

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO.: SLUHCV2018/0086

BETWEEN:

EFFIE MARCEL

Claimant

And

DELIA JOSEPH

Defendant

APPEARANCES:

Ms Trudy Glasgow for the Claimant

Mr Horace Fraser for the Defendant

2021: November 21;
2024: September 11

JUDGMENT

Introduction

[1] **PHILLIP, J:** This is a claim initially commenced by a regular claim form and statement of claim filed on 7th February 2018 for trespass to property where Effie Marcel (“the claimant”) claimed against Delia Joseph (“the defendant”) damages interest and costs. When the case came up for the case management conference on 9th May 2018, the defendant nor her legal practitioner appeared. The court granted the claimant permission to file and serve an amended statement of claim within 14 days of the order to comply with CPR 8 (1) (5).

[2] On 24th May 2018, the claimant filed an amended fixed-date claim form with an amended statement of claim and an application for an interim injunction supported by her affidavit. The claim seeks:

“(i) A declaration that the Claimant is the only lawful owner of the Parcel 1043B 209 [“(the property”)”] by virtue of the title registered, at the Land Registry, is the registered land owner;

- (ii) An Injunction restraining the Defendant whether by herself or through her agents or servants from interfering, threatening, harassing, or stopping any surveyor or surveying work from being done to give effect to the Land Register with regards to the said property;
- (iii) The costs hereof;
- (iv) Any order to which the court thinks just in the circumstances”.

[3] By notice of application supported by an affidavit filed on 18th June 2018, the defendant sought a declaration that the court has no jurisdiction to entertain the claim and, accordingly, should strike it out; alternatively, strike out the claim as disclosing no reasonable ground for bringing it; and costs. The grounds or basis of the application were: (1) the claim form discloses no cause of action; (2) the matter is prescribed in accordance with Article 2103 of the Civil Code of Saint Lucia¹ (hereafter, all references to ‘Article(s)’ will be to the Civil Code of Saint Lucia); (3) the defendant was in occupation of land belonging to the Crown which does not fall to the ownership of the claimant and is not part of the property; (4) the matters of the ownership and possession of the parcel of land the defendant occupies (“the disputed land”) had been the subject of litigation by the claimant’s predecessor in title to the property, Austin Glasgow (“Mr Glasgow”) and the defendant’s mother, Andrea Joseph (“Ms Joseph”) which said matter remains unresolved in the court system; and (5) these proceedings are an abuse of the process of the court.

[4] On 20th September 2018, when the application for the interim injunction came up for hearing, the defendant’s counsel indicated the matter was not amenable to mediation because the disputed land belonged to the Crown. Still, by consent of the parties, it was ordered that:

- “1. The Defendant is given leave to withdraw the notice of application to strike out the claim filed on 18th June 2018.
- 2. The claim shall be determined on the preliminary issue of whether the land which is the subject matter of this dispute, namely Block 1043 B Parcel 209 [the property] is or is not Crown Land.
- 3. That Chief Surveyor shall prepare a report to the Court stating whether or not the said parcel of land is Crown land, such report to be submitted on or before 30th January 2019.
- 4. The Defendant is given leave to file a Defence within two weeks of the date of this Order.
- 5. Counsel for both sides have provided an undertaking to this Court that their clients shall refrain from trespassing on each other’s property until this matter is heard and determined.”

