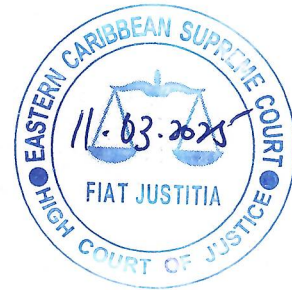


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES



CLAIM NO: SVGHCV2016/0104

BETWEEN:

DARON ANDREWS

Claimant

and

RENICK (AKA DANRICK) WILLIAMS

Defendant

Before:

The Hon. Mde Justice M E Birnie Stephenson

Appearances:

Mr Richard Williams and Mr Art Williams of Williams & Williams for the Claimant
Ms Ashelle Morgan of Morgan Law Inc. for the Defendant

2024: November 20th

December 31st

2025: January 24th

March 11th (Issued)

JUDGMENT

[1] **Stephenson J.:** On the 30th of October 2016, the claimant filed a Fixed Date Claim Form in which he has brought a claim against the defendant to recover possession of a portion of land with a

building and a declaration that he is the fee simple owner of the said land subject matter of deed number 2976 of 1990. The claimant also seeks to obtain an injunction to restrain the defendant whether by himself, his servants or agents or whomsoever from remaining on the said parcel of land, for damages for trespass and such other relief as this court would deem just and his costs.

- [2] The events giving rise to this claim has been set out in the statement of claim. This court will summarise the claim as follows.
- [3] The dispute in the case at bar touches and concerns the ownership of a parcel of land located at Riley in the state of Saint Vincent and The Grenadines¹. Both the claimant and the defendant contend that they have each inherited the land from their forebears.
- [4] The defendant claims his interest through the purported ownership of the said parcel of land by his grandmother Theodora Williams. He bases his claim on a deed of conveyance whereby she transferred to him her rights on her intended claim for possessory rights. (emphasis mine)
- [5] It is noted that the defendant is relying on Theodora Williams' intended claim for possessory rights. Let us pause here to examine what was the fate of Ms Williams intended claim for possessory rights.
- [6] Miss Theodora Williams the defendant's alleged predecessor in title filed a claim on the 22nd May 2012 for a declaration of possessory title. That application was opposed by the claimant. Miss Williams after a trial before the court was not successful in her claim. No appeal was filed for and on her behalf to challenge the ruling of the court in that regard.
- [7] Ms Williams claim was intituled "**Theodora Williams -v- Darron Andrew**"² the matter was heard on the 23rd July 2015 and judgment handed down by Madam Justice Esco Henry on the 23rd September 2015.
- [8] That case involved the parties conflicting claims for possessory title to a parcel of land situated at Riley in the State of Saint Vincent and the Grenadines. In that claim, Ms Williams made an application for a declaration for possessory title of 41, 382 sq. ft of land situated at Riley in the state of Saint Vincent and the Grenadines. Her application was opposed by the claimant in the case at bar.

¹ SVGHPT2012/0034

² Re: Judgment of Henry J in SVGHPT2012/34 at Paragraph 1

[9] According to the judgment of Henry J the claimant filed his own claim for a declaration of possessory title on the 18th October 2012.³ It is noted that the learned judge stated that Mr Andrews claim for possessory title was for 5,222 sq. ft of land a portion of which “seems to overlap with a section of the lands claimed by Ms Williams”.

[10] In the Learned Judge’s judgment, she stated the issues to be

“Whether Theodora Williams is entitled to a declaration of possessory title of the disputed land; and

Whether Daron Andrew is entitled to a declaration of the possessory title of the disputed land?”⁴

[11] It is to be noted that the court examined in detail the merits of the application brought by Ms Theodora Williams who is the defendant’s predecessor in title and upon whose possession and “intended possessory title” the defendant is seeking to resting his case on.

