates to section 32 of the **Limitation Act 1997**, Mr. Hewlett submitted that despite the transfer having occurred in 1966, the issue of ownership of the property in question could have easily been answered with a visit to the Land Registry and obtaining a copy of the Land Register since 1993. Mr. Hewlett submitted further that the Claimant, who resides in Florida, in the United States of America, upon a visit to Antigua, uncovered the alleged mistake. He submitted that it is unquestionable therefore that his successors, who resided in Antigua, could have done the same many years ago. Mr. Hewlett further submitted that even if the Claimant were to claim that his right of action accrued at the issuance of the Land Certificate mistakenly listing the wrong registered proprietor on 6th December 1993, that cause of action was 31 years, three months and 28 days before the filing of his claim, and would also be statute barred.

[28] Mr. Hewlett submitted that the only argument the Claimant is able to make to satisfy the court that his claim is not statute barred is to argue that time only began to run when he discovered the transfer in 2022/2023. He submitted that this argument has no hope of success, as the **Limitation Act 1997** specifically includes in its exception clause that the exception only applies from the time the mistake was discovered or with reasonable diligence could have been discovered. Mr. Hewlett submitted that if a person has a right of action in relation to land, and chooses not to do anything for the remainder of their life (as he submitted Joseph Benjamin O'Garro did), his successors cannot come many decades later to make the claim on their behalf.

[29] Mr. Hewlett further argued that there is no pleading that any previous searches were ever made in relation to the subject land. Indeed, he submitted, the pleadings suggest that the first time anything was done in relation to the land by

the Claimant or his successors after the alleged transfer which occurred in 1959 was in 2024 by the Claimant himself in bringing the present action. Mr. Hewlett submitted that the Claimant's case makes no allegation of fraud or concealment and rests firmly on the issue of mistake. As such, the Claimant cannot rely on the time when he actually discovered the mistake, but must account for the time that the mistake could, 'with reasonable diligence', have been discovered.

The Claimant's Submissions

- [30] Ms. Rose-Mary Reynolds, learned Counsel for the Claimant, submitted that the Claimant disagrees with the 2nd Defendant's contention that the issue of ownership in question could have easily been answered with a visit to the Land Registry and obtaining a copy of the Land Register since 1993. Ms. Reynolds argued that the conveyance indenture of the original conveyance from Mr. Arthur Grainger Edwards and Mr. Joseph Benjamin O'Garro could not have been easily obtained from the Land Registry as this paperwork was not stored by Land Registry and thus could not have easily been retrieved. Ms. Reynolds submitted that the Claimant maintains that if it was not for his search at the National Archives, which is not the typical process to obtain and confirm any conveyancing registration within Antigua and Barbuda, there would have been no discovery of the mistake. I pause to note that this is not in evidence before the Court.
- [31] Ms. Reynolds argued that the exception afforded under section 32(1)(c) of the **Limitation Act 1997** covers his discovery of the mistake, as the documents were only obtained from the National Archives. Ms. Reynolds submitted that the Claimant further asserts that it was through tedious searches at the National Archives that this mistake in the registration was discovered. Thus, she submitted that the Claimant rejects the 2nd Defendant's assertion that through reasonable diligence, the mistake would've been discovered through a search at Land Registry, as this could not have been easily obtained or obtained at all from Land Registry.
- [32] Ms. Reynolds further submitted that the Claimant's grandfather, relocated from Antigua and subsequently died while the original 12-year limitation period was valid, as he died in 1983 and the mistake in registration occurred by the Adjudication officer on or around 28th April, 1977.

Discussion

- [33] It appears from the Claimant's pleaded case, notice of opposition and his written submissions, that section 140(1) of the **Registered Land Act** is the basis of the relief he seeks on his claim. The section provides:-

“140. (1) Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration including a first registration has been obtained, made or omitted by fraud or mistake.”

[34] Having considered the pleadings and the evidence before the Court, to my mind, the Claimant's claim is premised on either a mistaken subsequent conveyance by Arthur Grainger Edwards of lands previously conveyed by Arthur Grainger Edwards to Joseph Benjamin O'Garro or a mistake by the Recording Officer in the adjudication record completed and dated 28th April, 1977 which presumably was carried into the Registration process. This remains unclear as the Claimant has not pleaded particulars of the mistake on which his claim is premised.

[35] Therefore, the first issue which would arise for the Court's determination on the Claimant's claim is whether there was any mistake in the conveyance or adjudication concerning Parcel 5 on which the Claimant's claim for rectification can be maintained. This is a question of fact and law. The authority of **St. Torrence Matty et al v Alicia Francois (Administratrix of the Estate of Jacob Fanus deceased)**⁶ helpfully put into perspective the nature of the mistake alleged and the relief that can be obtained under the **Registered Land Act**. In giving the judgment of the Court of Appeal, Pereira CJ stated:-

“[34] The appellants sought to say that a mistake occurred in the adjudication process which presumably was carried over into the registration process. Reliance is placed on the decision of the Privy Council in *Louisien v Jacob*²⁵ *[[2009] UKPC 93.]* an appeal from the Court of Appeal, Saint Lucia, which considered the issue of mistake in relation to a rectification claim such as the present. Prior to *Louisien* there were the decisions of this court in *Skelton v Skelton*²⁶, *[[1986] 37 W.I.R. 177.]* and *Webster v Fleming*²⁷ *[Anguilla Civil Appeal No. 6 of. 1993.]* which authoritatively established that rectification of the register is available only if the mistake in question (or when fraud is in question, the fraud) occurred in the process of registration. The Board referred to this statement of the law as established in the *Skelton* and *Webster* cases, and opined that the principle is a correct and useful statement of the law”²⁸ but added two footnotes by way of explanation or amplification in the following terms:

“A mistake in the process of registration” is a useful phrase, but it is judge-made, not statutory language, and its scope must depend on a careful evaluation of

⁶ SLUHCVP2012/0037 (delivered 21st August 2015, unreported).

the facts of the particular case. Moreover the fact that there has been a mistake in the course of the adjudication process does not automatically exclude the possibility of the same mistake being carried forward, as it were, so that it becomes a mistake in the registration process.