¹ Cap 4.01 of the Revised Laws of Saint Lucia

- [5] The defendant filed her defence on 24th September 2018. She denies being a trespasser of the property and contended that her house was on land belonging to the Crown. The property's boundaries do not extend to the Crown's land on which she resides. Further, her mother occupied the said Crown land since the 1970s and lived thereon continuously until she died in 2015. She, the defendant, was born on the disputed land in 1984 and has lived there all her life. Consequently, the defendant asserted that assuming but not admitting that the disputed land forms part of the property, the claim was prescribed under Article 2103 and should be dismissed with costs.
- [6] The Chief Surveyor, Mr John Labadie, submitted a report dated 28th January 2019 to the court, stating, among other things, that the investigation results at the Survey Department and the Land Registry revealed the property, represented as lot A1 on the plan of survey C10770R², is registered in the claimant's name³. He concluded it can be said with absolute certainty that the property does not belong to the Crown but to the claimant. Still, the court directed that Mr Labadie indicate whether the defendant was occupying Crown lands or lands being part of the property.
- [7] Mr Labadie submitted the further report dated 18th October 2020, reiterating that the plan of survey C10770R is the registered survey to support the boundaries to the property and Block 1043B Parcel 210, and the claimant owned the property. He further stated that the result of his field topographical survey revealed that some of the boundary pegs to the property were found on the ground in good condition and that there were five structures on the property – two wooden sheds, one concrete dwelling, one wooden dwelling, and one concrete toilet and bathroom, and that the wooden structure erected on the property identified as “wooden building” belong to the defendant.
- [8] On 19th February 2021, when the matter next came up, counsel for the parties acknowledged that the Chief Surveyor's second report dated 18th October 2020 has confirmed and put to rest the issue that the disputed land is not Crown lands, but counsel for the defendant contended there remains the defence of prescription to be determined by the court. The court gave case management conference directions for the trial of this issue.

² A copy of the Plan of Survey C 10770 R of lot A1, representing Block 1043B Parcel 209, was exhibited as “CS2”

³ A copy of the Land Register for Block 1043B Parcel 209 dated 28th January 2018 was exhibited as “CS3”

[9] At the trial on 15th November 2021, both parties gave evidence in their respective case, and counsel made brief closing submissions. The court then gave leave to the parties to file authorities on the issue of what amounts to incidents of interruption of prescription by 30th November 2021. On 29th November 2021, the defendant filed brief submissions with the authorities, and the claimant did so on 2nd December 2021.

The Claimant's Case

[10] The claimant's case, in a nutshell, was that she is the legal owner of the property on which her family (grandparents, mother, brother and her) lived for over 50 years. The defendant is a trespasser of the property as she resides on the disputed land, a part of the property. She has failed or refused to vacate it despite being written to at least twice by the claimant's Attorney-at-Law.

The Evidence

[11] The claimant's evidence from her witness statement was as follows:

1. She was a single mother, working at Massy Stores Supermarket as a Supervisor, and has lived in Bexon, Castries, all her life. She was 43 years old. Her grandfather, the late Henry Etienne, was an employee of the late George Matthias Glasgow as the caretaker of the land in Bexon and grew up with Mr Glasgow. Her late grandfather and grandmother lived there until their deaths. She and her brother were born and raised on this land, and although her mother moved away, they stayed with their grandmother, who raised them.
2. In 2007, Mr Glasgow agreed to sell the property to her mother, Fedora Etienne, a daughter of the late Henry Etienne. They began making payments towards this purchase. Her mother made the last payment of \$1,000.00 on 19th April 2011, leaving a balance of \$11,230.00. Mr Glasgow died on 22nd December 2012, with that balance still outstanding. On 26th May 2015, she paid off the balance owed on the property, and a deed of sale was executed and registered by the executors of Mr Glasgow's estate.
3. After she purchased the property and obtained her documents, the defendant, who lives next to her in Bexon, started construction on her home. On 11th August 2015, the claimant, through her Attorney-at-Law, served a letter informing the defendant that the property belonged to the claimant and that the defendant was to cease and desist any further construction on the disputed land. The defendant ignored the letter and continued working on her house.