[12] It is also noted that the statutory declaration which Mr Williams is seeking to rely on was before the court and referred to by the learned judge in her decision. The learned Judge said

“In support of her claim she (Ms Williams) has exhibited a “title deed 2133 of 1973”. That document is a declaration of possessory title made by Miss Williams and is neither a deed of gift nor a Deed of Conveyance” A statutory declaration does no vest legal property in real property and is only declaratory of the maker’s intention.”⁵

[13] The learned judge went on to say that the contents of statutory declaration, which was before the court, “is not determinative of the issue of ownership of the property, but only serves merely as an aid in assessing the conduct of the parties and the pertinent considerations which flow from its existence.”⁶

[14] Justice Henry in that matter interrogated the occupation of Mr Andrew’s predecessor Mr Dominic. (Dominique) The court also heard evidence of the occupation by Ms Carol Thomas. It is noted that Justice Henry accepted the evidence of Ms Thomas as to her occupation of the disputed land and

³ Ibid at paragraph 1

⁴ Ibid at paragraph 2

⁵ Ibid at paragraph 7

⁶ Ibid at paragraph 7

in that case essentially Ms Thomas stated that she rented the disputed property from Mr Andrews the claimant in the case at bar.

[15] It is also important to note that the Learned judge rejected the evidence of the Williamses' as to their occupation of the disputed property. In fact, the learned Judge stated

"I reject the Williamses' account entirely. They are too many conflicts for their testimony to be truthful. In the premises the entire factual basis on which Ms Williams has made her application is eroded by these untruths. I find therefore that Ms Williams did not enjoy factual possession for the disputed land for the 12 years immediately prior to the date on which she made her application for those reasons it must fail and I so find" (emphasis mine)

[16] The learned Judge went on to consider the question of whether the claimant at bar is entitled a declaration of possessory title of the disputed land?

[17] In the earlier case as in the case at bar, Mr Andrews based his claim on a Deed of Settlement No 2996 of 1990 which is the identical deed. The property under consideration by Justice Henry was duly described by the learned judge as

"ALL THAT LOT PIECE OR PARCEL of land situate at Riley in the State of Saint Vincent and the Grenadines being ONE LOT admeasuring TWENTY (20) POLES and butted and bounded on the One side by the lands of Cynthia Caruth on the Second Side by the lands of George Dowers on the Third Side by lands in Feath Mc Fee and the Fourth Side by a Public Road or howsoever otherwise the same may be butted bounded known distinguished or described Together with all ways waters watercourses rights lights liberties privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto."

[18] This is the identical parcel of land which is under consideration in the case at bar. In the case before Justice Henry, Mr Andrews adduced survey plan number G37/6 and it was his evidence that the land depicted in that survey plan was the land he was laying claim to.

[19] Justice Henry considered the survey plan and the deeds adduced by the parties before her and found that the description of the land differed substantially, the learned judge also found that the boundaries of the survey plans adduced to her were dissimilar in some respects.

[20] In that case Mr Andrews who was the defendant in that matter and the claimant in the case at bar was unable to adduce evidence or explain to the court as to the difference in the size of the parcel of land described in the deed he was relying on and the survey plan he adduced and was seeking to rely on.

[21] It is noted that Justice Henry stated that “... a visual examination of the plans reflects that the areas are not identical. It is not possible to ascertain if any part of either is a mirror image of the other”.

[22] Mr Andrews in the matter before Justice Henry like Ms Williams, did not produce expert evidence or the evidence of a surveyor to assist the court in its considerations and as such the Learned Judge found that “... the court is unable to determine what if any section of plan G 37.6 is captured in plan g35/26”. It is noted that these survey plans were approved and lodged at the Survey Department on September 9th, 2003, and May 7th, 2012 respectively as noted by the court.

[23] Justice Henry went on to find that “Mr Andrews has demonstrated that he has an interest in the property described in the Deed of Settlement. If that property comprises the disputed land or any part of it, he would be entitled to a declaration regarding his interest” (emphasis mine)

[24] It is noted that Justice Henry's decision as it regarded Mr Andrew's entitlement was encapsulated by this statement

“... however, too many questions remain unanswered and in view of these uncertainties it would be ill advised and contrary to evidence and the interest of justice to grant a declaration of possessory title to Daron Andrews in respect of the disputed portions he claims. I therefore make no such order.”

[25] Justice Henry then went on to dismiss both claims for possessory title before her.