Several different situations can be imagined. First, an entirely correct adjudication record, confirmed by the adjudication officer, is passed to the Land Registry, where one of the staff makes a mistake in transcribing the contents of the record into the Register. In that case there is plainly a mistake in the process of registration (there has been no mistake in the process of adjudication). Rectification is available. Secondly, suppose there has been a mistake in the process of adjudication, such as a recording officer acting beyond his statutory authority by altering the record after its confirmation by the adjudication officer. In a case of that sort there is a serious mistake (probably amounting to nullity) in the process of adjudication. That mistake gets carried forward to the registration process, since the staff of the Land Registry are presented with a record which does not correctly embody the adjudication officer's final decision. Again, rectification is available. That is *Webster v Fleming*. In their Lordships' opinion the same principle may extend to a case in which the adjudication record, although not a nullity, contains on its face an obvious error or inconsistency such as to put the staff of the Land Registry on enquiry as to the correctness of the record. If they were to omit to make such enquiries, and proceed on the basis of a defective adjudication record, that may amount to repeating the original mistake so that it becomes part of the process of registration. In a case of that sort, again, rectification would be available."

[36] The Court went on to find in **Matty** that the alleged complaint of mistake made there was:-

"..not a mistake which may ground a rectification claim under section 98 of the LRA but is in every sense the complaints of a party aggrieved by the decision of the adjudication officer and one for which redress by way

of appeal was specifically made available under the LAA but which was not utilized.”⁷

- [37] Thus, before any question of limitation arises, the question of the mistake grounding the Claimant’s claim must be established. This did not feature as part of the parties’ arguments on the Defendant’s summary judgment application and would be improper for the Court to take the point further. Any such determination by the Court would require a careful evaluation of the facts of the case and is, in my view, an important finding to be made by the Court and thus not at all appropriate for this summary judgment application.
- [38] Secondly, the 2nd Defendant’s central argument on the present summary judgment application is that the Claimant’s claim is statute barred as it was brought after the 12 year time limit under section 17 of the **Limitation Act 1997** in circumstances where the 2nd Defendant contends that the Claimant or his grandfather Joseph Benjamin O’Garro, through whom the Claimant claims, could, with reasonable diligence, have discovered the mistake much earlier. In my view, this is a speculative conclusion at this stage.
- [39] The burden is on the 2nd Defendant who is attacking the Claimant’s claim to show that the claim has no real as opposed to fanciful prospect of success. As was put by Lord Hobhouse in **Three Rivers District Council v Governor and Company of the Bank of England**⁸ (albeit in the context of the provisions for summary judgment under part 24 of the English CPR), and cited with approval by Blenman JA in **Comodo Holdings Limited v Renaissance Ventures Limited et al**⁹ ‘the criterion which the judge has to apply under Part 24 (Part 15 of CPR 2023) is not one of probability, it is the absence of reality.’
- [40] In my view, to accede to the 2nd Defendant’s position at this stage would be an impermissible assumption for the Court to make. If the Court accepts that a mistake has been made within the context of section 140 the **Registered Land Act** for which rectification of the land register is available to the Claimant, the determination of when the mistake was discovered and importantly to this case, when it could, with reasonable diligence have been discovered, is a critical determination that could only be made after an investigation into the facts of the case which would require a trial for findings of fact to be made.
- [41] Making such a finding as the 2nd Defendant is inviting the Court to make on the present application, would be to conduct a mini-trial, which is impermissible on a summary judgment application.¹⁰ In my view, on the mere contention that the

⁷ Ibid at para. 36.

⁸ [2001] UKHL 16 at para. 158.

⁹ BVIHCMAP2014/0032 (delivered 3rd May 2016, unreported) at para. 88.

¹⁰ Ibid.

mistake was made at the very least some 30 years ago, it does not follow that the mistake could have been discovered earlier than 2021/2022 as set out in the Defendant's affidavit evidence. This is a determination for the Court after the evidence has been deployed and tested at trial. In the circumstances, the Court therefore is unable to rule on the issue of whether the Claimant's claim is statute barred on the present summary judgment application.

Disposition

[42] In light of the foregoing, I would dismiss the 2nd Defendant's application for summary judgment. The Claimant having successfully resisted the 2nd Defendant's application is entitled to his costs. I will hear the parties on the issue of the costs to be paid by the 2nd Defendant to the Claimant at the next case management conference of this matter on a date to be fixed by the Court Office, unless costs are sooner agreed.

[43] I therefore make the following orders:-

1. The 2nd Defendant's application filed on 5th February, 2025 for summary judgment is dismissed.
2. The issue of costs on the 2nd Defendant's summary judgment application to be paid by the 2nd Defendant to the Claimant shall be considered at the next case management conference of this matter, unless costs are sooner agreed by the Parties.
3. The matter shall be set down for further case management on 15th October, 2025.

[44] I wish to thank learned Counsel on both sides for their helpful oral and written submissions.

Carlos Cameron Michel
High Court Master



By the Court

Registrar