4. Her Attorney-at-Law advised her to have the property resurveyed, which was done on 9th March 2017. She later called her Attorney-at-Law to inform her that the property was surveyed. However, the defendant removed all the pegs and threw them away as soon as the surveyor had left.
5. On 10th March 2017, she caused a notice to evict letter to be sent to the defendant, giving her three months to vacate. However, to date, the defendant is still on the disputed land. The defendant has not lived on the disputed land in sole, peaceable, public, unequivocal and undisturbed possession for over 30 years.
6. The claimant knows that Mr Glasgow had been trying to get the defendant off the disputed land since he had never permitted them to reside there. The matter was also before the court.
7. She wishes to renovate her home but did not get permission from the Ministry of Planning because the defendant resides on the disputed land. Despite the matter being in court, the defendant continued working on her house without regard for the law.
8. Therefore, she humbly asks this court, in all of the circumstances, to declare her the rightful owner of the property, not only because she purchased the same but she and her family have been in sole, peaceable, public, unequivocal and undisturbed possession for a continuous period of over 50 years. The court should order the defendant to break down her house and vacate the disputed land.

[12] In cross-examination, the claimant indicated that she remembered signing the deed of sale in December 2016, when she became the owner of the property on which she and the defendant are living presently. She confirmed that the defendant grew up on the disputed land as a little child, that she has a concrete house on the disputed land and that she has planted trees on the disputed land.

Submissions

[13] Ms Glasgow submitted in her oral presentation that:

1. The claim before the court since 2018 was for possession of property purchased by deed of sale in 2016. The issue for determination is prescription, which runs for 30 years under Article 2057. The property was owned by George Glasgow and inherited by Mr Glasgow. The claimant (through her Attorney-at-Law) wrote to the defendant on at least two

occasions, informing her that the claimant purchased the property and she should cease renovating.

2. The defendant gave evidence that she lived on the property. Still, there is no proof that Ms Joseph occupied the disputed land before her birth in 1985. Mr Glasgow brought a claim in 2008, but there is no evidence of its outcome. Prescription being for 30 years uninterrupted means that she was never approached and told of title to the property. The claimant has indicated that her family lived there much longer.
3. They had brought sufficient to show that prescription had been interrupted. Ms Joseph was brought to court, and only when Mr Glasgow died in 2015, there was a break. The defendant said she lived on the disputed land with her mother and siblings for 30 years from birth in 1984.
4. If a matter is brought to court irrespective of the conclusion it would be deemed interruption. The mere filing of the claim would be deemed an interruption. The defendant's defence is six lines and a short witness statement. It is clear that the defendant suggested the disputed land was Crown land, and when it was determined it was not, the defendant sought to show that it was prescribed.
5. There is a dispute over the property - a boundary dispute over the land occupied by the defendant. The defendant said she lived on the land all her life but that could be challenged as it was Ms Joseph taken to court in 2008 and not the defendant.
6. The claimant has been on the property for a period of longer than 30 years. She purchased the property with the due diligence of the Land Registry.
7. To her mind, a letter will amount to interruption. Still, she acknowledged that she would need to get legal authority later.

[14] In the written submissions, after summarising the claimant's version of the case, Ms Glasgow submitted that the issue to be determined was whether the defendant was entitled to the disputed land by prescription. She referred to the following Articles: Article 2047 - defines what is 'prescription'; Article 2057 - describes how possession is achieved for the purpose of prescription; Article 2074 - provides for the duration of possession in respect of corporeal immovables of 30 years; and Chapter Fifth, Articles 2083, 2084 and 2085 - the causes which interrupt prescription. Counsel also mentioned the following authorities (judicial decisions) as demonstrating where the

prescription has been interrupted: (1) *Victor Delices v Lindley Lubin et al.*⁴, (2) *Condace Benjamin and Geraldine Bridges v Avery Alexis Henry*⁵, (3) *Computron Limited v Adelaide Joseph*⁶, (4) *Castaways Development Ltd. v Linda Harris and Castaways Hotel Ltd.*⁷, (5) *The Bagshaws of St. Lucia Limited v Pavlin Limited*⁸, and (6) *Caroline Chetty v The Estate of Regis Albert et al.*⁹.