[26] It is clear to this court that the question of the ownership of the portion of land subject to the application currently before the court was previously litigated before the court. It is also clear to this court that the Learned Judge having had the opportunity to observe and make a finding of fact based on the evidence before her clearly rejected the claim brought by Theodore Williams the purported predecessor of Mr Renrick Williams. It was the very clear finding of the court, that Theodora Williams was unable to establish on the balance of probabilities that she enjoyed factual possession of the property that she was laying claim to.

[27] The matter is Res Judicata. This is a matter that has clearly been litigated before this court and a finding of fact has been made in this regard. As it regards the counterclaim brought by Mr Williams relying on the purported occupation of Theodora Williams this has already been adjudicated on and cannot be sustained.

[28] As it relates to the application of Mr Andrews his application for possessory title before Justice Henry was also rejected but, it was noted that the rejection of his application was clearly not based on the fact that he was unable to establish factual possession. In fact, quite to the contrary, the Learned judge made a finding of fact that Mr Andrew demonstrated that he has an interest in the land as he was claiming and that he would be entitled to declaration regarding his interest. (Emphasis mine)

[29] However, what is clear to this court is that the onus now falls on Mr Andrews to make his application for title in the delineated portion in compliance with the requirements of the Possessory Titles Act.⁷

[30] This court based on the doctrine of Res Judicata and issue estoppel which I will explain shortly, will not reexamine the factual basis of Mr Andrews' claim to the land. However, he will have to satisfy the procedural requirements of the Possessory Titles Act⁸. (emphasis mine)

[31] Mr Andrews is claiming title to the parcel of land subject matter of Survey Plan G37/6 as lodged and approved at the survey department. To be clear Mr Andrews based on his application and documents submitted is entitled to be declared owner of the land duly described therein.

[32] For the avoidance of doubt, it is hereby decreed and declared that the claimant is entitled to apply for possessory title for

“ALL THA LOT PIECE OR PARCEL of land situate at Riley in the State of Saint Vincent and the Grenadines being ONE LOT admeasuring TWENTY (20) POLES and butted and bounded on the One side by the lands of Cynthia Caruth on the Second Side by the lands of George Dowers on the Third Side by lands in Feath Mc Fee and the Fourth Side by a Public Road or howsoever otherwise the same may be butted bounded known distinguished or described Together with all ways waters watercourses rights lights liberties

⁷ Chapter 328 of the Revised Laws of Saint Vincent and the Grenadines, 2009

⁸ *ibid*

privileges and easements thereto belonging or usually held used occupied or enjoyed therewith or reputed to belong or be appurtenant thereto."

[33] At the close of the trial herein an order was made to file closing submissions. At the date of writing there is no record of the defendant filing closing submissions as ordered.

[34] I now return to the issue of Res Judicata and issue estoppel.

[35] Counsel on behalf of the claimant in his closing submissions submitted that even though the defendant in the case at bar was not a party to the previous litigation the land the subject matter of this case was the subject matter of that claim. Counsel Art Williams on behalf of the claimant quite correctly submitted that the court has already decided that it does not believe any of the facts relied on by Theodora Williams to support her possessory title application and found that she did not have factual possession of the disputed land for the requisite period. The court went on to dismiss Theodora Williams' application for a declaration of possessory title on that basis.

[36] Counsel submits that the impact of the earlier case is that the Deed of Transfer on which the Defendant relies to establish his legal title to the disputed land is invalid, his predecessor did not have valid legal title to transfer to him. His seeking to rely on the said deed and the same facts amounts to re-litigation on an issue already decided by a court of competent jurisdiction. This court has opined on this already and wholly agrees with Counsel in this regard.

[37] Counsel Williams went on to submit that the principle "issue estoppel" dictates the defendant cannot now rely on a root of title that the court found did not exist and was invalid. Counsel went on to cite and rely on the case of **Treldon Connell and Geoffery Creese and Marcelle Alexander Findlay**⁹, where **Justice Byer** at paragraph 4 considered the two instances in which res judicata can occur, she stated:

"The definition of res judicata is well settled. As was recognized by Counsel for the Claimant, it applies to two spate instances firstly what termed as "cause of action estoppel in that the whole of the legal rights and obligations of the parties have been concluded by an earlier judgment which may have "involved the determination of questions of law as well as findings of fact or in it could mean that there was a particular issue which was already litigated and decided (issue estoppel) which is now being raised in a different cause of action "to which the same issue is relevant" and one of the parties seek to reopen that issue".