[15] Regrettably, Ms Glasgow did not assist the court as to how these authorities may advance the claimant's case. Still, she concluded that based on the evidence in the trial and supporting documents, it is clear that the claimant is the rightful owner of the property, the defendant has no legal right to the disputed land by prescription, and the court should grant the claim as prayed and enter judgment for the claimant.

The Defendant's Case

[16] On the other hand, the defendant contends that her mother was on the disputed land from sometime in the 1970s and lived there continuously until she died in 2015. The defendant was born on the disputed land and is now 36 years old, so her occupation, when joined with that of her mother, exceeds 30 years. The claimant cannot bring or maintain any claim against her as 30 years had elapsed before these proceedings. Therefore, the claim against her is prescribed by Article 2103.

[17] Further, the contention that Mr Glasgow filed a claim against Ms Joseph in 2008 (SLUHCV 2008/0342), which interrupted prescription, cannot be maintained. The claimant relies on the claim form and the statement of claim as the only documents to prove the interruption of prescription but has not adduced any court order or affidavit of service in the claim to establish the interruption of prescription.

⁴ SLUHCV2007/0431

⁵ ANUHCv2011/0412

⁶ SLUHCV2014/0456

⁷ DOMHCV2007/0168

⁸ SLUHCV2011/0854

⁹ Supreme Court of Seychelles, [2020] SCSC 268, CS 131/2018

The Evidence

[18] The defendant gave evidence and stated in her witness statement that she relied on all documents filed by her in the matter to prove her case. Her mother occupied the disputed land since the 1970s and lived there continuously until she died in 2015. She was born on the disputed land in 1985 and has lived there all her life. Her brother and sisters were also born on the disputed land, but they left leaving her alone in occupation. When the claimant filed this claim was the first time she tried to get her off the disputed land. Her parents, who lived together on the disputed land at the time, constructed the house. It has three bedrooms, one living room, a bathroom, a toilet, and a kitchen. They planted mangoes, limes and pear trees on the disputed land.

[19] In cross-examination, the defendant testified as follows:

1. She has lived all her life at Bexon for the past 36 years. She had not lived anywhere else at all. She lived on the disputed land at Bexon with her mother and siblings (brother and sister). Her mother lived there until she died in 2015.
2. There is a house constructed in the 1970s on the disputed land. She guessed it was before she was born, as she was born in 1985. Her mother lived on the disputed land in the 1970s. She planted mangoes, limes and pear trees on the disputed land.
3. She did not know any claim brought against her or any family member.
4. She knows the claimant because they grew up next to each other. Still, she was only aware that the claimant purchased the property when they handed her documents saying she was occupying it.
5. She lived on the disputed land in 2008, but it would surprise her to learn that a claim was brought against her mother in 2008. She maintained that she was not aware of that claim.
6. The house was a concrete construction and she did renovation while living there. However, she can not remember exactly when she started the renovation but has been doing it for maybe three to four years now.
7. The property was surveyed during the time of the claim, but she was not present when the surveyor came to survey, nor did she see pegs in the ground showing her the property was surveyed.
8. She received a letter in 2015 concerning the disputed land, which she took to a lawyer. In March 2017, she got another letter, which she again took to the lawyer.
9. She stated that she has been truthful to the court.

10. She did not remove the pegs when the surveyor completed the survey, and she never attempted to purchase the disputed land.

Submissions

- [20] In his oral presentation to the court, as preliminary submissions, Mr Fraser indicated there was no claim for damages or *mense profit*, nor did the claimant claim possession of the disputed land. Still, referring to sections 11 and 17 of the Supreme Court Act¹⁰, he commented that he did not suppose the court would make an empty declaration. Further, he stated under CPR 29.5 (1) (g), having disclosed the documents, the party must sufficiently identify it in their witness statement to prove their case. The claimant's witness statement is devoid of any documents.
- [21] Regarding the substantive issue, Mr Fraser argued that the Civil Code of Saint Lucia has two types of prescriptions: Article 2103A - title by prescription, where the party must show continuous and uninterrupted, peaceable, public, unequivocal possession, and as proprietor for 30 years; and Article 2103, on which the defendant based her case, that after 30 years, the claimant forfeits the right to sue.
- [22] The evidence is that the defendant grew up on the disputed land. Her occupation is linked with Ms Joseph's prescription, so it is way over 30 years. The prescription started to run against Mr Glasgow, and there is no evidence he interrupted the prescription. The claimant's position is no better than Mr Glasgow's, who sold to her. Regarding the claim filed in 2008 against Ms Joseph, there is no evidence of the result or outcome, and a discontinued or struck-out claim does not interrupt the prescription, so this court cannot speculate.
- [23] Mr Fraser concluded that after 30 years, one could not bring a claim. He referred to **Walcott v Serieux**¹¹ as authority for saying Article 2103, read together with Articles 2129 and 2142, extinguished the claimant's right and the remedy. Thus, the court has no jurisdiction to entertain the claim, which it must dismiss with costs to the defendant.

¹⁰ Cap 2.01 of the Revised Laws of Saint Lucia

¹¹ Saint Lucia Civil Appeal No. 2 of 1975

- [24] In his written submissions, Mr Fraser stated the Articles in focus were the following: Articles 2047 - defines what is 'prescription'; 2049 - deals with renunciation of prescription; 2056 - defines possession for prescription; 2064 - a successor joining possession with that from whom his title was derived; 2083, 2085, 2086 and 2087 - the causes which interrupt prescription; and 2103 - prescription of all things, rights, and actions by 30 years.
- [25] Mr Fraser submitted that Ms Joseph died in 2015 while she was still in occupation of the disputed land. Therefore, it is reasonable to infer that the claim, SLUHCV2008/0342, was not decided. In paragraph 5 of the statement of claim, the claimant averred that Mr Glasgow died on 22nd December 2012. This was before Ms Joseph. Since the claimant cannot prove that the proceedings were served on Ms Joseph and the court entered an order for possession against her, the claim that prescription was interrupted fails according to Article 2085.
- [26] The claimant also failed to show that after Mr Glasgow's death, the personal representative of his estate took steps to continue the claim and also to join the defendant as a party to the claim. In this regard, the claim is presumed abandoned and prescription was not interrupted. Counsel referred to Articles 2049 and 2087 and the cases of ***Colic v Construction Miraberge Inc. and Others (9083-9176 Québec Inc)***¹² and ***Jumbo Motors Express Ltd. v Francois Nolin Ltée***.¹³ He submitted that the claimant could not show that prescription had been interrupted concerning the defendant and or Ms Joseph, so prescription has set in. Mr Fraser repeated his oral arguments relating to the ***Walcott*** case above that the claimant's right of action and right to a remedy have been extinguished. Further, he submitted that prescription ran against the defendant and her predecessor in title.

Issues

- [27] By their respective pretrial memorandum and submissions, the parties raised the following issues for determination at trial. The claimant's issues were (1) whether the defendant is entitled to the disputed land by prescription and (2) whether the claimant is entitled to damages due to the defendant's refusal to give up the disputed land. On the other hand, the defendant's sole issue was whether the claim was prescribed by Article 2103. Considering the parties' respective cases, I agree

¹² 2009 QCCS 29 at paragraphs 63, 64 and 65

¹³ [1985] S.C.R. 423 especially at paragraphs 33-40

with the defendant regarding the sole issue for determination because the defendant did not counterclaim with a possessory action claim under Article 2103A, nor did the claimant claim damages or mense profit for the trespass.

Discussion

[28] As indicated above, after the reports of the Chief Surveyor, the matter is now settled that the claimant was the legally registered owner of the property, including the disputed land, and I so hold. Consequently, the common position was that the defendant occupies the disputed land as a trespasser. Still, the defendant contended she had exercised all rights associated with ownership, and the claim against her was prescribed following Article 2103, which states:

“All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.”