⁹ (SVGHCV2017/0064)

[38] Counsel further cited and relied on the learning in Halsbury Laws of England¹⁰,

"Issue estoppel means that a party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second claims or actions are different, the finding on a matter which came directly in issue in the first claim or action, provided it is embodied in a judicial decision that is final, is conclusive in a second claim or action between the same parties and their privies. Issue estoppel will only arise where it is the same issue which a party is seeking to re-litigate. The principles apply whether the point involved in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law".

[39] The law on Res judicata as a legal doctrine is well settled it is meant to prevent a party from re-litigating an issue or claim that has already been decided in a previous case. It ensures that once a final judgment has been rendered on a matter, the parties cannot bring the same issue before the court again. The principle upholds the finality of judgments and promotes judicial efficiency by preventing redundant legal proceedings.

[40] Reference is also made to the learning provided in Halsbury's Laws of England which states:

*"The doctrine of res judicata provides that, where a decision is pronounced by a judicial officer or other tribunal, with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal"*¹¹

[41] The reason the Courts enforce res judicata is to ensure the good administration of justice in public interest and to prevent abusive and duplicative litigation. It has been held that the Courts should not be clogged by re-determinations of the same disputes; and the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter.¹² (emphasis mine)

[42] It has also been held that the plea of *res judicata* applies not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to

¹⁰ Fourth Edition Re-issue, Vol. 16(2) at paragraph 980:

¹¹ (Volume 11 (2015) At para 1603

¹² Re: Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd) [2013] UKSC 46, [2014] AC 160, [2013] 4 All ER 715,

every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. The case at bar is directly on point in this regard.

[43] The defendant Danrick Williams by his counterclaim is seeking a declaration that he is the owner of the disputed property. This matter, this court finds has already engaged the attention of this court before Justice Henry and judgment handed down.

[44] The court would have heard from the same witnesses and reviewed and opined on the same documents that Mr Danrick Williams is seeking to rely on to establish his claim. More importantly the court in the previous matter was able to hear from Ms Theodora Williams on whose purported title Mr Williams is seeking to rely on. Justice Henry at the trial has also, having heard Ms Williams' evidence and having had to opportunity to observe the witness whilst giving evidence and having considered the entire case the duly rejected the factual evidence adduced by Ms Williams.

[45] The defendant is seeking to rely on a deed of transfer from his grand mother. The court in the previous matter held that his grandmother did not have valid legal title to transfer to him.

[46] The counterclaim mounted by the defendant as counsel for the claimant has submitted amounts to an attempt by the defendant to relitigate an issue which has already been decided on by a court of competent jurisdiction, This court agrees with counsel's submission that this amounts to res judicata or issue estoppel which will disallow Mr Williams from relying on the identical document to establish his root title. This court has reviewed the decision and discussed same above. For those reasons Mr Williams' claim must fail.

[47] The order of this court is therefore:

- a. It is declared that Daron Andrews is the fee simple owner of the parcel of land subject matter of Deed Number 2976 of 1990 and he is entitled to possession of the land as delineated and laid out in Survey Plan G37/6 and he is entitled to apply for possessory title of the said land in compliance with the procedural requirements of the Possessory Titles Act.
- b. The defendant's counterclaim is dismissed in its entirety on the ground that his claim is res judicata in that the facts upon which he seeks to rely on to establish his came has already been decided and rejected by a court of competent jurisdiction.

- c. The defendant is to give up possession of that part of the parcel of land that the claimant is declared fee simple owner of, and which is contained in the Survey Plan G37/6.
- d. The defendant is hereby restrained by way of injunction whether by himself his servants and or agents from claiming the said parcel of land contained Survey Plan G37/6 and from remaining on any part there of.
- e. Damages for trespass to property is to be assessed.
- f. Costs to the claimant to be assessed if not agree within 28 days of the issue of this judgment.

[48] I wish to thank Counsel Art Williams for his helpful submissions in this matter.

M E Birnie Stephenson
High Court Judge

BY THE COURT
REGISTRAR'S OFFICE
ST. VINCENT AND THE GRENADINES
REGISTRAR