[29] In **Computron** (cited above), the court considered what was required to establish prescription under the Laws of Saint Lucia, albeit in acquiring title by prescription under Article 2103A. In delivering the judgment Cenac-Phulgence, J stated (para [34]):

“The essence of Ms. Joseph’s defence and counterclaim is that she has been in continuous and undisturbed possession of the Disputed Land since 1939. As a result of her long occupation of beyond thirty years, she claims to have acquired a proprietary interest in the Disputed Land, being prescriptive rights, and denies that Computron is entitled to possession thereof. She must therefore satisfy the Court that she has been in continuous and uninterrupted, peaceable, and public possession of the Disputed Land for the requisite period of 30 years and that such possession has been unequivocal and as proprietor. She must show that she had evinced an intention to possess the Disputed Land as owner, to the exclusion of all others, including the true ‘paper title’ owner.”

[30] It follows that the defendant, having relied on prescription as her defence, has the onus to prove to the court by the evidence adduced that (1) her possession was for at least 30 years; (2) the possession was continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor; and (3) she demonstrated an intention to possess the disputed land to the exclusion of all others.

[31] At this juncture, it is useful to consider Mr Fraser’s argument of the distinction between Articles 2103 and 2103A, where he suggests that because the defendant is not claiming a positive prescription of acquiring title to the disputed land under Article 2103A but rather a negative prescription to be discharged from an obligation by lapse of time under Article 2103, then the

defendant only needs to show 30 years had elapsed since her occupation and the court would have no jurisdiction to hear the claim.

[32] When one considers Mr Fraser's argument, its incompleteness is readily apparent. Prescription concerning immovable property must involve two scenarios – (1) the right to vacant possession and (2) the right to rent due, *mense profit* and or damages for the trespass or illegal possession. In the latter scenario, one may see some force in Mr Fraser's submission in that the defendant only needs to prove that in at least 30 years, the claimant made no demand or claim (interruption) for the payment of the rent due, mense profit and or damages for the trespass or illegal possession.

[33] However, regarding the first scenario, it would be illogical for a defendant who could not establish a case of acquisitive prescription under Article 2103A may nonetheless be protected from delivering up vacant possession of the property. Indeed, there is a difference between the right to be in possession and having title to the property. Still, the right to the title under Article 2103A is premised on the right not to be removed from possession and was only added to the Civil Code of Saint Lucia by Act No. 34 of 1956. I believe the Legislature provided Article 2103A to give practical and economic effect to that right. Otherwise, one would be entitled not to be removed from the property but could not make full economic use of it as an asset because they had no title.

[34] It is therefore clear to me that a defendant who relies on Article 2103 as a negative prescription to extinguish an obligation to deliver up vacant possession of immovable property must equally satisfy the court of possession that was for at least 30 years, continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor; and demonstrated an intention to possess the said immovable property to the exclusion of all others. I will now consider whether the defendant has satisfied these conditions.

30 Years

[35] The defendant seeks to establish the 30 years of possession of the disputed land by joining or continuing Ms Joseph's occupation with hers. Her evidence was that her mother occupied the disputed land since the 1970s and lived there continuously until she died in 2015. She (the defendant) was born on the disputed land in 1985 and has lived there all her life. When the claimant filed this claim was the first time she tried to get her off the disputed land.

- [36] Ms Glasgow was correct that there is no evidence capable of proving that Ms Joseph was in occupation of the disputed land from the 1970s. This assertion comes from the defendant, which is clearly hearsay. She has not even suggested how she got the information.
- [37] Moreover, our courts in **Computron** (paras [36] and [38] and the cases cited therein), and **Francis Chitolie and another v Saint Lucia National Housing Corporation**¹⁴, have settled that the effect of the Land Adjudication Act¹⁵ and the Land Registration Act¹⁶ precludes possession before first registration from the reckoning of the 30 years for prescription. The copy of the Land Register for the property dated 28th January 2018 exhibited to the Chief Surveyor's report as "CS3" reveals that the property was first registered on 1st April 1987.
- [38] At best, Ms Joseph's possession of the property may start after 1st April 1987. Still, more realistically, based on the fact that the defendant was the only witness testifying to this possession, it should properly commence sometime after she was of an age to appreciate and understand the nature of their occupation of the disputed land. However, I believe the defendant has a further huddle because she relies on article 2064 to join or continue Ms Joseph's possession before she died in 2015 to hers from then to the date of filing and service of this claim. Article 2064 provides:
- "A successor by particular title may join to his or her possession that of him or her from whom his or her title was derived, in order to complete prescription.
Heirs and other successors by universal title continue the possession of him or her of whom they are the heirs or successors, except in the case of interversion of title."
- [39] Again, there is no evidence of a particular title by which the defendant was the successor of Ms Joseph's purported interest or rights to claim possession of the disputed land. Presumably, the defendant's claim is by way of an heir or other successor by universal title, but there is also no evidence that she is an heir or other successor of Ms Joseph. At its highest, there is the defendant's bald statement¹⁷: "*My mother, Andrea Joseph also lived on the [disputed] land before she died in 2015.*" However, the laws of Saint Lucia specify who is an heir or other successor.

¹⁴ [2023] UKPC 43

¹⁵ Cap 5.06 of the Revised Laws of Saint Lucia

¹⁶ Cap 5.01 of the Revised Laws of Saint Lucia

¹⁷ See para 2 of her affidavit in support of the notice of application filed on 18th June 2018

[40] Article 1, Sub-Article 57 defines succession thus:

“Succession” means the devolution by law or by will of the property of a deceased person and such of his rights as are capable of devolution. The same term is also used sometimes to designate the property and rights of a deceased person with respect to which such devolution has taken place. The terms “a succession” or “the succession” are always used in the latter sense.

While Articles 540 and 549 speak to who is an heir:

“540. An intestate succession is established by law alone, and a testamentary succession is derived from a will. The former exists only in the absence of the latter.

Gifts in contemplation of death partake of the nature of testamentary successions.

The person to whom a succession of any kind devolves, or, in the case of a succession devolving on or after the 5th day of April 1952, the person entitled to the residuary succession after administration thereof, is called heir. (*Amended by Act 34 of 1956*)”

“549. Intestate succession pass to the heirs in the order established by law. (*Substituted by Act 4 of 1988*)”

[41] The defendant has provided no proof that she is the daughter of Ms Joseph or that she qualifies under the law as an heir or other successor. Consequently, the defendant can only properly claim possession for her own occupation and, therefore, failed to satisfy the court that she was in possession of the disputed land for at least 30 years.

[42] Having held that the defendant has not established that she possessed the disputed land for at least 30 years, there is no need to determine the other matters of whether the possession was continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor, and if the defendant demonstrated an intention to possess the disputed land to the exclusion of all others. However, I will make the following observation regarding these other matters for completeness.

Continuous and Uninterrupted

[43] The parties strongly contested the effectiveness of the 2008 claim to interrupt Ms Joseph’s possession of the disputed land. The law clearly states that prescription (or more accurately stated possession for the purpose of prescription) may be interrupted civilly by a claim properly filed and served (Article 2085). The Caribbean Court of Justice, now our apex court, affirmed this in ***Mcdowall Broadcasting Corporation (MBC) Limited Applicant v Guy Eardley Joseph***¹⁸. There was no evidence before the court that the 2008 claim was served on Ms Joseph or that she

¹⁸ [2023] CCJ 15 (AJ) LC

voluntarily and unconditionally participated in the claim's proceedings. Accordingly, I reject the submissions of Ms Glasgow and accept those of Mr Fraser that the court cannot be satisfied that the 2008 claim interrupted Ms Joseph's possession for purposes of prescription.

Peaceable, Public, Unequivocal and as Proprietor

[44] There could be no challenge that Ms Joseph's possession of the disputed land was public. She constructed her house and lived there with her family for many years. Indeed, the claimant acknowledged in cross-examination that the defendant grew up there as a child. On the other hand, the possession may not have been peaceable, unequivocal and as proprietor. As observed by Saunder, J (as he then was) in **National Insurance Board v Christopher Matthew Alsacs**,¹⁹

"[27] In assessing a claim made by prescription a court focuses not only on the acts and intention of the person claiming by prescription but also on the acts and attitude of the paper title owner. The acts and attitude of the latter can serve to rebut or help to confirm the claim that the person prescribing has enjoyed possession that is continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor. If there is evidence that a documentary owner has discontinued possession or abandoned the land, well that is one thing. But if during the period of possession claimed by the adverse possessor, the paper title owner has evinced an active assertion of title by, for example, carrying out surveys of the land in question, then it is difficult to see how the occupation by the adverse possessor can attain the character required by Article 2057. See: *Brandis vs. Craig* (1981) 30 W.I.R. 136 @145E."

[45] Even though the 2008 claim may be incapable of interrupting Ms Joseph's possession for purposes of prescription and the defendant testified in cross-examination that it would surprise her to learn that a claim was brought against her mother in 2008 and maintained that she was unaware of that claim, which is startling because she presented it to this court and exhibited the claim form and statement of claim to her affidavit in support of the notice of application filed on 18th June 2018, mentioned at para [3] above, it may well be indicative of the possession not been peaceable. Similarly, the defendant acknowledged that she was aware of the property being surveyed.

[46] Further, the defendant's plea of prescription conflicts with the assertion in her defence (para 5) that her house was on land belonging to the Crown. A position she maintained until the Chief Surveyor confirmed the contrary. Therefore, Ms Joseph's and the defendant's possession would thus be unequivocal and not as proprietors.

¹⁹ Saint Lucia Suit No.257 of 1999

Intention to Possess

- [47] The defendant's assertion that the disputed land belongs to the Crown is equally indicative that they could not have had the intention (*animus*) to have prescribed against the disputed land because, under Article 2077, prescription does not run in respect of generally all immovable property and real rights forming part of the domain of the Crown. They are imprescriptible.

Conclusion

- [48] The defendant failed in her defence of prescription under Article 2103, so the court now turns to the claimant's prayers. Mr Fraser was correct in his observations that the claimant did not seek possession, damages, or *mense profit* for the trespass but that the court would make an empty declaration. Indeed, the claimant sought a declaration that she was the only registered lawful owner of the property, an injunction restraining the defendant from interfering, threatening, etc., the surveyor, costs, and any order to which the court thinks just in the circumstances. In the latter prayer, the court is being asked to exercise its discretion and consider what relief, if any, the claimant may be entitled to in all the circumstances that reflect the justice of the case.
- [49] The court should not act in futility. As much as is feasible its decisions and orders should be practical and effective to deal with the case justly and with finality. Considering that I earlier upheld the findings in the Chief Surveyor's report that the claimant was the legally registered owner of the property, there is no difficulty granting the declaration requested. Still, there appears to be little practical value in granting the injunctions in the terms sought, which I refuse, as the claimant owns the entirety of the property. The need for surveying involving the defendant should not arise.
- [50] Nonetheless, these orders are not likely to resolve the underlying issue of the claimant needing the disputed land to obtain development planning approval for renovations to her home; therefore, I am prepared to order the defendant to deliver up vacant possession of the disputed land to the claimant. However, I believe the parties should have an opportunity to discuss the matter to determine a reasonable modality for its execution.
- [51] Accordingly, IT IS ORDERED THAT:
1. The claimant is declared the only lawful registered owner of the property, Block 1043B Parcel 209, by virtue of the title registered at the Land Registry.

2. The defendant shall deliver up vacant possession to the claimant of the disputed land, which she occupies, within 90 days of this order, unless the parties apply within 42 days to vary it by consent in terms mutually agreed by them, which shall supersede this order.
3. The defendant shall pay prescribed costs for an unquantified claim of \$7,500.00 to the claimant.

**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar